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Case Number 350,2012

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CORY HOLMES,	)	
	)	
Defendant-Below,	)	
Appellant,	)	No. 350, 2012
	)	
v.	)	On Appeal from the
	)	Superior Court of the
STATE OF DELAWARE,	)	State of Delaware in and
	)	for New Castle County
Plaintiff-Below,	)	
Appellee.	)	

STATE'S ANSWERING SUPPLEMENTAL MEMORANDUM

On January 10 and 16, 2013, the Court directed the parties to file supplemental memoranda addressing "the Superior Court's ruling on Holmes' motion for appointment of counsel in light of the United States Supreme Court's decision in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012)." Holmes, through counsel, has submitted an opening supplemental memorandum; this is the State's response.

In October 2009, Superior Court held a four-day jury trial, after which the jury found Holmes guilty of carjacking first degree, five counts of possession of a firearm during the commission of a felony, two counts of robbery first degree, burglary first degree, attempted robbery first degree, and possession of a deadly weapon by a person prohibited. Superior Court sentenced Holmes to an aggregate of 42 years at level V incarceration, suspended after serving 37 years. This Court, sitting *en banc*, affirmed Holmes' convictions and sentence in December 2010.[1]

[1] *Holmes v. State*, 2010 WL 5043910 (Del. Dec. 9, 2010).

In October 2011, Holmes moved for postconviction relief under Criminal Rule 61. Holmes' postconviction motion was referred to a Superior Court Commissioner for consideration of the claims.[2] After receiving defense counsel's affidavit addressing Holmes' ineffective assistance of counsel claims, the State's response, and Holmes' responses, the Commissioner recommended Superior Court deny relief. As to Holmes' motion for appointment of counsel for postconviction litigation, the Commissioner, exercised his discretion and denied the motion, specifically finding that "Defendant has demonstrated the ability to effectively represent his concerns in his motion; the Court found his arguments coherent, but not compelling."[3]

Holmes filed objections to the Commissioner's Report and Recommendation. Holmes' did not reassert his request for counsel or object to the Commissioner's denial of his motion for appointment of counsel.[4] After *de novo* review, Superior Court in June 2012 adopted, in a 17-page order, the Commissioner's Report and Recommendation and denied relief.[5] Holmes timely docketed an appeal from the Superior Court's decision. Holmes filed opening and reply briefs in this appeal. Holmes did not request appointment of counsel on appeal or challenge the lower court's denial of his request for appointment of counsel in either pleading. This Court appointed Holmes counsel to

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[2] *See* Del. Code Ann. tit. 10, § 512(b)(1)b; Super. Ct. Crim. R. 61(a)(5).

[3] Comm'r's Report at 23 (attach. Ex. B to Holmes' Supp. Mem.).

[4] *See* "Defendant's Reply to State's Response/Commissioner's Report and[d] Recommendations" (attach. Ex. A).

[5] *See generally* Order (attach. Ex. B to Holmes' Supp. Mem.).

address the Superior Court's denial of Holmes' motion in light of *Martinez*. Because *Martinez* does not mandate the appointment of counsel in state postconviction proceedings, and because Holmes demonstrated his ability to raise and argue his claims of ineffective assistance of trial counsel, Superior Court acted well within its discretion in denying Holmes' motion for appointment of counsel.

In March 2012, the United States Supreme Court in *Martinez v. Ryan*, held that if "a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective-assistance claim ..." when (1) "the state courts did not appoint counsel in the initial-review collateral proceeding" or (2) "appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective" pursuant to *Strickland*.[6] In such instances, the prisoner "must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit."[7] Thus, the *Martinez* Court articulated

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[6] *Martinez v. Ryan*, 132 S. Ct. 1309, 1318 (2012); *Strickland v. Washington*, 688 U.S. 669 (1984).

[7] *Martinez*, 132 S. Ct. at 1318; *see also Jones v. Pennsylvania Bd. of Probation and Parole*, 2012 WL 3024969, at *3 (3d Cir. July 25, 2012) ("With respect to what constitutes a "substantial" claim, the Court suggested, by citing *Miller-El v. Cockrell*, 537 U.S. 322 ... (2003) (describing standards for certificates of appealability to issue), that courts should apply the standard for issuance of certificates of appealability.").

a narrow exception to procedural default provisions in federal habeas review of state court decisions.[8]

Federal habeas review is designed to ensure that state courts deciding federal constitutional claims in criminal cases do not unreasonably apply well established federal precedent as set forth by the United States Supreme Court. Federal habeas rules require state petitioners to raise their federal constitutional claims in the state courts in the first instance. If petitioners fail to properly follow state court procedures in raising those claims, or fail to raise them in state court at all, then procedural default rules apply to those claims in federal habeas review. Those procedural default rules preclude the federal courts from reviewing a federal claim, such as ineffective assistance of trial counsel, when the petitioner did not present the claim to the state's highest court in such a manner that the state court could rule on the merits of the claim. If the petitioner presented the claim and the state court failed to decide the claim, then the federal court can address the claim *de novo*. The *Martinez* Court held that in states where an offender is precluded from raising a claim of ineffective assistance of trial counsel on direct appeal, and his substantial claim is denied on procedural grounds in postconviction proceedings, that the federal courts cannot find the claim of ineffective assistance of trial counsel to be procedurally defaulted (and thus may rule on the merits of the claim) unless the offender had been represented by competent counsel in that initial-

[8] *See, e.g., Jones*, 2012 WL 3024969, at *3 ("Thus, the Court created a narrow exception to the rule set forth in *Coleman v. Thompson,* 501 U.S. [722,] 753-54 [(1991)]").

review postconviction proceeding. The *Martinez* Court specifically declined to decide whether an offender has a constitutional right to counsel in initial-review collateral proceedings under these circumstances.[9] Thus, *Martinez* only applies to claims of ineffective assistance of trial counsel (not appellate counsel) that have *not* been decided on the merits in state court. That is not the case here.

Superior Court Criminal Rule 61(e) permits the court to appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown. This Court has consistently held that there is no constitutional right to counsel in a postconviction proceeding.[10] Courts in other jurisdictions have also found no constitutional right to counsel in state collateral proceedings post-*Martinez*.[11] Most states make some provision for the appointment of counsel for indigents in initial-review collateral proceedings either by rule or

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[9] 132 S. Ct. at 1315. *See also id.* at 1326 (Scalia, J., dissenting) (noting that the reframing of the issue "avoid[ed] the Court's need to confront the established rule that there is no right to counsel in collateral proceedings").

[10] *E.g., Watson v. State*, 2009 WL 2006883, at *2 (Del. July 13, 2009); *Cropper v. State*, 2001 WL 1636542, at *1 (Del. Dec. 10, 2001) ("[T]here is no right to court-appointed counsel in postconviction proceedings."); *Garnett v. State*, 1998 WL 184489, *2 (Del. Apr. 9, 1998) (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)); *Floyd v. State*, 1992 WL 183086, at *1 (Del. July 13, 1992). *See also State v. Zebroski*, 2009 WL 807476, at *2 (Del. Super. Ct. Mar. 19, 2009), *aff'd* 2011 WL 1900445 (Del. May 16, 2011).

[11] *E.g., In re Sepulvado*, _ F.3d _, 2013 WL 462078, at *3 & n.6 (5th Cir. Feb. 7, 2013) (citing *Shamburger v. Cockrell*, 34 F. App'x 962 (5th Cir. 2002)); *Sanchez v. Montana*, 285 P.3d 540, 544 (Mont. 2012) (declining to decide whether state constitutional right to counsel exists).

statute.[12] Many, like Delaware, make that appointment discretionary.[13] The State has discovered only one jurisdiction, Alaska, that has found a state constitutional right to counsel in an initial-review collateral proceeding.[14] The Alaska court based its holding on its interpretation of the state constitution's due process clause.[15] In so doing, the Alaska court held that prisoners are then entitled to a second postconviction proceeding to challenge the effectiveness of the original postconviction counsel, while declining to decide whether counsel was mandated for that successive postconviction proceeding.[16] But Delaware's due process clause has "substantially the same meaning as the due process clause contained in its federal counterpart."[17]

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[12] *E.g.*, Alaska Stat. 18.85.100(c) (2010); Ariz. Rule Crim. Proc. 32.4(c)(2) (2011); Conn. Gen. Stat. § 51-296(a) (2011); Me. Rev. Stat. tit. 15, § 2129 (2012) & Me. Rules Crim. Proc. 69, 70(c) (2010); N.C. Gen. Stat. Ann. § 7A-451(a)(2) (2009); N.J. Ct. Rule 3:22-6(b) (2012); Or. Rev. Stat. § 138.590 (2011); Pa. R. Crim. P. 904 (2012); R.I. Gen. Laws 1956 § 10-9.1-5 (2011); Tenn. Code Ann. § 8-14-205 (2011); Vt. Stat. Ann. tit 13, § 5232(2) (2012).

[13] *E.g.*, Ark. Rule Crim. Proc. 37.3(b) (2011); Colo. Rule Crim. Proc. 35(b) (2011); Indiana Rule Post-Conviction Remedies Proc. 1, § 9(a) (rev. 2011); Kan. Stat. Ann. § 22-4506 (2007); N.M. Dist. Ct. Rule Crim. Proc. 5-802 (2011); Nev. Rev. Stat. § 34.750 (2011); S.D. Codified Laws § 21-27-4 (rev. 2012); W. Va. Post-Conviction Habeas Corpus, R. 6 (2012); *Hust v. State,* 214 P.3d 668, 669-670 (Idaho 2009); *Hardin v. Arkansas,* 86 S.W.3d 384, 385 (Ark. 2002) *(per curiam); Jensen v. State,* 688 N.W.2d 374, 378 (N.D. 2004); *Wu v. United States,* 798 A.2d 1083, 1089 (D.C. 2002); *Kostal v. People,* 447 P.2d 536 (Colo. 1968).

[14] *See Grinols v. State*, 74 P.3d 889 (Alaska 2003).

[15] *Id.*

[16] *Id.* at 896.

[17] *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-59 (Del. 2011).

"Delaware constitutional due process is coextensive with federal due process."[18] The United States Supreme Court has never found a due process right to counsel in postconviction proceedings,[19] and there is no need for this Court to find one now. Because Superior Court Criminal Rule 61 provides the court with the ability to appoint counsel for good cause shown, there is no need to look further.

Holmes presented his claims of ineffective assistance of trial counsel in a 93-page motion for postconviction relief. His trial counsel addressed those claims in an affidavit. Holmes responded to both his prior counsel's affidavit and the State's response to his motion. Superior Court, however, found Holmes' claims regarding his trial attorney to be without merit - in other words, not substantial. Had the court determined that the claims might have some merit, the court would then have had "good cause" to appoint counsel. That was not the case. Holmes was able to explain and argue his claims of ineffective assistance of counsel supported by legal authority and cites to the record, and thus the court did not have "good cause" to appoint counsel. There is nothing in this record to indicate that Holmes would have been granted any relief if he had been appointed counsel to assist in his postconviction proceedings.

Martinez recognizes that there may be times that a constitutional claim of ineffective assistance of trial counsel may, because of state

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[18] *Id.* at 1259 (citing *Blinder, Robinson & Co., Inc. v. Bruton*, 552 A.2d 466, 472 (Del.1989)).

[19] *See Pennsylvania v. Finley*, 481 U.S. 551, 555-56 (1987) (no federal right to counsel in postconviction relief proceedings); *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (no federal right to challenge effectiveness of postconviction counsel).

procedural rules, never be considered on the merits by any court. *Martinez* recognized that having no counsel or inadequate counsel for an initial-review collateral proceeding, sometimes a defendant's first opportunity to raise ineffective assistance of trial counsel claims, may preclude a defendant from having those claims reviewed in state court. Therefore, the *Martinez* Court held that "[i]nadequate assistance of counsel at initial-review collateral proceedings *may* establish cause for a prisoner's procedural default of a claim of ineffective assistance of trial counsel."[20] Rule 61, however, also provides under subsection (i)(5), for the court to review substantial constitutional claims that may have been defaulted. Thus, if a Delaware prisoner has a substantial claim of ineffective assistance of trial counsel, Superior Court can still reach the merits of such a claim under Rule 61(i)(5).[21]

This Court should affirm the decision below without further proceedings.

/s/Elizabeth R. McFarlan (No. 3759)
Chief of Appeals
Department of Justice
State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

Date: February 28, 2013

[20] *Martinez*, 132 S. Ct. at 1315 (emphasis added).

[21] As recently noted in *Commonwealth of Pennsylvania v. Saunders* _ A.3d _, 2013 WL 150811, at *3 (Pa. Super. Ct. Jan. 15, 2013), "While *Martinez* represents a significant development in federal habeas corpus law, it is of no moment with respect to the way Pennsylvania courts apply the plain language of the time bar set forth in section 9545(b)(1) of the PCRA."

#090102065

The Honorable Diane Clark: 4/29/12

I received Mr. Vavala's Commissioner's Report on the 26 day of April, 2009; From my understanding I am obligated to respond with in ten days wich only left me four days to execute my response. With that said, I respectfully ask the Courts (Your Honor) to Please be patient with my draft and the lack of Professionalism it may display due to haste, but diligence. Thanck you for your time and consideration.

Truly yours Larry J Helsel

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EXHIBIT A

In The Superior court of the State of Delaware In And for New castle County #57

State of Delaware
V.
Cory J. Holmes

ID NO. 0901020659

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Defendants Reply to States Response / Commissioner Report an Recommendations
Pursuant to Superior Court rule (61)

Comes Now, Defendant Cory J Holmes by and through PRO.SE who replies to Commissioner Report and Recommendation.

Procedural Background

on January 27, 2009, Wilmington Police arrested Cory J. Holmes. on march 16, 2009 Holmes was indicted on the following charges: Car-Jacking

Dated: 4/29/12

Cory J. Holmes SBI# 399490
J.T.V.C.C
1181 Paddock Rd Smyrna DE
19977

first, five Counts of Possession of a fire arm during the Comission of a felony (PFdCF); two counts of Robbery first; burglary first; Attempted Robbery; Possesion of a deadly weapon by a Person Prohibited (PdWPP) A four day trial was held on october 27, 2009 Holmes was found guilty of all charges except resisting arrest on November 20, 2009 Holmes was Sentenced to 42 years. on December 9, 2010 the Delaware Supreme Court affirmed the defendants conviction, and issued a mandate affirming the Superior courts Idgment on october 4, 2011 Defendant filed a Post conviction motion and Supporting memorandum of law. The State responded on February 14, 2012 The Commissioner decided his Repart and Recomenendations on April 20, 2012 This is the defendants reply.

In his report and reccomendation, His Honor Commissioner Vavala, concludes the Defendant "is unable to shaw that Counsel's actions were so unreasonable as to amount to ineffective assistance of Counsel"[1]

His Honor appears to aggree with the State and mr Heyden's explanation that the Phone records could have been used to support the States case; specifically,

a) The Phone records bolstered Freemans assertions he called 911 after the carJacking; b) bolstered Freeman and another witness's testimony that Freeman frantically called his own mother after being robbed by the defendant.

c) Corroborates Freeman's testimony Defendant called his victem after the carJacking to report where the car was; d) supports Freemans testimony that he recieved calls ment for another friend of Defendants; e) Supports Freeman's testimony that Defent was intending to reach another person

1 See Commissioner report page 9

and not his victem's Phone; f) Corroborates Defendants initial Statement to Police that he was desperate; and g) impeached Defendants own testimony about the robbery at the apartment.[2]

Defendant address each contention seriatem

a) The Jury was more than aware Freeman dialed 911 through extensive testimony Presented at trial; therefor, the Phone records Shawing Somthing the Jury allready knew of was not harmful to the Defendant.

b) The Jury was more than aware that Freeman Called his mother after calling the Police; Mr Heyden, in his closing argument, argued that Freeman Called his mother to explain why the car was missing, So mr Heyden and the State cannot claim that the Phone records Shawing Freeman called his mother was harmful to the Defendant. If that was the case mr. Heyden's arguement that Freeman called his mother to explain what happened to the car was harful

2 See commissioner report page 9

to the defendant. (Please see A-158 T-77 the Jury knew of Freeman's calls to his mother)

C) mr. Heyden, in his closing, argued the De-fendant called Freeman to pick up the car, So how can the state and he now claim the Phone records bolstered Freemans claim that the defendant called Freeman to return the vehicle. This explanation is contradictory; when mr. Heyden argued the same thing he now claims bolstered the state's evidence. (Please See Id at T-77 See also A-155 T-63 line 14 " He called later and gave the car back to him told him where to pick it up")

d) and e) The Phone records clearly Proves Freeman was the intended caller and knew he was corresponding with the defendant. There were 9 Phone calls on the day before, and 10 calls on the day of the incident. The 10 calls on the day of the incident occurd all the way up until the Defendant was in the vehicle with Freeman.

According to the Phone records, if the defendant believed he was calling Hamilton, than Freeman had to have Stringed the defendant along by pretending to be Hamilton and following through with meeting the Defendant. In any event or scenario, the Jury Should have had the benefit of assesing all of the calls, not Just the ones Freeman wanted to admit.

f) The Phone records shawed the Defendant was desperate.

This is unreasonable because the Defendant vigorously attempted to contact Freeman before and after the incident; there for it cannot be said that the records shawing extensive calls Suggest desperatecy. The defendant desperately called the alledge victem after the incident. (Please see Exibit A-2 Jan 27, 09. At 6:01 PM - 8:51 PM.)

G) The Phone records does not shaw Defendant Called Elder on the night of the incident, but does Shaw a call from the Defenant on the day before

the incident. Therefor, the Phone records does not impeach the defendants testimony that he used Jhonson Phone on the night of the incident. Mr. Heyden should have introduced the records showing a call to Elder to assist his deffense; the defense that the Defendant was welcomed in to the home. (Please see A-160 T-83 L-10) Mr. Heydens excuse for not cross-examining Elder with this call was because he claimed the call impeached his client testimony; now that the records clearly Proves otherwise, mr. Heyden's excuse must fail.

Defendant has clearly demonstrated that mr. Heydens excuses for not using the Phone records are all last minute reconstructions through hindsight. These excuses were of Points that were allready well knawn to the Jury or Just plain unreasonable.

The record of mr. Heydens cross-examination shows he only asked Freeman, Elder, and Smith questions about phone calls, but excepted what ever answer they gave him, whether true or false.

Mr. Heyden charicterizes what he did as utilizing portions of the records, but not admitting them as exibits to avoid harming the defendant.

However, The Supreme Court in Davis V. Alaska, 415 U.S 308, 318 (1974) States, when Defense counsel does not expose the Jury to facts from wich the Jurors as the triers of fact and credibility could appropriately draw inferences relating to the reliability of the witness, a "Constitutional error of first magnitude" has been committed and no amount of shawing of want of Predjudice can cure it. Id Mr. Heydens cross-examination was clearly ineffective absent the facts of the Phone records, because Freeman, assisted by the Prosecution, claimed to be confused, claimed the Phone calls were not intended for him, limited the

amount of calls that were made, and maintained his deceptive position that all the calls were coincidental, misintented happenstance. Ultimately, mr. Heydens cross-examination did not serve its intented Purpose and was there for ineffective, because critical, available evidence was present, but not utilized.

His Honor, with all due respect, does not acknowledge the fact that mr. Heydens entire representation was Premised upon Proving the very essence he now claims would have assisted the states case. The defendant, aided by defense counsel, testified that there were extensive Phone calls between Freeman and Defendant from Jan 23, 2009 up until the day of the incident. If the State wanted to change their Position and argue to the Jury the defendant Planned to rob Freeman, Elder, and Smith, because they were drug dealers, they had Plenty evidence from the defendants testimony to do so.

Instead, the State thought more important to negate any notion of a drug dealer relationship

between Defendant and their clients. (Please See A-152 T-51 lines 6-11) There was no way the State was going to turn from their theory to argue their witnesses were indeed drug dealers that were subsequently targeted. That argument would have contradicted their entire opening and case. Any competant attorney would find it more helpful than dangerouse to present the phone records. Mr. Heyden excuse is clearly unreasonable when it was clear after the defendant took the stan and the State wasn't going to take such a position and even if they did it was more helpful to the defendant then hurtful.

Strickland v. Washington 466 U.S 688(1984)

" A fair assesment of attorney performance requires that every effort be made 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 466 U.S 688, 690, 104 S.Ct 2052, 2066

The trial record reflects clearly what mr. Heydens perspective was during trial.

Mr. Heyden told the Superior Court Judge (trial Judge) that his reason for not admitting the Phone records or cross examining the witnesses with the Phone records, was because The Phone records were not in Freemans name. In other words, if the Phone records were in Freemans name then he would have admitted them; according to Mr. Heydens own words. (Please verify with A-127 T-92 - T-93 line 1) This was Mr. Heydens perspective at the time; now through hindsight he says the Phone records were not utilized because they would have hurt the Defendant's case. The State, even in their closing, Proves the importance of the Phone records being Presented when they said if the defense Counsel had the evidence of Phone calls to Freeman and Elder, he would have Presented them. The State's argument also Suggest any Competant attorney would have Presented the Proof to Corroborate their case. (See A-162 T-93 also A-163 T 95)

His Honor, with all due respect, with the state, Charicterizes Freemans testimony as typical inconsistantcies Due to time lapse and memory loss[3], but the Phone records when compared to Freemans testimony Proves beyond a reasonable doubt blatent lies. There were thirty Plus calls ten on the day before ten on the day of; no robbery victem forgets they, not only recieved but made, numerouse calls to their victem. Or, excuse me, their robber. To say Freemans testimony was just typical, trivial misunderstandings is unreasonable.

His Honor, with all due respect, fails to see how the defendant sufferd Prejudice by Rescan Freemans lies not being exposed. With the Freemans lies being exposed to the Jury, the case was no longer Defendants damaged credibility against a innocent, good-Samaritan; but defendants trial testimony against Freemans incredible and/or damaged trial testimony

3 See commissioner report Page 16

It was the states burden to prove the defendant guilty beyond a reasonable doubt; therefor, all of Freemans lies should have been properly before the Jury when determining whether the defendant was guilty of Carjacking with a gun or as the defendant claimed.

The same goes for the Phone-record-Call to Elder/Smith that the Jury never heard of. Would the Jury have had a reasonable doubt to at least the fact that the Defendant broke in the home by claiming to be "W.P.D" or would and/or Could the evidence the Defendant called Elder, if the State has to prove beyond a reasonable doubt, have raised reasonable doubt?

Davis v. Alaska, also, explains how with out factual evidence presented, the Jury can easily construe Counsel cross-examination as a speculative and baseless line of attack on a apparently blameless witness.
Id 415 U.S 318

The Supreme Courts words are the exact words the Prosecutor told the Jury Counsel Heydens arguments and Cross examination was; baseless and speculative. (see A-161 T-90 also A-162 T-93 - T-92)

His Honor does not aggree that mr. Heydens wording during his closing argument was error and prejudicial[4]; However, with all due respect defendant disagree strongly.

The words The defendant Probaly had a bb gun, toy gun, or, ultimately, a fake gun Should never had been Said in this case ware the defense argument throughout trial was their was no objects at all. Mr. Heyden Probally ment good, but his words Connoted the defendant had a object when he encantered the witness's

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4 See commissioner report page 14

His Honor, says because the defendant's testimony was, in his opinion, damaging he cannot see how Mr. Heyden telling the Jury there was a bb gun or a fake gun Predjudiced the Defendant.[5]

To say such a thing is to, bassically, take the role of the of the Jury and say nothing the defendant said on the stand was believed. His Honor says, "most problematic for Defendant, however, is the fact that his own testimony seems to conceed the commision of crimes".

This is exactly right; the Defendant admitted to lesser crimes without the use of a gun, so why would Mr. Heyden say the "object" could have been a fake gun? The Jury may have wanted to convict the defendant of lesser crimes, but how could they if the defendants own attorney is now suggesting the Defendant may have had a model gun when the initial defense was no weapon period.

5 See commissioner report Page 14

Certificate of mailing And/or Delivery

The under signed certifies that on the 29th day of April, 2002. He caused the attached to be delivered via U.S mail to the following:

Name address of recipients:

Superior Court Delaware
Pathonotary office

500 N. King street
Wilmington DE. 19801
(New castle county)

Signiture: Cary J. Holmes

Cary J. Holmes 399-190
1181 Paddock Rd
Smyrna DE. 1997
J. T. V. C. C