

COMMONWEALTH OF
PENNSYLVANIA

:IN THE COURT OF COMMON PLEAS
:OF ELK COUNTY, PENNSYLVANIA

Vs.

:No. 388 of 2018

HARVEY L. DETTERLINE III

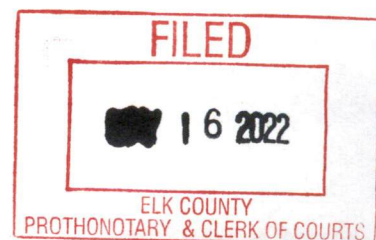
:CRIMINAL DIVISION

FINDINGS OF FACT, CONCLUSION OF LAW, DISCUSSION
AND ORDER ON DEFENDANT'S PCRA PETITION

Before the court is Defendant's first PCRA Petition. Hearings were held over several days, briefs have been presented, and the matter is ready for decision.

I. Findings of Fact

1. Defendant was charged with criminal homicide in the death of one Richard Hicks, occurring on August 16, 2018, in Johnsonburg, Elk County, Pennsylvania.
2. Both defendant and decent Hicks periodically lived at the apartment of one Brittany Dilley.
3. Dilley and Hicks, who was allegedly Dilley's fiancée, had a tumultuous relationship characterized by periodic separations.
4. There was significant friction between Hicks and the defendant, including a number of altercations initiated by Hicks against the physically smaller defendant.
5. It appears both men had intimate relationships will Dilley, and sometimes both lived in Dilley's apartment.
6. Both Dilley and Hicks were involved in a methadone clinic. Defendant supervised Dilley's children when they were at the clinic.
7. On August 16, 2018, after Hicks and Dilley had been arguing all day, Dilley ordered Hicks out of the apartment.
8. Hicks became very angry and upset and made various attempts to enter the apartment and to mollify Dilley.
9. Hicks made efforts to enter the apartment through the locked front door but was unsuccessful. While Dilley initially claimed to be asleep as Hicks tried to enter, she was in fact having sex with the defendant at the time.



10. Hicks eventually entered the apartment through an upper floor window which opened into the bedroom occupied by defendant.
11. In view of the exclusion of Hicks from the apartment by Dilley, and in view of past abuse suffered by the defendant from Hicks, defendant armed himself with a knife and went to the second floor where Hicks had already entered.
12. Defendant contends that Hicks attacked him, and that in self-defense and fear of his life, he fatally stabbed Hicks.
13. A central issue in the case was Hicks status as a resident of Dilley's apartment. Dilley was the only lessee. Defendant contended that Dilley had ordered Hicks out of the apartment earlier that day, and thus Hicks was a non-resident. Dilley had later stated that defendant was to admit decedent immediately before the fatal incident.
14. Both Dilley and Hicks had been using drugs, and in the case of Dilley alcohol at the time of the fatal encounter. Much of the evidence on drug and alcohol use was not presented to the jury.
15. There were significant inconsistencies between Dilley's pretrial statement and her testimony in court, particularly on Hicks status as a resident or nonresident of the apartment at the time of the fatal incident.
16. Defendant's trial counsel was George Dagher, an experienced criminal attorney.
17. Defendant's counsel hired a private investigator to research the case and interview potential witnesses.
18. Mr. Dagher's trial strategy was based on self-defense or imperfect self-defense. Specifically, he wanted to show that Hicks had been violent with defendant on prior occasions, and that defendant had a legitimate fear of Hicks.
19. The trial court initially discussed the Castle Doctrine relative to victim Hicks and noted that there was a question of whether Hicks had a right to be in the apartment or not.
20. When the jury was charged, the court's words indicated that decedent was in fact lawfully present as an invitee to the apartment, thus removing his issue from the jury's consideration. Trial counsel did not object to the court's charge.
21. The effect of this on this portion of the charge in essence negated another part of the charge where the judge explained to the jury the presumption that someone who enters unlawfully and by force is acting with intent to commit a crime involving death or serious bodily injury.
22. If Hicks was not an invitee, and entered without permission, defendant's argument would be reinforced. On the other hand, if Hicks had a right to be there, then the presumption given by

the court was inapplicable. Thus, the charge, as given, was at the minimum confusing and contradictory.

23. While the jury was told that defendant's response to an unlawful and forcible entry in using deadly force is reasonable and justified, it appears that as a whole, the instruction was improper as the judge had apparently already decided the invite issue instead of the jury.

24. Defense counsel had the opportunity to significantly impeach Dilley during trial, based on her substance abuse at the time, and contradictory statements, but he failed to do so. His explanation was that he did not wish to alienate Dilley as a witness who could help defendant's side of the case.

25. Dilley in fact testified that she had finally given permission to decedent to enter the premises, thus undercutting counsel's proposed defense, but impeaching evidence was still not offered to demonstrate this was false.

26. Defendant strongly disputed the fact that Dilley ultimately told defendant to let decedent in after Dilley had repeatedly told decedent that he was out of the apartment in the presence and hearing of defendant and had the door locked.

27. There was significant amount of evidence including other witnesses available which counsel could have used to impeach Dilley relative to what she said to the decedent shortly before the incident in question, her state of mind, her ability to remember, and her inconsistent statements.

28. Counsel should have strongly objected to the charge of the court, as it essentially foreclosed a significant portion of the proposed defense, in that the court essentially decided a question that should have been put before the jury.

II. CONCLUSION OF LAW

1. While counsel's initial choice of strategy was reasonable, he failed to fully develop that strategy, challenge adverse witnesses and to make appropriate choices on objections to a deficient court charge. This rendered his choice of strategy and his development of it deficient, to the point of no reasonable strategic choice.

2. There was no reason for counsel's omissions or errors.

3. Defendant was prejudiced as a result of counsel's actions.

III. DISCUSSION

In determining a claim of ineffective assistance, counsel is presumed to be effective. Com v. Miller 431 A. 2d 233 (1981). That presumption fails however if all of the following are proven:

(a) that the claims involved are of arguable merit, (b) there was no reasonable basis for counsel's

Hamm, 378 A. 2d 1219 (1975). Further, crimen falsi evidence relating to Dilley was not used but available.

A toxicologist testified during the hearing as to the levels of impairment that would be evident in both Dilley and the decedent. This information could have been used to undercut Dilley's testimony and strengthen the defendant's theory as to who was the initial aggressor. Com. v. Corley, 816 A. 2d 1109 (Pa. Super. 2003). Had the testimony of Dr. Kamerow or another toxicologist been used relative to the variety and quantity of controlled substances found in the blood of both decedent and Dilley, and the effects those substances on those individuals, it certainly would have bolstered the defendant's justification defense.

As noted, the court's charge was defective in part, but in a critical area. In some parallels to the case of Com. v. Hornberger, 74 A. 3d 279 (Pa. Super. 2013), the court decided a critical issue that was up to the jury when he characterized Hicks as an invitee to Dilley's apartment. That was a jury question, but counsel did not object.

The court has determined that defendant suffered prejudice because of counsel's errors and omissions. In order to establish prejudice, a defendant must show a reasonable probability that the outcome of the proceeding would have been different but for counsel's ineffectiveness. Com. v. Rollins, 38 A. 2d 435, 441 (1999). While counsel's errors and omissions constitute multiple grounds for relief, perhaps the most significant was the failure to object to the clearly erroneous jury charge. That error alone, and the failure to object certainly bring into question the outcome of the proceeding. It may well have been different but for counsel's actions and in particular, the failure to object to the charge. But for counsel's errors, the jury could have reasonably been expected to return a verdict for a lower grade of criminal homicide, or to fully exonerate the defendant on the basis of justification.

actions or omission, and (c) that defendant suffered prejudice as a result. Com v. Pierce, 527 A. 2d 973, 975-76(1987); Strickland v. Washington, 466 U. S. 688 (1984). A claim of ineffective assistance fails unless all three elements are proven. Com v. Williams 83 A. 2d 505 (2004).

A review of the record demonstrated defendant's multiple claims of ineffective assistance are in fact of arguable merit. Obviously, defendant's claims fail unless he is able to establish prejudice, Pierce, supra.

In this case, there is no question but that defendant stabbed Hicks, inflicting a fatal injury. There are many questions about how that scenario developed and whether or not Hicks was at that time welcome in Dilley's apartment. There is no doubt, but that Dilley had ordered Hicks out of the apartment earlier in the day in the course of ongoing arguments. What is in serious dispute is whether Dilley agreed to let Hicks in after he was beating on the door and making a scene about not getting in. She could have been impeached both as to the extent of her memory due to substance abuse, and prior inconsistent statements. Evidence of decedent's drug use at the time as well as Dilley's drug use was available and had been prepared by a toxicologist. For reasons unknown, trial counsel did not explore these important matters, which were critical to the proffered self-defense or justification theory.

In addition, while counsel questioned Dilley and the defendant about prior incidents where decedent abused defendant, there were apparently a number of other incidents of that type which were not presented to the jury. Evidence of decedent's violent character would have been admissible for defendant to demonstrate his reasonable belief that his life is in danger. Com v. Stewart, 394 A. 2d 968 (1978). Dilley's cross examination was deficient in many regards as she could have been impeached to show defects in her ability to observe and remember the incidents in question, particularly in view of the available evidence as to her level of intoxication. Com. v.

A hearing on ineffectiveness must consider all of the evidence before the finder of fact. Here it seems highly likely that the jury's decision was not strongly supported by the record and certainly not by overwhelming evidence. Com. Lesko, 15 A. 3d 345 (2011). The record is replete with matters counsel could have and should have used to capably represent his client and demonstrate justification. An appropriate order follows:

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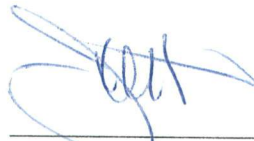
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ORDER

AND NOW, May 12, 2022, in accordance with the foregoing, the court having found that defendant is entitled to relief on his PCRA petition, accordingly defendant's conviction for murder of the 3rd degree is set aside, this matter is remanded for a new trial. Pending further proceedings, defendant's bail will be in the amount of \$150,000 cash or approved surety.

BY THE COURT:



John B. Leete, Senior Judge
Specially Presiding

