

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 State of South Carolina )  
 )  
 vs. )  
 )  
 Lakeithon M. Hall, )  
 Defendant. )

IN THE COURT OF GENERAL SESSION

ORDER  
 2001-GS-29-71, 72, 73, 346

**FILED**  
 OFFICE OF CLERK OF COURT  
 FOR LANCASTER COUNTY  
 LANCASTER COUNTY  
 LANCASTER, SC  
 11-12-13  
 [Signature]

This is a motion for a new trial based upon after discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. A hearing was held before me on August 30, 2013. The State was represented by Solicitor Douglas A. Barfield, Jr., who prosecuted the Defendant when he was convicted as set forth below. The Defendant was present with his attorney, Tricia A. Blanchette. The motion is based upon the affidavits of Brandon Cunningham and Calvin Lamar Peay, both of whom were codefendants of the Defendant and who implicated the Defendant in statements to the police when the case was investigated. Both Cunningham and Peay were served by the Defendant with subpoenas to testify at the hearing. Neither appeared. The Defendant moved for a continuance. The State objected. The motion was denied. The Defendant moved to be allowed to argue the matter based upon the affidavits of Cunningham and Peay. The State objected. The objection was overruled, and the hearing proceeded.

FINDINGS OF FACT

On November 20, 2000, at approximately 4:20 p. m., Thomas Jury and his wife Sheila Jury entered the parking lot of Pardue Street Apartments in the City of Lancaster in their automobile. Thomas was driving, and Sheila was the front seat passenger. Sheila was approximately eight months pregnant with a female child. Thomas gave investigators a written statement in which he said the couple had been to the bank and to McDonald's but determined

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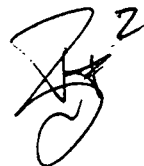
they needed to return to the bank to conduct other business. Thomas drove into Pardue Street Apartments as a short cut. Thomas had his window rolled partially down. He had an encounter with three males, who were standing in the roadway. One of the males reached his hand inside his jacket and demanded money from Thomas. When Thomas said he had no money, that male produced a handgun from under his jacket and fired one shot through Thomas' open window. Thomas was not struck, but Sheila was as she sat in the front passenger seat. Thomas drove out of the apartment complex. Thomas subsequently picked the Defendant out of a photographic lineup as the person who shot into the automobile.

Sheila died at Springs Memorial Hospital as the result of a single gunshot wound to her left shoulder which penetrated her left lung and her heart. The baby was delivered by caesarean section and was transferred to Carolinas Medical Center, where she died two days later of hypoxic encephalopathy as the result of the death of her mother from the gunshot wound.

The Lancaster Police Department and the South Carolina Law Enforcement Division investigated the case. Six people, including the Defendant, were charged in the case. The Defendant was charged with two counts of Murder, Attempted Armed Robbery, and Possession of a Firearm during the Commission of a Violent Crime. Cunningham was charged with one count of Murder, Attempted Armed Robbery, and Misprision of a Felony. Peay was charged with one count of Murder, Attempted Armed Robbery, Possession of a Firearm during the Commission of a Violent Crime, Possession of a Pistol by a Person under 21 Years of Age, and Accessory after the Fact of Murder.

The Defendant did not give a statement implicating himself in these crimes.

Cunningham gave investigators four statements. The first statement was given shortly after the crime occurred. In that statement Cunningham disclaimed any knowledge of the



shooting of Sheila Jury. The second statement was given later that evening. In the second statement Cunningham said Sheila got out of the automobile but Thomas did not. Cunningham said he struck Thomas with his hand as Thomas sat in the automobile. Cunningham said as Thomas was driving away shots were fired. Cunningham denied knowing who fired the shots. Cunningham's third statement was given two days later. In it Cunningham said the Defendant shot at Thomas but missed and hit Sheila. Cunningham's fourth statement was given the same date and just after the third. In this final statement, Cunningham told investigators he was standing on the street with the Defendant, Peay, Montinyo Stevens, and Heywood Watts. The Jurys drove by, turned around, backed up, and parked. Cunningham said he approached the automobile, and Thomas inquired of him about buying drugs. Cunningham returned to his group and related to them his conversation with Thomas. The Defendant approached the driver's side of the automobile and leaned in. Cunningham heard a single gunshot as the Defendant leaned into the automobile.

Peay also gave investigators four statements. The first statement was given shortly after the crime occurred. In that statement Peay disclaimed any knowledge of the shooting of Sheila Jury. The second statement was given later the night of the shooting. It was recorded. Peay told investigators he was with the Defendant, Cunningham, Watts, and Delrico Stevens in the street. When Thomas first drove into the complex, the Defendant told the others, "I might try to get them." Thomas drove back by the group and stopped. The Defendant told the group Thomas was looking for drugs. The Defendant approached the driver's side window of the automobile and pulled a gun. As Thomas attempted to drive away, the Defendant shot one time. All in the group ran. Peay ran to his home in the complex followed by the Defendant. The Defendant hid a gun under the mattress of Peay's bed in Peay's bedroom. Peay's third statement was given the

A handwritten signature or set of initials, possibly "J. J.", written in black ink in the bottom right corner of the page.

next day and was also recorded. Peay told investigators the gun used to shoot Sheila Jury was his and that he had found it on a path in the woods near his home a day before the shooting. Peay said when Thomas drove into the complex, the Defendant stopped him. The defendant told the group Thomas wanted drugs and said he was going to "try to get them." The Defendant asked for and received the gun from Peay and approached the automobile. The Defendant attempted to rob Thomas and pointed and fired the gun into the automobile as Thomas attempted to drive away. Peay ran to his home. The Defendant followed and busted in the door to Peay's home. The Defendant gave the gun back to Peay, who put it under his mattress. Peay sent investigators a note and was questioned again the following day. In a written statement Peay changed his story about the gun and told investigators the Defendant got the gun from Montinyo Stevens.

A Smith & Wesson .38 caliber revolver was found by investigators under Peay's mattress as he described. A fired bullet was recovered from the body of Sheila Jury. A firearms examiner with SLED test fired the revolver and determined it fired the bullet recovered from Sheila's body.

On December 9, 2002, the Defendant appeared before Judge Paul E. Short, Jr., and entered pleas of guilt to two counts of Murder, Attempted Armed Robbery, and Possession of a Firearm during the Commission of a Violent Crime. He received sentences of 38 years on the Murder charges, 20 years on the Attempted Armed Robbery charge, and five years on the Possession of a Firearm during the Commission of a Violent Crime charge. All sentences were concurrent. The Defendant was represented by Public Defender Ross Burton.

On December 9, 2002, Cunningham pled guilty to Misprision of a Felony and was sentenced to five years suspended upon the service of two years followed by two years



probation. The indictments charging Cunningham with Murder and Attempted Armed Robbery were dismissed.

On December 6, 2002, Peay pled guilty to Accessory before the Fact of Attempted Armed Robbery in lieu of Attempted Armed Robbery and Possession of a Pistol by a Person under 21 Years of Age. He received concurrent sentences of eight and five years, respectively. The indictments charging Peay with Murder, Possession of a Firearm during the Commission of a Violent Crime, and Accessory after the Fact of Murder were dismissed.

This motion is based upon the affidavits of Cunningham and Peay. Cunningham provided an affidavit dated January 28, 2013. In the affidavit, Cunningham admitted being present when Sheila Jury was shot and stated, in part, "I am giving this statement because I lied about Lakeithon Hall's involvement. Mr. Hall was not even out there when the crime took place...the truth of the matter is Montinyo Stevens is the one who attempted to rob Mr. & Mrs. Jury and this led to Mrs. Jury's death."

Montinyo Stevens is now deceased. He died after Sheila Jury was shot and killed but before Cunningham provided the above affidavit.

Peay's affidavit is dated June 11, 2013. In the affidavit Peay also admitted being present when Sheila Jury was shot and stated, in part, "I am giving this statement because I lied about Lakeithon Hall's involvement in this crime. Mr. Hall was not out there when the crime took place."

#### CONCLUSIONS OF LAW

Pursuant to Rule 29(b), the Defendant must make a motion for a new trial based on after discovered evidence within one year after the date of the actual discovery of the evidence. An affidavit of the Defendant indicates he discovered the Cunningham information on January 27,



2013, and the Peay information on July 23, 2012. The Cunningham affidavit was obtained on January 28, 2013, and the Peay affidavit was obtained on June 11, 2013. The motion was filed on July 19, 2013. The Defendant filed the motion within one year after the discovery of the evidence.

In order to prevail on a motion for a new trial based upon after discovered evidence, the Defendant must show the evidence (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching. **State v. Spann**, 334 S. C. 618, 513 S. E. 2d 98 (S. C. 1999).

The affidavits of Cunningham and Peay are not "after discovered" evidence. "[A] court must exercise great caution in considering evidence to be 'newly discovered' when it existed all along and was unavailable only because a co-defendant, since convicted, had availed himself of his privilege not to testify." **United States v. Jacobs**, 475 F. 2d 270, 286 n. 33 (2d Cir. 1973), quoted in **United States v. Flynn**, 791 F. Supp. 133, 136 (M. D. N. C. 1992). The proffered evidence of Cunningham and Peay is merely newly available and not newly discovered. *Id.*

The information contained in the affidavits of Cunningham and Peay could have easily been discovered in the exercise of due diligence prior to trial. Cunningham and Peay were implicated in the crime on the day it occurred. Both admitted being present when the crime occurred and had knowledge of the crime and its perpetrators. If the Defendant did not commit the crime, Cunningham and Peay knew as much from the outset. Both gave multiple statements beginning the day the crime occurred. The statements contained glaring inconsistencies. The Defendant was on notice from the time he received the many statements of Cunningham and

Peay that if the Defendant was not a participant Cunningham and Peay knew he was not a participant and that the credibility of these two witnesses could be challenged.

The affidavits of Cunningham and Peay are merely impeachment evidence. In their statements to investigators, Cunningham and Peay clearly implicated the Defendant as Sheila Jury's shooter. In their affidavits, Cunningham and Peay recanted their prior statements that the Defendant was the shooter. The affidavits merely impeach the veracity of Cunningham's and Peay's prior statements.

The affidavits of Cunningham and Peay are not such as would probably change the result if the Defendant were granted a new trial. This court has a gatekeeping role in making a credibility assessment of the affidavits of Cunningham and Peay. **State v. Mercer**, 381 S. C. 149 (SC 2009). Cunningham's and Peay's statements are riddled with inconsistencies. Their stories changed in substantial ways from statement to statement. Their affidavits follow this pattern and offer yet a fifth version from each about the events leading to the shooting death of Sheila Jury. Their affidavits come over a decade after the Defendant pled guilty to these crimes and after both Cunningham and Peay were convicted for their roles in these events and have nothing to lose by again changing their stories. Cunningham now even attempts to attribute the death of Sheila Jury to Montinyo Stevens, who is deceased. The affidavits of Cunningham and Peay are also contrary to the information provided to investigators by Thomas Jury, who was face to face with the Defendant and picked him out of a photographic lineup as the shooter. Finally, both Cunningham and Peay failed to appear to testify under oath about the substance of their affidavits despite having been served with subpoenas. I conclude the affidavits of Cunningham and Peay are not credible.



Although the Defendant did not confess to investigators that he committed these crimes, he did admit doing so when he pled guilty on December 9, 2002. His plea was a guilty plea, not a nolo contendere plea or a plea pursuant to **North Carolina v. Alford**. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably foreclosed. **Blackledge v. Allison**, 431 U. S. 63, 97 S. Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. **Crawford v. U. S.**, 519 F. 2d 317 (4<sup>th</sup> Cir. 1975); **Edmonds v. Lewis**, 546 F. 2d 566 (4<sup>th</sup> Cir. 1976).

The Defendant entered his guilty plea on December 6, 2002, and was sentenced on December 9, 2002. He was represented by competent counsel. He was sworn to tell the truth. Judge Short meticulously ensured that the Defendant understood his constitutional rights and that by pleading guilty he waived those rights. Judge Short reviewed each indictment with the Defendant and asked the Defendant, as to each indictment, whether he committed the offenses, to which the Defendant replied affirmatively. The solicitor summarized the facts of the case including the statements of Peay implicating the Defendant. Judge Short asked the Defendant whether he agreed with the statement of the facts and he said he did, that is what happened, and that is what he did. Thomas Jury was present. Thomas Jury was also present at the sentencing hearing. The Defendant apologized to the court for what he had done. He also apologized directly to Thomas Jury and asked for Mr. Jury's forgiveness.

I conclude as a matter of law that the Defendant has failed to meet his burden in establishing that he is entitled to a new trial based on after discovered evidence.

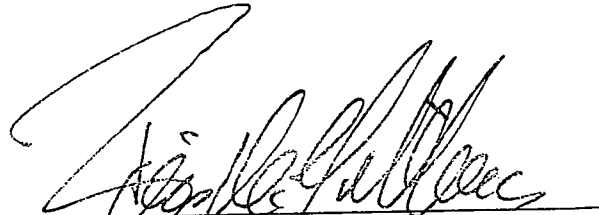


IT IS THEREFORE ORDERED that the motion is denied.

IT IS SO ORDERED!

November 12, 2013

Lancaster, South Carolina



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Brian M. Gibbons, Judge  
Court of General Sessions for the  
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

IN THE COURT OF GENERAL SESSIONS

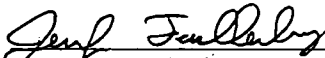
State )  
 )  
vs. )  
 )  
Lakeithon M. Hall )  
Defendant. )

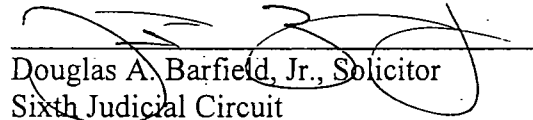
AFFIDAVIT OF MAILING  
2001-GS-29-71, 72, 73, 346

PERSONALLY APPEARED BEFORE ME Douglas A. Barfield, Jr., who, being duly sworn, stated that he is the Solicitor for the Sixth Judicial Circuit in the above mentioned action and that on the 2nd day of December, 2013, he deposited in the United States Mail with proper postage affixed thereto a copy of the Order dated November 12, 2013, addressed as follows:

Tricia A. Blanchette, Esquire  
P. O. Box 12725  
Columbia, South Carolina 29211

SWORN to and subscribed before me  
this 2nd day of December, 2013.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires July 13, 2022

  
\_\_\_\_\_  
Douglas A. Barfield, Jr., Solicitor  
Sixth Judicial Circuit  
P. O. Box 607  
Lancaster, South Carolina 29721  
(803)416-9367