

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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GEORGETOWN, DE 19947

July 25, 2014

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RE: State of Delaware v. Stanley O. Taylor
Def. ID. No. 1106004204

Date Submitted: May 1, 2014

Dear Counsel:

This is my decision on Stanley O. Taylor's Motion for Postconviction Relief. Taylor was convicted of numerous sexual offenses that arose out of his sexual abuse of his eight-year-old stepgranddaughter, M.H.¹ I sentenced Taylor to eight life sentences plus 225 years at Level 5. Taylor appealed his convictions to the Supreme Court. The Supreme Court upheld his convictions in a decision dated May 6, 2013.²

¹ The name of the minor victim has been reduced to her initials to preserve her anonymity. Taylor was also charged with abusing M.H.'s sister, E.H. However, he was not convicted of those charges.

² *Taylor v. State*, 65 A.3d 593 (Del. 2013).

This is Taylor's first motion for postconviction relief and it was filed in a timely manner. Taylor is now represented by Edward C. Gill, Esquire.

Taylor alleges that his trial counsel was ineffective because he did not (1) file a motion to suppress the evidence seized by the police as the result of their search of his home pursuant to their execution of an invalid nighttime search warrant, (2) file a motion pursuant to 11 *Del.C.* § 3508 seeking the admission into evidence of allegations made by M.H. that her cousin had inappropriately touched her, (3) file a motion to exclude the testimony of sexual assault nurse examiner Cheryl Littlefield, (4) object to the testimony of sexual assault nurse examiner Ashley Thompson-Hill, (5) move for a mistrial after the jury was allowed to hear allegations of unsupported sexual abuse against E.H., (6) file a motion for a bill of particulars, (7) object to remarks made by the State in its closing arguments, and (8) object to the Court's instruction to the jury on the procedure for viewing M.H.'s CAC interview during deliberations. Taylor's trial counsel and the prosecutor have submitted affidavits in response to Taylor's allegations.

STANDARD OF REVIEW

In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must engage in a two-part analysis.³

³ *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

First, the defendant must show that counsel’s performance was deficient and fell below an objective standard of reasonableness.⁴ Second, the defendant must show that the deficient performance prejudiced the defense.⁵ Further, a defendant “must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.”⁶ It is also necessary that the defendant “rebut a ‘strong presumption’ that trial counsel’s representation fell within the ‘wide range of reasonable professional assistance,’ and this Court must eliminate from its consideration the ‘distorting effects of hindsight when viewing that representation.’”⁷

DISCUSSION

I. Search Warrant

Taylor alleges that his trial counsel was ineffective because he did not file a motion to suppress the evidence seized by the police as the result of their search of his home pursuant to their execution of an invalid nighttime search warrant. Taylor argues that the warrant was invalid because the affidavit supporting it did not set forth exigent circumstances justifying a nighttime search of his home. Taylor further

⁴ *Id.* at 687.

⁵ *Id.*

⁶ *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

⁷ *Coleman*, 2003 WL 22092724, at *2, quoting *Strickland*, 466 U.S. at 689.

argues that the nighttime search warrant itself did not authorize its execution at night.

The police executed a search warrant on Taylor's home at 3:55 a.m. on June 5, 2011. As a result of their search, the police (1) a digital camera, (2) a Compaq Presario computer, (3) an HP Pavilion Slimline computer, (4) a cellular phone, (5) a .22 caliber rifle, (6) several DVDs, and (7) 18 rounds of ammunition. When the police examined Taylor's camera and computers, they found numerous nude pictures of M.H. and E.H. This evidence was admitted into evidence at Taylor's trial. Taylor's trial counsel states that he did not file a motion to suppress because he believed the warrant contained probable cause and that it complied with the statutory requirements for a nighttime search warrant.

11 *Del.C.* § 2308 states that a "search warrant shall not authorize the person executing it to search any dwelling house in the nighttime unless the judge, justice of the peace or magistrate is satisfied that it is necessary in order to prevent the escape or removal of the person or thing to be searched for, and then the authority shall be expressly given in the warrant. For purposes of this section the term "nighttime" shall mean the period of time between 10:00 p.m. and 6:00 a.m."

In *State v. White*,⁸ the Court ruled that a nighttime search warrant was improperly issued because the supporting affidavit did not include sufficient exigent

⁸ 2010 WL 369354 (Del. Super. Feb. 2, 2010).

circumstances. In that case, the search warrant was issued to search a hotel room after an infant had been rushed to a hospital and subsequently died. The sole exigency offered to support the nighttime search warrant was a “possibility of degradation of evidence.”⁹ The Court held this was nothing more than a conclusory allegation because no explanation was offered as to why the evidence would degrade before a daytime warrant could be executed.¹⁰

The affidavit in this case does provide probable cause to obtain a warrant to search Taylor’s home during the daytime. However, §2308 is clear and unambiguous.¹¹ Under Delaware law, even when a search warrant is supported by probable cause, a nighttime search may not be conducted “absent the showing of exigent circumstances which make it necessary to conduct the search at night.”¹² Under §2308 two things must be present to authorize a nighttime search warrant. One, the warrant must include sufficient facts on the face of the affidavit for a magistrate to find that the nighttime warrant is necessary to prevent the removal or destruction of potentially incriminating evidence. Two, authorization must be

⁹ *White*, 2010 WL 369354, at *2.

¹⁰ *Id.*

¹¹ *Mason v. State*, 534 A.2d 242, 251 (Del. 1987).

¹² *Hanna v. State*, 591 A.2d 158, 162 (Del. 1991).

expressly given in the warrant for a nighttime search. In determining whether the issuance of the warrant satisfies these statutory requirements, the Court may only consider those facts presented in the affidavit of probable cause supporting the warrant application, otherwise known as the “four-corners” of the affidavit.¹³ It is also worth noting that a probable cause determination by a magistrate is entitled to “great deference by a reviewing court and will not be invalidated by a hypertechnical, rather than common sense, interpretation of the warrant affidavit.”¹⁴

The facts contained in the affidavit do not establish that there were exigent circumstances justifying a nighttime search of Taylor’s home. In fact, they support the opposite conclusion. The statements in the affidavit discussing the issue of staleness with computer investigations mention that data can be recovered many years after being written. Furthermore, the affidavit mentions how “collectors and traders are known to store and retain their collections for extended periods of time, usually in their home and/or computer.”¹⁵ Nothing in the affidavit discusses a need for exigency in order to recover this data. Outside of the affiant’s conclusory opinion that a nighttime search warrant is necessary, there are no facts to back up that claim.

¹³ *Henry v. State*, 373 A.2d 575, 577 (Del. 1977).

¹⁴ *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984).

¹⁵ Affidavit of Probable Cause at 5.

In short, there is no mention in the affidavit about the immediate potential destruction of evidence.

Not only did the application for the nighttime search warrant fail to satisfy the specific initial statutory requirements of §2308, but the warrant itself did not meet the statutory requirements. The form of the search warrant to be issued when a nighttime search of a dwelling has been authorized is prescribed by statute.¹⁶ The statute provides, in pertinent part, as follows:

Greetings:

Upon the annexed affidavit and application for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely (describe the property) used or intended to be used for.....is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint; and that *search of the premises in the nighttime is necessary in order to prevent the escape or removal of the person or thing to be searched for;*

NOW THEREFORE, YOU ARE HEREBY COMMANDED within 3 *days* of the date hereof to search the above-named person, persons, house, place or conveyance for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place or conveyance above named for such property *-serving this warrant and making the search in the daytime, or in the nighttime...*¹⁷

The form of warrant required by statute for the nighttime search of a residence

¹⁶ 11 *Del.C.* § 2310(c).

¹⁷ *Id.* (emphasis added).

was not used in this case. In fact, the form of search warrant which was issued appears to more closely follow the “form of search warrant where search of a dwelling house in the nighttime is *not* authorized.”¹⁸ The search warrant in this case provided, in pertinent part, as follows:

Greetings:

Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely [property omitted] used or intended to be used for, is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint;

NOW THEREFORE, YOU ARE HEREBY COMMANDED *within 10 days* of the date hereof to search the above-named person, persons, house, conveyance or place for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place, or conveyance above named for such property, serving this warrant and making *the search in the daytime, or in the nighttime if the property to be searched is not a dwelling house...*¹⁹

The affidavit here failed to allege with particularity facts indicating the existence of exigent circumstances justifying the issuance of a nighttime search warrant. Moreover, the statutory form for a nighttime search warrant was not used.²⁰

The form of warrant used by the magistrate authorized the execution of the search

¹⁸ 11 *Del.C.* § 2310(b) (emphasis added).

¹⁹ *Id.* (emphasis added).

²⁰ 11 *Del.C.* § 2310(c).

warrant within the *next 10 days* and specifically indicated that the search warrant could only be served *in the daytime, or in the nighttime if the property to be searched is not a dwelling house*. This time limit far exceeds the three day limit that the Delaware legislature has statutorily placed on the execution of nighttime search warrants. It follows that the evidence seized under the authority set forth in the invalid nighttime search warrant should have been suppressed.

Taylor has established that his trial counsel should have filed a motion to suppress the evidence seized by the police as a result of their search of his home pursuant to their execution of the invalid nighttime search warrant. If trial counsel had done this, then the pictures recovered from the camera and computers would have likely not been admitted into evidence at trial. Instead, the State was able to introduce into evidence dozens of naked photographs of the victims. This evidence was certainly used by the State to convince the jury that Taylor had sexually abused M.H. As such, this evidence prejudiced the defense. I find that Taylor's trial counsel provided ineffective assistance of counsel because he did not file a motion to suppress this evidence and that the failure to do this prejudiced Taylor's defense.

II. Child Advocacy Tape

Taylor alleges that his trial counsel was ineffective because he did not file a motion pursuant to 11 *Del. C.* § 3508 to admit into evidence M. H.'s allegation that

she had been touched inappropriately by her cousin. During M.H.'s CAC interview, she stated that her cousin, "Little Nut," had touched her inappropriately. Taylor argues that this information would have been helpful because if untrue, it would have undermined M.H.'s credibility, and if true, it would have explained why she was knowledgeable about sexual matters. Taylor also argues that it would have offered another explanation for the SANE nurse's observations of M.H.'s vaginal area. The SANE nurse told the jury that M.H.'s vagina and anus were red and irritated.

Trial counsel asked the State to see if there was a separate CAC interview of this allegation. The State told him that there was not one. Indeed, the State had no information about this allegation, leaving trial counsel unable to determine if there was anything to it. It was for this reason that trial counsel agreed that M.H.'s reference to "Little Nut" could be deleted from her CAC video. The jury never heard this allegation. Given that the allegation was that "Little Nut" had only inappropriately touched M.H., I conclude that it would not have helped Taylor in the manner that he now alleges. There is simply no way to determine whether or not there is anything to this allegation. Indeed, Taylor has not offered anymore information about this than Taylor's trial counsel knew. Thus, I can not conclude that this allegation alone would have had any effect in M.H.'s credibility. Also, given that it only involved an allegation of touching that occurred in 2007, it would have done

nothing to explain the SANE nurse's testimony regarding the redness around M.H.'s vaginal area. Thus, trial counsel's decision to exclude it was not deficient.

Moreover, in order for this information to have been admitted at trial, the requirements of 11 *Del.C.* § 3508 would have had to have been met. This statute focuses on the alleged sexual conduct of M.H. Taylor's allegations do not touch on that. Nothing in the record exists to indicate that the information sought was relevant, truthful, or even admissible. Without more, there is no showing that trial counsel's representation was ineffective. I conclude that this allegation is without merit.

III. Nurse Cheryl Littlefield

Taylor alleges that his trial counsel should have (1) filed a *Daubert* motion to exclude the testimony of the SANE nurse Cheryl Littlefield because her testimony was based on junk science, (2) sought the exclusion of her testimony because she testified to a standard of speculation as to one opinion and to a standard of reasonable medical probability as to all of her other opinions, and (3) called an expert witness to rebut her testimony regarding M.H.'s hymenal ring. Nurse Littlefield examined M.H. a day after Taylor sexually abused her. M.H. told Nurse Littlefield that Taylor had put his "thing" in her vagina and his fingers in her anus and vagina. Nurse Littlefield saw redness and irritation around M.H.'s vagina and anus. Nurse Littlefield told the jury that her observations were consistent with M.H.'s statements

about being sexually abused by Taylor. She also told the jury that M.H. had an abnormally large hymenal ring.

Taylor's first argument is conclusory. Nurse Littlefield was tendered as an expert witness. An expert witness is a person who possesses specialized knowledge, skill, experience, and education.²¹ Nurse Littlefield certainly qualifies as an expert witness. She is the Emergency Management Coordinator for Beebe Medical Center where she is also one of the senior sexual assault nurse examiners. She has completed specialized training in adult and pediatric sexual examinations. Nurse Littlefield testified that additional training is required to perform pediatric exams. At the time of the trial, she had been certified in performing pediatric sexual abuse examinations for five years during which time she had performed over 25 exams on children under the age of 18. As part of her employment, Nurse Littlefield trains other nurses in performing adult, adolescent, and pediatric sexual examinations. She is a Certified Healthcare Emergency Professional, a member of the Emergency Nurses Association, and has received numerous awards recognizing her work.²² It is common in Delaware for SANE nurses to offer opinions regarding allegations of sexual abuse.

²¹ Delaware Rules of Evidence 702.

²² Transcript at B-79-86.

Taylor's second argument is also conclusory. One, he does not identify the opinion that was speculative, leaving the Court with nothing to analyze. Two, Nurse Littlefield is a medical professional. Given that, I find nothing wrong with her stating that her opinions were held to a standard of reasonable medical probability. Taylor has offered no legal authority for his argument that this is an incorrect standard.

Taylor's third argument is misplaced and unfounded. Taylor has mischaracterized Nurse Littlefield's testimony regarding M.H.'s hymenal ring. Nurse Littlefield testified that M.H. had an unusually large hymenal ring. She did not testify that this was evidence of sexual abuse. As to Taylor's claims that trial counsel should have hired an expert to counter Nurse Littlefield's testimony about M.H.'s hymenal ring, he has not proffered an expert who would offer an opinion contradicting Nurse Littlefield's testimony. In sum, Taylor has criticized trial counsel's efforts, but he has not offered a realistic and meaningful alternative to them. I conclude that these allegations are without merit.

IV. Nurse Ashley Thompson-Hill

Taylor alleges that his trial counsel was ineffective because he did not object to the testimony provided by SANE nurse Ashley Thompson-Hill. Thompson-Hill testified about her examination of the other alleged victim, E.H. Thompson-Hill also testified about statements that E.H. made to her. Thompson-Hill testified before E.H.

due to a scheduling conflict. E.H. took the stand the day after Thompson-Hill testified and told the jury that no one had ever touched her inappropriately. She did testify that Taylor had inappropriately touched E.H. Given E.H.'s testimony, the State dropped the counts in the indictment that alleged that Taylor had sexually abused E.H. Trial counsel requested that Nurse Thompson-Hill's testimony be struck from the record and an instruction be given to the jury. This Court did not strike Nurse Thompson-Hill's testimony because it was also evidence of the other remaining crimes charged. Taylor now alleges that trial counsel should have objected on hearsay or confrontation clause grounds to her testimony coming in before E.H. testified. Thompson-Hill was allowed to testify out of order for scheduling reasons. This was done because all parties believed at the time that E.H. would take the stand and testify that Taylor had sexually abused her. Given this, there was no reason for trial counsel to object to Thompson-Hill's testimony.

Moreover, on direct appeal, Taylor argued that this Court violated his right to a fair trial because it refused to strike Nurse Thompson-Hill's testimony. After reviewing the evidence, the Supreme Court held that Taylor's motion to strike was properly denied.²³ As the Supreme Court has addressed the denial of the motion to strike and the relevancy of Nurse Thompson-Hill's testimony, this Court will not

²³ *Taylor v. State*, 65 A.3d 593, 599 (Del. May 6, 2013).

revisit it, other than to say that Nurse Thompson-Hill's testimony was relevant and probative to the charged conduct and properly admitted. Trial counsel was not ineffective for failing to object to Nurse Thompson-Hill's testimony on confrontation or hearsay grounds. I conclude that this allegation is without merit.

V. The Charges Involving E.H.

Taylor alleges that his trial counsel was ineffective because he did not move for a mistrial after the charges regarding E.H. were dropped. Taylor argues that because the jury was able to hear unsupported allegations of sexual abuse by another alleged victim, he was prejudiced and unfairly convicted. At issue was the testimony of Nurse Thompson-Hill concerning the sexual history she received from E.H. when she conducted her examination of her.

Trial counsel states that at the close of evidence he moved to strike Nurse Thompson-Hill's testimony since all of the charges involving E.H. were dropped. This motion was denied by the Court. Trial counsel contends that he did not move for a curative instruction because he believed that redirecting the jury's attention to the testimony would have been a mistake. Additionally, trial counsel stated that he did not believe a mistrial would have been granted. "[T]here is a strong presumption that trial counsel's conduct fell within a wide range of reasonable professional

assistance and constituted sound trial strategy.”²⁴ Trial counsel made a decision not to redirect the jury’s attention to Nurse Thompson-Hill’s testimony. It was a reasonable trial strategy.

Moreover, as I noted previously, the Supreme Court has reviewed Nurse Thompson-Hill’s testimony and has ruled that it was properly submitted to the jury even though the charges pertaining to E.H. were dismissed.²⁵ The testimony was evidence of other remaining charged conduct against M.H. The Supreme Court also found that the only statement that E.H. made to Nurse Thompson-Hill that did not directly correspond to the remaining charged conduct was part of her medical treatment and would have come in for the history of that individual.²⁶ Since the testimony was properly submitted, Taylor certainly cannot make out an argument that trial counsel was ineffective for failing to move for a mistrial. As this issue has been reviewed and decided by the Supreme Court, there is nothing left for this Court to consider. I conclude that this allegation is without merit.

VI. Bill of Particulars

Taylor alleges that his trial counsel was ineffective for failing to file a Motion

²⁴ *State v. Hampton*, 2014 WL 1254385, at *1 (Del.Super. Mar. 26, 2014).

²⁵ *Taylor v. State*, 65 A.3d 593, 599 (Del. May 6, 2013).

²⁶ *Id.*

for a Bill of Particulars. The allegations against Taylor were presented in a 22 count indictment. Taylor argues that a Motion for a Bill of Particulars would have required the State to specify what alleged conduct coincided with each count in the indictment. By not requiring a Bill of Particulars, Taylor alleges that he was not provided with adequate notification as to the charges he was defending himself against. In support of his allegation, Taylor relies on *Dobson v. State*.²⁷ In *Dobson*, the defendant was indicted on six counts of Rape in the Second Degree and one count of Endangering the Welfare of a Child. The six counts were worded identically and each covered a period of one year. During the trial, neither Dobson's trial counsel nor the trial judge were aware of which alleged incident corresponded with each count in the indictment. The Court held that because Dobson's trial counsel failed to request a bill of particulars or otherwise become informed through discovery, defense counsel proceeded to trial with inadequate knowledge of the case to be tried.

Trial counsel stated that he was aware of the details for each of the counts. He had the reports of the SANE nurses, the arrest warrant, the police report, the pictures from the computers and the camera, and the CAC interviews. The CAC interviews set forth the time frame of the alleged crimes, the location, and the specific room and the nature of the conduct that was alleged to have occurred in each room. With this,

²⁷ 80 A.3d 959, 2013 WL 5918409 (Del. Oct. 31, 2013).

trial counsel states that he was able to match up the alleged conduct with each count in the indictment.

Given this, I am satisfied that trial counsel was aware of the time, location, and nature of alleged crimes. Therefore, he knew what alleged acts corresponded to which charges. The *Dobson* holding does not apply since trial counsel became informed about the case through the discovery process and as he stated in his affidavit, “was able to match up conduct set forth in the CAC interviews with the number of counts of the Indictment.” I conclude that this allegation is without merit.

VII. The State’s Closing

Taylor alleges that his trial counsel should have objected to the State’s comments regarding M.H.’s credibility in its closing argument. The comments in question focused on M.H.’s demeanor and comfort level in court versus her demeanor and comfort level during her CAC interview.²⁸ Specifically, the prosecutor stated “this interview occurred in a kid-friendly environment where she could draw pictures, where she could talk to someone one-on-one without a courtroom full of strangers looking at her, and without the man accused of molesting her in the courtroom.”²⁹

Taylor argues that the State’s comments violated his rights under the

²⁸ Transcript at D-38.

²⁹ *Id.*

Confrontation Clause. The Confrontation Clause guarantees a defendant the opportunity to cross-examine adverse witnesses.³⁰ Taylor was present in Court for the entire trial. M.H. was certainly an adverse witness. She was also a witness that Taylor's trial counsel cross-examined, thus satisfying the Confrontation Clause.

In addition to hearing M.H.'s testimony, the jury was also able to observe her demeanor, which was different from her demeanor during the CAC interview. The State attempted to explain this difference. The State's comments went toward M.H.'s credibility, which was a major issue during the trial. Taylor attempts to color the prosecutor's comments as impacting his right to be present during the trial. That is a far-fetched reading of the State's comments. It is logical and expected that a child victim of sexual abuse would be uncomfortable while on the stand in front of many strangers and her alleged abuser. However, that does not mean that Taylor's presence in Court was in any way diminished. Taylor was present for M.H.'s testimony. Trial counsel was not ineffective for failing to object to the State's comment. I conclude that this allegation is without merit.

VIII. Jury Instruction

Taylor alleges that his trial counsel was ineffective for not objecting to this Court's instruction to the jury regarding the process for reviewing M.H.'s CAC tape

³⁰ *Gordon v. State*, 582 A.2d 935, 1990 WL 168256, at *2 (Del. Sept. 17, 1990).

while they were deliberating. This Court stated “[i]f you want to see and listen to [M.H.]’s statements, you will have to tell the bailiff and then I will have to make a decision as to whether or not you will get to listen to that again. It is a process we follow; why we do it is of no importance to you folks.”³¹ After a period of deliberation, the jury asked to view the complaining witness’ unsworn statement. Taylor’s trial counsel objected to the jury viewing the complaining witness’ CAC interview. However, this Court overruled his objection. Taylor argues that this instruction drew attention to the statement of the complaining witness and prejudiced his defense.

Taylor’s argument is conclusory. He has failed to offer a explanation of what the proper basis for an objection to the Court’s instructions would have been. Moreover, he cannot demonstrate that the objection would have been granted. Taylor has also failed to offer any authority regarding the proper procedure for the jury to follow in order to request to view M.H.’s CAC interview.

Trial counsel stated in his affidavit that while he did not object to the jury instruction, he did object to the jury viewing the complaining witness’ CAC several days after the close of testimony. Trial counsel contends that the viewing of the statement unfairly prejudiced the defendant, and was a matter on direct appeal.

³¹ Transcript at D-83.

The Supreme Court took up this issue on Taylor's direct appeal.³² The Supreme Court held that this Court did not abuse its discretion by allowing the recording to be played for the jury during deliberations.³³ If this court did not commit an abuse of discretion by allowing the jury to view the video during deliberations, then trial counsel was not ineffective for not objecting to the jury instruction. As such, this Court will not revisit the issue. I conclude that this argument is without merit.

CONCLUSION

I find that trial counsel was ineffective for not filing a motion to suppress the evidence that the police seized from their search of his home and vehicle pursuant to their execution of an invalid nighttime search warrant. I further find that the admission of this evidence at trial prejudiced Taylor's defense. Therefore, I have vacated Taylor's convictions and sentences and set this case for a new trial.

Stanley O. Taylor's Motion for Postconviction Relief is **GRANTED**.

³² *Taylor v. State*, 65 A.3d 593 (Del. May 6, 2013).

³³ *Id.* at 601.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

cc: E. Stephen Callaway. Esquire