

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No: 2013-002537

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JUL 07 2015

SC Court of Appeals

THE STATE

RESPONDENT,

v.

MARION BENJAMIN POWELL

APPELLANT.

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

TRIAL TRANSCRIPT PAGE 1821
TRIAL TRANSCRIPT PAGE 1832

1 from Mr. Sheldon that they're not proceeding on the
2 possession of a weapon by a convicted felon, and he is not
3 going to read that charge to the jury, and he is not going
4 to subsequently try to prove up a conviction for a felony
5 as an element of that charge. And that's my
6 understanding.

7 MR. SHELDON: That's correct. The way that that - I
8 saw that indictment this morning. I should have checked
9 it earlier, much prior to this matter. I think it only
10 provides notice for unlawful possession of a handgun, and
11 not unlawful possession of a person during the commission
12 of a violent offense, and that would be what - because
13 that would be what he is convicted of. It would be ABWIK,
14 and not the new violent crime statute, the 16-23-500. And
15 under that, even if it was that statute, I don't think
16 that's a principle matter. I don't think that's an
17 element for the jury to hear. So, I agree with Mr. Lee.
18 I'm not going to go into his assault with intent to kill
19 conviction.

20 THE COURT: All right.

21 MR. LEE: And if I could just look at the photo
22 lineups that were introduced yesterday, and then I'll be
23 ready to go.

24 MR. SHELDON: Finally, Your Honor, pursuant to the
25 *Neil v. Biggers* motion yesterday, if I may make my

1 memorandum -- I understand that you reviewed my
2 memorandum.

3 THE COURT: I did.

4 MR. SHELDON: And took the facts into consideration.

5 THE COURT: I did take the facts into consideration
6 that were stated that were not opposed in that --

7 MR. SHELDON: They're not opposed in my memorandum.
8 I'd like to make that a court's exhibit. Thank you.

9 THE COURT: We actually do have another issue, of
10 course, nobody knew about. The Bailiff just handed me a
11 note, apparently, from Juror 278, Richard Sherman.

12 And the handwritten note says:


13 *I have owned two shooting ranges where*
14 *I was involved with two sheriff departments*
15 *and the National Sheriff's Association. I*
16 *was involved with concealed carry and self*
17 *defense courses.*

18 I take it that's a matter of disclosure is all. All
19 right.

20 MR. LEE: Judge, I would say this. I certainly would
21 have struck him had I known he had such a close
22 relationship with law enforcement. That was one of the
23 questions we specifically asked. And I think him not
24 responding, I would ask that the first alternate be seated
25 and he be excused.

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 
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July 7, 2015

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