

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL McKINLEY MUNDY,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 00-953-GMS
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, Michael McKinley Mundy was convicted of assault and possession of a deadly weapon during the commission of a felony. Mundy was sentenced to three years in prison, and is incarcerated at the Delaware Correctional Center in Smyrna, Delaware. He has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the court concludes that Mundy's claims do not provide a basis for federal habeas relief, and will deny the petition.

I. BACKGROUND

Michael Mundy and Herbert Folks lived together in a van parked behind a residence in Wilmington. On November 12, 1996, after an evening of drinking, the two became involved in an altercation over a blanket. At some point, Mundy struck Folks with a metal pipe, then threw the pipe and hit Folks in the head. When police officers arrived, they found Folks bleeding and lying still on the ground with Mundy standing over him. Folks was hospitalized and treated for a

broken nose, jaw, and facial bones. He also lost the vision in one eye.

Based on these events, a grand jury in the Delaware Superior Court charged Mundy with assault in the first degree and possession of a deadly weapon during the commission of a felony. At trial, Mundy testified that Folks initiated the attack by hitting him in the head with his fist and in the face with a stick. Mundy also testified that he struck Folks with a pipe, but argued that he did so in self defense. On April 9, 1999, the jury found Mundy guilty as charged. The Superior Court sentenced Mundy on June 18, 1999, to five years imprisonment to be suspended after three years for decreasing levels of supervision. On direct appeal, the Delaware Supreme Court affirmed. *Mundy v. State*, No. 320, 1999, 2000 WL 975111 (Del. June 9, 2000).

In July 2000, Mundy filed his first motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court found each of Mundy's claims either procedurally barred or without merit, and denied the motion. *State v. Mundy*, Crim. A. No. IN96-12-0586R2, 2001 WL 789666 (Del. Super. Ct. Apr. 12, 2001). Mundy then filed a second Rule 61 motion, which the Superior Court summarily denied on May 4, 2001. In a consolidated appeal, the Delaware Supreme Court dismissed as untimely Mundy's appeal from the denial of his first Rule 61 motion, and affirmed the summary denial of his second. *Mundy v. State*, Nos. 240, 2001, 253, 2001, 2001 WL 1636516 (Del. Dec. 10, 2001).

Mundy's petition for federal habeas relief is now before the court.

II. STANDARDS OF REVIEW

A federal court may consider a habeas petition filed by a state prisoner only "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United

States.” 28 U.S.C. § 2254(a). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”):

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

A federal court may issue a writ of habeas corpus under § 2254(d)(1) only if it finds that the state court decision on the merits of a claim either (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law.

Williams v. Taylor, 529 U.S. 362, 412 (2000). “A federal court may not grant a writ of habeas corpus merely because it concludes in its independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly.” *Gattis v. Snyder*, 278 F.3d 222, 228 (3d Cir. 2002).

Specifically, a federal court may grant the writ under the “contrary to” clause only “if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts.” *Williams*, 529 U.S. at 412-13. The court “must first identify the applicable Supreme Court precedent and determine whether it resolves the petitioner’s claim.” *Werts v. Vaughn*, 228 F.3d 178, 197 (3d Cir.

2000)(citing *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 888 (3d Cir. 1999)), *cert. denied*, 532 U.S. 980 (2001). In order to satisfy the “contrary to” clause, the petitioner must demonstrate “that Supreme Court precedent **requires** the contrary outcome.” *Matteo*, 171 F.3d at 888 (emphasis added).

If the petitioner fails to satisfy the “contrary to” clause, the court must determine whether the state court decision was based on an unreasonable application of Supreme Court precedent. *Id.* Under the “unreasonable application” clause, the court “may grant the writ if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner’s case.” *Williams*, 529 U.S. at 413. In other words, a federal court should not grant the petition under this clause “unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent.” *Matteo*, 171 F.3d at 890.

Respecting a state court’s determinations of fact, this court must presume that they are correct. 28 U.S.C. § 2254(e)(1). The petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence. *Id.* The presumption of correctness applies to both explicit and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000), *cert. denied*, 531 U.S. 1084 (2001). When the state court did not specifically articulate its factual findings but denied a claim on the merits, federal courts on habeas review generally may “properly assume that the state trier of fact . . . found the facts against the petitioner.” *Weeks v. Snyder*, 219 F.3d 245, 258 (3d Cir.), *cert. denied*, 531 U.S. 1003 (2000).

III. DISCUSSION

In his petition, Mundy raises the following claims for relief:

- (1) The arresting officer failed to advise him of his *Miranda* rights.
- (2) The prosecution failed to disclose favorable evidence.
- (3) The warrantless search and seizure of the metal pipe was in violation of his Fourth Amendment rights.

(D.I. 2.) In their answer, the respondents acknowledge that Mundy exhausted his first two claims by raising them on direct appeal. As to the third claim, the respondents expressly waive the exhaustion requirement under 28 U.S.C. § 2254(b)(3). (D.I. 12 at 6.) The court addresses each of Mundy's claims in turn.

A. Failure to Advise of *Miranda* Rights

Mundy's first claim is that the arresting officer failed to advise him of his *Miranda* rights. Although Mundy has failed to provide a factual basis for this claim, the record indicates that Mundy made an incriminating statement at the crime scene shortly after the arresting officer arrived. According to the arresting officer, when he arrived at the scene, he asked Mundy what happened. Mundy answered that he beat Folks with a metal pipe. The respondents acknowledge that this claim is exhausted, but contend that it does not provide a basis for federal habeas relief.

A review of the record confirms that Mundy raised this claim on direct appeal. With little elaboration, the Delaware Supreme Court concluded that the Superior Court did not commit plain error in admitting Mundy's statement to the officer. *Mundy*, 2000 WL 975111 at **3. On federal habeas review, this court determines only whether the Delaware Supreme Court's decision either was contrary to, or involved an unreasonable application of, clearly established federal law. 28 U.S.C. § 2254(d)(1); *Williams*, 529 U.S. at 412. The court presumes that the state court's findings of fact are correct unless rebutted by clear and convincing evidence. 28

U.S.C. § 2254(e)(1).

Although the Delaware Supreme Court's decision on this claim is terse, the court cannot conclude that it is contrary to, or that it involved an unreasonable application of, clearly established federal law. Under *Miranda*, warnings must be administered before a person is subjected to "custodial interrogation," *i.e.*, "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Brosius v. Warden, United States Penitentiary*, 278 F.3d 239, 245-46 (3d Cir. 2002)(quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)).

Plainly, Mundy was not subjected to custodial interrogation for *Miranda* purposes when he told the arresting officer that he beat Folks with a metal pipe. As soon as the arresting officer arrived, he saw Mundy standing over Folks and simply asked what happened. Mundy answered that he hit Folks with a metal pipe. Mundy had neither been arrested nor otherwise taken into custody. Because Mundy was not subjected to custodial interrogation, *Miranda* warnings were not required.

Even if *Miranda* warnings were required, the failure to suppress Mundy's statement to the arresting officer was harmless. On federal habeas review, an error is considered harmless if it did not have a substantial and injurious effect or influence on the verdict. *See Brosius*, 278 F.3d at 248 (citing *Hassine v. Zimmerman*, 160 F.3d 941, 949 (3d Cir. 1998)). In arguing self defense at trial, Mundy himself testified that he hit Folks with the metal pipe. In light of Mundy's admission at trial, the court concludes that the failure to suppress his statement to the arresting officer had no substantial and injurious effect on the verdict. Thus, even if *Miranda* warnings were required, this claim cannot provide a basis for federal habeas relief.

In sum, the court finds that Mundy's *Miranda* claim lacks merit. Accordingly, the court will deny his request for federal habeas relief as to this claim.

B. Failure to Disclose Favorable Evidence

Mundy next alleges that the prosecutors failed to produce evidence favorable to him in a timely manner. Again, Mundy's allegations of fact are sparse, but it appears that he told the arresting officer at the crime scene that Folks struck him in the face with a stick. According to Mundy, the arresting officer failed to testify that Mundy made such a statement. Mundy further alleges that the prosecutors did not disclose until the first day of trial that they had the bloody stick. In addition, Mundy alleges that the arresting officer testified that he was dispatched to an assault in progress, when the person who telephoned the police reported that Folks was drunk, not that an assault was in progress. Mundy argues that the audiotape of the telephone call to the police should have been admitted to impeach the arresting officer's testimony. The respondents acknowledge that Mundy exhausted this claim by presenting it on direct appeal, and again argue that this claim lacks merit.

Because Mundy refers in his petition to "Brady" and "due process," the court construes this as a claim brought pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). A review of the record confirms that Mundy presented this claim on direct appeal. The Delaware Supreme Court rejected this claim because Mundy "failed to demonstrate any prejudice." *Mundy*, 2000 WL 975111 at **2. This court's review is again limited to determining whether the Delaware Supreme Court's decision is contrary to, or involved an unreasonable application of, clearly established federal law.

Under *Brady*, "the suppression by the prosecution of evidence favorable to an accused

upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 87; *Riley v. Taylor*, 277 F.3d 261, 300-01 (3d Cir. 2001)(en banc). To state a valid *Brady* claim, a petitioner must show that the evidence was suppressed, favorable, and material to the defense. *United States v. Perdomo*, 929 F.2d 967, 970 (3d Cir.1991). Evidence is considered material for *Brady* purposes if there is a reasonable probability that the outcome would have been different had the evidence been disclosed to the defense. *United States v. Bagley*, 473 U.S. 667, 682 (1985); *Riley*, 277 F.3d at 301. Evidence that may be used to impeach may qualify as *Brady* material. *Riley*, 277 F.3d at 301.

Assessed under these standards, the court agrees with the respondents that Mundy’s *Brady* claim lacks merit. First, Mundy himself testified that he told the arresting officer that Folks hit him in the face with a stick. The court cannot conclude that the verdict might have been different if the arresting officer had repeated Mundy’s statement. Respecting Mundy’s allegation that the prosecution did not disclose the existence of the stick until the day of trial, Mundy has failed completely to explain how his defense might have been different if the prosecution had disclosed this evidence sooner. Finally, as to the arresting officer’s testimony that he was dispatched to an assault in progress, the court cannot imagine, nor has Mundy explained, how the admission of the tape of the telephone call could have affected the outcome of the trial. To the extent that Mundy asserts that it could have been used to impeach the arresting officer’s testimony, the court finds this argument specious, at best.

In sum, the court finds that Mundy’s *Brady* claim is without merit. Accordingly, the court will deny his request for federal habeas relief as to this claim.

C. Fourth Amendment Claim

Mundy's final claim is that the warrantless search and seizure of the metal pipe violated the Fourth Amendment. Although Mundy offers no facts supporting this claim, the Superior Court stated that the police found the metal pipe lying on the ground near the scene after Mundy himself pointed it out to them. *Mundy*, 2001 WL 789666 at *8. Mundy offers no facts to undermine either the Superior Court's findings or its conclusion that no Fourth Amendment violation occurred.

Even if Mundy could offer facts suggesting that the Superior Court erred, his Fourth Amendment claim is not cognizable in this proceeding. Under *Stone v. Powell*, 428 U.S. 465 (1976), a federal court may not grant habeas relief to a state prisoner on the ground that evidence obtained in an unconstitutional search or seizure was introduced at trial, if the state provided an opportunity for full and fair litigation of the Fourth Amendment claim. *Deputy v. Taylor*, 19 F.3d 1485, 1491 (3d Cir. 1994)(quoting *Stone*, 428 U.S. at 494). "Even otherwise potentially meritorious Fourth Amendment claims are barred on habeas when the petitioner had a full and fair opportunity to litigate them." *Deputy*, 19 F.3d at 1491.

In Delaware, a criminal defendant may file a pretrial motion to suppress evidence pursuant to Rule 41 of the Superior Court Rules of Criminal Procedure. *See* Super. Ct. R. Crim. P. 41(f); *State v. Ashley*, 1998 WL 110140 (Del. Super. Ct. Jan. 26, 1998). Although Mundy did not file a pretrial motion to suppress, nothing in the record suggests, nor does Mundy allege, that he was prevented from doing so. Moreover, the Superior Court considered Mundy's Fourth Amendment claim on the merits in his first postconviction proceeding, and concluded that "there was no violation of [his] Fourth Amendment rights." *Mundy* 2001 WL 789666 at *8. The

Superior Court’s opinion amply demonstrates that Mundy was given a full and fair opportunity to litigate his Fourth Amendment claim in the Superior Court.

In short, the court finds that Mundy was afforded a full and fair opportunity to litigate his Fourth Amendment claim in the state courts. Accordingly, federal habeas review of his Fourth Amendment claim is foreclosed.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. *See* Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires the petitioner to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the court has concluded that Mundy’s claims do not provide a basis for federal habeas relief. The court is persuaded that reasonable jurists would not find its conclusions debatable or wrong. Mundy has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Michael McKinley Mundy's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2) is DENIED.
2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated: June 14, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE