STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 13, 2021)

MUSTAPHA BOJANG	:	
	:	
v.	:	**C.A. No. PM-2016-2458**
	:	
STATE OF RHODE ISLAND	:	**(Associated with P1-2009-1119A)**

DECISION

I

Facts and Travel

CARNES, J. In the above-captioned matter, Mustapha Bojang (hereinafter Petitioner or Mr. Bojang) brings a postconviction-relief application asking the Court to vacate his convictions by a jury on two counts of First Degree Child Molestation brought in relation to case number P1-2009-1119A. Petitioner filed his petition on May 25, 2016 according to information in the Court's electronic filing system.

Originally, Petitioner was indicted on eight counts of First Degree Child Molestation. The matter was reached for trial on April 26, 2010. A suppression hearing was held on April 26 and 27, 2010. On May 13, 2010, trial concluded when the jury returned verdicts of not guilty on counts 1 through 6 of the indictment and guilty on counts 7 and 8 of said indictment. On July 9, 2010, Petitioner was sentenced to thirty years imprisonment with twenty to serve, the balance suspended with probation along with other statutory counseling, registration, and GPS monitoring requirements.

The Court denied Petitioner's motion for a new trial on June 22, 2010 and Petitioner appealed. The matter was remanded by the R.I. Supreme Court for the Court to make further findings, especially as to the credibility of witnesses who testified at the suppression hearing and

trial. *State v Bojang*, 83 A.3d 526 (R.I. 2014). The Court made certain findings on June 30, 2014. Thereafter, the Court entered an order denying Petitioner's motion to suppress, and the matter was returned to the Supreme Court. The Supreme Court thereafter affirmed Petitioner's convictions. *State v Bojang*, 138 A.3d 171 (R.I. 2016). Petitioner thereafter filed the instant application. Counsel was appointed and the matter proceeded to evidentiary hearings on January 21, 2020, where former Woonsocket police officer David Chattman testified, and also on March 18, 2021,[1] where the Petitioner's trial counsel (hereinafter defense attorney or trial counsel) also testified. Petitioner opted not to testify on March 18, 2021. A number of exhibits were received in evidence at the evidentiary hearing, notably transcripts of Superior Court events of April 26, 2010 (suppression hearing and ruling transcript consisting of 263 pages – Exhibit 4 at evidentiary hearing), June 22, 2010 (new trial motion transcript consisting of 36 pages – Exhibit 2 at the evidentiary hearing), and June 30, 2014 (remand hearing for further findings and ruling transcript consisting of 15 pages – Exhibit 3 at the evidentiary hearing). After the evidentiary hearings, the matter was continued for post-hearing memoranda and taken under advisement.

Further relevant facts taken from the testimony and content of the file are set forth herein.

II

Standard of Review - Postconviction Relief

"'[T]he remedy of postconviction relief is available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant's constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interest of justice."' *DeCiantis v. State*, 24 A.3d 557, 569 (R.I. 2011) (quoting

[1] The Covid 19 pandemic led to the over one-year delay between the first and second evidentiary hearings.

Page v. State, 995 A.2d 934, 942 (R.I. 2010)) (further citation omitted); *see also* G.L. 1956 § 10-9.1-1. "An applicant for such relief bears '[t]he burden of proving, by a preponderance of the evidence, that such relief is warranted' in his or her case." *Brown v. State*, 32 A.3d 901, 907 (R.I. 2011) (quoting *State v. Laurence*, 18 A.3d 512, 521 (R.I. 2011)). Postconviction relief motions are civil in nature and thus governed by all the applicable rules and statutes governing civil cases. *Ferrell v. Wall*, 889 A.2d 177, 184 (R.I. 2005).

The Post Conviction Remedy statute is found at § 10-9.1-1 and provides that one who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights. Our courts have held that "post-conviction relief is available to a defendant convicted of a crime who contends that his original conviction or sentence violated rights that the state or federal constitutions secured to him." *Ballard v. State*, 983 A.2d 264, 266 (R.I. 2009)) (internal quotation omitted). Section 10-9.1-1, in pertinent part, reads as follows:

> "(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:
>
> > "(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
> > "(2) That the court was without jurisdiction to impose sentence;
> > "(3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
> > "(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> > "(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
> > "(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;
>
> "may institute, without paying a filing fee, a proceeding under this chapter to secure relief."

III

Petitioner's Claims

Petitioner claims that the issues have been narrowed after the evidentiary hearings to two. (Pet'r's Post Hr'g Mem. 2.) Petitioner articulates the issues as: "first, that the trial justice committed reversable error when it made inconsistent findings and determinations of the state of the testimony, and secondly, whether counsel provided ineffective assistance in electing not to present additional evidence, testimony or argument when the matter was remanded for the Court to make additional findings for the record." *Id.* 2-3.

IV

Analysis

1. The Trial Justice Committed Reversable Error When He Made Inconsistent Findings

Petitioner argues he is entitled to relief because of certain inconsistencies in the trial justice's rulings. Specifically, Petitioner asserts that when ruling on Petitioner's motion for a new trial on June 22, 2010, the Court found Petitioner to be "credible," but after conducting the remand hearing on June 30, 2014, the Court found Petitioner's testimony not to be credible. *See* Pet'r's Post Hr'g Mem. 4. Petitioner argues that such an inconsistency amounted to an "abuse of discretion" by the Court, "especially in light of the Court's assessment of the testimony of the police officer who testified at both the suppression hearing and during the course of trial." *Id.*

Petitioner acknowledges that the Court's findings regarding Petitioner's appearance on the video of his custodial statement may have been consistent from the suppression hearing to the motion for a new trial, and the remand hearing but suggests that "what was not consistent were the Court's findings regarding [Petitioner's] credibility when testifying under oath." *Id.* Petitioner directs the Court's attention to a portion of the transcript of the motion for a new trial and ruling

thereon heard on June 22, 2010 that was submitted as Exhibit 2 at the evidentiary hearing related to Petitioner's application for postconviction relief on March 18, 2021. Specifically, Petitioner refers the Court to the following passage:

> "Now, Mr. Bojang *testified at trial*. *He presented himself credibly*. He indicated that, "More than 10 times I told them I was innocent, and one of the policemen said, "See this telephone? You've got two minutes to cooperate or I'll call the INS." And then he said, "I tried to figure out what to do, and I did tell some of those things." Now, did that have to do with immigration? Did that have to do with activity that was not observed on the video in the juvenile conference room? I'm not sure. *But Mr. Bojang's body language did not indicate that to me*.
>
> "In court Mr. Bojang appeared very confident when he was testifying about being struck by the policeman, and I'll note that he said, "He hit me and I said that he did, and he hit me a second time and I looked at him furiously and at that point I was afraid of being charged with assault of a cop." (Ex. 2, Tr. 32:12-33:3, June 22, 2010) (emphasis added)).

Petitioner submits to the Court for comparison certain passages from the remand hearing which occurred on June 30, 2014. The transcript of that hearing was submitted as Exhibit 3 at the evidentiary hearing related to Petitioner's application for postconviction relief on March 18, 2021. Specifically, Petitioner refers the Court to the following passages:

> "Now, the defendant testified; and the defendant, from my own notes, was very strong with his – he was confrontational, he was not shy or reserved at trial." (Tr. 10:8-10, June 30, 2014.)
>
> "Now, the Court notes this is at odds with the 37, 40-minute video of the interview in Room No. 2. And the Court noted back at the suppression hearing and also the Court notes again after reading the transcripts that the defendant becomes more and more relaxed and more and more engaged as the interview progresses. And in relation to the defendant's testimony, the defendant's allegations with regard to assaults, threats and fear, the Court finds they're not credible because he's somewhat inconsistent, as the Court[] indicated. He used his hands to demonstrate the rubbing; and the explanation, "I kind of picked up what to say from the detectives," the Court doesn't find that to be credible.
>
> "The Court does find Hammann's denied at all times that LeBreche assaulted the defendant. The language was unequivocal. With regard to

> Hammann's resistance of certain questions by the defense, the Court finds that doesn't undermine Hammann's credibility regarding denials as to specific assaults and threats. The Court finds that there was no assault based upon its own review, upon Hammann's testimony, upon LeBreche's testimony; *and also the Court's finding that the defendant's testimony was not credible in this regard*." *Id.* at 12:9-13:6 (emphasis added).

Petitioner argues that, "There is a clear inconsistency between the *Court's assessments of its perceptions* and evaluations of *Mr. Bojang's testimony* from its comments at these . . . two hearings." (Pet'r's Post Hr'g Mem. 5) (emphasis added). Petitioner goes on to compare the way Petitioner's trial counsel characterized Detective Hammann's testimony at the suppression hearing with the Court's comments at the remand hearing on June 30, 2014, suggesting the Court's comments were "at odds not just with its remarks from the prior hearing, but also from within that very decision." *Id.* at 8. Petitioner argues that from the beginning of the Court's summation of the testimony under consideration, the Court commented unfavorably on Detective Hammann's testimony. *Id*. The quoted passage in Petitioner's memorandum indicates:

> "Now, given the imprecision that's inherent in words, the Court's going to bring out some direct quotes from the transcripts; because that statement may be a little overbroad. The Court did note that there was a delayed response time. At one point we excused Hammann from the courtroom during the suppression hearing; and with regard to what I reviewed, I looked at my own trial notebook in this particular matter." (Tr. 4:2-9, June 30, 2014.)

Petitioner acknowledges at this point that the Rhode Island Supreme Court made specific mention of Detective Hammann's apparent evasiveness, and the trial Court specifically expounded on this during the remand ruling. Petitioner points to specific passages of the Court's comments on June 30, 2014 during the remand hearing. Specifically, Petitioner refers to:

> "Now, Detective Hammann was referred to bail hearing questions; and he was asked during the bail hearing, was a table banged. He said, "It's possible." He was asked if the defendant was accused of lying. He says, "It's possible; but I don't recall." He was asked if he recalled LeBreche banging on the table and calling the defendant an f'ing liar. He said, "I don't recall that." He was asked at line 17 what

> he could remember; and he said, "No one smacked the defendant in the head." *Id*. at 6:22-7:5.
>
> "Then there was a recross. This begins at page 148 of the transcript; and it became apparent, especially on the rereading, the detective began to fence with the cross-examiner, Hammann resists answering yes or no to certain questions, and he does that a lot." *Id*. at 8:15-19.
>
> "There were two redirects, there were two crosses. Each time there was a cross, Hammann would become more disengaged[.] *Id*. at 9:16-18.

In this particular context, Petitioner argues that for the purposes of his application for postconviction relief, his point is "not necessarily that the Court ruled against him on the motion to suppress his confession" but that it was "improper for the Court to ma[ke] clearly inconsistent findings regarding the testimony of the defendant and Detective Hammann from the hearing conducted on the motion for a new trial and from those it made at the remand hearing." (Pet'r's Post Hr'g Mem. 9.)

Petitioner goes on to argue that his position is supported by the concept of judicial estoppel, which would have worked to "estop the Court from making the findings it did upon remand." *Id*. at 10.

The State, in its opposition, reminds this Court that it had noted Detective Hammann's "repeated consistency" as to his denial that Petitioner was threatened or assaulted. (State's Post Hr'g Mem. 4.) The State points to specific language of this Court at the remand hearing:

> "The court does find Hammann's denied *at all times* that LeBreche assaulted the defendant . . . . With regard to Hammann's resistance of certain questions by the defense, the court finds that doesn't undermine Hammann's credibility regarding denials as to specific assaults and threats. The court finds there was no assault based on its own review. (Remand H. at 12-13)." *Id.* (emphasis added).

The State suggests that a close review of the testimony from the Suppression Hearing Decision, the Motion for New Trial, and the Remand Hearing was actually consistent throughout with regard to the Court's comments on the *demeanor of Petitioner* during the taped confession

at each of the hearings. *Id*. at 4-5. The State sets forth in detail the specific portions of the Court's comments at each hearing.

"Suppression Hearing Decision:

> "I did have the opportunity to look at Mr. Bojang's demeanor. I can describe him as relaxed. He actually sat and twirled his thumbs, one around the other. He did not appear overly sensitive. He did not appear to be emotionally upset, and he waited for at least a period of two minutes until the detectives entered the room. He did not appear apprehensive at that time……..I did not observe his hand to be shaking, and I didn't observe any apprehension (when signing the rights form)…..I watched the interview unfold, and Mr. Bojang became increasingly more comfortable as the interview progressed. (p. 243-244)" *Id*. at 4.

"Motion for New Trial:

> "I've noted on the record prior to this that I did observe Mr. Bojang to have some degree of comfort as the video progressed. Even if the officer had, in fact, struck Mr. Bojang, and I made a finding on that issue, but it did not appear Mr. Bojang on the videotape was coerced into giving that statement. (p. 32)" *Id*. at 5.

"Remand Hearing:

> "Now the court notes this is at odds with the 37, 40-minute video of the interview in room no.2. (referring to defendant's trial testimony) And the court noted back at the suppression hearing and also the court notes again after reading the transcripts that the defendant becomes more and more relaxed and more and more engaged as the interview progresses. (p. 12)" *Id*.

It is true that at one point, during the motion for a new trial, this Court did comment, "Now, Mr. Bojang testified at trial. He presented himself *credibly*." (Tr. 32:12-13, June 22, 2010.) (Emphasis added.) In hindsight, that sentence and the word "credibly" could have probably used

a qualifier.[2] Use of such a qualifier could distinguish between what parts of Petitioner's testimony were credible and which were not. Further, the exact meaning of the word "credible" in the overall context of Petitioner's trial testimony might have been better elucidated. However, the State suggests that a close reading of a larger portion of the transcript from the motion for a new trial reveals that this Court's findings on Petitioner's credibility were consistent. The State points to the following from the motion for new trial:

"Motion for New Trial:

> "Now, Mr. Bojang testified at trial. He presented himself credibly. He indicated that, "More than 10 times I told them I was innocent, and one of the policemen said, 'See this telephone? You've got two minutes to cooperate or I'll call the INS.'" And then he said, "I tried to figure out what to do, and I did tell some of those things." Now, did that have to do with immigration? Did that have to do with activity that was not observed on the video in the juvenile conference room? I'm not sure. But Mr. Bojang's body language did not indicate that to me.
>
> "In court Mr. Bojang appeared very confident when he was testifying about being struck by the policeman, and I'll note that he said, "He hit me and I said that he did, and he hit me a second time and I looked at him furiously and at that point I was afraid of being charged with assault of a cop." *And I wrote that testimony down, and I wondered to myself at the time if I was that angry would I ever admit, if I was that angry at somebody who struck me, that I did anything I did not do.* (32-33, emphasis added by State)." (State's Post Hr'g Mem. 5-6.)

The State suggests that the last sentence set forth above indicates that the Court had "some reservations about Petitioner's credibility." *Id*. at 6. This Court notes that the State's suggestion

[2] A *qualifier* is "a word (such as an adjective) or word group that limits or modifies the meaning of another word (such as a noun) or word group." Https://www.merriam-webster.com/dictionary/qualifier (last visited May 7, 2021).

is correct given the differences apparent in Petitioner's demeanor on the video and when testifying at trial as described above.

Doctrine of Judicial Estoppel

Petitioner asserts that the doctrine of judicial estoppel justifies vacating his convictions based on the inconsistencies averred. The State, while maintaining that there are no inconsistencies, submits that the doctrine is inapplicable. "A trial justice has the discretion to invoke judicial estoppel 'when he or she finds that a *party's* inconsistent positions would create an unfair advantage.'" *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013) (quoting *State v. Lead Industries Association, Inc.*, 69 A.3d 1304, 1310 (R.I. 2013) (*Lead Industries*)) (emphasis added). The Rhode Island Supreme Court has indicated that the focus should be on whether a '"party's subsequent position would be perceived as misleading as to either the first or second court[.]'" *Id.* (quoting *Lead Industries*, 69 A.3d at 1310–11). '"[J]udicial estoppel focuses on the relationship between the litigant and the judicial system as a whole."' *Iadevaia*, 80 A.3d at 870–71 (quoting *Lead Industries*, 69 A.3d at 1310). '"Because the rule is intended to prevent improper use of judicial machinery, * * * judicial estoppel is an equitable doctrine invoked by a court at its discretion."' *Id.* at 871 (quoting *Gaumond v. Trinity Repertory Co.*, 909 A.2d 512, 519 (R.I. 2006)). "'One of the primary factors courts typically look to in determining whether to invoke the doctrine in a particular case is whether the *party* seeking to assert an inconsistent position would derive an unfair advantage * * * if not estopped."' *Id.* (quoting *Lead Industries*, 69 A.3d at 1310) (emphasis added).

In the matter before the Court, the Court itself is not, was not, and never was a "party" or a "litigant." Therefore, the doctrine of judicial estoppel does not justify vacating Petitioner's convictions. Furthermore, after consideration of Petitioner's arguments regarding inconsistent

findings, the Court is not persuaded. When viewed in the overall context of exactly what was articulated by the Court at the various hearings described herein, this Court finds that there is no inconsistency that would justify vacating Petitioner's convictions.

2. Ineffective Assistance of Counsel/Failure to Introduce Evidence

Petitioner next submits that it was "ineffective on the part of his counsel to offer no additional testimony or evidence when the case was remanded from the Supreme Court for the trial justice to make additional findings of fact and credibility determinations [among the various witnesses] concerning the voluntariness of [Petitioner's] confession." (Pet'r's Post Hr'g Mem. 11.) The State counters that "[t]rial counsel's decision not to put on additional evidence at the remand hearing was clearly tactical in nature and thus does not constitute ineffective assistance." (State's Post Hr'g Mem. 9.)

Ineffective Assistance of Counsel Standard of Review

The case of *Strickland v. Washington*, 466 U.S. 668 (1984), adopted by the Rhode Island Supreme Court, is the benchmark decision regarding when a court is faced with a claim of ineffective assistance of counsel. *Navarro v. State*, 187 A.3d 317, 325 (R.I. 2018); *LaChappelle v. State*, 686 A.2d 924, 926 (R.I. 1996). A *Strickland* claim entails a two-part inquiry, and a petitioner must satisfy both requirements to prevail. First, a petitioner must prove that counsel's performance was deficient in such a way that the attorney was "not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687; *Neufville v. State*, 13 A.3d 607, 610 (R.I. 2011). Second, a petitioner must show that, even if counsel's performance was deficient, the attorney's shortcomings "prejudiced [petitioner's] defense." *Strickland*, 466 U.S. at 687.

The first prong of the *Strickland* analysis evaluates whether counsel's performance "fell below an objective standard of reasonableness." *Id.* at 688; *Reyes v. State*, 141 A.3d 644, 654 (R.I.

2016). However, the Sixth Amendment standard is "'very forgiving,"' *United States v. Theodore*, 468 F.3d 52, 57 (1st Cir. 2006) (quoting *Delgado v. Lewis*, 223 F.3d 976, 981 (9th Cir. 2000)), and there is a strong presumption that counsel performed competently. *Gonder v. State*, 935 A.2d 82, 86 (R.I. 2007). "As the *Strickland* Court cautioned, a reviewing court should strive 'to eliminate the distorting effects of hindsight."' *Clark v. Ellerthorpe*, 552 A.2d 1186, 1189 (R.I. 1989) (quoting *Strickland*, 466 U.S. at 689).

A petitioner claiming ineffective assistance of counsel must overcome a heavy burden in proving his claim. *See Rice v. State*, 38 A.3d 9, 16-17 (R.I. 2012). It is well settled that tactical decisions by trial counsel, even if ill-advised, do not by themselves constitute ineffective assistance of counsel. *See Rice*, 38 A.3d 9 (where trial counsel's decision not to call physician to testify regarding lack of physical evidence of sexual penetration was reasonable trial strategy); *Vorgvongsa v. State*, 785 A.2d 542 (R.I. 2001) (failure to impeach state's witness with her prior testimony at co-defendant's trial was a tactical decision); *Toole v. State*, 748 A.2d 806 (R.I. 2000) (legitimate defense strategy does not amount to ineffective assistance of counsel); *Alessio v. State*, 924 A.2d 751 (R.I. 2007) (mere tactical decisions, though ill advised, do not by themselves constitute ineffective assistance of counsel).

Trial Counsel's Testimony at the Evidentiary Hearing

Petitioner points to trial counsel's testimony wherein trial counsel expresses his opinion that it was "highly unusual" to allow the trial court to consider Petitioner's testimony at trial when making the further findings relative to the suppression hearing on remand. (Pet'r's Post Hr'g Mem. 14.) Specifically, Petitioner sets forth a portion of trial counsel's testimony:

> "**A**: Based on the record that we had – well, what I should first say is that I found it extremely unusual for the Supreme Court to remand a case back to the trial court and allow the Court to take additional testimony, and I believe the Supreme Court order also indicated that Justice Carnes could now consider the testimony of Mr.

> Bojang. I found that to be highly unusual, and the reason is when a defense attorney files a motion to suppress, the burden still remains with the State, and the State or the government has the burden of establishing that the statement of Mr. Bojang that was taken was not in violation of the Fifth Amendment. Mr. Bojang, at that hearing, did not testify.
>
> **"Q**: When you say at the hearing, you mean the suppression hearing?
>
> **"A**: Yes, at the suppression hearing. So to have the Supreme Court now make a finding that the trial court could consider trial testimony that was not taken during the suppression hearing in making its finding for the suppression hearing was unusual." *Id*.

Petitioner notes that trial counsel was then asked how the ruling by the Supreme Court factored into his decision to not present any additional testimony or argument at the remand hearing. *Id*. The response was:

> "Well, the way that factored in was I went and I looked at the comments that the Court had made about the witnesses. Knowing now that the Court was going to be allowed to consider Mr. Bojang's testimony, we looked at the Court's comments with regard to Detective Hammond (sic) at the trial, where the Court had expressed at least at that time some concerns about his evasiveness or credibility, and when I compared that to the comments that the Court made about Mr. Bojang's testimony, trial testimony, during the motion for new trial, the Court had commented in the motion for new trial that when Mr. Bojang testified he testified confidently and credibly. I don't remember if those were the exact words, but there was some reference about Mr. Bojang presenting as a credible witness. So I now have two transcripts that I believe the trial court is going to see; one transcript where it calls into question the credibility of Detective Hammond (sic), and another transcript which comments on the credibility of Mr. Bojang. Looking at that, I didn't see any purpose in eliciting additional testimony." *Id*. at 14-15.

Petitioner suggests that, at a minimum, trial counsel's decision not to at least argue at the remand hearing was ineffective. *Id*. at 15.

The State, in response, submits that trial counsel's decision not to put on additional evidence at the remand hearing was clearly tactical in nature and thus does not constitute ineffective assistance. (State's Post Hr'g Mem. 9.) The State points to the testimony of trial counsel at the evidentiary hearing, specifically where trial counsel testified as to his rationale for

not introducing additional evidence at the evidentiary hearing even though the Supreme Court had expressly allowed for such an introduction of additional evidence.

> "Q: So when the matter was remanded and you conducted a hearing, you decided and elected not to present any additional evidence, correct?
>
> "A: Correct.
>
> "Q: You and the prosecutor, who was also given the opportunity, both rested on the previous exhibits and the transcripts?
>
> "A: Correct.
>
> "Q: Not putting words in your mouth, is it fair to say you didn't want to open a hornet's nest?
>
> "A: I think that is a fair description. I think that - - I think looking at the transcripts that we had and some of the findings about those witnesses that the court had already made, *yeah. I think putting Mr. Bojang or any other evidence could create a hornet's nest to allow any additional evidence for the court to consider and work against the defendant*." *Id*. (Emphasis added.)

The State suggests, in light of the above testimony, that trial counsel's decision not to put forth any additional evidence was a "strategic decision" and not one "made lightly" but made with "care and deliberation." *Id*.

Given the standards discussed above, mere tactical decisions, though ill advised, do not by themselves constitute ineffective assistance of counsel. *Alessio*, 924 A.2d 751. Trial counsel acknowledged that he did not want to "create a hornet's nest" with the submission of any additional evidence. Furthermore, it is speculative to suggest that if trial counsel had engaged in additional argument, the trial court would have made a finding consistent with its prior finding that Petitioner, at trial, "*presented himself credibly*."[3] This Court has already indicated that the word "credibly"

[3] The precise language used by the Court was, "*He presented himself credibly*," as previously set forth in the transcripts and Court's Decision herein.

could have probably used a qualifier, and in the larger context it is clear to this Court that after considering the contrast in Petitioner's demeanor from the video confession and that exhibited by the Petitioner at trial, this Court did not feel that Petitioner's denials at trial were credible. That being stated, it is highly doubtful that any further argument by trial counsel at the remand hearing would have led to a result different from that appearing in the Court's Decision at the time of this writing.

V

Conclusion

For the reasons stated herein, based on the evidence, exhibits, transcripts, and the Court's own recollection, the Court does not feel its prior findings relative to Petitioner were inconsistent. The Court also finds that trial counsel was not ineffective. Petitioner's application is denied. The Court will enter an order and a judgment in their usual and customary form.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Mustapha Bojang v. State of Rhode Island**
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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 13, 2021**
JUSTICE/MAGISTRATE:	**Carnes, J.**

ATTORNEYS:

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