IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 1204003639
v.	:	
	:	
JERMAINE D. BRINKLEY,	:	
	:	
Defendant.	:	

Submitted: November 18, 2014
Decided: February 6, 2015

ORDER

Upon Defendant's Motion to
Withdraw Guilty Plea. *Denied.*

D. Benjamin Snyder, Esquire, Department of Justice, Dover, Delaware; attorney for the State.

John S. Malik, Esquire, Wilmington, Delaware; attorney for Defendant.

WITHAM, R.J.

State v. Jermaine D. Brinkley
I.D. No. 1204003639
February 6, 2015

Before the Court is Jermaine Brinkley's Motion to Withdraw A Guilty Plea pursuant to Superior Court Criminal Rule 32(d). Jermaine Brinkley (hereinafter "Defendant") makes his motion based on the recent investigation surrounding the Chief Office of the Medical Examiner (hereinafter "OCME" or "crime lab").[1]

FACTUAL BACKGROUND

On April 5, 2012, the Defendant was stopped by a police officer after changing several lanes without using a turn signal. The Defendant was driving the vehicle and was accompanied by his brother in the passenger seat. Upon stopping the car, the arresting officer, Patrolman Peter Martinek (hereinafter "Officer Martinek") smelled marijuana and called for backup. Once backup arrived, Officer Martinek asked the Defendant to step out of the vehicle, and as he did, two blue baggies fell from the Defendant's clothing to the ground. The officer identified the items as heroin, and also found Defendant to be in possession of more than 100 blue baggies in his waistband. The Defendant's brother was also in possession of the following illegal substances: a small amount of marijuana, 31 grams of crack cocaine, and a digital

[1] On January 14, 2014, Tyrone Walker was on trial for drug dealing charges in the Superior Court of the State of Delaware, in and for Kent County. During the trial, an evidence envelope was presented to an officer to confirm that the substance in the envelope was the substance found on the Defendant at the time of arrest. When the officer opened the envelope, the relevant drugs were missing. This sparked an investigation into the practices of the OCME resulting in a finding of multiple cases of pilfering drugs by employees for their own personal use. "The State has brought charges against persons in the chain of custody in many of the pending cases. The Court ruled that there was evidence of pilfering or stealing of drugs by a person or persons for their own use. There was no evidence of "planting" drugs to get a false conviction. There was no evidence that any actual chemical analysis by the chemist was false." *State v. West* (cited as *State v. W.*), 2014 WL 7466714, at *1 (Del. Super. Dec. 16, 2014).

scale. Officer Martinek field tested all of the substances seized from the Defendant. The heroin that was seized had an estimated total weight of 3.51 grams (.03 grams per bag), distributed among 117 baggies.

In the State's answering brief it notes that Counsel met with officers on January 17, 2014, at the Dover Police Headquarters and inspected the evidence in preparation for trial.[2] Upon examination of the drugs in preparation for trial, the State did not find any evidence of tampering associated with the drugs in question in this case.[3] The Defendant was charged with additional charges relating to drugs and drug paraphernalia that were retrieved from his brother. The State did not pursue those charges and as a result, the Defendant pled guilty to the two remaining drug charges.

Plea Agreement

On January 21, 2014, the Defendant entered into a guilty plea for the following: Drug Dealing- Heroin in violation of 16 Del. C. § 4752(2) and Aggravated Possession of Heroin in violation of 16 *Del. C.* § 4756. The Defendant also executed a Plea Agreement and Truth-in Sentencing Guilty Plea prior to the guilty plea colloquy.

At the time of Defendant's guilty plea, the Defense was not aware of any investigation into the OCME. Defense counsel says that it did not inspect the heroin that was allegedly found on the Defendant, and did not review any of the bench notes

[2] State's Answering Brief, Page 3.

[3] State's Answering Brief, Page 3.

or data from the OCME. The Defense believes that, because it was unaware of any investigation into the OCME, the Defendant did not enter his guilty plea through an intelligent waiver of his trial rights. The Defendant also states that had he known of the possibility that the OCME tampered with evidence, he would have sought leave of Court to have an independent analysis conducted of the substances in question. The State contends that the colloquy and plea lack any sort of defect that would render the Defendant's plea as inadequate, thus requiring withdrawal.

Filings by Counsel

The Defendant filed the Motion to Withdraw a Guilty Plea pursuant to rule 32(d) on March 25, 2014. The State filed its response on April 4, 2014. The Defense filed an opening memorandum in support of its motion on May 1, 2014, and the State filed an answering brief on August 8, 2014. Judge Carpenter's case in *State v. Irwin* was decided November 17, 2014. This Court requested that if the parties had any additional memoranda to submit to the Court in light of the *Irwin* decision, it should do so by February 2, 2015. The State filed a memorandum in light of the Court's request. Further, the Supreme Court of Delaware issued its decision in *Brown v. State of Delaware,*[4] involving a Defendant-Appellant who believed he was entitled to a new trial based on the evidence of misconduct at the OCME, and wanted to withdraw his guilty plea, and have a new trial. The Supreme Court held that evidence stemming from the OCME had no bearing on the Defendant-Appellant's guilty plea and that he was not entitled to a new trial, and that he was bound by the statements made to the

[4] *Brown v. State*, 2015 WL 307389 (Del. Jan. 23, 2015).

Superior Court.

STANDARD OF REVIEW

Superior Court Criminal Rule 32(d) provides that if a motion to withdraw a guilty plea is made before sentencing, the Court may permit a withdrawal if the Defendant shows any fair and just reason. "Rule 32(d) [...] contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea and one which must guide the discretion of the trial court."[5] Although 32(d) provides a lower threshold of cause, the burden is on the defendant "to articulate sufficient reasoning to meet the fair and just standard."[6] Still, "a motion to withdraw a guilty plea is addressed to the sound discretion of the trial court."[7]

Traditionally, the standard of review determining whether a Defendant may withdraw a guilty plea is as follows: (1) was there a procedural defect in taking the plea; (2) did the defendant knowingly and voluntarily consent to the plea agreement; (3) does the defendant presently have a basis to assert legal innocence; (4) did the defendant have adequate legal counsel throughout the proceedings; and (5) does granting the motion prejudice the State or unduly inconvenience the Court.[8] This

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[5] *McNeill v. State*, 810 A.2d 350 (Del. 2002) *citing Patterson,* 684 A.2d at *1237.

[6] *Id.*

[7] *McNeill v. State*, 810 A.2d 350 (Del. 2002) *citing Blackwell v. State, 736 A.2d 971, 972 (Del.1999); Patterson v. State, 684 A.2d 1234, 1237 (Del.1983).*

[8] *State v. Friend*, 1994 WL 234120, at *2 (Del. Super. May 12, 1994) aff'd, 683 A.2d 59 (Del. 1996).

Court will review each of the factors relative to this case.

DISCUSSION

The Defendant asserts that he should be allowed to withdraw his plea for three reasons (2-4 from above). First, the Defendant contends that his plea was not knowingly and voluntarily entered. Second, the Defendant wants the chance to prove legal innocence by questioning the chain of custody of the drugs that were seized on him in the hopes of finding a break in that chain due to the OCME investigation. Third and last, the Defendant does not believe that the State provided the Defense with potentially exculpatory evidence (that is, that the OCME was under investigation), and because of this, the Defendant should be allowed to present chain of custody evidence at a trial. The Court will review each of these in turn.

The Defendant believes that the discovery of the OCME evidence tampering provides the Defendant with the ability to argue legal innocence at trial because he believes the newly discovered evidence is exculpatory. The Defense relies on *Patterson v. State*[9] to withdraw his guilty plea. The Defendant believes that *Patterson* is relevant to the present case because the Defendant was able to withdraw a guilty plea. The Defendant further argues that it is the cumulative effect of the circumstances in *Patterson* that relate to the present case, because had the Defendant had more information at his disposal, he might have chosen to go to trial instead of pleading guilty. However, the cumulative circumstances in *Patterson* are different than the case at bar.

[9] *Patterson v. State,* 684 A.2d 1234 (Del. 1996).

Although the Defendant in *Patterson* successfully withdrew his plea, the circumstances surrounding that withdrawal are substantially different from Mr. Brinkley's case. The Defense counsel in *Patterson* provided the defendant with erroneous information regarding the defendant's sentencing. Defense counsel also erroneously informed the defendant that he would only need to serve six more years when in fact the sentence was a minimum mandatory of ten years. Also, because the defendant in *Patterson* was intoxicated and could not remember the alleged incident, the defendant entered into a *Robinson* Plea, a plea which he entered knowingly and voluntarily but without admitting commission of the offense.[10] Those facts are not present here.

The Defendant argues that the test previously noted in *Friend v. State* renders the Defendant able to withdraw his guilty plea.[11] The Defense does not believe there was a procedural defect in taking the plea, and thus there is no issue with the first prong of the test. However, the Defense argues that the Defendant did not knowingly and voluntarily consent to a plea agreement, violating prong two (2); that the OCME investigation could lead to the State lacking the ability to prove the drugs in custody are the Defendant's, a violation of prong three (3); and that the State failed to timely

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[10] *State v. Gustin*, 2004 WL 3030019, at *3 (Del. Super. Dec. 13, 2004).

[11] "(1) Was there a procedural defect in taking the plea; (2) Did the Defendant knowingly and voluntarily consent to the plea agreement; (3) Does the Defendant have a basis to assert legal innocence; (4) Did the Defendant have adequate legal counsel; and, (5) Will the State be prejudiced or the Court unduly inconvenienced if the motion is granted." *Friend v. State*, 1994 WL 234120, at *2 (Del. Super. 1994).

disclose the Brady material regarding the OCME scandal, thus not allowing counsel to litigate adequately, a violation of prong four (4); and lastly, there is no prejudice to the State because there are no victims or witnesses that will testify in the case, which speaks to prong five (5).

The Defendant does not believe that he knowingly and voluntarily consented to a plea agreement, because had he known of the OCME investigation involving cases of mishandled drug evidence, he would have requested the drugs be tested by an independent lab and then would have challenged the chain of custody of those drugs at a trial. In other words, the Defendant bases the "knowing" component of the plea on his lack of knowledge regarding the OCME's troubles. However, the Defendant does not make any claim of mishandled evidence concerning the drugs seized in his own case. Further, the burden is on the Defendant to prove by clear and convincing evidence that he should not be made bound to the representations made during his plea colloquy.[12] Also relevant to the issue of knowingly and voluntarily consenting to a plea agreement, is that the Defendant in this case pled guilty, which is different than the defendant in *Patterson*, who made a *Robinson* plea.

The State relies upon a Massachusetts case with a similar set of facts whereby a drug chemist removed drug samples from the evidence room without authorization,

[12] *Harley v. State*, 870 A.2d 1192 (Del. 2005) *citing Somerville v. State*, 703 A.2d 629 (Del. 1997).

State v. Wilkins.[13] In *Wilkins*, a defendant wanted to withdraw his guilty plea because, as in this case, he pled guilty prior to the misconduct of the lab was made public.[14] The Defendant in *Wilkins* and the present case both failed to assert actual innocence, and only asserted legal innocence. However, because the Defense has not come forth with any assertion that the drugs in *his* case were tampered with, no evidentiary issue has been raised.

Further, the Defendant asserted that the "knowing" component to the second prong in the test means that he should have been made aware of the OCME investigation by the prosecution. However, the strength of the State's case against the Defendant is irrelevant. The Constitution "does not require complete knowledge of the relevant circumstances but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor."[15]

With regard to the third prong of legal innocence, the Defendant argues that he should be allowed to assert legal innocence by proving a break in the chain of custody of the drugs seized on him upon arrest. The Defendant does not, however, assert that the drugs found on him were any substance other than heroin, nor does he assert that

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[13] *United States v. Wilkins*, 2013 WL 1899614 (D. Mass. May 8, 2013) certificate of appealability granted in part, denied in part, 2013 WL 2436670 (D. Mass. June 6, 2013) and aff'd, 2014 WL 2462554 (1st Cir. June 3, 2014) and aff'd sub nom. *United States v. Merritt*, 2014 WL 2696723 (1st Cir. June 16, 2014) *Citing Ferrara v. United States,* 456 F.3d 278, 291 (1st Cir. 2006).

[14] *United States v. Wilkins*, 2013 WL 1899614 (D. Mass. May 8, 2013).

[15] *Wilkins* citing *Ruiz*, 536 U.S. at 630, 122 S.Ct. 2450.

the drugs in the State's possession are in a quantity less than what it should be. In other words, the Defendant has not alleged even a hint of evidence tampering with the drugs associated in his own case. The Defendant believes that if he is granted a withdrawal of the guilty plea, he will be successful during trial in impeaching any chain of custody witnesses.

The fourth prong of test is whether the Defendant had adequate legal counsel. The Defendant argues that because the State failed to provide defense counsel with a timely disclosure of any *Brady*[16] materials regarding the OCME scandal, the defense was precluded from adequately representing its client. In order for a *Brady* violation to be established, the Defendant must show the following: (1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the Defendant.[17] The United States Supreme Court has stated that :

> "[I]mpeachment information is special in relation to the *fairness of a trial,* not in respect to whether a plea is *voluntary* ("knowing," "intelligent," and "sufficient[ly] aware"). Of course, the more information the defendant has, the more aware he is of the likely consequences of a plea, waiver, or decision, and the wiser that decision will likely be. But the Constitution does not require the prosecutor to share all useful information with the defendant.[18] ("There is no general constitutional right to discovery in a criminal case"). And the law

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[16] *Brady v. Maryland,* 373 U.S. 83 (1963).

[17] *Id.*

[18] *Ruiz* citing *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977).

> ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances-even though the defendant may not know the *specific detailed* consequences of invoking it.[19]

The Supreme Court made clear that impeachment evidence would be relevant if the Defendant had gone to trial, but that it is not exculpatory precisely because he pled guilty and forfeited his Constitutional right to a fair trial. With regard to any *Brady* violation, the *Ruiz* case overturned the Ninth Circuit, which held that a guilty plea is not voluntary "unless the prosecutors first made the same disclosure of material impeachment information that the prosecutors would have had to make had the defendant insisted upon a trial."[20] Conversely, *Ruiz* held that the Constitution does not require government to disclose impeachment information prior to entering plea agreement with criminal defendant.[21] Thus, the Defendant's argument relating to the fourth prong must fail, as the Supreme Court has ruled the circumstances do not create a *Brady* violation.

The Defendant lastly asserts that there is no prejudice to the State if the guilty plea is withdrawn because there are no victims or witnesses that will testify in the

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[19] *United States v. Ruiz*, 536 U.S. 622, 628, 122 S. Ct. 2450, 2455, 153 L. Ed. 2d 586 (2002) *at 628.

[20] *Id.*

[21] *Id.*

case, and that the case could be tried "less than two days before a jury."[22] The State did not respond to this argument, however, it appears that the degree of inconvenience to the State is likely low, considering the witnesses would only be from the OCME, and the trial would last for a relatively short period of time, as stated by defense counsel.

However, the controlling precedent in Delaware as a result of *Brown* is now what is most relevant to the Defendant's present motion. The Supreme Court of Delaware flatly stated that the State did not commit a *Brady* violation because it did not disclose an ongoing OCME investigation to the Defendant.[23] The Court went on to further state that when the Defendant admitted in a plea colloquy the crimes he committed, the OCME investigation "provide[d] no logical or just basis to upset [the] conviction."[24] In *Brown*, it was later discovered that one of the individuals in the chain of custody for his case was indicted for criminal charges based on events at the OCME.[25] Still, The Supreme Court ruled that "evidence of the OCME investigation did not affect the validity of Brown's guilty plea and that Brown [was] not entitled to a new trial."[26]

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[22] *Defendants Op. Mem at 7.*

[23] *Brown v. State*, 2015 WL 307389, at *4 (Del. Jan. 23, 2015).

[24] *Id.* at *1.

[25] *Id.* at *3.

[26] *Id.* at *4.

In response to the Court's request for additional memoranda, the State relied upon the aforementioned holdings in *Brown*, and argued that a denial of a motion to withdraw a guilty plea pursuant to Superior Court Criminal Rule 61, like in *Brown,* is applicable to the present motion to withdraw a guilty plea pursuant to Rule 32(d). The Court agrees. Although Superior Court Criminal Rule 32(d) provides a lower threshold of cause, it is within the Court's discretion to determine whether the Defendant has sufficiently pled to meet the standard for withdrawal. The Court finds that the Defendant in the present motion has not, and as such the motion is denied.

CONCLUSION

In weighing the factors in *Friends* and in light of the recent ruling in *Brown*, the Defendant failed to carry his burden of proving that there is a fair and just reason for a withdrawal of his plea. For the reasons stated above, the Defendant's motion is **denied.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: D. Benjamin Snyder, Esquire
John S. Malik, Esquire