

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JESSE J. DRUMMOND,	§	
	§	No. 204, 2002
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County, in S00-
	§	01-0555-0557, 0559-0564,
STATE OF DELAWARE,	§	0567-0570.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0001010398

Submitted: April 29, 2002

Decided: July 2, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices.

**ORDER**

This 2nd day of July 2002, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Jesse J. Drummond, has appealed from the Superior Court's denial of Drummond's motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Drummond's opening brief that the appeal is without merit. We agree and affirm.

(2) In August 2000, Drummond was found guilty by a Sussex County Superior Court jury of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Vehicle, Possession of Drug Paraphernalia, Resisting Arrest, and eight motor vehicle offenses. Drummond's convictions were affirmed by this Court on direct appeal.<sup>1</sup> By order dated April 1, 2002, the Superior Court denied Drummond's motion for postconviction relief.<sup>2</sup> This appeal followed.

(3) At trial, Delaware State Police Officer John L. Evans, Jr., testified that on January 13, 2000, at approximately 2:00 a.m., he stopped Drummond for speeding on Route 113 near Millsboro in Sussex County. Officer Evans testified that, during the stop and while his back was turned, Drummond apparently threw a pill bottle containing 14 grams of crack cocaine from his vehicle<sup>3</sup> and then fled, leading the police on a high-speed chase that ended in Millsboro. Drummond was taken into custody and transported to Troop 4 in Georgetown where Officer Evans read Drummond his *Miranda* rights. According to Officer Evans, Drummond then confessed

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<sup>1</sup> *Drummond v. State*, 2001 WL 138503 (Del. Supr.).

<sup>2</sup> *State v. Drummond*, 2002 WL 524283 (Del. Super.)

<sup>3</sup> Officer Evans testified at trial that during the stop, he heard a "rattling type of click." When he looked on the ground, he found a pill bottle "that obviously had come from [Drummond's] vehicle." Trial Tr., Aug. 16, 2000, at 21-22.

that he purchased the crack cocaine for \$150.00, and that he threw the pill bottle out of his car window during the stop.

(4) At trial, Drummond testified that he did not have the pill bottle of cocaine in his possession, and that he did not throw it from his vehicle. Drummond also denied making any such confession to Officer Evans.

(5) In his opening brief on appeal, Drummond argues, as he did in his postconviction motion, that his trial counsel was ineffective. To prevail on a claim of ineffective assistance of counsel, Drummond must show that (i) counsel's representation fell below an objective standard of reasonableness, and (ii) the deficiencies in counsel's representation caused him actual prejudice.<sup>4</sup> Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."<sup>5</sup>

(6) According to Drummond, his trial counsel was ineffective when he failed to move to suppress Drummond's alleged confession. In support of his claim, Drummond contends that the State was required to produce a signed written waiver of his *Miranda* rights to prove that he confessed.

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<sup>4</sup> *Strickland v. Washington*, 466 U.S. 668, 689, 694 (1984).

<sup>5</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996) (quoting *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990)).

Drummond maintains that the State did not, and could not, produce the written *Miranda* waiver, because he never confessed.

(7) Drummond provides no authority that a written waiver form is required to properly waive one's *Miranda* rights or to prove that a defendant confessed. Indeed, contrary to Drummond's contention, "[t]he absence of an express waiver does not necessarily render a confession inadmissible; other surrounding circumstances can show that a defendant knew of his right and intelligently waived them."<sup>6</sup> Drummond's counsel was not ineffective in failing to file a motion to suppress on the basis that the State did not produce a written *Miranda* waiver.

(8) According to Drummond, his counsel's cross-examination of Officer Evans was ineffective because it focused solely, and thus wrongly, on Officer Evans' admission that he did not see Drummond throw the pill bottle from the car. Drummond contends that his counsel should have elicited from Officer Evans the possibility that the pill bottle was already lying on the ground prior to the stop. In view of the overwhelming evidence of Drummond's guilt, however, including his confession and his flight from the crime scene, Drummond cannot establish actual prejudice from his trial

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<sup>6</sup> *Hooks v. State*, 416 A.2d 189, 200 (Del. 1980) (citing *North Carolina v. Butler*, 441 U.S. 369 (1979)).

counsel's failure to more thoroughly cross-examine Officer Evans on his observations during the stop.

(9) It is manifest on the face of Drummond's opening brief that this appeal is without merit. The issues raised are clearly controlled by settled Delaware law. To the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland

Justice