

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1306000818
)	
KEVIN BRITT,)	
)	
Defendant.)	
)	

Submitted: October 26, 2017
Decided: January 11, 2018

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED
AND
COUNSEL'S MOTION TO WITHDRAW SHOULD BE GRANTED.**

Martin B. O'Conner, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Edward F. Eaton, Esquire, 716 North Tatnall Street, Suite 400, Wilmington, Delaware,
19801, Attorney for Defendant.

PARKER, Commissioner

This 11th day of January, 2018, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On August 19, 2013, Defendant Kevin Britt was indicted on charges of Home Invasion, Carrying a Concealed Deadly Weapon, six counts of Reckless Endangering First Degree, seven counts of Possession of a Firearm during the Commission of a Felony ("PFDCF"), and Possession of Ammunition by a Person Prohibited.
2. Following a two-day bench trial held on May 13-14, 2014, the trial court convicted Britt of Carrying a Concealed Deadly Weapon, three counts of Reckless Endangering First Degree, and three counts of PFDCF. The trial court acquitted Britt of the following charges: Home Invasion, three counts of Reckless Endangering, and four counts of PFDCF. The Possession of Ammunition by a Person Prohibited charge was dismissed prior to trial.
3. On August 1, 2014, following a pre-sentence investigation, Britt was sentenced to a total of 32 years at Level V, suspended after serving 9 years, followed by decreasing levels of probation.
4. Defendant filed a direct appeal to the Delaware Supreme Court. On April 28, 2015, the Delaware Supreme Court determined that the appeal was without merit and affirmed the judgment of the Superior Court.¹

FACTS

5. The facts are recited herein as set forth by the Delaware Supreme Court on Britt's direct appeal.² On June 1, 2013, Rene Jamison was living in a residence on Concord

¹ *Britt v. State*, 2015 WL 1973358 (Del.).

² *Britt v. State*, 2015 WL 1973358, *1-2 (Del.).

Avenue in New Castle County with her father, Joseph Custis, and her eight children: Jhireique Sutherland (“Sutherland”)- age 20; Jhaquez Toston (“Toston”)- age 18; Andre- age 15; Abu- age 13; Angelo, Jr.- age 6; Angelina Warner- age 5; Angelow- age 5; and Angelino- age 3.³

6. That day, June 1, 2013, Britt knocked on the front door of the home and asked five-year-old Angelina, “Where’s your brother?” When Angelina asked Britt which of her brothers he was looking for, he replied, “Any of them.” Angelina told Britt that her brother Toston was in the shower. Britt replied, “[T]ell him to come here; I’m not playing,” and said that he “got a strap,” meaning that he had a gun. Angelina closed the door and Britt left.⁴

7. Sutherland was in his bedroom to the side of the front door and could see and hear the exchange between Angelina and Britt through a window. Sutherland testified that he saw what he believed to be a gun in Britt’s pocket, and that Britt was wearing a blue or grey t-shirt over a long-sleeved thermal shirt.⁵

8. Approximately twenty minutes later, Britt returned and knocked loudly on the door. When Jamison opened the door slightly, Britt covered his face, pulled a gun out of his pants, and reached the gun into the house. Jamison slammed the door shut, but caught Britt’s wrist between the door and the doorframe.⁶

9. As Jamison struggled to keep the door closed she yelled, “My babies are in here,” but Britt continued pointing his gun at Jamison and yelled at her to get off the door.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

During the struggle, a single shot was discharged from the gun. The bullet struck and damaged some molding near the front door.⁷

10. At the time of the gunshot, Angelino was asleep on Jamison's bed, Custis was in the basement, Toston and Angelo, Jr. were upstairs in Toston's room, Angelow and Sutherland were either inside or in front of Sutherland's room on the ground floor, and Angelina was crying at the top of the stairway leading from the front doorway to the second floor.⁸

11. After several minutes of trying to keep the door closed, Jamison finally let go and ran out the back door with Angelow and Angelina. Britt then fled the scene. Jamison called 9-1-1 and Wilmington police responded. Detective Malcolm Stoddard took Sutherland in the back of his unmarked police car to look for a possible suspect in the area of 23rd and West Street, where Sutherland said he had seen the shooter in the past. Sutherland spotted Britt among a group of people in the area and identified him as the shooter. Britt was then taken into custody.⁹

12. At the time of his arrest, Britt was wearing a grey t-shirt over a white, long-sleeve thermal shirt, and police found a blue t-shirt on the ground nearby. Police also recovered a revolver from the backyard of a nearby home. The revolver contained six live rounds and one spent casing. DNA swabs from the revolver matched Britt's DNA profile and one other unknown contributor. Forensic testing also showed the presence of gunshot residue on both of Britt's hands.¹⁰

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

13. At the conclusion of the two-day bench trial, the Superior Court found Britt guilty of three counts of Reckless Endangering, and the related PFDCF counts, as to the three persons that Britt knew were in the residence- Jamison, Toston and Angelina Warner. Britt was also convicted of CCDW. The trial court acquitted Britt of Home Invasion; and the remaining Reckless Endangering and related PFDCF counts, as to those occupants of the home that Britt did not know were present.

RULE 61 MOTION AND COUNSEL'S MOTION TO WITHDRAW

14. On April 11, 2016, Defendant filed a *pro se* motion for postconviction relief. Defendant was thereafter assigned counsel.

15. On March 17, 2017, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(6).

16. Superior Court Criminal Rule 61(e)(6) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

17. In the motion to withdraw, Defendant's Rule 61 counsel represented that, after undertaking a thorough analysis of the Defendant's claims, counsel has determined that the claims are so lacking in merit that counsel cannot ethically advocate any of them.¹¹ Rule 61 counsel further represented that, following a thorough review of the record, counsel was not aware of any other substantial claim for relief available to Defendant.¹²

¹¹ See, Superior Court Docket No. 56- Defendant's Rule 61 counsel's Motion to Withdraw along with the accompanying Memorandum in Support of Motion to Withdraw.

¹² *Id.*

Defendant's Rule 61 counsel represented that there are no potential meritorious grounds on which to base a Rule 61 motion and therefore sought to withdraw as counsel.¹³

18. On April 6, 2017, Defendant's Rule 61 counsel submitted to the court additional points for consideration that Britt wanted the court to consider as part of his Rule 61 motion.¹⁴

19. Following the receipt of Defendant's additional points for consideration, the court requested Defendant's Rule 61 counsel to advise whether counsel still sought to withdraw or whether counsel's position had changed in light of the additional points for consideration.¹⁵

20. By letter dated April 18, 2017, Defendant's Rule 61 counsel advised the court that after consideration of the additional points for consideration raised by Defendant, Rule 61 counsel still remained unable to assert any meritorious postconviction claims and that he continued to stand by his motion to withdraw.¹⁶

21. The court then requested that Defendant's trial counsel submit an Affidavit responding to the ineffective assistance of counsel claims raised by Defendant, and that the State respond to the claims raised by Defendant in his Rule 61 motion. Trial counsel submitted an Affidavit, the State submitted a response, and Britt submitted responses thereto.

22. In order to evaluate Defendant's Rule 61 motion and to determine whether Defendant's Rule 61 counsel's motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law

¹³ *Id.*

¹⁴ See, Superior Court Docket No. 58.

¹⁵ Superior Court Docket No. 59.

¹⁶ Superior Court Docket No. 60, Rule 61 counsel's April 18, 2017 letter to court.

for claims that could arguable support Defendant's Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Defendant's Rule 61 motion is so totally devoid of any, at least, arguable postconviction claims.¹⁷

DEFENDANT'S RULE 61 MOTION IS WITHOUT MERIT

23. In Britt's Rule 61 motion, he claimed that his trial counsel and appellate counsel were ineffective for failing to file a motion to suppress the handgun discovered by the police in a nearby backyard, and for failing to challenge the admissibility of the handgun on appeal. In addition, Britt has supplemented his motion with additional points for consideration.

24. In order to prevail on an ineffective assistance of counsel claim, Defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.¹⁸ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.¹⁹

25. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.²⁰ Although not insurmountable, the *Strickland* standard is highly demanding and leads to a strong presumption that counsel's conduct fell within a wide range of reasonable professional

¹⁷ *Matos v. State*, 2015 WL 5719694, *2 (Del).

¹⁸ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

¹⁹ *Id.* at 687-88, 694.

²⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

assistance.²¹ Moreover, there is a strong presumption that defense counsel's conduct constituted sound trial strategy.²²

26. In *Harrington v. Richter*,²³ the United States Supreme Court explained the high bar that must be surmounted in establishing an ineffective assistance of counsel claim. In *Harrington*, the United States Supreme Court explained that representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.²⁴ Counsel's representation must be judged by the most deferential of standards.²⁵

Britt's Claims Raised in His Rule 61 Motion

27. In Britt's Rule 61 motion, he claims that his trial counsel was ineffective for failing to move to suppress the handgun found in the backyard of a nearby home, and that appellate counsel was ineffective for failing to raise this issue on direct appeal. Britt's claims are without merit. Britt did not have standing to object to the warrantless search of the back yard of the nearby home. He had no connection with the premises where the gun was found.

28. Fourth Amendment rights are personal and cannot be asserted vicariously.²⁶ A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.²⁷ A person has standing to contest the legality of a search and seizure only if he can claim a possessory or proprietary

²¹ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

²² *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

²³ *Harrington v. Richter*, 131 S.Ct. 770 (2011).

²⁴ *Id.* at *791.

²⁵ *Id.* at *787-88.

²⁶ *Rakas v. Illinois*, 439 U.S. 128, 128, 133-34 (1978); *Thomas v. State*, 467 A.2d 954, 958 (Del. 1983).

²⁷ *Rakas v. Illinois*, 439 U.S. 128, 128, 133-34 (1978).; *Thomas v. State*, 467 A.2d 954, 958 (Del. 1983); *Salasky v. State*, 2013 WL 5487363, *4 (Del.Super.).

interest in the areas searched.²⁸ Here, Britt did not have any possessory or proprietary interest in the premises where the gun was found. He was not residing at that premises. He had no connection to that premises. He is therefore not entitled to challenge the legality of the search of that property for the recovered handgun.

29. An ineffective assistance of counsel claim based on the failure to object to evidence is without merit if trial counsel lacked a legal or factual basis to object to the evidence.²⁹ Trial counsel cannot be deemed ineffective for failing to file a meritless motion to suppress, when there was no basis to support such a motion. Appellate counsel cannot be deemed ineffective for failing to raise this baseless issue on appeal. The claims raised in Britt's Rule 61 motion are without merit.

Britt's Additional Points for Consideration

30. We turn now to the additional points for consideration that Britt raised *pro se* following Rule 61 counsel's motion to withdraw. As previously stated, Rule 61 counsel evaluated Britt's additional points for consideration and found them to be without merit and advised that counsel continues to stand by his motion to withdraw.

31. Britt first claims that trial counsel was ineffective for failing to subpoena witnesses who were with Britt at the time of the crime and/or at the time of his arrest.³⁰ Britt's trial counsel, in his Affidavit in response to Britt's Rule 61 motion, denies that he was ineffective in any regard and represents that to the best of his recollection, "at no time during the course of my representation of Mr. Britt did he ever make me aware of any possible alibi witnesses. According to police reports, there were a number of individuals near Mr. Britt at the time he was arrested; however, none could be later

²⁸ *Thomas v. State*, 467 A.2d 954, 958 (Del. 1983).

²⁹ *State v. Exum*, 2002 WL 100576, at *2 (Del.Super.), *affirmed*, 2002 WL 2017230, at *1 (Del.).

³⁰ See, Superior Court Docket No. 56

identified or located. Additionally, the location of the crime and the location where Mr. Britt was later arrested were not the same.”³¹

32. Britt must make concrete allegations of ineffective assistance and substantiate the claims. Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.³² Britt has not identified any specific potential witnesses that should have been subpoenaed, he has not claimed that he requested that any specific witness be subpoenaed and that his counsel failed to comply, nor has he explained what any specific witness would have contributed to his defense. Britt has failed to substantiate his allegations, let alone establish that he suffered actual prejudice as a result of any particular unspecified witness not being called to testify at trial. This claim is without merit.

33. Britt next claims that trial counsel was ineffective because he failed to “get video camera footage from reported crime scene” and failed to “challenge officers for withholding evidence that would prove defendant is not guilty.” Specifically, Britt claims that trial counsel failed to question officers who went to a “corner store” to check for video surveillance. Britt’s trial counsel represents that he was unaware of the existence of any video or other surveillance footage from the crime scene, which was a private residence, or from any “corner store.”³³ Britt has not identified the existence of any evidence that surveillance video did, in fact, exist from either a corner store or at the crime scene. Moreover, Britt has failed to establish that any alleged surveillance video would have likely affected the outcome of the trial.

³¹ Superior Court Docket No. 62- Affidavit of Defense Counsel, Ground One.

³² *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, *2 (Del.Super. 2004)(conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

³³ Superior Court Docket No. 62- Affidavit of Defense Counsel, Grounds Two and Three.

34. Britt has failed to show any record support for these claims. It is his burden to do so. Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.³⁴ Britt has failed to establish that his trial counsel was deficient or that he suffered actual prejudice as a result thereof. These claims are without merit.

35. Britt claims that trial counsel was ineffective for failing to challenge the officers contaminating the crime scene and for failing to challenge the officers tampering with the evidence. Britt summarily states that counsel should have known that the crime scene was contaminated. Britt also alleges that “an officer under oath stated that the evidence was in one place, then another officer stated that the evidence was in a different place, then EDU [Evidence Detection Unit] had taken pictures of evidence being at an even different place.”³⁵

36. Britt’s trial counsel represents that there was no factual or legal basis to argue that the police had contaminated the crime scene or tampered with any physical evidence.³⁶ Moreover, Britt provides no record evidence to support his allegations. Britt does not identify the officers and does not identify any evidence that the police allegedly manipulated. Britt does not explain what “crime scene” he is referring to or how it was “contaminated.” Britt has not substantiated his claims or made concrete allegations as to how trial counsel acted in a constitutionally deficient manner. Britt’s claims are without merit.

³⁴ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, *2 (Del.Super. 2004)(conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

³⁵ Britt’s Points for Consideration, at pg. 4.

³⁶ Superior Court Docket No. 62- Affidavit of Defense Counsel, Grounds Four and Five.

37. Britt claims that trial counsel was ineffective for his “failure to challenge the prosecutor from misleading the witness.” Britt claims that the prosecutor mislead five-year-old Angelina. Britt claims that the prosecutor continued to mislead Angelina about identifying Britt. The record shows to the contrary. The prosecutor never asked Angelina if she knew Britt, could identify Britt or saw Britt. On cross-examination by Britt’s trial counsel, Angelina testified that she did not know Britt, had never seen him before, and has not seen him since the incident.³⁷ At trial, Angelina did not recognize Britt as the man who came to the door the day at issue.³⁸ Angelina never testified that she knew Britt. This claim is without merit.

38. Britt claims that trial counsel was ineffective for failing to cross-examine Jhireique Sutherland’s inconsistent statements. Britt claims that trial counsel was ineffective for not seeking to have Sutherland’s testimony “thrown out of court for the inconsistency.” Trial counsel effectively established that, at trial, Sutherland testified that he did not know Britt, had not seen him before the shooting, and that Britt was a “total stranger.”³⁹ Yet, on the day at issue, Sutherland told the police that he had seen Britt around the area before.⁴⁰ In fact, trial counsel did such a good job discrediting Sutherland that the trial court, the finder of fact, did not find Sutherland to be credible.⁴¹ Specifically, the trial court stated that “the one witness I didn’t find credible . . . is Jhireique Sutherland.”⁴² Trial counsel was not deficient in any regard in his cross-examination of Sutherland. Counsel effectively discredited Sutherland’s testimony. Britt

³⁷ May 13, 2014 Trial Transcript, at pg. 32, 38.

³⁸ May 13, 2014 Trial Transcript, at pg. 38.

³⁹ May 13, 2014 Trial Transcript, at pg. 68-69, 85-86.

⁴⁰ May 14, 2014 Trial Transcript, at pg. 38, 48.

⁴¹ May 14, 2014 Trial Transcript, at pg. 192.

⁴² *Id.*

cannot establish that trial counsel was deficient or that he suffered actual prejudice as a result thereof. This claim is without merit.

39. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.⁴³ Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.⁴⁴ Britt's trial counsel represented that his cross-examination of all the witnesses was thorough and covered all of the issues that trial counsel felt important to the trial. Trial counsel noted that Britt's identification as the shooter became less important once the DNA evidence was introduced identifying Britt's DNA on the revolver.⁴⁵ Britt has not established that trial counsel was deficient in his examination of any of the witnesses.

40. Britt claims that appellate counsel was ineffective because he was not at Britt's trial to even know or hear things that were being said. Britt claims appellate counsel should have raised additional claims, but fails to identify specific meritorious claims that should have been raised but were not. Britt claims that the verdict was inconsistent and that the inconsistency should have been challenged on direct appeal.

41. First, there is no requirement that appellate counsel be present at trial to effectively evaluate appealable issues and represent a defendant on appeal. Britt's contention to the contrary is without merit. Second, Britt fails to identify specific additional meritorious claims that he contends should have been raised on appeal. This contention is conclusory, unsubstantiated, and unsupported and without merit. Third,

⁴³ *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

⁴⁴ *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *Harrington v. Richter*, 131 S.Ct. 770 (2011).

⁴⁵ Superior Court Docket No. 62- Affidavit of Defense Counsel, Ground Seven.

Britt already raised the inconsistency of the verdict on direct appeal and it is now procedurally barred as previously adjudicated.⁴⁶

42. On direct appeal, Britt contended that he should not have been convicted of Reckless Endangering as to Toston. Britt argued that the trial court's acquittal as to Custis on the Reckless Endangering charge was inconsistent with its conviction as to Toston.⁴⁷ Britt was convicted of Reckless Endangering First Degree, and the related PFDCF charges, as to Jamison, Angelina and Toston, the three individuals that he knew were present in the residence. Britt was acquitted of the offenses related to the occupants of the home that Britt did not know were present.

43. On direct appeal, the Delaware Supreme Court held that Britt was properly convicted of Reckless Endangering First Degree, and the related PFDCF charges, as to the three persons that Britt knew where in the house when he fired the gun through the front doorway. Britt's claim that there was insufficient evidence to find him guilty of Reckless Endangering First Degree as to the three persons, Jamison, Angelina and Toston, that he knew were present in the residence is unavailing and unpersuasive.⁴⁸ Britt's claims that the verdict was inconsistent, or that appellate counsel was ineffective in any regard, are without merit.

44. Britt next claims that trial counsel was ineffective for failing to "challenge DNA facts" and failing to "challenge bullet damage." Britt claims that trial counsel should have argued that Britt's DNA on the handgun could have been transferred to the weapon by another person at the scene.

⁴⁶ Superior Court Criminal Rule 61(i)(4).

⁴⁷ *Britt v. State*, 2015 WL 1973358, *2-3 (Del.).

⁴⁸ *Id.*

45. Britt's trial counsel represented that based on the facts and expert testing of the gun, he had no legal or factual basis to "challenge" the DNA evidence other than to point out during cross-examination that the DNA analyst could not testify as to how long Britt's DNA had been on the gun or how it got there in the first place. There was no factual basis to argue that Britt's DNA was transferred to the handgun by another person at the scene. The DNA testing as to the other items recovered as evidence (i.e. blue shirt and black spandex) was inconclusive. As noted by the DNA analyst, the DNA sample obtained from the gun was very good, and the odds of a randomly selected person having a matching DNA profile to the one recovered from the gun was at least one in 1.2 septillion people.⁴⁹ Counsel cannot be found deficient for failing to raise an issue which has no legal or factual basis. This claim is without merit.

46. Finally, Britt claims that trial counsel was ineffective for failing "to even challenge evidence chain of custody problem." Britt claims deficiencies in the maintenance of "evidence" which was transported to the medical examiner's office. Britt claims that somehow there was a "chain of custody problem." Britt does not identify the "evidence" at issue, or how the presence or absence of "tape" on the evidence affected its testing or analysis. Britt does not allege that any of evidence was tampered with. Indeed, Britt's trial counsel represented that he reviewed the evidence introduced by the State during trial and did not see any problem with the chain of custody or any reason to object.⁵⁰

⁴⁹ Superior Court Docket No. 62- Affidavit of Defense Counsel, Ground Nine; See also, May 14, 2014 Trial Transcript, at pgs. 74-75.

⁵⁰ Superior Court Docket No. 62- Affidavit of Defense Counsel, Ground Ten.

47. Detective Malcolm Stoddard was responsible for retrieving items from the evidence locker and transporting them to the Medical Examiner's Office for testing.⁵¹ After Detective Stoddard did so, a decision was made that some items would instead be tested by Bode Laboratories.⁵² Detective Stoddard then responded back to the Medical Examiner's Office, retrieved the evidence, and sent it to Bode Laboratories for testing.⁵³ Despite the Medical Examiner's Office not completing the testing on items sent to Bode Laboratory, some Medical Examiner's Office tape was placed on the exterior of items sent to Bode Laboratories.⁵⁴

48. At times, the Medical Examiner's Office will require the police to tape, or secure, evidence to meet their standards, and that is what occurred when Detective Stoddard retrieved the evidence at the lab.⁵⁵ Detective Stoddard also testified that the evidence did not appear tampered or altered with, and it did not appear anyone disturbed the tape he placed on the evidence at the Medical Examiner's Office.⁵⁶ He then transported/sent the evidence to Bode Laboratory for analysis.⁵⁷ Britt has not alleged tampered evidence was admitted at trial. Trial counsel reviewed the evidence and did not see any problem with the chain of custody or reason to object.

49. An ineffective assistance of counsel claim based on the failure to object to testimony is without merit if trial counsel lacked a legal or factual basis to object to the

⁵¹ May 14, 2014 Trial Transcript, at pg. 44-45.

⁵² May 14, 2014 Trial Transcript, at pg. 45.

⁵³ May 14, 2014 Trial Transcript, at pg. 46.

⁵⁴ May 14, 2014 Trial Transcript, at pg. 46.

⁵⁵ May 14, 2014 Trial Transcript, at pg. 46.

⁵⁶ May 14, 2014 Trial Transcript, at pg. 47.


⁵⁷ May 14, 2014 Trial Transcript, at pg. 47.

testimony.⁵⁸ Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.⁵⁹ This claim is without merit.

50. The court has reviewed the record carefully and has concluded that Britt's Rule 61 motion is without merit and devoid of any other substantial claims for relief. The court is also satisfied that Defendant's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Defendant does not have a meritorious claim to be raised in his Rule 61 motion.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied and Defendant's Rule 61 counsel's motion to withdraw should be granted.

IT IS SO RECOMMENDED.


Commissioner Lynne M. Parker

oc: Prothonotary
cc: Bradley V. Manning, Esquire
Santino Ceccotti, Esquire
Mr. Kevin Britt

⁵⁸ *State v. Exum*, 2002 WL 100576, at *2 (Del.Super.), *affirmed*, 2002 WL 2017230, at *1 (Del.).

⁵⁹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, *2 (Del.Super. 2004)(conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).