

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RADEE PRINCE,	§
	§
Defendant Below,	§ No. 35, 2022
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 1710010993A(N)
	§
Appellee.	§

Submitted: July 8, 2022
Decided: September 9, 2022

Before **SEITZ**, Chief Justice; **VAUGHN** and **TRAYNOR**, Justices.

ORDER

(1) The appellant, Radee Prince, has appealed the Superior Court’s denial of his motion for postconviction relief under Superior Court Criminal Rule 61. After careful consideration of the parties’ briefs and the record, we affirm the Superior Court’s judgment.

(2) Prince was indicted on multiple charges, including attempted murder, after he shot a long-time acquaintance, Rashan Baul (also known as Jason Baul), in an office at Baul’s auto-sales business on the morning of October 18, 2017. This Court described the incident and summarized the evidence presented at trial in its decision on Prince’s direct appeal.¹ That evidence included video footage from

¹ *Prince v. State*, 2019 WL 3383880, at *1-2 (Del. July 25, 2019).

surveillance cameras that showed Prince arriving on the scene and shooting into the office; the testimony of a witness who was meeting with Baul when Prince shot Baul; the testimony of one of Baul's employees, who had known Prince since childhood, who testified that she spoke with Prince when he arrived at the business, saw him enter the building and pull out a gun, and then fled after hearing a gunshot; and evidence that Prince drove from Maryland to Delaware shortly before the shooting, purchased ammunition from a Wal-Mart store, exchanged that ammunition for a different type, and then proceeded to Baul's business.

(3) Prince did not contend at trial that he was not the shooter. Rather, his defense was that he had learned that Baul had hired someone to kill him, and that he therefore shot Baul in self-defense or under extreme emotional distress. To rebut Prince's position that his past interactions with Baul supported a finding of self-defense or extreme emotional distress, the State sought to introduce evidence that on the morning of the shooting, before going to Baul's business, Prince shot and killed three people and injured others at his workplace in Edgewood, Maryland. The Superior Court ruled that the evidence was admissible,² and the State introduced evidence of the Maryland shooting, including a video of the incident; the ensuing manhunt; and Prince's arrest later that evening in Newark, Delaware, by federal agents, which involved a brief foot chase during which Prince discarded a gun.

² See *id.* at *2, 5-6 (discussing and affirming the Superior Court's analysis).

(4) A Superior Court jury found Prince guilty of attempted manslaughter under extreme emotional distress, a lesser-included offense of attempted murder, as well as first-degree reckless endangering, carrying a concealed deadly weapon, resisting arrest, and two counts of possession of a firearm during the commission of a felony. The Superior Court sentenced Prince to a total of forty years of unsuspended prison time, followed by probation. Prince was represented by counsel before and during trial, but he elected to proceed *pro se* on appeal.³ This Court affirmed on direct appeal.⁴

(5) Prince filed a timely motion for postconviction relief, which the Superior Court denied.⁵ Prince has appealed to this Court. On appeal, Prince asserts multiple claims of ineffective assistance of counsel. He argues that trial counsel failed to object to the admission of the video of the Delaware shooting on the basis that the video that was shown to the jury differed from the version produced to the defense in discovery; failed to object to certain statements made by counsel for the State during closing arguments; failed to object to the admission of the Maryland shooting video on the basis that it was not properly authenticated; and failed to object to certain contents of the State's sentencing memorandum. In addition to his claims of ineffective assistance of counsel, Prince asserts that the Superior Court abused its

³ *Id.* at *3.

⁴ *Id.* at *14.

⁵ *State v. Prince*, 2022 WL 211704 (Del. Super. Ct. Jan. 24, 2022).

discretion by denying him the opportunity to present evidence or witnesses to support his defense, thereby forcing Prince to take the stand, and by admitting the video of the Maryland shooting without requiring the State to properly authenticate it. He also asserts that the State wrongfully withheld information regarding misconduct by a ballistics expert who did not testify at Prince's trial. Finally, he contends that he is entitled to relief based on cumulative error.

(6) This Court reviews the Superior Court's denial of a motion for postconviction relief for abuse of discretion.⁶ We review legal or constitutional questions, including claims of ineffective assistance of counsel, *de novo*.⁷ The Court considers the procedural requirements of Rule 61 before addressing any substantive issues.⁸

(7) As the Superior Court correctly determined, Prince's claims of ineffective assistance of counsel are not procedurally barred.⁹ In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that (i) his defense counsel's representation fell below an objective standard of reasonableness, and (ii) there is a reasonable probability that but for counsel's

⁶ *Ploof v. State*, 75 A.3d 811, 820 (Del. 2013).

⁷ *Id.*

⁸ *Bradley v. State*, 135 A.3d 748, 756-57 (Del. 2016).

⁹ *See Green v. State*, 238 A.3d 160, 175 (Del. 2020) (“[I]neffective-assistance claims are not subject to Rule 61(i)(3)'s bar because they cannot be asserted in the proceedings leading to the judgment of conviction under the Superior Court's rules and this Court's precedent.”).

unprofessional errors, the result of the proceeding would have been different.¹⁰ Although not insurmountable, there is a strong presumption that counsel's representation was professionally reasonable.¹¹ A defendant must also make and substantiate concrete allegations of actual prejudice to prevail on an ineffective-assistance claim.¹²

(8) Prince first argues that his trial counsel failed to object to the admission of the video of the Delaware shooting on the basis that the video that was shown at trial differed from a version that the defense obtained in discovery. He asserts that the trial video showed Prince firing four shots, while the video obtained in discovery showed Prince firing three shots. The Superior Court determined that Prince had failed to establish prejudice on this basis, and we agree. Prince does not claim that he was not the shooter, and the jury accepted Prince's claim that he shot Baul under extreme emotional distress. In light of that result and considering all the evidence presented to the jury, it is not reasonably probable that the result of the proceeding would have been different—that is, that the jury would have found Prince not

¹⁰ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¹¹ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

¹² *Bradley*, 135 A.3d at 760; *see also Ploof*, 75 A.3d at 821 (“To establish prejudice, ‘[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” (quoting *Strickland*, 466 U.S. at 694) (alteration in original)); *id.* (“‘A reasonable probability is a probability sufficient to undermine confidence in the outcome’—a lower standard than ‘more likely than not.’” (quoting *Strickland*, 466 U.S. at 693-94)).

guilty—if the jury had seen a video of Prince firing three shots at Baul rather than four.

(9) Next, Prince argues that his trial counsel was ineffective because he did not object to the prosecutor’s statement during closing arguments that Prince “huddled people together in a workplace in Edgewood, Maryland, and murdered three of them, and shot two others” on the basis that the evidence presented during the trial did not inform the jury that three of the five Maryland shooting victims had died. The Superior Court concluded that Prince did not establish that the result of the trial would have been different if defense counsel had objected to the prosecutor’s statement because, on the facts of this case, whether Prince “went to his workplace and shot five coworkers” or whether he “went to his workplace and shot five coworkers, three of whom died” “cannot have impacted the verdict negatively.”¹³

(10) We agree with the Superior Court’s conclusion. On direct appeal, this Court affirmed the Superior Court’s decision to permit the State to introduce evidence of the Maryland shooting, including the video.¹⁴ Thus, to the extent that Prince is attempting to recast his challenge to the admission of the Maryland video

¹³ *State v. Prince*, 2022 WL 211704, at *8-9 (Del. Super. Ct. Jan. 24, 2022).

¹⁴ *Prince*, 2019 WL 3383880, at *5-6.

as an ineffective-assistance claim, that attempt is unavailing.¹⁵ Moreover, counsel for the State had the following exchange with Prince during cross-examination:

Q: That exact morning at your place of work in Edgewood, Maryland, on October 18, 2017, when a group of people were gathered in a room, you shot them, right?

You shot five people. Three of them are dead.

And isn't it true that that has a little bit more to do with your state of mind on October 18, 2017, that morning, than whatever this stuff was from 2014, and 2015, and 2016, right?

[No response indicated in transcript.]

Q: That's a non-answer?

A: You've seen the pictures. You've seen the evidence.¹⁶

Even accepting Prince's argument, despite the foregoing exchange, that the "jury had no knowledge that three people died until [the prosecutor] told them" so during closing argument,¹⁷ Prince has not explained, in light of the video and other evidence of the Maryland shooting, how there is a reasonable probability that the jury would have acquitted Prince if the prosecutor had not made that statement in closing argument.

(11) Prince also contends that his counsel was ineffective because he did not object to the admission of the Maryland shooting video on the basis that it was not properly authenticated. Prince did not present this claim to the Superior Court in the

¹⁵ See *Ruffin v. State*, 2019 WL 719038, at *3 (Del. Feb. 19, 2019) ("Having failed to prevail on the merit of the claims on direct appeal, Ruffin cannot succeed on the claims now by reframing them as grounds for ineffective assistance of counsel.").

¹⁶ Appendix to Answering Brief at B130-31.

¹⁷ Opening Brief at 10.

first instance, and we therefore review for plain error.¹⁸ We find no plain error here. Prince argues that authentication of a surveillance video requires a witness to testify regarding the type of equipment or camera used, the quality of the recorded product, the process by which it was focused, or the general reliability of the recording equipment and system.¹⁹ But this Court has held that a party may authenticate video evidence “either by establishing a chain of custody, which establishes the continuous whereabouts of the evidence, or by having a witness with knowledge testify that the evidence is what it is claimed to be.”²⁰ Moreover, “while the authentication requirement is fundamental, it imposes only a lenient burden that is easily met.”²¹ “The proponent need not conclusively prove the evidence’s authenticity, but merely provide a ‘rational basis’ from which a reasonable finder of fact could draw that conclusion. And there are no hard-and-fast rules about how that must be done. The proponent can point to witness testimony, corroborative circumstances, distinctive characteristics, or other evidence probative of authenticity.”²²

(12) Here, the State presented the testimony of an agent of the federal Bureau of Alcohol, Tobacco, and Firearms (“ATF”) that he and other ATF officers

¹⁸ DEL. SUPR. CT. R. 8.

¹⁹ Opening Brief at 10.

²⁰ *Masarone v. State*, 2014 WL 1515038, at *2 (Del. Apr. 16, 2014).

²¹ *Schaffer v. State*, 2018 WL 1747793, at *5 (Del. Apr. 10, 2018) (citations and internal quotations omitted).

²² *Id.* (citations and internal quotations omitted).

had responded to notifications of a workplace active shooter incident in Edgewood, Maryland, on October 18, 2017; that he had previously viewed a video of that workplace shooting and was familiar with its contents; that the video was the same one that led to an investigation on October 18, 2017; and that he recognized the contents of the video that was then played for the jury.²³ Prince has not raised any actual challenge to the authenticity of the Maryland shooting video, and we conclude that he has not sufficiently established that his defense counsel acted in a professionally unreasonable manner by not objecting to the authentication of the Maryland video.

(13) As his final ineffective-assistance claim, Prince asserts that his counsel should have objected to the State's inclusion in its sentencing memorandum of purportedly unreliable or misleading information regarding a 2015 arrest of Prince during which he was alleged to have been in possession of a firearm and a detective's report stating that Prince went to another former workplace between the time of the Maryland shooting and the time of the Baul shooting. On direct appeal, Prince argued that the prosecutor engaged in misconduct by including inadmissible information about those events in its sentencing memorandum.²⁴ Addressing that claim, this Court wrote:

²³ Appendix to Answering Brief at B148-49.

²⁴ *Prince v. State*, 2019 WL 3383880, at *13 (Del. July 25, 2019).

This information was not presented to the jury at trial, but only at sentencing. At sentencing, a trial court may consider “unsworn or out-of-court information relative to the circumstances of the crime and to the convicted person’s life and circumstance.” In the sentencing context, the court may consider information about other, unproven crimes or conduct for which the defendant was not convicted, as long as the information presented does not lack minimal indicia of reliability. Prince has not demonstrated that the information submitted by the State in connection with sentencing lacked minimal indicia of reliability.²⁵

Having failed to prevail on the merits of this issue on direct appeal, Prince cannot succeed now by reframing the issue as a claim of ineffective assistance of counsel.²⁶

(14) In addition to his claims that his counsel was ineffective, Prince presents various claims of “trial court errors” and prosecutorial misconduct. He argues that the Superior Court prohibited him from presenting evidence to rebut Baul’s testimony denying that he had threatened Prince with a gun at Prince’s father’s funeral in 2016 or solicited someone to kill Prince, thereby “forcing” Prince to take the stand to present evidence to support his self-defense and extreme-emotional-distress theories. He also contends that the purported improper authentication of the Maryland shooting video warrants reversal of his conviction, independent of any ineffective-assistance claim. Finally, he asserts that the State violated *Brady v. Maryland*²⁷ by withholding information regarding misconduct by

²⁵ *Id.*

²⁶ *Ruffin v. State*, 2019 WL 719038, at *3 (Del. Feb. 19, 2019); *Bradley v. State*, 135 A.3d 748, 762 (Del. 2016).

²⁷ 373 U.S. 83 (1963).

Carl Rone, a ballistics expert who did not even testify at Prince’s trial. We agree with the Superior Court’s determination that these claims were procedurally barred because they were formerly adjudicated²⁸ or could have been asserted in the proceedings leading to the judgment of conviction but were not.²⁹ Prince’s attempts to overcome the procedural bars are unavailing.³⁰ His decision to represent himself on direct appeal did not preserve for later adjudication issues that he did not raise—or raised unsuccessfully—in that appeal. And the information regarding Rone’s misconduct is not new, nor does it create a strong inference that Prince is actually innocent in fact of shooting Baul.³¹

(15) Finally, Prince’s claim that he is entitled to relief because of cumulative error also is without merit. “Cumulative error must derive from multiple errors that

²⁸ DEL. SUPER. CT. CRIM. R. 61(i)(4).

²⁹ *Id.* R. 61(i)(3).

³⁰ *See id.* R. 61(i)(2), (5) (providing that the procedural bars set forth in Rule 61(i)(1)-(4) do not apply if the movant pleads with particularity that “new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted” or that “a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction . . . invalid”).

³¹ *See generally Purnell v. State*, 254 A.3d 1053, 1095 (Del. 2021) (stating that showing innocence of the “acts underlying the charges” as set forth in Rule 61(d)(2)(i) requires showing “more than innocence of intent; it requires new evidence that a person other than the petitioner committed the crime” (internal quotations omitted)).

caused ‘actual prejudice.’”³² Because the Court has found no errors that caused actual prejudice, Prince’s claim of cumulative error also fails.³³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

³² *Michaels v. State*, 970 A.2d 223, 231 (Del. 2009).

³³ *Abbatiello v. State*, 2020 WL 7647926, at *6 (Del. Dec. 22, 2020); *see also Swan v. State*, 248 A.3d 839, 884 (Del. 2021) (“As described above, all of the claims Swan asserts are procedurally barred. Therefore, Swan has failed to establish cumulative error.”).