

FILED

STATE OF SOUTH CAROLINA)
2015 MAR 23 AM 10: 22)
COUNTY OF CHARLESTON)
JULIE J. STRONG)
STATE OF SOUTH CAROLINA)
CLERK OF COURT)
BY *[Signature]*)

IN GENERAL SESSIONS COURT
FOR THE NINTH JUDICIAL CIRCUIT

Warrant No.: M998134, M998135,
M998136, M998149

v.

DENZEL HEYWARD,

Defendant,

) ORDER DENYING DEFENDANTS'
) MOTION FOR NEW TRIAL DUE
) TO IMPERMISSABLE BRUTON
) TESTIMONY; MOTION FOR NEW
) TRIAL BASED ON AFTER
) DISCOVERED EVIDENCE and
) MOTION TO RECONSIDER
) SENTENCE.

This matter came before this Court on Defendant Denzel Heywards' Motion for New Trial Due to Impermissible Bruton Testimony; Motion for New Trial Based On After Discovered Evidence; and Motion to Reconsider Sentence Imposed.

STATEMENT OF THE FACTS

Defendant Denzel Heyward ("Heyward") and Defendant Deshawn Simmons ("Simmons") were tried as co-defendants during the week of November 10, 2014, for Murder, Attempted Murder, Armed Robbery, and Possession of a Firearm During a Crime of Violence. Both Defendants were found guilty of Attempted Murder, Armed Robbery, and Possession of a Firearm During a Crime of Violence and sentenced to 65 years of incarceration.

During the joint trial, the State introduced recorded jail tapes of Simmons where he is heard talking to a third-party while referring to a person by the nickname "Fat" and often using the word "snitch" or the act of "snitching." Without objection, the jail tapes

were admitted into evidence and referenced in the State's closing argument.

RECEIVED

MAY 04 2015

SC Court of Appeals

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DISCUSSION

1. Heyward moves for new trial based on impermissible Bruton testimony. "The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983) (citation omitted).

Here, Heyward did not object to the introduction of recorded jail tapes, nor the State's closing argument where the word "snitch[ing]" was referenced. Had Heyward objected to such testimony, this Court would have entertained the idea of redacting certain statements from the recording and possibly provided a limited jury instruction. However, without objection those issues were not preserved for post-trial review. Therefore, the motion for new trial due to impermissible Bruton testimony is denied.

2. Heyward moves for new trial based on after-discovered evidence. Motions for a new trial based on after-discovered evidence are addressed to the sound discretion of the trial judge. State v. Clamp, 225 S.C. 89, 80 S.E.2d 918 (1954); State v. Wells, et al., 249 S.C. 249, 153 S.E.2d 904 (1967). "The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered; and his judgment will not be disturbed except for error of law or abuse of discretion." State v. Corn, 224 S.C. 74, 77 S.E.2d 354 (1953).

A motion for a new trial based on after-discovered evidence may be granted if the evidence: (1) would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not

merely cumulative or impeaching.” State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979).

Here, sufficient evidence was presented at trial such that a showing of Heyward and Hemingway’s relationship prior to the incident date would not have changed the result. The presence of such evidence at trial would have merely gone to the possible impeachment of Hemingway. See Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978) (holding that the exclusion of testimony that would be merely cumulative or impeaching does not constitute error). Furthermore, through due diligence and the cooperation of Heyward, such evidence would have been attainable prior to trial. See Id. Therefore, since the after-discovered evidence merely references possible impeachment issues and was discoverable before trial, this Court finds such evidence insufficient to require granting of such relief. State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959).

I have reviewed the evidence presented at trial and the arguments raised by Heyward in his motion and supporting memoranda, and deny the motion for new trial based on after-discovered evidence.

3. Heyward moves for reconsideration of the sentence imposed. The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984).



I have reviewed the evidence presented at trial and the arguments raised by Heyward in his motion and supporting memoranda, and deny the motion to reconsider sentence imposed.

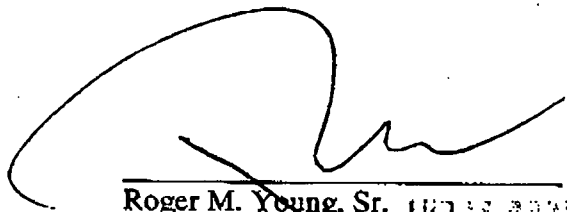
CONCLUSION

IT IS THEREFORE ORDERED:

1. That Defendant's Motion for New Trial Due to Impermissible Bruton Evidence is **DENIED**, and
2. The Defendant's Motion for New Trial Based on After Discovered Evidence is **DENIED**, and
3. The Defendant's Motion to Reconsider Sentence Imposed is **DENIED**.

AND IT IS SO ORDERED.

March 17, 2015
Charleston, South Carolina



Roger M. Young, Sr. JUDGE ROGER YOUNG
Circuit Court Judge CIRCUIT COURT
OF SC #2134

FILED

2015 MAR 23 AM 10:22

JULIE J. ARMSTRONG
CLERK OF COURT

BY

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF CS & EC
By Amman
DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2014GS1000767

Denzel Marquise Heyward

A/W#: M998149

AKA: _____
Race: BLACK Sex: M Age: 22

Date of Offense: 5/16/2012

DOB: _____ SS# _____

S.C. Code § : 16-23-0490

Address: _____

CDR Code #: 0549

City, State, Zip: North Charleston, SC 29405

DL#: 101515762 SID#: SC02046407

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) § 17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ n919
Kneeca Shealy, Jennifer SC Bar# _____ Defendant

Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 10 765
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
*Fine:
§ 14-1-206 (Assessments 107.5%) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County: (if paid in installments) \$ 3.40
TOTAL \$ 133.40

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Amara
Court Reporter: Amara
SCCA/217 (03/2011)
ATTEST: A TRIEBORN
JULIE L ARMSTRONG (SEAL)
By: Amara DEPUTY CLERK
Date: 11/15/14

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
Denzel Marquise Heyward)
 AKA: _____)
 Race: BLACK Sex: M Age: 22)
 DOB: SS#: _____)
 Address: _____)
 City, State, Zip: North Charleston, SC 29405)
 DL#: 101515762 SID#: SC02046407)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1000765
 A/W#: M998136
 Date of Offense: 5/16/2012
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*GDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar#
Kneece Shvaly, Jennifer 7919

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 10763
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

| Recipient: | | \$ |
|----------------------------------------|---------|-----------|
| *Fine: | | \$ |
| § 14-1-206 (Assessments 107.5 %) | | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| § 56-5-2995 (DUI Assessment) | \$12 | \$ |
| § 56-1-286 (DUI Breath Test) | \$25 | \$ |
| Proviso 47.9 (Public Def/Prob) | \$500 | \$ |
| § 14-1-212 (Law Enforce. Funding) | \$25 | \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$150 | \$ |
| § 50-21-114 (BUI Breath Test Fee) | \$50 | \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| Proviso 90.5 (SCJA Surcharge) | \$5 | \$ 5.00 |
| 3% to County (if paid in installments) | | \$ 3.90 |
| TOTAL | | \$ 133.90 |

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk _____
 Court Reporter: Amanda Henderson
 SCCA/217 (03/2011)
 ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK OF S.C. J.S.C.
 By amandah
 DEPUTY CLERK

Presiding Judge _____
 Judge Code: 213
 Sentence Date: 5/17/14
11/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2014GS1000763

Denzel Marquise Heyward

A/W#: M998135

AKA:

Date of Offense: 5/16/2012

Race: BLACK Sex: M Age: 22

S.C. Code §: 16-03-0029

DOB: SS#

CDR Code #: 3410

Address:

City, State, Zip: North Charleston, SC 29405

SENTENCE SHEET

DL#: 101515762 SID#: SC02046407

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kneece Shealy, Jennifer SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

Recipient:

| *Fine: | | \$ |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %) | | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| § 56-5-2995 (DUI Assessment) | \$12 | \$ |
| § 56-1-286 (DUI Breath Test) | \$25 | \$ |
| Proviso 47.9 (Public Def/Prob) | \$500 | \$ |
| § 14-1-212 (Law-Enforce-Funding) | \$25 | \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$150 | \$ |
| § 50-21-114 (BUI Breath Test Fee) | \$50 | \$ |
| § 56-5-2942(F) (Vehicle Assessment) | \$40/ca | \$ |
| Proviso 90.5 (SCCA Surcharge) | \$5 | \$ 5.00 |
| 3% to County (if paid in installments) | | \$ 3.90 |
| TOTAL | | \$ 133.90 |

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47:12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda Halverson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2134

Sentence Date: 5/10/14

ATTEST: A TRUE COPY
JULIE L ARMSTRONG (SEAL)
CLERK OF COURT