

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH L. HOLLAND,	§
	§
Defendant Below-	§ No. 510, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0605016750A
Plaintiff Below-	§
Appellee.	§

Submitted: September 2, 2011

Decided: November 7, 2011

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 7th day of November 2011, upon consideration of the parties' briefs, the Superior Court's decision following remand, and the parties' supplemental memoranda, it appears to the Court that:

(1) The appellant, Kenneth Holland, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. After considering the parties' briefs on appeal, we remanded the matter to the Superior Court to consider the merits of Holland's claims in light of recent case law. Holland's claims challenge the admission of his codefendant's prior out-of-court statement at trial. On remand, the Superior Court ordered supplemental memoranda from the parties, as well as a supplemental

response from Holland's trial counsel. On June 30, 2011, the Superior Court issued its decision denying Holland's motion on its merits. The parties have filed supplemental memoranda in response to the Superior Court's decision on remand, and the matter is again before the Court for review.

(2) The relevant facts of this case reflect that Holland was arrested in 2006 following an administrative search of his property by probation officers. Officers searched a trailer titled in Holland's name, as well as the home of Holland's mother, which Holland had listed as his home address with his probation officer. The search of the properties uncovered drugs, weapons, paraphernalia, and ammunition. Prior to trial, defense counsel filed a motion to suppress the evidence on the ground that the administrative searches were invalid. The Superior Court denied that motion.¹

(3) Also prior to trial, Holland's former girlfriend and codefendant, Yvonne Bradshaw, gave a recorded statement to police, in the presence of her attorney, detailing her and Holland's involvement in the case. Thereafter, Bradshaw pled guilty to maintaining a dwelling and second degree conspiracy. As a condition of her sentence, Bradshaw agreed to testify truthfully against Holland at his trial. When she took the stand at trial, the prosecutor confirmed with Bradshaw that her August 2006

¹ *Holland v. State*, 2007 WL 3112481 (Del. Super. Sept. 14, 2007).

statement to the police had been given voluntarily. The prosecutor, however, did not ask Bradshaw about the content of her statement or whether the statement she gave was true. When Bradshaw's trial testimony began to deviate from her prior recorded statement, the prosecutor sought admission of the statement under 11 Del. C. § 3507(a)² without objection from defense counsel. After the jury convicted him, Holland, acting *pro se*, moved for a judgment of acquittal, which the Superior Court denied. In March 2008, the Superior Court sentenced Holland as an habitual offender to a total period of thirteen years at Level V incarceration, to be suspended after serving ten and a half years for probation. On direct appeal, Holland challenged the Superior Court's denial of his suppression motion. This Court affirmed Holland's convictions and sentence.³ Thereafter, Holland sought postconviction relief challenging the admission of Bradshaw's statement. The Superior Court denied relief. This appeal ensued.

(4) In reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before it may consider the merits of any postconviction claims. Superior Court Rule 61(i)(3) provides that any ground for relief that was not asserted in the

² DEL. CODE ANN. tit. 11, § 3507(a) (2007) (provides that, "In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.")

³ *Holland v. State*, 2008 WL 4918213 (Del. Nov. 18, 2008).

proceedings leading to the judgment of conviction is thereafter barred unless the defendant can establish cause for the procedural default and prejudice from a violation of his rights. The bar of Rule 61(i)(3) does not apply, however, to a colorable claim asserting a miscarriage of justice due to a constitutional violation that undermined the fundamental fairness of the proceedings.⁴ In this case, Holland argues that the Superior Court's erroneous admission of Bradshaw's statement without a proper foundation violated his constitutional rights and undermined the fundamental fairness of his trial. He further contends that his trial counsel was ineffective for failing to object to the admission of Bradshaw's statement and that counsel's error affected the outcome of his trial.

(5) On remand, the Superior Court found, and the State concedes, that a proper foundation was not laid for the admission of Bradshaw's prior statement because the prosecutor failed to ask Bradshaw whether or not her prior statement was true.⁵ The State argues, however, that Holland cannot establish any prejudice from this error because, even if Bradshaw's statement had not been admitted, the other evidence against Holland was more than sufficient to sustain his convictions.

⁴ Del. Super. Ct. Crim. R. 61(i)(5) (2011).

⁵ See *Blake v. State*, 3 A.3d 1077, 1081 (Del. 2011) (reiterating the two-part foundation that must be established by the State during its direct examination before a witness' prior statement may be admitted under Section 3507—the witness must testify about both the events and whether or not they are true).

(6) We agree. The record reflects that, during the search of the trailer that Holland owned and was renovating, officers found cocaine, a digital scale, 44 rounds of .22 caliber ammunition, Holland's social security card, and personal letters with Holland's name. The search of the residence where Holland lived with his mother uncovered cocaine residue in the dresser of Holland's bedroom as well as a large safe containing two guns, ammunition, two digital scales, and a receipt with Holland's name. Even without Bradshaw's prior statement, the evidence against Holland was more than sufficient to sustain his convictions. We find that the Superior Court's error in admitting Bradshaw's prior statement without a proper foundation was "harmless beyond a reasonable doubt."⁶

(7) The erroneous admission of the statement did not undermine the integrity of the proceeding. Holland cannot establish a reasonable probability that the outcome of his trial would have been different if Bradshaw's prior statement had not been admitted under Section 3507. We, therefore, find no miscarriage of justice sufficient to overcome the procedural bar of Rule 61(i)(3).⁷

⁶ See *Hassan-El v. State*, 911 A.2d 385, 398 (Del. 2006) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).

⁷ See Del. Super. Ct. Crim. R. 61(i)(5) (2011).

(8) Moreover, we reject Holland's second claim, asserting ineffective assistance of counsel, on similar grounds. In order to establish a claim of ineffective assistance of counsel, a defendant must show: (a) counsel's representation fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different.⁸ Even if we assume that Holland's trial counsel erred in failing to object to the admission of Bradshaw's prior statement because of an improper foundation, Holland can establish no prejudice from that error because the admission of Bradshaw's prior statement was harmless beyond a reasonable doubt.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).