

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS G. CABRERA,	§	
	§	
Defendant Below-	§	No. 538, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN97-04-1074 thru
	§	1077
Plaintiff Below-	§	
Appellee.	§	

Submitted: March 5, 2004  
Decided: April 26, 2004

Before **HOLLAND**, **STEELE** and **JACOBS**, Justices

**ORDER**

This 26th day of April 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Luis G. Cabrera, filed an appeal from the Superior Court's October 8, 2003 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In 1998, Cabrera was found guilty by a Superior Court jury of two counts of Murder in the First Degree and related charges in connection with the

murder of Fundador Otero. Cabrera was sentenced to life in prison. His convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Cabrera claims that: a) following his arrest in the Otero case, and after exercising his right to remain silent, a detective with the Wilmington Police Department questioned him about the Rockford Park murder case and elicited an incriminating statement, thereby violating his constitutional rights; and b) his trial counsel provided ineffective assistance by failing to impeach a prosecution witness and fully investigate his case to develop exculpatory alibi evidence.

(4) The record reflects that the prosecutor did not seek to introduce the incriminating statement into evidence at trial in the Otero case. The record further reflects that the Superior Court held a suppression hearing in the Rockford Park murder case with respect to the incriminating statement and that the statement was suppressed. Because the statement was not admitted into evidence at either trial, there was no constitutional violation. This claim is, therefore, without merit.

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<sup>1</sup> *Cabrera v. State*, 747 A.2d 543 (Del. 2000). In an unrelated case known as the “Rockford Park” murder case, Cabrera was found guilty of two counts of Murder in the First Degree and related charges and was sentenced to death. Those convictions and sentences also were affirmed by this Court on direct appeal. *Cabrera v. State*, 840 A.2d 1256 (Del. 2004).

(5) In order to prevail on his claim of ineffective assistance of counsel, Cabrera must show that his counsel’s representation fell below an objective standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>2</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>3</sup>

(6) While Cabrera argues that his trial counsel did not adequately cross examine a prosecution witness in order to impeach his credibility, our review of the record in this case does not support that argument. While counsel did not question the witness about his background as a drug dealer, he did raise the issue of a “deal” between the witness and the police and did point out contradictions in his testimony to the jury. Cabrera’s additional argument that his counsel failed to investigate an alibi defense is also without factual support. While counsel tried to find the individual identified by Cabrera as an alibi witness, the witness could not be located. Cabrera, thus, has failed to demonstrate any error on the part of his counsel that resulted in prejudice to him.

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<sup>2</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>3</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice