

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801-3733
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August 12, 2015

Eric Zubrow, Esquire
Department of Justice
820 N. French Street
Wilmington, DE 19801

Ross Flockerzie, Esquire
Public Defender's Office
820 N. French Street
Wilmington, DE 19801

RE: State v. Michael Davis
ID No. 1305019292

On Defendant's Motion for New Trial - DENIED

Dear Counsel:

The Court has before it a Motion for New Trial based on the misconduct discovered at the Office of the Chief Medical Examiner (OCME). The Motion alleges no specific misconduct regarding the Defendant's case or any assertion of significant variations in weight, content or packaging from that seized by the police and the material provided to OCME for testing. As such, for the reasons set forth below and in accordance with the Supreme Court decision in *Brown v. State*¹ the Motion will be denied.

This case appears to be a simple drug transaction that was actually observed by officers from the Wilmington Police Department. Both individuals involved were arrested and seven bags of drugs and \$21.00 in currency was taken from those individuals at the time of the arrest. The co-defendant had in her possession five bags of heroin and the defendant possessed the \$21.00 used to make the

¹ *Brown v. State*, 2015 WL 3372271 (Del. May 22, 2015).

purchase as well as two additional bags. The arrest warrant also reflects that after being mirandized the defendant stated that the \$21.00 seized from him was in exchange for the five bags of heroin purchased by the co-defendant.

The case was subsequently indicted and the drugs seized were sent to the OCME lab for testing. The lab report submitted with the defendant's Motion reflects that 7 bags of material were tested with a total weight of .07 grams.

At the Defendants's final case review on January 13, 2014, he entered a plea of guilty to Count I of the indictment which reflected the charge of drug dealing. The Court acknowledges that the Defendant requested a continuance to obtain new counsel. However, while the Court agreed that the defendant could obtain new counsel if he was able to do so before trial, the request to continue the trial date was denied by Judge Silverman as the trial was scheduled for the following week. In discussing the continuance request, the Defendant without provocation from any individual in the courtroom stated:

“I had four bags of heroin on me. I know this is not a trial right now, but I wasn't drug dealing. It was usage.”

Subsequently during the plea colloquy the Defendant admitted to committing the offense.

The Court finds that the record in this case reflects the Defendant's plea was knowingly, intelligently and voluntarily made and on several occasions he admitted that the bags he possessed contained heroin. The bags seized and subsequently tested by OCME are consistent with his statements, and there is not a significant weight differential between the evidence provided by the police and the “official” weight recorded by the Medical Examiner. Therefore, based upon the Court's decision in *Irwin* and the Delaware Supreme Court's decision in *Brown*, the Court finds no basis to vacate the defendant's guilty plea that was voluntarily entered in this case or to require a new trial in this matter. As such, the Motion is denied, and the Defendant will proceed to sentencing on August 28, 2015 at 11:15 a.m. with Judge Silverman.

Sincerely yours,

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp
cc: Judge Fred Silverman
Prothonotary