

motion under 28 U.S.C. § 2255. The defendant has brought such a motion.

The petitioner claims that his counsel was ineffective in two ways: in not challenging his arrest as unconstitutional; and in failing to object to the admission of a police officer's testimony concerning a statement made by Mr. Coffie.

Whether or not counsel will be considered "ineffective" for habeas purposes is governed by the two-part test articulated by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, the defendant must prove that (1) counsel's representation fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that, but for counsel's error, the result would have been different. Id. At 687-96; see also United States v. Nino, 878 F.3d 101 (3d Cir. 1989).

In evaluating the first prong, a Court must be "highly deferential" to counsel's decision and there is a "strong presumption" that counsel's performance was reasonable. United States v. Kauffman, 109 F.3d 186 (3d Cir. 1997) (citing Strickland). Counsel must have wide latitude in making tactical decisions. Strickland, 466 U.S. at 689. The defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. United States v. Gray, 878 F.2d 702 (3d Cir. 1989).

The conduct of counsel should be evaluated on the facts of the particular case, viewed as of the time of the conduct. Strickland, 466 U.S. at 690. The Third Circuit, quoting Strickland, has cautioned that: the range of reasonable professional judgments is wide and courts must take care to avoid illegitimate second-guessing of counsel's strategic decisions from the superior vantage point of hindsight. Gray, 878 F.2d at 711.

For the second prong, the courts have defined a "reasonable probability" as one which is sufficient to undermine confidence in the outcome. Strickland, 466 U.S. at 694. Put another way, whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt. The effect of counsel's inadequate performance must be evaluated in light of the totality of the evidence at trial.

The Court concludes that defense counsel was not ineffective in failing to file a motion to suppress the gun because such a motion is without merit and would have been rejected. The defendant does not dispute the facts concerning the conduct of the police so the Court concludes that there is no need for an evidentiary hearing on this issue.

Philadelphia police arrested Mr. Coffie on December 29, 2000, at approximately 7:30 P.M. after a foot chase. The

defendant had been the passenger in a car which the police identified as stolen because its license plate was on their hot sheet. When the officers stopped the car, one officer approached the driver's side. Mr. Coffie came out of the passenger's side of the car and began running down the street. At nearly the same time, the driver drove the car into the officer, drove onto a sidewalk and fled, driving down a side street. The officer's partner ran after Mr. Coffie, who continued to run away, and the pursuing officer yelled "Stop! Police!" Another officer joined in chasing Mr. Coffie. As Mr. Coffie ran, he cut around a car which was parked on the sidewalk. The police testified that as he did so, a bright silver pistol fell out of his right coat pocket to the ground. There was no one else in the immediate area. One police officer remained to guard the pistol and the other officers continued chasing Mr. Coffie. They caught him nearby on the sidewalk of Cambria Street, near 7th Street in Philadelphia.

When Mr. Coffie was seated in a patrol car in custody, the officer who had been knocked over by the driver of the stolen car came up to Mr. Coffie. Mr. Coffie said to the officer: "I'm sorry Miss, I didn't know he was going to hit you." The officer asked Mr. Coffie who he was, meaning the person who was driving the car, and Mr. Coffie said, "His name's John. He's a hack. He

works at Germantown and Erie and Germantown and Lehigh. I can get you his number." 2/28/02 Transcript at p. 40.

1. The Stop/Arrest

The police had reasonable suspicion to stop the car in which the defendant was a passenger. The car had been reported stolen by persons who were armed and dangerous. See Terry v. Ohio, 392 U.S. 1 (1968). When the officers stopped the car, Mr. Coffie ran from the car. The police officer's chasing of Mr. Coffie was not a seizure. See Illinois v. Wardlow, 528 U.S. 119 (2000).

As the officers chased Mr. Coffie, they saw a firearm fall from his person onto the street. It was only then that the defendant was seized. At this time, there was probable cause to arrest him for possession of the firearm.

2. The Statement

Nor was counsel ineffective in failing to object to the post-arrest statement by Mr. Coffie. The defendant argues that the statement was hearsay and inadmissible. The statement was not hearsay. It was an admission by a party opponent. The Court has also considered whether there was a Miranda violation. The Court will assume for purposes of this decision that Mr. Coffie had not been given his Miranda rights before he made the

statement. The first part of the statement does not present a Miranda problem because it was spontaneous. Although the second half of the statement may have been a violation of Miranda, it was inconsequential. It added nothing to the weight of the evidence. It was the first part of the statement that corroborated the officers' testimony that Mr. Coffie had been in the car. In addition, Mr. Coffie's counsel cross-examined the officer about the statement. By not objecting to the statement that the driver was a hack and that Mr. Coffie had the driver's number, counsel may have wanted to provide evidence from which the jury could infer that Mr. Coffie was not connected to the driver but was merely a passenger in an unlicensed and unmarked taxi.

In any event, there is not a reasonable probability that the result would have been different had counsel moved to suppress the evidence and/or objected to the statement.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
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KEN COFFIE : NO. 01-663-01

ORDER

AND NOW, this 14th day of July, 2005, upon consideration of petitioner's motion under 28 U.S. C. § 2255 (Docket No. 53) and the government's opposition thereto, IT IS HEREBY ORDERED that said motion is DENIED. IT IS FURTHER ORDERED that a certificate of appealability is denied because the petitioner has not made a substantial showing of the denial of a constitutional right.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.