STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 15, 2021)

ERWIN GRANTLEY	:	
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	:	
V.	:	**C.A. No. PM-2017-1056**
	:	**(P1-2009-2498A)**
	:	
STATE OF RHODE ISLAND	:	

DECISION

MCGUIRL, J. Before this Court is Erwin Grantley's (Mr. Grantley) Application for Postconviction Relief (Application). Mr. Grantley asserts that defense counsel denied him effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and article I, section 10 of the Rhode Island Constitution, and that, as a result, he wrongfully was convicted of crimes with which he had been charged and of which he maintains his innocence. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-3.

I

Facts and Travel

On August 14, 2009, an indictment was filed against Mr. Grantley charging him with three felony offenses: (1) assault with a dangerous weapon in a dwelling house (domestic) in violation of G.L. 1956 §§ 11-5-4 and 12-29-2(a)(2); (2) breaking and entering of a dwelling house (domestic) in violation of G.L. 1956 § 11-8-2(a) and §§ 12-29-2(a) and (b); and (3) driving a motor vehicle without the owner's consent in violation of G.L. 1956 § 31-9-1. The indictment additionally charged Mr. Grantley with one count of misdemeanor larceny in violation of G.L.

1956 § 11-41-1, and it also charged him as a habitual offender in accordance with G.L. 1956 § 12-19-21.

The record reveals that prior to the commencement of criminal trial, the State had offered Mr. Grantley an opportunity to plea to the charges. (*State v. Grantley*, P1-2009-2498A, Trial Transcript (Trial Tr.), Tr. I at 1-2.) The final offer "was to reduce Count 1 to an assault with a dangerous weapon domestic." *Id.* at 2. In return for a twenty-year sentence of imprisonment, with fifteen years to serve on that count, the State would agree to dismiss the other three counts and not seek to have Mr. Grantley adjudged as a habitual offender. *Id.* Mr. Grantley rejected the offer and opted instead to proceed to trial. *Id.* at 3. During a colloquy with the Court, Mr. Grantley acknowledged that he had discussed the offer with his defense counsel, Attorney Brian Quirk (defense counsel), including the evidence against him, as well as his possible defenses against the charges. *Id.* at 2-3. He further acknowledged that, notwithstanding these discussions, he had knowingly and voluntarily decided to proceed to trial. *Id.* at 3.

Following the jury trial, Mr. Grantley was convicted of the charges of assault with a dangerous weapon and breaking and entering. The jury acquitted Mr. Grantley of driving without the owner's consent and misdemeanor larceny. After denying his motions for judgment of acquittal and a new trial, the Court adjudicated Mr. Grantley to be a habitual violator and sentenced him to a term of imprisonment at the Adult Correctional Institutions (ACI).[1] Mr. Grantley timely appealed to the Rhode Island Supreme Court. *See State v. Grantley*, 149 A.3d 124 (R.I. 2016). Thereafter, the Supreme Court affirmed his convictions. *See id.*

The following facts are pertinent to the instant Application:

[1] At the time of the hearing in this matter, there was a motion pending before the Court in the underlying criminal case. That motion was not pertinent to this matter, and that issue has been resolved.

On the morning of May 28, 2009, an incident occurred between Mr. Grantley and the complaining witness, Crystal Bruce (Ms. Bruce). At the time, Ms. Bruce lived at 134 Houston Street in Providence with her twin sons Jonathan and Christopher (age twenty-one at the time of the trial), her son Germain (age eighteen), and her daughter Kiara (age thirteen). (Trial Tr. II at 300-01.) The residence was a single-family home, with Ms. Bruce's bedroom on the first floor and her children's four bedrooms on the second floor. *Id.* at 301.

Ms. Bruce testified that from 2004 through the early fall of 2008 she had been involved in an intermittent romantic relationship with Mr. Grantley. *Id.* at 298-99, 326-27. She described this relationship as having two sides, like "a Dr. Jekyll and Mr. Hyde relationship." *Id.* at 299-300. She stated that "[t]here would be a lot of fights, a lot of arguments," including physical fights. *Id.* at 300. Although the romantic portion of the relationship ended in late summer or early fall 2008, the two continued to be friends. *Id.* at 327. In December 2007, Mr. Grantley and Ms. Bruce moved into the 134 Houston Street address; Mr. Grantley lived there for approximately eight months. *Id.* at 299. When Mr. Grantley moved out of the residence, Ms. Bruce did not remove his name from the mailbox, and it remained there even after their romantic relationship ended. *Id.* at 328-30, 363, 373-74. Despite the fact that the romantic portion of their relationship ended, Ms. Bruce continued to try to work on her friendship with Mr. Grantley, including writing letters to him while he was in prison. *Id.* at 371, 372-73. Mr. Grantley later called Ms. Bruce when he was released from prison in May 2009. *Id.* at 371-72.

During the week before the May 28, 2009 incident, Ms. Bruce testified that she saw Mr. Grantley once or twice at his Pawtucket apartment, and that she had been intimate with him on one of those occasions. *Id.* at 331. A day or two before the incident, Ms. Bruce testified that she drove Mr. Grantley to a Price-Rite grocery store to fill out a job application, but that she refused

to allow him to come back to her residence to visit with her three dogs, with whom he was friendly. *Id.* at 303, 330-32. Indeed, at that time, Mr. Grantley was not permitted to enter Ms. Bruce's home when she was not present; had not been inside her residence since 2008; and he did not possess a key to the property. *Id.* at 305, 361.

At approximately 8:30 a.m. on May 28, 2009, Ms. Bruce returned home from an overnight stay with a male friend in Connecticut. *Id.* at 301-02, 352-53. At the time, her twin sons, Jonathan and Christopher, were asleep upstairs. *Id.* at 312. Ms. Bruce testified that she entered her bedroom; took a fan out of the bedroom window; and then turned around to see Mr. Grantley walk into her bedroom "out of nowhere" and shut the bedroom door behind him. *Id.* at 304-05, 345. Ms. Bruce stated that she had not known that Mr. Grantley was in the house, and that she had not invited him inside. *Id.* at 305.

Ms. Bruce testified that when she asked Mr. Grantley what he was doing there, he responded by demanding from her where she had been. *Id*. Ms. Bruce replied that she had been in Connecticut, and Mr. Grantley then punched her in the face around her left eye and proclaimed: "You're not going to be a whore as long as I'm around." *Id.* at 305-06, 345. When Mr. Grantley again punched her in the same area of her face, Ms. Bruce fell towards her bed. *Id.* at 306. Ms. Bruce stated that Mr. Grantley then grabbed her by the neck, pinned her to the floor with his knees, and began to choke her. *Id.* at 306. Ms. Bruce testified that Mr. Grantley declared that "if he [Mr. Grantley] couldn't have me [Ms. Bruce], wasn't nobody else going to have me." *Id.* Thereafter, Ms. Bruce passed out, but not before exclaiming: "You're going to kill me with my kids upstairs?" *Id.*

Ms. Bruce then testified that when she regained consciousness, she found herself slouched over her bed with Mr. Grantley holding the wire to her phone charger wrapped around her neck.

Id. at 307. She stated that she managed to throw the wire across the room while Mr. Grantley took her car keys and cell phone from the bed, without her permission, and then walked out of the room. *Id*.

Ms. Bruce stated that she had difficulty breathing as she subsequently tried to crawl up the stairs to alert her sleeping sons that she needed help. *Id.* at 308, 358-59. She realized that she was bleeding, but she did not know where the blood was coming from, and that her difficulty in breathing prevented her from yelling out loud to her sons. Nevertheless, she managed to awaken them and tell them that Mr. Grantley had beaten her up. *Id.* at 308, 359. While Christopher was calling 911 for assistance, Jonathan ran to the window to look outside. *Id.* at 308, 358-59.

Ms. Bruce testified that after an ambulance arrived, rescue personnel informed her that she had been stabbed in the left side of her chest. *Id.* at 309. Ms. Bruce testified that while she did not see Mr. Grantley stab her before she passed out, and that she did not see him with a knife, she also did not have any preexisting stab wounds before he entered her bedroom that morning and that he was the only other person in the room besides herself. *Id.* at 311-12, 344, 357. Ms. Bruce stated that she spent four days at Rhode Island Hospital recovering from a collapsed lung, a stab wound near her heart, a small bleed in her brain, and bruised ribs. *Id.* at 310.

During cross-examination, defense counsel scrupulously examined Ms. Bruce's relationship with Mr. Grantley. He questioned her extensively concerning so-called "love letters" that she had written to Mr. Grantley during the fall of 2008 while he had been incarcerated at the ACI. *Id.* at 333-36, 373. Defense counsel also delved into Ms. Bruce's alleged misappropriation of a check payable to Mr. Grantley that the Internal Revenue Service had mailed to Mr. Grantley at the 134 Houston Street address. *Id.* at 336-44. In engaging in these lines of questioning, defense counsel was attempting to impeach Ms. Bruce's credibility.

Emergency Medical Technician (EMT) Paul Casey was next to testify at the underlying trial. He testified that on May 28, 2009, he arrived at 134 Houston Street shortly after a 911 dispatch was sent out at approximately 9:34 a.m. *Id.* at 386, 395. He further testified that Ms. Bruce told him that she had been hit many times on her torso, head, neck, and arm, and that he observed a deep puncture wound to her left breast, a swollen left eye, and multiple ligature marks and blunt trauma signs on her arm and torso. *Id.* at 389-91. EMT Casey stated that Ms. Bruce told him that she had been hit numerous times, had been stabbed, and that at some point she had lost consciousness. *Id.* at 392-93.

Dr. Jay Baruch, an emergency physician at Rhode Island Hospital, testified that he treated Ms. Bruce when she arrived at the hospital. *Id.* at 462, 465. He based his testimony on her medical records, as he had no independent recollection of having treated Ms. Bruce. *Id.* at 466. Based on those records, Dr. Baruch testified that Ms. Bruce had abrasions and tenderness around her left eye; black and blue bruises in the middle of her face; redness around her neck; a penetrating stab wound midway down her chest; a small bleed to the brain; and a collapsed lung. *Id.* at 462-63, 465-72. Dr. Baruch opined to a reasonable degree of medical certainty that due to the stab wound's location, the wound was potentially life-threatening at the time Ms. Bruce arrived at the hospital. *Id.* at 480.

Ms. Bruce's twin sons also testified. Christopher testified that on the morning in question he and his brother Jonathan were asleep upstairs when their mother came up the stairs, panicked and scared, and said that her ex-boyfriend, Mr. Grantley, had assaulted her. *Id.* at 400-02. Christopher further testified that when he went to sleep the night before, the outside doors to their house were shut; that he never saw Mr. Grantley at the house on the morning of the incident; that he had not invited Mr. Grantley over to the house; and that Mr. Grantley did not have permission

to be there. *Id.* at 410-12. Christopher stated that he could not recall the last time before May 28, 2009, that Mr. Grantley had come to their home. *Id.* at 418. He also testified that he called 911 twice, the first time to request an ambulance and the second time to request the police because Mr. Grantley had beaten his mother and she could hardly breathe. *Id.* at 402-03, 405-06, 408-09.

Ms. Bruce's other twin son, Jonathan, testified that on the morning of May 28, 2009, he was awoken by his mother who was coming up the stairs and was bleeding. *Id.* at 422-23. Jonathan additionally testified that after he helped his mother over to his bed and told Christopher to call for an ambulance, he looked out the window and saw Mr. Grantley back out of the driveway in his mother's car. *Id.* at 423-24, 441-43, 450. He stated that he could see Mr. Grantley's face through the car window even though, as Mr. Grantley backed out of the driveway, the driver's window would have been on the side of the car farthest from the window out of which Jonathan was looking. *Id.* at 441-43, 450.

Like his brother, Jonathan also testified that the outside doors to their home had been closed when he went to bed, and that he had not invited Mr. Grantley over to the house or given him permission to enter their home at the time in question. *Id.* at 430-31. Jonathan further testified that he had no idea that Mr. Grantley had been in the house until he saw him driving away in his mother's car. *Id.* at 431. He did, however, admit that Mr. Grantley had been at their house in the month preceding the assault, and that he had stopped by on the day before the assault. *Id.* at 432-33, 446.

Jonathan additionally testified that while he was cleaning up the house after his mother left by ambulance, he discovered a knife blade wrapped in a bloody towel on the floor underneath her bed. *Id.* at 426-28, 435. He identified the knife blade when he was on the stand and stated that he reported his find to the police. *Id.* at 427, 430.

According to Jonathan, he found and reported the knife blade on May 28, 2009, and that a police officer retrieved it on the same day. *Id.* at 426, 430. Nevertheless, during cross-examination, Jonathan acknowledged that his signed witness statement indicated that the police did not retrieve the knife blade until June 1, 2009, and that a May 28, 2009 photograph of the towel clearly depicted it to be located next to the bed, not underneath the bed, as he had testified on direct. *Id.* at 438-39.

Providence Police Detective Robert Firth testified that on May 28, 2009, he responded to a 911 call at 134 Houston Street and that he saw no signs of forced entry. Trial Tr. III at 497, 514. He stated that it was unclear to police whether the suspect lived at the address and would have standing to challenge a thorough search; consequently, the responding officers decided to conduct only a limited, plain-view search. *Id.* at 497-99. As a result, the police did not test for fingerprint evidence on the doors or the windows on the day of the assault. *Id.* at 514.

Detective Firth did testify, however, that he observed stains that appeared to be consistent with blood on the floor of Ms. Bruce's bedroom, and that he photographed a towel on the floor next to her bed. *Id.* at 502-06. He acknowledged that he did not actually disturb the towel or notice a knife. *Id.* at 516. Detective Firth also admitted that he did not return to conduct a thorough search or further process the crime scene, and that he was not aware of any subsequent search warrant or consent to search obtained by other officers. *Id.* at 501-02, 507-08.

Detective Firth stated that the clothing that Ms. Bruce had been wearing at the time of the assault had been seized, but it was not sent for testing because it appeared obvious that the blood stains were from Ms. Bruce's own wounds. *Id.* at 508-10. He also stated that when, as in this case, a victim knows and can readily identify her attacker, DNA testing and fingerprint processing are not necessarily requested. *Id.* at 511-12, 516-17.

Detective Ralph Costantino testified that on June 1, 2009, he went to 134 Houston Street to recover a bent knife blade that had been located at the house. *Id.* at 520-21. He identified photographs of the knife blade that he took on June 1, 2009, and he also identified the physical knife blade introduced as evidence at trial as being the same blade as in the photographs. *Id.* at 521-22. He testified that a substance on the blade of the knife appeared to be consistent with blood. *Id.* at 522. Similar to Det. Firth, Det. Costantino testified that where a suspect's identity is known, DNA and fingerprint testing are less valuable, and that, in this case, he was not instructed to process the knife blade for fingerprints. *Id.* at 524-25, 531-32. He also stated that because he had responded to the scene a full four days after the crime had been committed, there would have been no purpose in processing the scene at that point in time. *Id.* at 528-29.

Officer Jose Deschamps responded to the scene on May 28, 2009. *Id.* at 535-36. When he arrived, he observed that Ms. Bruce was being treated by rescue personnel while she bled from both her chest and her face. *Id.* at 537. He testified that Ms. Bruce informed him that Mr. Grantley had stabbed her and had taken her car. *Id.* at 546-47.

On the afternoon of May 1, 2012, the trial concluded, and the jury began its deliberations. *Id*. at 641. The jury did not reach a verdict until the late morning of May 3, 2012. *Id*. at 655. It found Mr. Grantley guilty of assault with a dangerous weapon in a dwelling house (domestic) and breaking and entering of a dwelling house (domestic). *Id.* at 656-57. The jury found Mr. Grantley not guilty of driving a motor vehicle without the owner's consent and misdemeanor larceny. *Id.* at 657.

Thereafter, the Court denied Mr. Grantley's motions for judgment of acquittal and for a new trial, adjudicated him to be a habitual violator in accordance with § 12-19-21, and sentenced

him to a term of imprisonment at the ACI. The Supreme Court subsequently affirmed his convictions. *See Grantley*, 149 A.3d at 135.

On March 7, 2017, Mr. Grantley filed the instant Application on grounds that he received ineffective assistance of counsel at his trial. On November 25, 2019, this Court conducted an evidentiary hearing on the Application. At that hearing, the Court received testimony from both defense counsel and Mr. Grantley.

Defense counsel testified that he had been a practicing attorney for approximately twenty years and had been a police officer for approximately five years before becoming an attorney. (Hr'g Tr. 7.) He first spent almost four years at the Rhode Island Department of Attorney General where he worked on over a dozen criminal trials and since then he has worked in private practice, concentrating primarily in the area of criminal defense. *Id.* at 7-9.

Defense counsel remembered reviewing Mr. Grantley's case and that his "initial thoughts were it [was] a serious case . . . ." *Id.* at 11. He noted that Mr. Grantley had been served with a habitual offender notice and that Mr. Grantley currently was serving seven years of imprisonment on a probation violation. *Id.* at 12. He testified that he conducted numerous pretrial meetings with Mr. Grantley about resolving the case, and that the two of them discussed the strengths of both the State's case and defense's case. *Id.* at 13-14. Defense counsel also testified that Mr. Grantley executed a "Pre-Frye hearing form" in which he acknowledged and rejected the final pretrial offer. *Id.* at 14-15. Defense counsel had advised Mr. Grantley to accept the offer, but he recognized that Mr. Grantley ultimately had the right to proceed to trial. *Id.* at 15.

Defense counsel testified that he engaged the services of an investigation company to interview witnesses and obtain recordings of Mr. Grantley's telephone conversations from the ACI in order to avoid any potential surprises at trial. *Id.* at 15-16, 38. He stated that he later advised

Mr. Grantley not to testify because it then would provide the State with the opportunity to cross-examine Mr. Grantley about his lengthy criminal history and the fact that he had been released from prison only eight days before the assault. *Id.* at 22-24. Defense counsel also advised Mr. Grantley that if he testified, the jury likely would hear that Mr. Grantley had been wearing a home confinement bracelet at the time of the assault; that he allegedly had attempted to run over Ms. Bruce with his car just days before the incident; and that the contents of the recorded telephone conversations that he had while incarcerated at the ACI conceivably could hurt his case. *Id.* at 23-24. Thereafter, Mr. Grantley executed a document in which he acknowledged receiving this advice and agreed to waive his right to testify at trial. *Id.* at 22.[2]

Defense counsel also stated that he and Mr. Grantley discussed the difficulties in challenging the admission of the knife blade. *Id.* at 31-32. He testified that he made a strategic decision not to challenge the admission of the knife blade or to call Mr. Grantley's alleged alibi

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[2] At the close of the State's presentation of its case, defense counsel informed the Court that Mr. Grantley was opting not to testify upon the advice of counsel. (Trial Tr. III at 557.) Thereafter, the following colloquy took place:

> "THE COURT: Okay. Mr. Grantley, could you stand up for a minute, please? It's my understanding you do not wish to testify at this point in time?
> "THE DEFENDANT: Yes.
> "THE COURT: You've talked to Mr. Quirk about that?
> "THE DEFENDANT: Yes.
> "THE COURT: I assume you've had conversations during the course of the trial about that?
> "THE DEFENDANT: Yes.
> "THE COURT: And you understand the benefits, pluses and minuses and consequences of each decision?
> "THE DEFENDANT: Yes.
> "THE COURT: And you believe you are making an informed decision at this point?
> "THE DEFENDANT: Yes.
> "THE COURT: Any questions you want to ask me about that?
> "THE DEFENDANT: No.
> "THE COURT: Alright." (Trial Tr. III at 557.)

witness, Dennis Souza (Mr. Souza), to the stand, as he believed that neither would be of benefit to the defense. *Id.* at 32, 40, 42-43.

Additional facts will be supplied, as needed, in the Analysis portion of this Decision.

II

Standard of Review

It is well settled that pursuant to "§ 10-9.1-1, postconviction relief is a remedy 'available to a convicted defendant who contends that his original conviction or sentence violated rights afforded to him under the state or federal constitution.'" *Whitaker v. State*, 199 A.3d 1021, 1026 (R.I. 2019) (quoting *Barros v. State*, 180 A.3d 823, 828 (R.I. 2018)); *see also Lyons v. State*, 43 A.3d 62, 64 (R.I. 2012) ("[O]ne who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights.") (internal quotation omitted). Such actions are civil in nature and governed by all of the rules and statutes that are applicable in civil proceedings. *See* § 10-9.1-7 ("All rules and statutes applicable in civil proceedings shall apply . . . ."); *see also Lyons*, 43 A.3d at 64 (stating "[a]pplication[s] for postconviction relief [are] civil in nature") (internal quotation omitted). In challenging his or her conviction, an applicant has '"[t]he burden of proving, by a preponderance of the evidence, that such [postconviction] relief is warranted[.]'" *Whitaker*, 199 A.3d at 1026 (quoting *Navarro v. State*, 187 A.3d 317, 325 (R.I. 2018)).

III

Analysis

Mr. Grantley contends that the defense counsel's representation of him was ineffective during the trial. Mr. Grantley asserts three arguments in support of his claim; namely, that defense counsel (a) should have moved to suppress the knife blade due to its lack of seizure by the

Providence Police and due to alleged chain of custody issues; (b) failed to call a purported alibi witness who also possessed potentially exculpatory evidence; (c) failed to effectively defend Mr. Grantley after Mr. Grantley rejected the State's pretrial offer and opted to proceed to trial; and (d) failed to seek disqualification of the prosecutor for bias because she previously had successfully prosecuted him on a probation violation where the probation violation was based upon charges that subsequently were dismissed.

It is well established that when assessing claims of ineffective assistance of counsel, Rhode Island courts employ the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *See Whitaker*, 199 A.3d at 1027; *Millette v. State*, 183 A.3d 1124, 1129 (R.I. 2018). "'[T]he benchmark issue is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" *Whitaker*, 199 A.3d at 1027 (quoting *Barros*, 180 A.3d at 828).

Recently, our Supreme Court enunciated the *Strickland* requirements that an applicant must satisfy in order to prevail on a claim for ineffective assistance of counsel. *Whitaker*, 199 A.3d at 1027. Accordingly,

> "An applicant must satisfy two criteria to prevail on a claim of ineffective assistance of counsel. First, the applicant must demonstrate that counsel's performance was deficient, to the point that the errors were so serious that trial counsel did not function at the level guaranteed by the Sixth Amendment. This prong can be satisfied only by a showing that counsel's representation fell below an objective standard of reasonableness. In evaluating counsel's performance, [the Court] keep[s] in mind that there is a strong presumption * * * that an attorney's performance falls within the range of reasonable professional assistance and sound strategy[.]
>
> "Second, the defendant must show that the deficient performance prejudiced the defense. Specifically, the second prong of *Strickland* requires the applicant to demonstrate that the deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of the applicant's right to a fair trial. In

> other words, the applicant must show that there is a reasonable probability that, *but for* counsel's unprofessional errors, the result of the proceeding would have been different. [Crucially, it must be remembered that] [t]his is a highly demanding and heavy burden." *Id*. (internal citations and quotations omitted).

See also Rice v. State, 38 A.3d 9, 16-17 (R.I. 2012) (an applicant "is saddled with a heavy burden, in that there exists a strong presumption [recognized by this Court] that an attorney's performance falls within the range of reasonable professional assistance and sound strategy . . ."") (internal quotations omitted); *Jaiman v. State*, 55 A.3d 224, 238 (R.I. 2012) ("Recognizing the difficulties inherent in [an ineffective assistance of counsel] evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.") (internal quotations omitted).

Indeed, this Court must avoid "second-guess[ing] counsel's assistance after conviction or adverse sentence[,] [because] it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id*. (internal quotations omitted). Rather, in order to conduct a fair assessment of a trial counsel's performance, the Court must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.*

A

Suppression of the Knife Blade

Mr. Grantley contends that defense counsel provided ineffective assistance of counsel when he failed to seek suppression of the knife blade due to its lack of seizure by the Providence Police and alleged chain of custody issues. It appears that Mr. Grantley is arguing that because

the knife was not seized pursuant to a legal search warrant, and that, instead, it was obtained four days after the assault, defense counsel should have moved to exclude the knife blade on grounds that the State could not provide a proper chain of custody for its introduction at trial.

It is undisputed that the police did not conduct a search of the property on the day of the crime and that they did not later obtain a search warrant. If they had conducted a search, either warrantless or pursuant to a legal warrant, Mr. Grantley would have had to show that he had standing to challenge the search due to his reasonable expectation of privacy in the property in order to successfully exclude introduction of the knife blade at trial. *See State v. Verrecchia*, 766 A.2d 377, 382 (R.I. 2001) (stating that before contesting the seizure of evidence as unlawful, a "defendant must have enjoyed a reasonable expectation of privacy in the premises or property that was the subject of the search[,]" and must prove that such expectation "was one that society would be willing to recognize as objectively reasonable"). To make such a showing, Mr. Grantley would have had to demonstrate factors such as whether he "possessed or owned the area searched or the property seized; his or her prior use of the area searched or the property seized; [his] ability to control or exclude others' use of the property; and [his] legitimate presence in the area searched." *Id.*

The record reveals that Mr. Grantley did not possess or own Ms. Bruce's residence; his prior use of the property terminated when his relationship with Ms. Bruce ended; and he did not have the ability to control or exclude others from using the property. Furthermore, Ms. Bruce and her sons each testified that Mr. Grantley had not been invited onto the property on the day of the assault. Consequently, it appears that Mr. Grantley's presence at the crime scene was not legitimate and that he did not have a reasonable expectation of privacy in the property.

Consequently, Mr. Grantley likely would not have had standing to challenge any seizure of the knife blade and any motion to suppress likely would have been denied.

Mr. Grantley nevertheless contends that defense counsel should have challenged the admissibility of the knife blade because it was obtained four days after the assault and that, consequently, the State could not establish a proper chain of custody for its introduction at trial. Our Supreme Court has declared:

> "Although a showing of a continuous chain of custody may operate as a guarantee of the reliability, such a showing is not necessary for the introduction of physical evidence. Physical evidence is admissible upon a showing that in all reasonable probability the evidence has not been subjected to tampering. The state, however, need not eliminate all possibility of tampering. A continuous chain of custody is relevant, therefore, only to the weight of the evidence." *State v. Nelson*, 982 A.2d 602, 612 (R.I. 2009) (internal citations and quotations omitted).

S*ee also State v. Lopez*, 45 A.3d 1, 16 (R.I. 2012) (stating '"gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility'") (quoting *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 n.1 (2009)).

The Supreme Court of Indiana has succinctly set forth useful guidance in determining the chain of custody of evidence that is proposed for admission at trial. *See Davis v. State*, 472 N.E.2d 922 (Ind. 1985). It stated

> "that the purpose of establishing a chain of custody for seized evidence is to show a complete chain of possession from the original receiver to the final custodian and thus to lay a proper foundation connecting the evidence in question with the accused. The State, however, must present only evidence which strongly suggests the whereabouts of the evidence at all times. Nonfungible items by their nature do not require the high degree of scrutiny that must be applied to fungible items. A nonfungible item therefore may be admitted into evidence based on testimony that the item is the one in question and is in a substantially unchanged position." *Id*. at 924 (internal citations omitted).

In *Stubbs v. State*, 411 S.E.2d 525 (Ga. App. 1991), a defendant challenged the admissibility of a knife, contending that there had been a break in the chain of custody. The Georgia Court of Appeals rejected this argument, holding that "[t]he item was not fungible but a distinct physical object[,] and no custodial proof was required for admission of it." *Id.* at 527. This tracks with how Rhode Island handles chain-of-custody disputes. *See State v. Garcia*, 883 A.2d 1131, 1139 (R.I. 2005) ("Physical evidence must be shown to be in substantially the same condition as it was when the crime was committed. This burden is met when a party demonstrates, that in all reasonable probability, there was no tampering with the evidence.") (Internal citation and quotations omitted.)

At the postconviction relief hearing, defense counsel testified that he believed that the fact that the police had left the alleged weapon at the scene actually worked in favor of the defense. (Hr'g Tr. 29.) He testified that

> "either a day or two days later, one of these twins found the knife underneath the bed and brought it to the police station with no evidentiary value for the prosecution. In other words, the knife had no blood evidence tested. There were no fingerprints on the knife and he brought it into the Providence Police Station indicating to me that the scene was not processed [for evidence]." *Id.* at 30.

Defense counsel stated that he felt that the police testimony about having "a good feeling of who did it" as justification for not processing the scene "played out very well to the jury." *Id.* at 31.

Defense counsel acknowledged that at first Mr. Grantley wanted him to suppress the knife, but that he explained to Mr. Grantley that under caselaw,

> "ordinarily, when you're talking about suppressing evidence like this, it is a chain of custody argument, and chain of custody generally goes to weight, not admissibility, unless you can show the Court that the evidence had a probability of being tampered with. Here, in my opinion, there was no probability of this evidence being tampered with because the State had no evidentiary value. The woman was obviously stabbed, that was a knife. They brought a

> knife to the police. There were no fingerprints. There was no blood on it. And the other part of it that I really wanted in, and I explained this to Mr. Grantley, who agreed at the time, was the fact that the police never seized this knife on scene. I thought that was great for the defense due to the fact that it had no prosecutorial evidentiary value and it was, I felt it was a very sound legal strategy attacking the knife." *Id.* at 31-32.

During cross-examination, defense counsel testified that he believed that admission of the knife blade allowed him "to poke holes in the Providence police's investigation, not just that but using that as an effective tool." *Id.* at 39. He agreed that his approach to handling the evidence was strategic in nature, and that with respect to the knife blade, he believed that Mr. Grantley "had no standing, number one, to suppress it. And number two, I felt it went to the weight of the evidence and not admissibility, but I also felt it was a good strategy to have the knife there." *Id.* at 39-40.

It is undisputed that Ms. Bruce was stabbed on May 28, 2009. At trial, the State introduced a knife blade that allegedly caused her stab wound. Considering that Det. Costantino positively identified the knife blade as being the same one depicted in photographs that he took on June 1, 2009, this physical evidence was shown to be substantially in the same condition as when it was retrieved, and "that in all reasonable probability, there was no tampering with the evidence" since it had been photographed on that date. *Garcia,* 883 A.2d at 1139.

Mr. Grantley's vague allegation of problems in the chain of custody appear to revolve around the time lapse between the assault and the police obtaining custody of the knife several days later. Defense counsel, however, recognized that because there was no evidence of any tampering, the knife blade would be admissible. He discussed these limitations with Mr. Grantley, and he advised him that he had devised a strategy to challenge the weight of the knife blade evidence in order to demonstrate to the jury that it had no evidentiary value.

Applying the standard set forth in *Strickland*, 466 U.S. 668, this Court first must consider whether defense counsel provided ineffective assistance of counsel when he chose not to seek exclusion of the knife blade at trial. Defense counsel testified that this decision was guided by his belief that the poor handling of the scene of the crime actually helped Mr. Grantley, as it tended to show that the police assumed his guilt based upon witness statements and did not bother to investigate any further.

In pursuing this strategy, the record reveals that defense counsel attempted to impeach Jonathan by showing the inconsistency between his trial testimony, when he stated that he reported finding the knife blade on May 28, 2009, and his witness statement, when he stated that he told the police about the knife blade on June 1, 2009. The record further reveals that defense counsel explored, in depth, the failures by police to conduct forensic tests on the knife blade, on the towel, as well as on the crime scene itself. In doing so, he ably demonstrated to the jury that the police had conducted a sloppy investigation of the crime scene and that the State was unable to show any physical link, such as fingerprint or blood evidence, between Mr. Grantley and the knife blade that had appeared several days after the assault.

In light of the foregoing, the Court finds that Mr. Grantley failed to demonstrate that defense counsel's performance was so deficient as to deny him his constitutional right to effective assistance of counsel. *See Whitaker*, 199 A.3d at 1027 (stating an "applicant must demonstrate that counsel's performance was deficient, to the point that the errors were so serious that trial counsel did not function at the level guaranteed by the Sixth Amendment") (internal quotation omitted). Rather, the Court finds that defense counsel's representation was effective and fell well "within the range of reasonable professional assistance and sound strategy[.]" *Id.* (Internal quotation omitted.)

Indeed, had defense counsel managed to persuade the Court to suppress the knife blade's admission, the case still would have gone forward, and the rest of the State's evidence would have been presented to the jury. Furthermore, without the knife blade in evidence, defense counsel would have been unable to explore the unusual circumstances surrounding its appearance, as well as the police department's failure to examine it for forensic evidence. Defense counsel's strategy in not challenging admission of the knife blade enabled him to explore these unexplained circumstances and failures; without the knife blade, Mr. Grantley would have been deprived of this helpful evidence. Accordingly, this Court concludes that defense counsel's performance with respect to the knife blade reflects not only a reasonable decision by a seasoned attorney, but basically was a very effective strategy available to him under the facts of this case. This Court will not second guess that tactical decision. Consequently, the Court concludes that Mr. Grantley failed to satisfy the first prong of *Strickland* by a preponderance of the evidence.

As Mr. Grantley has not satisfied the first prong of the *Strickland* analysis, the Court need not address the second prong; namely, demonstrating that defense counsel's alleged "deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of [Mr. Grantley's] right to a fair trial." *Whitaker*, 199 A.3d at 1027. Suffice it to say that given the other evidence that the State possessed, even if defense counsel's performance was deficient, which it was not, Mr. Grantley would have been unable to overcome the heavy burden of showing that the result of the trial would have been different had the knife blade been excluded.

B

Alibi Witness

Mr. Grantley next contends that defense counsel's failure to call Mr. Souza as a witness for the defense constituted ineffective assistance of counsel because Mr. Souza would have

provided him with an alibi at the time that the crime was committed. Defense counsel testified that his investigation of the case revealed that Mr. Souza's purported alibi not only was not persuasive, but it likely would have hurt his defense of Mr. Grantley.

It is well established in Rhode Island "that tactical decisions by trial counsel, even if ill-advised, do not by themselves constitute ineffective assistance of counsel." *Rice*, 38 A.3d at 18. The '"choice between trial tactics, which appears unwise only in hindsight, does not constitute constitutionally-defective representation under the reasonably competent assistance standard.'" *Toole v. State*, 748 A.2d 806, 809 (R.I. 2000) (quoting *State v. D'Alo*, 477 A.2d 89, 92 (R.I. 1984)). Indeed "[i]n any given case, [t]here are countless ways to provide effective assistance . . . [;] [e]ven the best criminal defense attorneys would not defend a particular client in the same way." *Jaiman*, 55 A.3d at 238 (internal quotations omitted). Furthermore, it is well settled "that the Constitution guarantees criminal defendants only a fair trial and a competent attorney; it does not ensure that the defense will recognize and raise every possible claim[.]" *Id.* (citing *Engle v. Isaac*, 456 U.S. 107, 133–34 (1982)).

In the instant matter, defense counsel testified that he engaged an investigation company to investigate the case, interview witnesses, and obtain ACI records of telephone conversations between Mr. Souza and Mr. Grantley. (Hr'g Tr. 15-16.) He then testified he learned the following from the investigator's interview of Mr. Souza, as well as his review of the telephone records:

> "The evidence was him [Mr. Souza] testifying or him stating to my investigator that, at the time in question, Mr. Grantley was walking his dog. He knew that he was walking his dog because the dog wasn't in the backyard and then it was. It was about sticking to a story. It was about, we have to stick to a story because we have no choice. Stuff like, 'remember, you were walking the dog?' And he got further in detail, too. I mean, it was a lengthy, it was a lengthy phone transcript. There were two or three different phone calls." *Id.* at 17.

Defense counsel stated that he became concerned about introducing Mr. Souza as a witness when he learned that Mr. Souza had become "very nervous and uncomfortable when he found out that my investigator had telephone transcripts" of the conversations between Mr. Souza and Mr. Grantley. *Id.* at 18. In light of this information, defense counsel opted not to call Mr. Souza to the stand, because he felt that Mr. Souza's witness testimony would not have any evidentiary value in favor of Mr. Grantley and, in fact, could hurt the defense's case. *Id.*

The Court finds that the tactical decision to not call the "very nervous and uncomfortable" Mr. Souza as an alibi witness was not unreasonable. *Id.* Furthermore, had defense counsel called Mr. Souza as a witness, the State then would have attempted to impeach Mr. Souza with the ACI records of his telephone conversations with Mr. Grantley about "sticking to a story." *Id.* at 17. Not only might this have hurt Mr. Grantley's defense, it also might have prejudiced the jury against Mr. Grantley, as it also would have called the jury's attention to the fact that Mr. Grantley was incarcerated while said conversations took place. Furthermore, even if the jury believed Mr. Souza's testimony that Mr. Grantley's dog was not in the backyard at the time of the assault, such observation would not have provided the jury with evidence of the dog's actual location at that particular time.

In view of the foregoing, this Court finds that Mr. Grantley has failed to overcome, by a preponderance of the evidence, the strong presumption that defense counsel's tactical decision to not call Mr. Souza as a witness did not "fall[] within the range of reasonable professional assistance and sound strategy[.]" *Whitaker*, 199 A.3d at 1027; *Rice*, 38 A.3d at 17. Consequently, the Court concludes that such tactical decision did not amount to ineffective assistance of counsel.

C

Vigorous Defense

Mr. Grantley also maintains that after he rejected the State's pretrial offer and opted to proceed to trial, defense counsel provided ineffective assistance of counsel at the subsequent trial. In essence, Mr. Grantley appears to suggest that defense counsel made little effort to defend him in court after Mr. Grantley did not agree with defense counsel's advice to accept the deal.

The record reveals that before the trial commenced, the State offered to dismiss all but one count—assault with a dangerous weapon, domestic—and to decline to pursue a habitual offender enhancement of the charges. The effect of this plea would have substantially reduced Mr. Grantley's exposure to a potentially lengthy prison sentence. Mr. Grantley rejected the offer and opted instead to proceed to trial, as was his right.

At the postconviction relief hearing, defense counsel testified that he had extensive conversations with Mr. Grantley about the State's offer to resolve the case and that he advised Mr. Grantley to accept the offer in light of the serious nature of the charges, the strength of the State's case against him, as well as the strength of the defense's case. (Hr'g Tr. 13-15, 37.) Defense counsel also advised Mr. Grantley that in addition to any sentence he might receive on the underlying charges, he also faced the possibility of an additional non-consecutive, non-parolable, ten-year sentence of imprisonment as a habitual offender. *Id.* at 37-38.

Mr. Grantley declined the offer and signed a document memorializing this decision. The affidavit stated the following:

> "I, Erwin Grantley have been advised that I am currently charged with Attempted Murder and Assault with a Dangerous Weapon. I have been advised of the elements of these crimes. I have been advised that the charge of Attempted Murder carries a penalty of up to life at the Adult Correctional Institution[s]. I have also been advised that Assault with a deadly weapon carries a

> penalty of up to 20 years at the A.C.I. I am aware that these sentences can be run consecutively.
>
> "My attorney, Brian S. Quirk has advised me that my current offer is 15 years to serve at the A.C.I. to be served concurrently with the 7 year violation time that I am serving. My attorney has advised me that in light of my record and the allegations in the information package, that it may be in my best legal interest to plea to the current charges.
>
> "I am aware of my exposure and in spite of advice from my attorney I intend on exercising my constitutional right to proceed to trial." (Aff. of Erwin Grantley, Sept. 20, 2011.)

The record reveals that immediately prior to the commencement of the trial, Mr. Grantley acknowledged in open Court that he had discussed the final pretrial offer with his defense counsel, including the evidence against him, his possible defenses against the charges, and the legal issues that may arise during the trial. Trial Tr. I at 2-3. Mr. Grantley further acknowledged that notwithstanding these discussions, he had knowingly and voluntarily decided to proceed to trial. *Id.* at 3.

As previously mentioned, defense counsel engaged an investigation company to interview both the State's witnesses as well as Mr. Souza. He testified that he hired an investigator so that he could avoid any potential surprises at trial. The investigation revealed what appeared to be incriminating evidence contained within the ACI telephone records between Mr. Grantley and Mr. Souza, and it also revealed Mr. Souza's nervous disposition when he was confronted about the existence of those records. Based upon this information, defense counsel made the tactical decision not to call Mr. Souza as a witness.

As also discussed above, the record also reveals that defense counsel engaged in a strategy to discredit the police investigation for failure to seize the knife blade at the scene and for failure to collect forensic evidence. In addition, defense counsel attempted to impeach the State's witnesses by highlighting various inconsistencies in their testimony. At the conclusion of the trial,

the jury deliberated on the charges for almost two full days. Ultimately, it convicted Mr. Grantley on Counts 1 and 2; however, it acquitted him on Counts 3 and 4.

In view of defense counsel's pretrial investigation, sound trial strategies, and seasoned performance during trial, the Court finds that Mr. Grantley failed to prove by a preponderance of the evidence that his constitutional guarantee of a fair trial and a competent attorney was violated. Indeed, far from being ineffective, the Court concludes that considering that the jury deliberated for almost two days, and then acquitted Mr. Grantley on two of the charges, defense counsel provided an effective defense of Mr. Grantley.

D

Disqualification of the Prosecutor

Finally, Mr. Grantley asserts that defense counsel should have sought disqualification of the prosecutor for bias because she previously had successfully prosecuted him on a probation violation that was based upon charges that subsequently were dismissed. In making this argument, Mr. Grantley appears to be asserting that the prosecutor was biased against him in the instant case because he was not convicted of the charge underlying her successful prosecution of his probation violation case. This contention is wholly without merit.

"The decision of whether or not to disqualify a prosecutor is within the sole discretion of the trial justice." *State v. McManus*, 941 A.2d 222, 231 (R.I. 2008). Generally, "a prosecutor should be disqualified [only] if there is an actual conflict of interest." *Id.* at 231-32. An example of an actual conflict of interest would be "if the prosecutor is a necessary witness in the case against the defendant." *Id.* at 232. However, "a disabling conflict does not exist simply because the [prosecutor] and the defendant have been adversaries in other legal proceedings, even where the

defendant previously prevailed." *People v. Millwee*, 954 P.2d 990, 1005 (Cal. 1998). Rather, "[o]ther evidence of overriding bias must be present to warrant disqualification." *Id.*

Here, Mr. Grantley simply has contended, without any supporting evidence, that the prosecutor was biased against him because they were adversaries in a previous proceeding. This certainly does not rise to the level of an actual conflict of interest. Had defense counsel moved to disqualify the prosecutor on these grounds, the Court would have denied the motion. Consequently, the Court concludes that defense counsel's failure to make any such motion did not amount to ineffective assistance of counsel.

IV

Conclusion

In view of the foregoing, the Court concludes that Mr. Grantley has not satisfied his burden of proving by a preponderance of the evidence that postconviction relief is warranted. Furthermore, the Court is satisfied that defense counsel provided competent and professional services in defense of the charges against Mr. Grantley. Accordingly, the Application for Postconviction Relief is denied and dismissed.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Grantley v. State of Rhode Island**
CASE NO:	**PM-2017-1056** **(P1-2009-2498A)**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 15, 2021**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Matthew S. Dawson, Esq.**
For Defendant:	**Judy Davis, Esq.**