EFiled: Nov 20 2023 12:08PM EST
Filing ID 71449442
Case Number 24,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAHEED MATTHEWS,	)	
	)	
Defendant Below-	)	**No. 24, 2023**
Appellant,	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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DATE: November 20, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in *Amicus Curiae's* November 2, 2023, Opening Brief.

This is the State's Answering Brief in opposition to Matthews' appeal from the New Castle County Superior Court's denial of post-conviction relief.[1] (AA354-94).

[1] *State v. Matthews*, 2023 WL 21545 (Del. Super. Jan. 3, 2023).

SUMMARY OF ARGUMENT

I. DENIED. The Superior Court did not abuse its discretion in denying post-conviction relief. Whether there was a general warrant for the search of the defendant's cellphone was ultimately of no significance because Matthews validly consented to a police search of his cellphone. (AA349).

As the Superior Court noted, a motion to suppress the cellphone and text message evidence would have been futile. While Matthews in hindsight argues that his trial counsel should have done a half dozen things differently regarding the cell phone/text message evidence, none of these new strategies would have changed the trial outcome. Some of the things Matthews argues his counsel should have done were, in fact, done at his trial.

This is not a case where the police first announced they had a search warrant and the defendant merely acquiesced in a subsequent search. Rather, the pertinent exchange in the December 28, 2017, police interview (AA338-52) occurred when the interviewing detective said that Matthews did not want to reveal his cellphone number and Matthews answered: "You can, you can have it." (AA349). This was a valid consent to the subsequent police search of the defendant's cellphone before the police revealed they had a search warrant. (AA374-76).

STATEMENT OF FACTS

On direct appeal in 2020, this Court found the following operative facts:

> At 10:42 p.m. on December 2[7], 2017, a resident of Briarcliff Drive in New Castle reported gunshots to police. Briarcliff Drive runs parallel to Parma Avenue, where the shooting victim was eventually found. Around the same time a Parma Avenue resident called police to report being awakened by three or four gunshots and saw from his window a large person in a grey or black hoodie pointing or extending their arm. Police did not immediately locate the victim in response to the calls. At 12:25 a.m. on December 28, police responded to a report of someone lying on the ground on Parma Avenue. Police found Antoine Terry unresponsive with multiple gunshot wounds in the area of 245 Parma Avenue. He died from his injuries.
>
> Terry was friends with [Shaheed] Matthews, who stayed at 227 Parma Avenue with his girlfriend, Devon Johnson. On December 27, 2017, the evening of the shooting, Terry, Matthews, and Johnson exchanged text messages. Terry asked Matthews if he wanted him to "come to his crib." Matthews and Johnson were at home. Terry, Matthews, and Johnson spent the evening together at Johnson's house watching basketball. Johnson testified that Terry and Matthews left her house around 10:30 p.m., but she was upstairs at the time and did not see them leave. Around the time of the first report of gunshots, Matthews called Johnson and asked her to pick him up at a church around the corner from her house.
>
> Video cameras from the neighborhood showed two people leave 227 Parma Avenue at about 10:38 p.m., walk towards 245 Parma Avenue, stop, and fight. A video showed one man run away while the second man chased him, fired several shots, and then ran away. A video also showed that one of the two people walking out of 227 Parma Avenue appeared to be wearing a white hood and was the same person being chased by the second man firing shots. When police found Terry he was wearing a black puffy jacket, white hood, white

pants, and pants around his knees.

The police interviewed Matthews on December 28, 2017. He first denied having a cell phone, then admitted he had one, but he gave police the wrong number. Matthews eventually surrendered his cell phone to police. The police recovered internet search history and a text message thread from Matthews' cell phone revealing that Matthews was looking to purchase a firearm just days prior to the fatal shooting on December 27, 2017.

The State's ballistics report was inconclusive as to the specific type of firearm used to kill Terry. The police did not recover the murder weapon. The jacket police seized from Matthews when they arrested him tested positive for gunshot residue on the right cuff.[2]

[2] *Matthews v. State*, 2020 WL 6557577, at * 1-2 (Del. Nov. 9, 2020).

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING POST-CONVITION RELIEF

QUESTION PRESENTED

Whether the Superior Court abused its discretion in denying Matthews' *pro* se motion for post-conviction relief?

STANDARD AND SCOPE OF REVIEW

The Superior Court's denial of post-conviction relief[3] is reviewed on appeal for an abuse of discretion.[4] This Court reviews "legal or constitutional questions, including ineffective assistance of counsel claims, *de novo*."[5]

MERITS OF THE ARGUMENT

This Court's August 3, 2023, Order[6] appointed *amicus curiae* to file a brief in support of the legal arguments Shaheed Matthews has raised in this appeal from the New Castle County Superior Court's denial of a *pro se* motion for post-conviction relief. In his November 3, 2021, *pro se* motion for post-conviction relief (AA240-80), Matthews raised six claims of ineffective assistance of counsel during the 2019 jury trial and in the 2020 direct appeal; however, in this appeal

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[3] *State v. Matthews*, 2023 WL 21545 (Del. Super. Ct. Jan. 3, 2023). (AA354-94).
[4] *Swan v. State*, 248 A.3d 839, 856 (Del. 2021); *Baynum v. State*, 211 A.3d 1075, 1082 (Del. 2019).
[5] *Purnell v. State*, 254 A.3d 1053, 1093-94 (Del. 2021). *See Reed v. State*, 258 A.3d 807, 821 (Del. 2021).
[6] *Matthews v. State*, Del., No. 24, 2023, Valihura, J. (Aug. 3, 2023).

from the denial of post-conviction relief, Matthew has only addressed his fourth *pro se* claim about the introduction at the trial of evidence obtained from the defendant's cellphone. (AA261-72). Similarly, *amicus curiae's* appellate argument is confined to the trial court's determination that Matthews' trial counsel was not professionally deficient in handling the cellphone evidence by failing to file a motion to suppress. (AA369-78). Both Mathews and *amicus curiae* are incorrect in arguing that the Superior Court abused its discretion in denying post-conviction relief for the cellphone ineffective assistance of trial counsel claim.[7]

As explained by this Court in the 2020 direct appeal,

> At trial, the State introduced internet search history and text messages recovered from Matthews's cell phone. In the internet searches on December 25 and 26, 2017, police recovered inquiries for a "Ruger 45" firearm. Matthews deleted the searches before turning his phone over to police. The police also found text messages from December 20, 2017 from an unknown individual offering to sell Matthews a "Taurus Millennium" firearm for $450. Matthews replied, "[t]hats too much," and the unknown individual said they would get back to Matthews if they found something else. There was also an image of a Taurus handgun. Matthews's counsel objected to the admission of the gun purchase evidence under D.R.E. 404(b), arguing that the probative value of the evidence was low and outweighed by the prejudice that Matthews would suffer if introduced.[8]

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[7] *State v. Matthews*, 2023 WL 21545, at *6-12 (Del. Super. Jan. 3, 2023). *See Redden v. State*, 150 A.3d 768, 772 (Del. 2016); *Prince v. State*, 2022 WL 4126669, at *2 (Del. Sept. 9, 2022).

[8] *Matthews v. State*, 2020 WL 6557577, at *2 (Del. Nov. 9, 2020).

On direct appeal, Matthews limited his challenge to the cellphone evidence to relevance. The trial judge's evidentiary ruling admitting the cellphone material over defense objection was reviewed by this Court for an abuse of discretion.[9] No abuse of discretion by the trial court's ruling occurred because "Here, the State did not offer a gun into evidence, and then imply that the gun was used in a homicide when the evidence did not support the implication. Instead, the State offered the gun purchase evidence for another purpose – to show Matthews's motive and plan to kill Terry."[10] Antoine Terry was fatally shot on December 27, 2017, so the cellphone evidence in December 2017 was timely.[11] The jury was also given a limiting instruction about the cellphone evidence "to ameliorate any prejudice."[12]

Amicus curiae argues that the Superior Court erred in finding that Matthews consented to the police search of his cellphone even if the search warrant was defective and in also concluding that Matthews had failed to establish the second prong of prejudice in the two-part ineffective assistance of counsel test.[13] There was no abuse of discretion by the Superior Court in denying post-conviction relief.

The consent to search the defendant's cellphone turns on the interpretation of a brief exchange in Matthews' December 28, 2017 recorded police interview. (AA338-52). *Amicus curiae* argues that the controlling authority should be

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[9] *Matthews*, 2020 WL 6557577, at *2.
[10] *Id.*, at *3.
[11] *Id.*, at *1-2.
[12] *Id.*, at *3.
[13] *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Bumper v. North Carolina,[14] and that this Court's recent decision in the cellphone search in *Blackwood v. State,*[15] is distinguishable. The State has the opposite interpretation of these two cases. That is, *Bumper* is distinguishable because the police claim of search warrant preceded the house search while the police did not reveal to Matthews that they already had a search warrant for his cellphone until after Matthews had consented to the search ("You can, you can have it (UI).") (AA349). In contrast, the totality of the circumstances surrounding Blackwood's consent to a police search of his cellphone is more analogous to what occurred in Matthews' case.

During his December 28, 2017, recorded body cam interview (AA338-52), Matthews initially said he had no cellphone. (AA338). Subsequently in the interview Matthews acknowledged having a phone, but said, "…I didn't want to give the number out." (AA345). When the interviewing detective later noted that Matthews did not "…want to give me the cellphone number" (AA349), Matthews responded: "You can, you can have it (UI)." (AA349). It was only after this consent to allow the police access to the cellphone that the detective next revealed, "…we have a search warrant for it." (AA349).

It is the timing aspect of when police reveal the possession of a search warrant that distinguished Matthews' cellphone search from what occurred in

[14] *Bumper v. North Carolina*, 391 U.S. 543, 548-50 (1968).
[15] *Blackwood v. State,* 2023 WL 6629581, at *6-8 (Del. Oct. 11, 2023)

Bumper. In *Bumper*, four North Carolina law enforcement officers went to the defendant's 66 year old grandmother's rural home, and one officer announced that he had a search warrant to search the house.[16] The United States Supreme Court concluded in *Bumper* that this was not a valid consent search, but merely an "acquiescence to a claim of lawful authority."[17] In contrast to what occurred in the *Bumper* home search, the Delaware police did not say they possessed any search warrant for the cellphone before Matthews said, "…you can have it (UI)." (AA349).

Searches conducted pursuant to a valid consent are an exception to the warrant requirement.[18] Evidence seized during a consent search is admissible.[19] "In order to be valid, a consent must be voluntary and given by a person with authority to do so."[20] Matthews validly consented to a police search of his cellphone. As the user or owner of the phone, Matthews had the authority to give this consent.

Likewise, the consent was voluntary. Matthews and the police officers spoke at the residence of Devon Johnson, Matthews' girlfriend, not at police

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[16] *Bumper v. North Carolina*, 391 U.S. 543, 546 (1968).
[17] *Bumper*, 391 U.S. at 548-49
[18] *Word v. State*, 2001 WL 762854, at *2 (Del. June 19, 2001).
[19] *See Kedde v. State*, 564 A.2d 1125, 1128 (Del. 1989); *Schneckloth v. Bustamonte*, 412 U.S. 218, 221-22 (1973).
[20] *Word*, *supra*, at *2. *See United States v. Matlock*, 413 U.S. 164, 171 (1974).

headquarters or some other custody setting. The December 28, 2017, interview was recorded on Detective Smith's body cam. (AA338). Matthews was not arrested or otherwise in custody when being interviewed. Near the end of the police interview Matthews was encouraged to leave and retrieve his cellphone for police review. (AA349-51).

"Voluntariness is determined by a judicial examination of the circumstances surrounding the consent."[21] The State has the burden of proving that the consent was not coerced."[22] "The scope of a consent is determined by the language used in giving the consent."[23]

As the Superior Court pointed out, "The validity of the search warrant notwithstanding, Mr. Matthews provided police with an independent basis to search his phone when he consented to the search."[24] The trial court added, Matthews "…volunteered his phone to the officers and helped them access it, knowing they intended to download its entire contents. In light of this consent, a motion to suppress based on defects in the search warrant would have been futile."[25] (AA376).

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[21] *Knight v. State*, 690 A.2d 929, 932 (Del. 1996).
[22] *Knight,* 690 A.2d at 932.
[23] *Guy v. State*, 913 A.2d 558, 563 (Del. 2006) (citing *Ledda v. State*, 564 A.2d 1125, 1129 (Del. 1989)).
[24] *State v. Matthews*, 2023 WL 21545, at *8 (Del. Super. Jan. 3, 2023).
[25] *Matthews,* 2023 WL 21545, at *9.

Matthews gave consent to the cellphone search without prompting or police coercion. When Matthews volunteered his phone, he was unaware the police had a search warrant. Nor are there any other factors that would have led Matthews to believe he could not refuse to consent. "Consent may be express or implied, but this waiver of Fourth Amendment rights need not be knowing and intelligent."[26] Likewise, Matthews did not withdraw or limit his consent after learning that the police would "dump" the entire contents of the cellphone. (AA349). In fact, Matthews simply said, "Okay." (AA349). There was no allegation that Matthews limited the scop of his consent to search his cellphone in any respect.

In *Cooke v. State*, [27] this Court delineated pertinent factors to evaluate for a lawful consent search and stated:

> In addition to the plain view exception, police officers may also conduct a search and seizure without probable cause or a warrant based upon an individual's voluntary consent. Consent may be express or implied, but this waiver of Fourth Amendment rights need not be knowing and intelligent. To determine whether consent was given voluntarily, courts examine the totality of the circumstances surrounding the consent, including (1) knowledge of the constitutional right to refuse consent; (2) age, intelligence, education, and language ability; (3) the degree to which the individual cooperates with police; and (4) length of detention and the nature of questioning, including the use of physical punishment or other coercive police behavior. Generally, anyone having a reasonable expectation of privacy in the place being searched may

[26] *Cooke v. State*, 977 A.2d 803, 855 (Del. 2009) (*citing Schneckloth v. Bustamonte*, 412 U.S. 218, 241 (1973)). *See also Flonnory v. State*, 109 A.3d 1060, 1063 (Del. 2015).

[27] *Cooke*, 977 A.2d 803, 805 (Del. 2009) (footnotes omitted). *See also Higgins v. State*, 2014 WL 1323387, at *2 (Del. Apr. 1, 2014).

> consent to a warrantless search, and any person with common authority over, or other sufficient relationship to, the place or effects being searched can give valid consent.

A review of the *Cooke* factors applicable to Matthews' December 28, 2017, interaction with the police does not undermine the Superior Court's conclusion that there was voluntary consent here. (AA373-76). As the trial court also pointed out (AA375-76), there was "a similar factual scenario" (AA375) in *State v. Blackwood*.[28] Just as there was a voluntary and valid consent in *Blackwood*, [29] so also was there a valid consent search for Matthews' cellphone. There was no abuse of discretion by the Superior Court in concluding that a voluntary consent to the police cellphone search existed in Matthews' case.[30] (AA373-76).

The second appellate argument by *Amicus* is that the Superior Court was also incorrect in deciding that Matthews failed to establish actual prejudice resulting from trial counsel's failure to file a pretrial motion to suppress.

To prevail on a claim of ineffective assistance by his trial counsel, Matthews must establish: (1) counsel's representation was professionally deficient; and (2) there was prejudice as a result of the deficiency.[31] Failing to file a futile pretrial motion to suppress does not satisfy the first cause prong of the two-part *Strickland*

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[28] *State v. Blackwood*, 2020 WL975465, at *6-7 (Del. Super. Feb. 27, 2020).
[29] *Blackwood v. State*, 2023 WL 6629581, at *6 (Del. Oct. 11, 2023).
[30] *State v. Matthews*, 2023 WL 21545, at 8-9 (Del. Super. Jan. 3, 2023).
[31] *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

test. As the trial court pointed out in this regard, "In light of this consent, a motion to suppress based on defects in the search warrant would have been futile."[32] (AA376).

Furthermore, Matthews cannot establish the second prejudice prong of the *Strickland* ineffective assistance of counsel test. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course would be followed."[33] To establish the second prong of the two-part ineffective assistance of counsel test, a "defendant must prove actual prejudice."[34] "*Strickland's* second prong requires the defendant to show how counsel's error resulted in prejudice. Prejudice is defined as 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[35] The trial court correctly found no actual prejudice in the handling of the cellphone evidence in the prosecution of Matthews. Matthews cannot establish actual prejudice resulting from defense counsel's inaction because "…even if the consent was defective, the cell phone evidence had

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[32] *State v. Matthews*, 2023 WL 21545, at *9 (Del. Super. Jan. 3, 2023).
[33] *Strickland*, 466 U.S. at 697 (quoted in *Richardson v. State*, 3 A.3d 233, 240-41 (Del. 2010)).
[34] *Sierra v. State*, 242 A.3d 563, 572 (Del. 2020) (citing *Strickland*, 466 U.S. at 693).
[35] *Hoskins v. State*, 102 A.3d 724, 730 (Del. 2014) (quoting *Strickland*, 466 U.S. at 694). *See also Neal v. State*, 80 A.3d 935, 942 (Del. 2013); *Ploof v. State*, 75 A.3d 811, 821 (Del. 2013); *Capano v. State*, 889 A.2d 968, 975 (Del. 2006).

no bearing on the outcome of the case."[36] (AA376). The reason there was no actual prejudice (AA376-78) is that the cellphone evidence was presented to prove intent, "…but the surveillance video showing the suspect chasing down and shooting Mr. Terry from behind more than adequately proved that element of the crime."[37] (AA376). As the Superior Court added, "The video evidence, combined with Ms. Johnson's statements, leaves the Court with no room to reasonably conclude anyone other than Mr. Matthews could have been the shooter."[38] (AA376-77).

"[N]ot every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding."[39] To establish actual prejudice Matthews must show a reasonable probability that exclusion of his cellphone evidence would have undermined confidence in the outcome of his jury trial.[40] Matthews did not meet this reasonable probability standard, and he has failed to establish actual prejudice from defense counsel's alleged deficiencies. Accordingly, Matthews has failed to prove either prong of the ineffective assistance of counsel test. There was no abuse of discretion by the Superior Court

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[36] *State v. Matthews*, 2023 WL 21545, at *9 (Del. Super. Jan. 3, 2023)
[37] *Matthews*, 2023 WL 21545, at *9.
[38] *Id*., at *9
[39] *Strickland*, 466 U.S. at 693. *See also Sierra v. State*, 242 A.3d 563, 572 (Del. 2020).
[40] *Strickland*, 466 U.S. at 694.

in rejecting this fourth post-conviction relief claim.[41] (AA369-78). As pointed out, "The State's case was strong. That is so, even without the cellphone evidence."[42] (AA378).

[41] *Matthews*, 2023 WL 21545, at *6-10.

[42] *Id*., at *10

CONCLUSION

The judgment of the Superior Court should be affirmed.

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Dated: November 20, 2023

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Microsoft Word.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2,758 words, which were counted by Microsoft Word.

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STATE OF DELAWARE,	**)**	
	)	
Plaintiff Below-	**)**	
Appellee.	**)**	

CERTIFICATION OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on November 20, 2023, he caused two copies of *State's Answering Brief* to be served via First Class Mail upon the following:

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