

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL STROHL : CIVIL ACTION  
v. :  
JAMES L. GRACE, et al. : 06-2708  
: Carol Sandra Moore Wells  
: United States Magistrate Judge

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

AND NOW, comes Respondent, District Attorney of Northampton County, John M. Morganelli, by Assistant District Attorney Robert Eyer, and submits the following Answer to the Petition for Writ of Habeas Corpus:

1. Petitioner, Joseph Michael Strohl, is an inmate committed to the custody of the Pennsylvania Department of Corrections and is currently housed at the State Correctional Institution at Huntingdon. Strohl brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 and is challenging his present confinement, alleging certain constitutional violations.

2. This case arises from a burglary and deadly assault at the home of the victim, Ella Wunderly. The evidence produced at trial showed that Strohl and a cohort burglarized the victim's home on Friday, December 26, 1986, when the victim was at home. During the burglary, Strohl assaulted the victim, leaving her debilitated and possibly unconscious. Strohl returned the following night on Saturday, December 27,

1986, with a different cohort to burglarize the home a second time. At trial, the second cohort, Robert J. Shull, testified that on the day of Saturday, December 27, 1986, while he and Strohl were working at Sears, Strohl approached Shull about burglarizing a home that night. Shull testified that Strohl told Shull that Strohl had been in the home the night before and that the occupant of the house was dead. When Shull entered the house with Strohl, Shull saw the victim laying on the floor. Shull testified that he abandoned the house, and shortly thereafter, Strohl joined him outside. At that point, Shull testified that Strohl told him that he had kicked the victim in the head and that there was blood on the wall. Shull testified that Strohl left the victim's home on Saturday, December 27, 1986, with a box containing a tin canister, a converter box and a wallet. See Exhibit A and Exhibit H.

3. The first cohort, William Notti, testified that on a Friday or Saturday night around the Christmas holiday of 1986, he drove Strohl and Robert Pearson and/or Robert Shull to Strohl's neighborhood. According to Notti, Strohl had him park at the end of an alley and Strohl stated that he was going to obtain some money. Notti stated that Strohl and either Pearson or Shull left the vehicle and returned approximately 5 to 10 minutes later. Notti testified that Strohl was carrying a purse or handbag wrapped up in something, possibly a shirt. According to Notti, Strohl then stated to the third person, "I wonder if she's okay. " Upon Notti's inquiry as to what Strohl was referring to, Strohl replied, "shut up or I'll kill you, too." Notti further testified that the occupant in the rear seat of the vehicle later threw something out of the

window of the car as Notti was driving that night. See Exhibit A and Exhibit H.

4. Joseph Cecela testified that he was driving his vehicle with his wife on a Saturday morning in December of 1986 when he observed a purse alongside the side of the road. He stated that his wife then picked up the purse on the next day. Patricia Cecela, Joseph Cecela's wife, testified that she and her daughter retrieved from the side of the road on a Sunday in December of 1986, a purse that she had observed with her husband on the previous day. She took the purse home, looked for some identification in the purse to find out to whom it belonged, and then ultimately called a corresponding name that she located in the phone book. She stated that a man answered the phone. Richard Wunderly, the son of the victim in this case, testified that his mother was discovered on Sunday, December 28, 1986, and that the police notified him that night. Wunderly further stated that sometime after that date he received a call from a woman indicating that she had found his mother's purse. See Exhibit A.

5. As a result of the attack, the victim was rendered comatose and immobile, and ultimately died in April of 1994. A grand jury investigation was conducted in 1999 resulting in a presentment of criminal homicide against Strohl. A jury trial was held in March of 2001, and on March 15, 2001, the jury returned a verdict of guilty to the charge of second degree murder. Strohl was sentenced to life in prison. A post-sentence motion was denied on July 27, 2001. The Superior Court of Pennsylvania affirmed judgment of sentence on September 11, 2002. The

Pennsylvania Supreme Court denied a Petition for Allowance of Appeal on February 13, 2003. On June 2, 2003, the United States Supreme Court denied a Petition for Certiorari. Strohl filed a petition pursuant to the state Post-Conviction Relief Act on September 15, 2003. The PCRA court denied the petition on June 15, 2004. The Superior Court of Pennsylvania affirmed on May 13, 2005. A Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on October 26, 2005. See Exhibit A; Exhibit E; Exhibit G; Exhibit H; and Exhibit L.

6. A petition for habeas corpus relief will not be granted unless the petitioner can establish that the state court's determination of his claims resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established federal law . . . , or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." Williams v. Taylor, 529 U.S. 362 (2000).

7. A federal court may entertain an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. Section 2254(a). An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the petitioner has exhausted the remedies available in the courts of the state. 28 U.S.C. Section 2254(b)(1)(A). An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the

petitioner to exhaust the remedies available in the courts of the state. 28 U.S.C. Section 2254(b)(2). A state shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the state, through counsel, expressly waives the requirement. 28 U.S.C. Section 2254(b)(3).

8. An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. Section 2254(d). In a proceeding instituted by a petition for writ of habeas corpus by a person in custody pursuant to the judgment of the state court, a determination of a factual issue made by the state court shall be presumed to be correct. The petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. Section 2254(e)(1).

9. Strohl claims that the Commonwealth suppressed certain exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). Specifically, Strohl claims that he was not provided with two medical reports from the Lehigh Valley Hospital Center, as well as a police station complaint authored by Officer William Gerancher.

10. Pursuant to Brady, a prosecutor's failure to disclose evidence favorable to an accused, upon request, violates due process "where the evidence is material either to guilt or punishment, regardless of the good or bad faith of the prosecution." Commonwealth v. Copenhefer, 719 A.2d 242 (Pa. 1998) (citing Brady, 373 U.S. 83). "In order for a defendant to establish the existence of a Brady violation, he must establish that there has been a suppression by the prosecution of either exculpatory or impeachment evidence that was favorable to the accused, and that the omission of such evidence prejudiced the defendant." Commonwealth v. Grant, 813 A.2d 726 (Pa. 2002). Evidence is material for Brady purposes "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Commonwealth v. Howard, 749 A.2d 941 (Pa. Super. 2000). The defendant must prove, "by reference to the record, that evidence was withheld or suppressed by the prosecution." Copenhefer, 719 A.2d 242.

11. The claim with respect to the Lehigh Valley Hospital medical reports does not amount to a violation of Brady. A Brady violation does not occur "where the parties had equal access to the information or if the defendant knew or could have uncovered such evidence with reasonable diligence." Grant, 813 A.2d 726 (citing Commonwealth v. Paddy, 800 A.2d 294 (Pa. 2002)). The reports in question were not in the custody of the Commonwealth prior to trial. Rather, they were in the possession of Lehigh Valley Hospital. Strohl makes no claim that the Commonwealth had the Lehigh Valley Hospital reports in its possession prior to trial and knowingly withheld

them. Rather, Strohl claims that he did not receive the reports when he requested the reports from the hospital. No evidence was suppressed by the prosecution. There was no violation of Brady and Strohl is not entitled to relief. See Exhibit H.

12. The claim with respect to the police station complaint does not amount to a violation of Brady. It has not been established that if the station complaint had been disclosed to the defense the result of the proceeding would have been different. It has not been established how the station complaint is material to a determination of guilt or innocence. Strohl was provided with a complete and detailed report regarding the subject matter of the station complaint. There was no Brady violation and Strohl is not entitled to relief. See Exhibit H.

13. Strohl claims that he was denied due process because of a delay in prosecuting the case. A claim for a dismissal of charges due to delay in prosecution is founded in the due process protections of the Fourteenth Amendment to the United States Constitution. To prevail on a due process claim based on pre-arrest delay, "the defendant must first show that the delay caused him actual prejudice, that is, substantially impaired his or her ability to defend against the charges."

Commonwealth v. Scher, 803 A.2d 1204 (Pa. 2002). A defendant attempting to demonstrate prejudice must "show that he or she was meaningfully impaired in his or her ability to defend against the state's charges to such an extent that the disposition of the criminal proceedings was likely affected." Scher, 803 A.2d 1204. "It is not sufficient for a defendant to make speculative or conclusory claims of possible

prejudice as a result of the passage of time." Scher, 803 A.2d 1204.

14. There is no showing of actual prejudice. Strohl claims that he was prejudiced due to lost evidence. Strohl identifies the lost evidence essentially as missing physical evidence or other scientific or forensic results that he asserts could have helped in his defense. Such allegations constitute pure speculation and do not amount to actual prejudice. To the extent that Strohl claims that he suffered actual prejudice due to lost medical records which he asserts may have resulted in a different medical opinion regarding the causation of the victim's death, this is further speculation which does not meet the actual prejudice standard. Expert medical testimony at trial clearly supported the Commonwealth's claim that the victim died from injuries to her head. There was no actual prejudice. There was no due process violation based upon pre-arrest delay. See Exhibit A.

15. Beyond the prejudice analysis, the Commonwealth had sufficient and proper reasons for postponing the prosecution of this case. This was not a case of "purposeful shelving of a case to gain advantage." Commonwealth v. Snyder, 761 A.2d 584 (Pa. Super. 2000). The victim was assaulted in December 1986, receiving serious head injuries that resulted in her being admitted to a nursing home in 1987, which is where she remained until her death in April of 1994. In 1997, the District Attorney of Northampton County initiated an effort to pursue investigations in unsolved homicide cases. After reviewing the open cases, the District Attorney presented an application requesting that a grand jury be empaneled to investigate five such



unsolved homicide cases. The grand jury was empaneled in March of 1999 and investigated this particular case until October of 1999, which is when the grand jury issued a presentment recommending that Strohl be charged with criminal homicide. Charges were filed against Strohl on October 15, 1999. Related to the grand jury proceedings, there were interviews of witnesses by investigating officers that elicited statements from witnesses that were previously unavailable to investigators. In light of the fact that the victim did not die until 1994 and the prosecution did not obtain important information until the grand jury proceedings in 1999, Strohl failed to demonstrate that the prosecution lacked sufficient and proper reasons for any delay in prosecution. See Exhibit A.

16. The remainder of the claims for habeas relief relate to six separate allegations of ineffective assistance of counsel. When reviewing a claim for ineffective assistance of counsel, courts must review the totality of the evidence presented to the trial court and determine whether a petitioner has demonstrated that the decision reached is likely to have been different, but for the alleged ineffectiveness of counsel. Strickland v. Washington, 466 U.S. 688 (1984).

17. A defendant is denied effective assistance of counsel as required by the Sixth and Fourteenth Amendments if "counsel's representation fell below an objective standard of reasonableness," and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. 688. The failure to satisfy both the deficient

performance and the prejudice prongs of the Strickland test is fatal to any claim for ineffective assistance of counsel.

18. In order to satisfy the prejudice prong, a petitioner must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. 688. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. 688. That is, "a criminal defendant alleging prejudice must show 'that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'" Lockhart v. Fretwell, 506 U.S. 364 (1993) (quoting Strickland, 466 U.S. 688). This is not an outcome-determinative test. Nix v. Whiteside, 475 U.S. 157 (1986). The question is not whether the defendant would have more likely than not received a different verdict but for counsel's performance, but whether "he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles v. Whitley, 514 U.S. 419 (1995).

19. To obtain relief on an ineffectiveness claim, a petitioner must also satisfy the performance prong, that is, that "counsel's representation fell below an objective standard of reasonableness . . . considering all of the circumstances . . . under prevailing professional norms." Strickland, 466 U.S. 688. In addressing this question, courts must indulge a strong presumption that counsel's conduct was reasonable and "might be considered sound trial strategy." Strickland, 466 U.S. 688 (quoting Michel v. Louisiana, 350 U.S. 91 (1955)).

20. The first claim of ineffective assistance of counsel alleges that counsel was ineffective for failing to assert a double jeopardy collateral estoppel claim. Strohl argues that counsel failed to pursue a collateral estoppel claim based upon Strohl's prior guilty plea to burglarizing the victim's home on Saturday, December 27, 1986. Strohl argues that the Commonwealth should not have been permitted in the murder trial to relitigate an issue of fact already determined in a prior proceeding concluding with a valid and final judgment. Strohl contends that since a purse was mentioned at the guilty plea by the testifying officer as one of the several items taken from the victim's home during the December 27 burglary, the Commonwealth should have been precluded from using evidence concerning the purse in proving the burglary on December 26, which formed the underlying felony for Strohl's felony murder conviction.

21. Collateral estoppel is embodied in the Fifth Amendment pursuant to the holding of Ashe v. Swenson, 397 U.S. 436 (1970). Pennsylvania courts have employed a three part test in the application of the doctrine of collateral estoppel: (1) while the crimes charged as part of the two offenses need not be identical, the issues must be similar and material; (2) collateral estoppel only precludes redetermination of those issues necessarily determined and litigated between the parties in the first proceeding; and (3) collateral estoppel requires a final judgment in the first proceeding. Commonwealth v. Garcia, 746 A.2d 632 (Pa. Super. 2000).

22. There is no showing that Strohl was prejudiced by the alleged

ineffective assistance of counsel with regard to failure to assert a double jeopardy collateral estoppel claim. The evidence at trial established that Strohl confessed to his cohort during the Saturday burglary that he had kicked the victim in the head during the Friday burglary, which resulted in blood being splattered on the wall. The evidence established that the victim was comatose as a result of his blunt force trauma to her head, and she eventually died as a result of this injury. Absent a showing of prejudice, Strohl is not entitled to relief on this claim. See Exhibit H.

23. Beyond the failure to show prejudice, when Strohl pleaded guilty to a burglary which occurred on December 27, 1986, the Commonwealth did not charge Strohl in connection with the burglary and assault occurring on December 26, 1986. The Commonwealth was careful to make explicitly clear that the burglary to which Strohl pleaded guilty was distinct and separate from any prior criminal activities occurring at the Wunderly residence in which Strohl participated. The fact that a police officer present at the 1987 guilty plea added the word "purse" to the list presented by the prosecutor of items missing from the residence is immaterial. The guilty plea was to burglary, not theft. Whether or not a purse was actually taken during the December 27, 1986, break-in is entirely superfluous as the theft of the purse was not a fact essential to the conviction for burglary. There is no merit to Strohl's collateral estoppel claim, and counsel was not ineffective for not pursuing a claim. See Exhibit H.

24. The next claim of ineffective assistance of counsel alleges that counsel was ineffective for failing to request a lesser included offense instruction for

aggravated assault. The failure to request a charge on aggravated assault did not cause prejudice to Strohl. The jury had the option of convicting Strohl of third degree murder instead of second degree murder. The jury did not do so. Thus, the jury would not have returned a verdict of guilty of assault out of sympathy or in recognition of factors they may have deemed mitigating where these factors were not sufficiently compelling to cause the jury to elect the lesser degree of homicide that was offered. See Commonwealth v. Taylor, 502 A.2d 195 (Pa. Super. 1985). See also Commonwealth v. Bradley, 480 A.2d 1205 (Pa. Super. 1984). Strohl has not demonstrated prejudice and the ineffective assistance claim in this regard must fail. See Exhibit H.

25. The next claim of ineffective assistance of counsel alleges that counsel was ineffective for failing to object to alleged material misstatements of evidence by the court during the jury charge. Strohl claims that the trial court misstated the testimony of William Notti when explaining the accomplice liability charge. Strohl contends that the misstatement by the trial court placed Strohl and an accomplice directly inside the victim's house on Friday night when the alleged assault occurred. This claim of ineffective assistance of counsel must fail as Strohl has failed to establish prejudice. The evidence showed Strohl confessed to Shull during the Saturday burglary that he had kicked the victim in the head during the Friday burglary. The credibility of witnesses and weight of evidence are determinations that lie solely with the trier of fact. Commonwealth v. Williams, 854 A.2d 440 (Pa. 2004). The jury

obviously found Shull's testimony to be credible. Strohl has failed to establish prejudice due to the fact that Shull's testimony, which was obviously credited by the jury, placed Strohl at the victim's house on Friday. Strohl is not entitled to relief on the grounds of an alleged misstatement by the trial court during the jury instructions. See Exhibit H.

26. The next claim of ineffective assistance of counsel alleges that counsel was ineffective for failing to suppress testimony which was allegedly the product of police and prosecutorial misconduct during the grand jury. Strohl essentially contends that the prosecutor impermissibly shaped a witness' testimony during the grand jury proceedings. Since Strohl was ultimately convicted by a jury after trial, this issue is moot. "[O]nce an indictment has been approved, the preliminary proceedings are not subject to either direct or collateral attack because the defendant has been afforded an independent determination that a prima facie case exists." Commonwealth v. Gordon, 385 A.2d 1013 (Pa. Super. 1978). At trial, an independent analysis of the facts was conducted, during which Strohl's trial counsel undertook extensive cross-examination of the witnesses concerning the inconsistencies in any prior grand jury testimony. This issue remains moot. Moreover, counsel's approach in attempting to discredit the testimony of grand jury witnesses was a reasonably chosen and executed strategy. Counsel was not ineffective for failing to assert alleged grand jury misconduct. See Exhibit H.

27. The next claim of ineffective assistance of counsel alleges that counsel

was ineffective for failing to request an adverse inference jury instruction regarding lost medical records. Strohl contends that trial counsel was ineffective for failing to secure an adverse inference instruction concerning the destruction of the victim's medical records by Life Quest Nursing Center. The missing records that form the underlying basis of Strohl's adverse inference claim are medical records of the victim that were kept by Life Quest Nursing Center. Strohl subpoenaed Life Quest. In response, Strohl received a letter from Life Quest explaining that in addition to the records which were provided, certain boxes of records containing the doctors' orders and progress notes were accidentally destroyed a few years prior. There is no indication that the lost and destroyed medical records were in any way under the control of the Commonwealth. As such, any claim for an adverse inference instruction would have been without merit. Trial counsel can never be deemed ineffective for failing to raise a claim that is without merit. Commonwealth v. Roberts, 681 A.2d 1274 (Pa. 1986). See Exhibit H.

28. The next claim for ineffective assistance of counsel alleges that counsel was ineffective for failing to call a favorable defense witness, specifically Robert Strohl. "A failure to call a witness is not per se ineffective assistance of counsel for such a decision usually involves matters of trial strategy." Commonwealth v. Auker, 681 A.2d 1305 (1996). Strohl contends that his father, Robert Strohl, was an alibi witness. In an affidavit, Robert states that he was prepared to testify that he picked Strohl up from work on Friday, December 26, 1987, and took Strohl to their home. According to Robert's affidavit, he would have testified that Strohl did not leave their residence while

his father was awake. However, Robert would have testified that he went to bed at 11:15 p.m., prior to the relevant time period. Since the proposed alibi testimony did not concern the relevant time period, counsel cannot be deemed ineffective for failing to call the purported alibi witness. Given the content of Robert Strohl's proposed testimony, Strohl has not demonstrated how he was prejudiced by its absence. Consequently, counsel cannot be deemed ineffective for not calling Robert Strohl as a witness at trial. See Exhibit H.

29. Strohl has not established that he is in custody in violation of the Constitution or laws or treaties of the United States.

30. Strohl has not established that any adjudication of any claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law.

31. Strohl has not established that any adjudication of any claim resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence.

32. Any and all determinations of factual issues made by the state courts are, in fact, correct. Moreover, Strohl has failed to rebut the presumption of correctness.

33. There was no suppression by the prosecution of either exculpatory or impeachment evidence that was favorable to Strohl, and there was no prejudice occasioned by any alleged suppression of evidence. There was no Brady violation.



34. There was no actual prejudice occasioned by the timing of the commencement of prosecution. Further, the prosecution was postponed for sufficient and proper reasons. There was no due process violation.

35. At no time did counsel's representation of Strohl fall below an objective standard of reasonableness. Strohl received a fair trial without prejudice from any alleged error of counsel. The verdict is worthy of confidence. There was no Sixth and Fourteenth Amendment violation.

36. In addition to the foregoing answers addressing the allegations contained in the Petition, Respondent states that the transcripts of all lower court proceedings are transcribed and available, specifically: (1) the transcript of the preliminary hearing held February 23, 2000; (2) the transcript of hearing on pretrial motions held January 26, 2001; (3) the transcript of hearing on pretrial motions held February 1, 2001; (4) the transcripts of trial proceedings held March 6, 2001, through March 9, 2001; (5) the transcripts of trial proceedings held March 12, 2001, through March 13, 2001; (6) the transcript of trial proceedings held March 15, 2001; (7) the transcript of Post-Conviction Relief Act proceedings held January 23, 2004; (8) the transcript of Post-Conviction Relief Act proceedings held January 27, 2004; (9) and the transcript of Post-Conviction Relief Act proceedings held January 30, 2004.

37. In addition to the foregoing answers addressing the allegations contained in the Petition, Respondent states that it has attached hereto and filed herewith a copy of: (1) each and every brief that the Petitioner submitted in an

appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-sentencing proceeding; (2) each and every brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and (3) each and every opinion and dispositive order of any appellate court relating to the conviction or sentence.

WHEREFORE, it is respectfully requested that the Petition for Writ of Habeas Corpus be DENIED and DISMISSED.

Respectfully submitted,

JOHN M. MORGANELLI  
District Attorney of Northampton County

By: Robert Eyer  
Assistant District Attorney

RE7039

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Date: October 25, 2006

CERTIFICATE OF SERVICE

I, Robert Eyer, do hereby certify that I filed and served the foregoing Answer to Petition for Writ of Habeas Corpus upon the following persons and in the following manner:

VIA HAND DELIVERY

Michael E. Kunz  
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VIA FIRST CLASS U.S. MAIL

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October 25, 2006

RE7039

Robert Eyer