**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**
**IN AND FOR NEW CASTLE COUNTY**

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| STATE OF DELAWARE | ) | |
| | ) | |
| V. | ) | I.D. No. 9912015068 |
| | ) | |
| SADIKI J. GARDEN, | ) | |
| | ) | |
| *Defendant* | ) | |

# Opinion

Submitted: June 24, 2008
Decided: January 15, 2009

Upon Defendants's Motion for Postconviction Relief.
Motion Denied.

*Appearances:*

Sadiki J. Garden, *Pro Se.*

Elizabeth R. McFarlan, Esquire, and James T. Wakley, Esquire, Deputy Attorneys General, Wilmington, Delaware. Attorneys for the State.

BABIARZ, JUDGE

Defendant Sadiki Garden was convicted of murder in the first degree and numerous related offenses in connection with the murder/robbery of Denise Rhudy. Garden has filed with a Court a motion for postconviction relief, in which he alleges that all four of his trial and appellate attorneys were constitutionally ineffective. Garden seeks either an evidentiary hearing or a new trial. For the reasons explained below, the Court finds that Garden is not entitled to relief and his motion for postconviction relief is therefore **Denied.**

**Facts.** Late one evening in December 1999, Garden and two other men drove into the City of Wilmington in a van owned by Constance Webster, Garden's sometime girlfriend. The purpose of the trip was to commit a robbery. Garden parked the van on 8th Street in Wilmington, and the three men went into Garden's apartment at 704 N. Tatnall Street. One of the men, James Hollis, an amputee missing his right leg, remained in the apartment while Garden and co-conspirator Christopher Johnson went to look for victims to rob. Johnson was armed with a .25 caliber handgun. As a man and woman walked down 8th Street, Defendant and Johnson approached them, and Johnson aimed the gun in their direction and demanded their money. The woman turned over her purse, and the robbers ran back to Garden's apartment. The three men divided the cash in the handbag, and Garden kept the credit cards. They left the apartment and drove to a gas station, making a $2 purchase with one of the stolen cards. They then went to the

Walmart store in Bear, Delaware, where they bought approximately $450 worth of merchandise using the same stolen credit card. The store security video captured the three men on film making their purchases.

The next evening, the three men came into the city again. They drove a maroon, four-door Toyota Camry. Garden again parked on the 800 block of N. Tatnall Street. Hollis waited in the car while the other two men walked toward a parking lot on the 800 block of Orange Street, behind a restaurant known at the time as Bottlecaps Bar and Restaurant. A car pulled into the lot and parked. As the woman in the right front seat got out of the car, Garden ran up to her, stuck a small handgun in her side and demanded that she give him her money. When she told him she did not have any money, Garden looked at her male companion, who was standing near the front of the car, and demanded his money. The man also denied having any money. Garden then leaned into the car and demanded money from the woman in the driver's seat, Denise Rhudy. She, too, refused to comply. Garden fired two shots at her and then turned and ran away. As he ran, he looked back at the woman standing by the car, and fired one shot at her, grazing the sleeve of her jacket. Johnson, who had been standing approximately ten feet from the victim's car, also ran away.

Denise Rhudy had been shot in the neck and the chest. By the time the police arrived only a few minutes later, she was dead. Garden and his cohorts went to a party.

The men were apprehended three days later and indicted for numerous charges in connection with these crimes.

At Garden's trial, the victims of the second robbery testified that Garden was the man who shot Denise Rhudy. Both witnesses testified to a high degree of confidence in their identification of Garden as the shooter. Garden was found guilty of all crimes charged except for the attempted murder charge. Following the guilty verdicts, a penalty hearing was conducted. The jury found the existence of a statutory aggravator beyond a reasonable, and the jury voted 10-2 in favor of life imprisonment for the intentional murder count and 9-3 in favor of life for the felony murder count. The Court imposed the death penalty for each of the two murder convictions and declared Garden to be a habitual offender on each of his robbery convictions. After a post-trial hearing in July 2001, Garden's motions for a new trial and for recusal of the trial judge were both denied. On appeal, the Delaware Supreme Court affirmed Garden's convictions but remanded the case for reconsideration of the sentence on the murder convictions.[1] On remand, the Court re-imposed the death penalty.[2] On appeal, the death sentence was reversed and this Court was instructed to impose a sentence of life imprisonment without the possibility of probation or parole.[3] On March 16, 2004, this Court modified Garden's

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[1] *Garden v. State*, 815 A.2d 327 (Del. 2003).

[2] *State v. Garden*, 831 A.2d 352, 365 (Del. Super. Ct. 2003).

[3] *Garden v. State*, 844 A.2d 311, 318 (Del. 2004).

sentence to life in prison for the two murder convictions.

**Ineffective assistance of counsel.** A claim of ineffective assistance of counsel is governed by the two-part test set forth in *Strickland v. Washington.*[4] A defendant must show both that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.[5] The failure to prove either prong will render the claim unsuccessful, and the Court need not address the remaining prong. Counsel's conduct is subject to a strong presumption of professional reasonableness that is designed to eliminate the distorting effects of hindsight.[6]

**Joinder of PDWPP with other charges.** Garden alleges first that his attorneys were ineffective for failing to argue against joinder of the charge of PDWPP with the other charges. The argument, more accurately stated, is that counsel should have moved to sever the PDWBP from the other charges. Either way, Garden cannot show attorney error or prejudice because joinder of the charges is in and of itself not prejudicial and serves the interests of judicial economy.[7] Defense counsel agreed to stipulate to the

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[4]466 US. 668 (1984).

[5]*Id.* at 688, 697.

[6]*Albury v. State*, 551 A.2d 53, 59 (Del. 1988) (citing *Strickland v. Washington*, 466 U.S. at 689).

[7]*Sexton v. State,* 397 A.2d 540, 545 (1979), rev'd on other grounds.

PDWBPP in order to ameliorate any effect on the jury, and this tactic has been approved by the Supreme Court.[8] Furthermore, Garden was acquitted of Attempted Murder first degree, demonstrating that the jury did not impute to him a general criminal disposition. Garden has not met either prong of the *Strickland* test, and this claim must fail.

**Trial court's statements regarding allocution.** Next, Garden alleges that defense counsel was ineffective for failing to object to certain remarks regarding allocution made by the Court during an office conference. The specific topic was whether the Court would ask Garden questions during allocution:

> I don't know where a question is going to lead when I ask it. Maybe it helps, maybe it hurts. So I will give it some thought. And I will let defense counsel know tomorrow morning whether I would want to ask questions of the defendant, or I would simply not ask him, even if I did want to. I just have to think about it. I've thought about it a little bit when I was drawing this instruction up, and I didn't reach a conclusion, and I still haven't. We've done so many things different in this trial, and what's wrong with one more: isn't it nice to experiment on a first degree capital case?

Garden was not prejudiced by these comments. They were not made in the presence of the jury, and the Court did not ask Garden any questions during allocution. Furthermore, the death sentence was vacated and Garden is now serving a life sentence for his crimes. Clearly, Garden suffered no prejudice from these statements.

Garden also argues that these comments tainted the Court's trial rulings. He

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[8] *State v. Bacon*, 2005 WL 2303810 at *4 (Del. Super.); *State v. Wright*, 1992 WL 52346 at *4 (Del. Super.).

asserts that there is no way to identify the tainted rulings but that the only remedy is a new trial. This is an unsubstantiated and conclusory allegation that is subject to summary dismissal.

**Pre-trial investigation.** Garden alleges that his defense attorneys were ineffective for failing to conduct an adequate pretrial investigation of the crime scene. He asserts that the police failed to locate certain witnesses who, according to the affidavit of probable cause, observed two black males running from the scene toward a Toyota Camry matching the description of the car driven by Garden on that night. In roundabout fashion, Garden suggests that counsel could have elicited material for cross-examination, although he fails to say what it would have been. Garden also alleges that counsel failed to adequately investigate the condition of his car on the date of the murder in order to get an objective assessment. These are conclusory assertions, and Garden does not identify any prejudice from the alleged omissions.[9] That is, he has not identified what evidence his attorneys would have discovered had they investigated the car or found the witnesses. Nor has he shown how any of the speculative evidence would have changed the outcome of the trial. If he cannot show prejudice, the Court need not consider attorney conduct because a defendant must meet both prongs of the *Strickland* test. This claim has no merit.

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[9] *See, e.g., Stone v. State*, 690 A.2d 924, 926 (Del. 1996); *State v. Dawson*, 681 A.2d 407, 415 (Del. 1995).

**Testimony of Codefendant Johnson and the alleged recantation letter.** Garden makes three claims regarding the testimony of co-defendant Christopher Johnson, who testified at both the guilt phase of the trial and at a post-trial evidentiary hearing on Garden's motion for a new trial. Some background information is necessary. In December 1998, after being apprehended in connection with these crimes, Johnson gave a statement to police, implicating both himself and Garden. He moved to suppress this statement in September 2000, prior to his trial, but his motion was denied. During his trial in November 2000, Johnson pled guilty to the charged offenses, acknowledging the truth of his 1998 statement and agreeing to testify truthfully at future proceedings. He testified at Garden's trial, as required by the plea agreement. In June 2001, the Court received a letter that purported to be from Johnson and recanted his trial testimony. The letter alleged that in December 1998, Johnson had been taken to a park by police who threatened to beat him with a stick if he failed to cooperate. Based on the letter and its alleged recantation, Garden moved for a new trial.

This Court conducted an evidentiary hearing and admitted the following letters into evidence: the disputed June 18, 2001 letter; a letter from Johnson to his attorney, dated August 26, 2000; Johnson's letter of June 27, 2001 to the Court denying authorship of the June 18, letter; three additional letters from Johnson to the Prothonotary; and a letter dated September 11, 2000 allegedly written by Garden to

another Superior Court judge. Johnson stated that all the letters attributed to him were in fact written by him except for the June 18 recantation letter. He acknowledged having written to his attorney in July 2000 complaining that he had been threatened with a needle in his arm. He also testified that when he told Detective Sullivan he did not know where the gun was, Detective Sullivan had stated "You won't be saying that when that needle gets in your vein." Hrg. Tr. 7/27/01 at 11.

Garden first alleges that counsel was ineffective for failing to object that Johnson perjured himself at trial when he denied being threatened by the police. However, Johnson's testimony at Garden's trial was consistent with his 1998 statement, which this Court found to be voluntarily given. Because it was a statement proffered under 11 *Del. C.* § 3507, Johnson himself testified as to its voluntariness and acknowledged that he had attempted to have it suppressed prior to his own trial. With the Court having already determined voluntariness and Johnson testifying to voluntariness, there was no reasonable chance that defense counsel could have prevailed on a motion to suppress on grounds of lack of voluntariness. Garden cannot show either attorney error or prejudice.

Garden alleges that counsel was ineffective for failing to object to admission of letters at the evidentiary hearing and for failing to seek a handwriting expert. These allegations pertain to the letters other than the alleged recantation letter. Garden now objects to the admission of the letters on grounds of relevance, but counsel could not

have prevailed on such an objection because the handwriting and the content of the letters did "tend" to show that Johnson did not write the June 18 letter.[10] This allegation has no merit.

Garden alleges that defense counsel was ineffective for failing to have a handwriting expert examine the June 18 recantation letter. However, the record shows that the style of both the handwriting and the prose of the letter were markedly different from Johnson's other letters and resembled instead the style of Garden's other letters to the Court. Most importantly, Johnson's testimony confirmed that he did not write the letter. Garden has not shown how a handwriting expert would have overcome this evidence, or helped to show that Johnson's testimony was false. Thus Garden cannot show attorney error regarding his conduct at the hearing on the motion for a new trial and cannot meet the *Strickland* test for ineffective assistance of counsel.

**Counsel's alleged refusal to let Garden testify.** Garden alleges that his trial attorney prohibited him from testifying. He asserts that counsel gave him a note that stated the following: "Write me a letter explaining why you don't believe you should not testify, 15 or more reasons."[11] Counsel allegedly later told Garden that the letter had been given to the trial judge who would charge Garden with perjury if he stated that he

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[10]D.R.E. 401.

[11]App. at A-6.

wanted to testify.

The record belies these allegations. At the conclusion of the State's case, this Court stated to defense counsel that "there is the possibility that your client may decide to take the stand."[12] The Court then called a recess so that Defendant could discuss the issue with his attorneys. After the recess, this Court questioned the Defendant, who indicated to the Court that he had decided not to testify after discussions with all three attorneys. He also acknowledged that he understood that he had the right to testify and that he was giving up that right.[13] Thus the record shows that right up until the time when Garden could have taken the stand, the Court continued to emphasize Garden's right to do so. As far as Garden's alleged fear of racking up a perjury charge, he already had 13 charges against him, including three first degree murder charges.[14] A perjury charge would have provided little deterrence if Garden genuinely wanted to testify. The Court finds no merit to this argument.

***Miranda* issues.** Next, Garden alleges that defense counsel was ineffective for failing to argue that his statement to the police should be suppressed based on *Miranda*[15] violations. In fact, defense counsel made such a motion, which the Court found to be

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[12]T. Tr. (2/2/01) at 235.

[13]*Id.* at 237.

[14]The two felony murder convictions were merged at sentencings.

[15]*Miranda v. Arizona*, 384 U.S. 436 (1966).

moot because the State conceded the violations and was not attempting to use the statement in its case-in-chief. Some statements which are inadmissible under *Miranda* are admissible to cross examine a testifying defendant. When a suspect in police custody has been given Miranda warnings and later indicates that he would like a lawyer but is not given the opportunity, and he then provides inculpatory information, such information is admissible at the suspect's trial solely for impeachment purposes after he has taken the stand and testified to the contrary knowing such information had been ruled inadmissible for the prosecution's case in chief.[16] This was the possibility that the attorneys and the Court were prepared for in Garden's case, but it did not come to pass. Garden's argument as to the suppression issue is without merit.

**Probable cause to search.** In his motion to amend, Garden asserts that defense counsel was ineffective for failing to argue against the admissibility of evidence seized pursuant to a search warrant for Garden's two residences. Garden argues generally that probable cause was not established within the four corners of the affidavit of probable cause and specifically that the affidavit contained nothing other than information from Hollis, whose reliability was not established.

Garden relies primarily on *LeGrande v. State*,[17] in which the Delaware Supreme

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[16] *Oregon v. Haas*, 420 U.S. 714, 722 (1975); *Holder v. State* 692 A.2d 882, 888 (Del. 1997).

[17] 947 A.2d 1103 (Del. 2008).

Court held that probable cause was not established where police had corroborated the identity of an anonymous informant, knew the location of the suspect's locked apartment, knew his probationary status, and knew that his neighbor had outstanding arrest warrants. The *Le Grande* Court made clear that it was analyzing a situation involving an anonymous informant, unlike the situation here which involves a person, that is, Hollis, who was by his own admission involved in or had knowledge of the crimes.

The affidavit alleges the following facts. Hollis told police that on both nights he had been with two men in the Toyota Camry which Garden's girlfriend Constance Weber said Garden had been driving. Hollis admitted that he was in the apartment when Garden and Johnson came back with the stolen purse, money and credit cards, and that he accompanied them to Walmart to use the stolen credit cards. He stated that he kept some of the items purchased, while "George" kept the rest. (Hollis later acknowledged that he lied when he used the names "George" and "Mike" in reference to Garden and Johnson, respectively.) Hollis and one of the victims of the first robbery indicated that one of the men had a dark-colored handgun. Hollis risked implicating himself in the second robbery when he admitting being in the back of the vehicle while the crimes were being committed.[18] Garden's girlfriend Constance Webster stated that he was her

[18]*See United States v. Harris*, 403 U.S. 573 (1972) (stressing that "[t]he accusation by the informant was plainly a declaration against interest since it could readily warrant a prosecution

boyfriend and that he lived with her and in his own apartment, the two residences Garden challenges in his amendment. Based on this information, the judge found probable cause to search the residences and the vehicles.

Viewing the affidavit from the perspective of a totality of the circumstances,[19] it clearly contained within its four corners information from which one could conclude that it was more than merely probable that Garden had been involved in the crimes and that evidence of the crimes was in one or both of his residences. Other circumstances confirm this conclusion, that is, the Walmart security videotape, the fact that both Hollis and one of the victims of the first robbery saw a dark-colored handgun, and the statements of Constance Webster, which were consistent with Hollis' statements. Hollis' narrative description of the two nights in question, in combination with the additional facts provided by other individuals, establish probable cause to search Garden's two residences.

Thus, even if counsel had not withdrawn the motion to suppress, Garden cannot show prejudice because the motion would have been denied and there would have no impact on the outcome of the trial. The State's evidence against Garden was overwhelming, including the evidence of the other two victims of the second

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and could sustain a conviction against the informant himself").

[19] *Illinois v. Gates*, 462 U.S. 213, 230-31 (1983) (adopting a totality of the circumstances test for assessing the credibility of a confidential informant), adopted by the Delaware Supreme Court in *Gardner v. State*, 567 A.2d 404, 409-10 (Del. 1989).

robbery/murder. This ground for relief has no merit.

For all these reasons, Defendant Garden's motion for postconviction relief is ***Denied.***

***It Is So ORDERED.***

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Judge John E. Babiarz, Jr.

JEB,jr/ram/bjw
Original to Prothonotary