

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

April 27, 2005

N440  
Alonzo Morris  
Sussex Correctional Institution  
P. O. Box 500  
Georgetown, DE 19947

**RE: Defendant ID No. 9911000751(R-1) - Postconviction Motion**

Dear Mr. Morris:

Mr. Morris was convicted of assault<sup>1</sup> in the first degree and possession of a deadly weapon during a felony. He was sentenced to 27 years, followed by probation.

The conviction was based upon the eyewitness testimony of the victim, James Bibbins, who knew him. He was convicted based upon the testimony of James Bynum who knew both the Defendant and the victim. Mr. Bynum testified he watched Defendant and victim "arguing"; he saw the victim get on his bike and pedal away, saw the Defendant pick up a pipe and go after Mr. Bynum, striking him in the head and then saw the Defendant run past the witness and he "looked dead at us". The "us" included another State's witness, Ineshia Mariguel Mitchell, who was with James Bynum. She testified she knew the Defendant and testified to seeing the above described events occur. Finally, another eyewitness, Richard Hughes, said he was waiting to start work at Harvey's Plumbing and Heating and observed the above events. He testified as to the graphic details including getting an eyeball to eyeball look at the Defendant after the assault took place. Mr. Hughes identified the Defendant as the assailant. The assault caused permanent injuries including but not limited to the victim's loss of sight in the damaged eye.

The Defendant offered testimony which placed him away from the crime scene. The Defendant did not testify.

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<sup>1</sup>Mr. Morris' first conviction was reversed by the Supreme Court based upon the State's closing argument.

All grounds alleged are based on ineffective assistance of counsel. Therefore, the Defendant must establish that his attorney made mistakes or errors in his defense which were objectively unreasonable. Additionally, he must establish the claimed error caused him actual prejudice. *Strickland v. Washington*, 466 U. S. 668 (1984).

### GROUND ONE

\_\_\_\_\_The Defendant includes multiple claims in Ground One. After attempting to make sense out of these issues, I believe I have included all of them in the following summary.

The Defendant complains that he was arrested by the police without a warrant. Defendant alleges his attorney was ineffective for not making motions concerning his warrantless arrest.

He states the arrest warrant, which was obtained following his physical arrest, had inaccuracies in the probable cause portion of the application which the officer later admitted on cross-examination were mistakes or assumptions by the officers.

He claims that his attorney should have made a motion as to his claim that the entry into the Defendant's house to make a warrantless arrest was improper.

Defendant also argues that his indictment should have been dismissed due to the use of “perjurious and erroneous testimony before the Grand Jury”. He offers nothing to substantiate this claim other than his assumption that if errors were made in the probable cause affidavit, then errors were made in the Grand Jury testimony.

Upon review of these claims, I conclude his claims have no factual or legal merit.

The Defendant was arrested for this assault with a deadly weapon without a warrant. A warrant was not needed.<sup>2</sup> He was arrested in his home immediately following the police investigation. He didn't testify at his second trial, but he did testify at his first trial. The transcript establishes that the police came to the Defendant's home and advised the Defendant's father why they were there. When Defendant's father reported this to the Defendant, he testified he told his father to “tell [Officer] Danny Davis to come in and talk to me”, thereby establishing reasonable grounds to conclude the entry into his home was by consent.

Probable cause existed for his arrest. Consent allows police entry into the house without a warrant. The admitted errors in the probable cause affidavit did not contribute to the Defendant's

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<sup>2</sup>11 Del. C. §1904(b)

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arrest. The warrant was not obtained until after the arrest. Again, based upon what the police knew at the time they went to the Defendant's residence, probable cause existed for a felony arrest.

After he was arrested, a warrant was obtained. At trial, the police admitted that there were mistakes in the warrant. Nevertheless, it is clear to me that the police investigation quickly and correctly developed the Defendant as the person who assaulted the victim. The police had probable cause to arrest the Defendant regardless of any subsequent errors in the warrant application.

Since the Defendant has no proof of "perjurious" Grand Jury testimony, this complaint factually fails.

I find that trial counsel committed no errors under the aforementioned facts by not pursuing motions to suppress and/or motions to dismiss based on the aforementioned complaints.

Additionally, as to the prejudice prong of *Strickland*, the Defendant offers no prejudice. I presume he thinks that these alleged illegalities would set him free; but at best, if there were a basis to file a Motion to Suppress, he has not pointed to one piece of evidence that was admitted into evidence which would have been suppressed under his present application. Without prejudice, the claims against his attorney must fail.

Ground One fails and is dismissed.

## **GROUND TWO**

The Defendant alleges his attorney failed to adequately investigate and present evidence to support Defendant's position that false evidence was used to obtain the indictment.

The Defendant makes conclusory allegations that his indictment was based upon perjury. He attacks his trial attorney as being ineffective for not investigating and coming up with evidence to support this claim. He faults his attorney for not investigating "what evidence was used to obtain the indictment".

The Defendant offers no evidence to support his allegations other than the admitted mistakes contained in the probable cause affidavit for the arrest warrant. This is no basis for me to infer that there was perjury in the State's presentation of the case to the Grand Jury, and, therefore, the entire prosecution is somehow tainted and should now be dismissed.

Defendant has not shown his attorney breached an objective standard of reasonable representation by failing to investigate the Grand Jury proceedings, nor has he established any prejudice. He has not shown that the Grand Jury was misled into indicting of the Defendant.

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As an aside, the Defendant criticizes his attorney for not impeaching the credibility of Detective Davis during trial by way of the mistakes and/or assumptions in the probable cause warrant. The Defendant is mistaken. His trial attorney did attack the officer's credibility for this and other reasons.

This ground is dismissed.

### **GROUND THREE**

Defendant alleges that his attorney "failed to properly litigate Defendant's claim of double jeopardy".

He claims his second trial attorney should have questioned his first trial attorney as to why she didn't ask for a mistrial. Such an examination would have established she was "in collusion with the prosecutor to obtain a conviction".

I do not find fault with counsel based on the above argument because it is clear that there was not even an objection made by first trial counsel as to the portion of the State's argument that was found to be erroneous by the Supreme Court. If she missed the objection, then how could she have been thinking about a mistrial. Based on the missed objection, the Defendant received a new trial. This claim is frivolous.

Finally, the double jeopardy arguments have been presented to this Court and the Supreme Court by three different attorneys. It has been adequately adjudicated.

This ground is dismissed.

### **GROUND FOUR**

Defendant attacks trial counsel for failing to litigate his in-court identification. Defendant complains that his identification by the victim, who did not identify him in Court during the first trial, was suggestive. He also complains that the identification by Mr. Hughes, the Harvey's Plumbing employee, was suggestive.

I'm satisfied that there was no error by trial counsel as to the in-court identification of the Defendant by the victim. While it is true that the victim wasn't able to identify Mr. Morris at the first trial, it was brought out that the assault blinded him in his right eye and the Defendant was seated to the witness' right side during the first trial, but to his left side in the second trial.

Presumably because the victim didn't identify the Defendant at the first trial, the State did not

ask the victim to identify anyone. Neither did the defense attorney. When defense counsel asked the victim to describe his assailant, the victim pointed out the Defendant and said "There he is". Thereafter, the victim was examined and cross-examined vigorously as to that identification. It is noteworthy that this was not a "stranger" assault; the victim knew the Defendant. I do not find fault with defense counsel for not "litigating" the in-court identification by the victim. The victim was put to the test by vigorous cross-examination.

Finally, the Defendant can establish no prejudice as to this allegation of ineffective assistance of counsel. Mr. Morris ignores the two most important eye witnesses in this case, James Bynum and Ineshia Mariguel Mitchell. These witnesses knew the Defendant and the victim from their community. They had no ax to grind. They reported what happened. They testified to the assault by Mr. Morris against an elderly man peddling his bike away from Mr. Morris. The evidence that Mr. Morris is guilty was overwhelming.

#### **GROUND FIVE**

The Defendant alleges his attorney should have objected to the Court's instruction concerning the felony arrest of the Defendant without the necessity of a warrant.

I do not know if trial counsel objected or not, but the instruction is not a misstatement of the law and therefore there is no basis to make this claim.

It is dismissed.

#### **GROUND SIX**

In this very brief allegation, the Defendant claims his attorney was ineffective by not properly vindicating the Defendant's due process rights by (1) his performance as to the fingerprint testimony and (2) knowingly allowing the eye doctor to present false testimony.

The Defendant does not develop these conclusory allegations and they are dismissed for that reason.

#### **GROUND SEVEN**

Defendant argues his trial counsel had a conflict of interest that compromised his ethical obligations to zealously represent the Defendant.

Trial counsel was court-appointed. It was a difficult assignment because of interesting but difficult double jeopardy arguments that had to be made prior to trial.

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At some time, appointed counsel was upset with the Defendant about remarks the Defendant was making about counsel's performance, etc. This was discussed in open Court.

There is nothing to establish that a breakdown of the attorney-client relationship occurred in this case. There is nothing to support the conclusory allegation that defense counsel was not zealous. He was zealous. Defense counsel did a fine job, but he had the problem of having bad facts from a defense viewpoint. Two neutral eyewitnesses who knew the Defendant, saw the Defendant pick up a pipe and chase an old man, blinding him.

Defense counsel and the Defendant don't have to like each other. As appointed counsel, your attorney's responsibility was to give you the best defense he was capable of, within his professional and ethical guidelines. I am satisfied that he did that.

Defendant's multiple claims for relief based upon ineffective assistance of counsel are denied.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary