

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) INDICTMENT NOS 2001-GS-07171,174,175

2016 AUG 12 PM 3:27

STATE OF SOUTH CAROLINA)
BEAUFORT COUNTY, S.C.)
CLERK OF COURT)

v.)

Shameen Coker)

Defendant.)

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL
PURSUANT TO RULE 29(b)

RECEIVED

AUG 25 2016

SC Court of Appeals

This matter comes before the Court pursuant to the Defendant's Motion for a new trial based upon after-discovered evidence under Rule 29(b) SCRCrimP. After consideration of the case law cited by both parties and of the evidence presented, the Court hereby **DENIES** the Defendant's motion based on the following.

FACTS

On May 19, 2000, James Dillard disappeared from a Citgo gas station in Yemassee, South Carolina. The following day, his vehicle was found submerged at a public boat ramp in Colleton County, South Carolina. His body was found in a wooded area in Beaufort County, South Carolina on May 24, 2000. An autopsy determined that he had been killed by a .38 caliber handgun.

Defendant Shameen Coker was charged with Murder, Kidnapping, and Armed Robbery and proceeded to trial on March 10, 2003. The Co-Defendant in this case, Ajanae Roach, testified at Defendant's trial that he was with the Defendant on the night of the murder and was present when the Defendant forced James Dillard into the woods and shot him multiple times.

On March 12, 2003, the Defendant was found guilty of Murder, Kidnapping, and Armed Robbery under the above numbered indictments. He was sentenced to thirty years for murder

and kidnapping, and fifteen years for Armed Robbery to run consecutively. Ajanae Roach pled guilty to Voluntary Manslaughter, Kidnapping, and Armed Robbery and was sentenced to twenty-five years. A timely appeal was filed and perfected by Aileen P. Clare, Appellate Defender and dismissed by the South Carolina Court of Appeals on October 20, 2004. The Remittitur was issued on November 22, 2004.

The Defendant filed a timely appeal for Post-Conviction Relief on July 1, 2005 which was supplemented on March 14, 2006. The State filed a Return on September 22, 2005 and an evidentiary hearing was held before this Court on April 17, 2008. An order of dismissal was issued on May 13, 2008. The Defendant then filed a motion for a new trial pursuant to after-discovered evidence on March 2, 2016.

LAW AND ANALYSIS

In order to prevail in a motion for a new trial based on after-discovered a defendant "must show the after-discovered evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99, (1999). The decision of whether to grant a new trial rests within the sound discretion of the trial court and the appellate court will not disturb the trial court's decision absent an abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007).

Beyond the Spann factors outlined above, the South Carolina Supreme Court held in State v. Mercer, 381 S.C. 149, 166-167, 672 S.E.2d 556, 565, (2009):

In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (noting that the determination of whether new evidence is credible for purposes of a new trial motion rests with the trial court); State v. Deese, 266 S.C. 534, 538, [167] 225

S.E.2d 175, 176 (1976) (noting that the trial court is tasked with assessing the new evidence in a motion for a new trial); State v. Pierce, 263 S.C. 23, 33, 207 S.E.2d 414, 419 (1974) (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)) ("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. In him, not this court, resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion."). On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.

South Carolina Courts have held on numerous occasions that "[r]ecantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." Porter, 269 S.C. at 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)). State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (S.C. Ct. App. 2011).

In support of his motion, the Defendant submitted affidavits from himself, Co-Defendant Ajanae Roach, and former Hampton County Sheriff's Deputy Otis Harris. They each testified at an evidentiary hearing on July 11, 2016.

The Defendant first presented testimony from Otis Harris. Mr. Harris did not testify during the trial in 2003, so his testimony is the only truly "after-discovered evidence" to support this motion. Mr. Harris avers that after the trial of this case, a critical witness named Herbert Ford told him "they have the wrong person for the killing of James Dillard." Mr. Harris' affidavit states that he "believe[s] the name he told me was AJ Roach." He also says that he told another Deputy named Sammy White about this statement, but for unknown reasons waited thirteen years before mentioning it to anyone else. In January 2016, Mr. Harris says he mentioned this statement to the Defendant's brother, Willie Frazier, with whom Mr. Harris now works.

During the hearing, Mr. Harris said numerous times that Mr. Ford made this statement sometime after the Defendant was found guilty at trial. When asked for a more precise time, he stated it must have been after the trial in March 2003 and before he left the Hampton County Sheriff's Office sometime in 2005. Mr. Ford, however, testified at the trial of this case that he was serving eighteen years in federal prison on a carjacking charge and began serving that sentence at the end of 2001. Therefore, he could not have been arrested and made the statement in question between 2003 and 2005 as Mr. Harris claims. The statement is also in direct contradiction with Mr. Ford's testimony at trial. When called as a witness, Mr. Ford testified that on the night of the murder the Defendant had a .38 caliber revolver and he was bragging about "getting his OG status," which Mr. Ford understood to mean he had murdered someone. It is also significant that both Herbert Ford and Sammy White are deceased and cannot validate Mr. Harris' testimony.

Given the circumstances surrounding the alleged statement, the court does not find Mr. Harris' testimony credible. Mr. Ford could not have made the statement during the time period claimed by Mr. Harris and his testimony at trial directly contradicted what Mr. Harris claims was said. Furthermore, Mr. Harris' decision to wait thirteen years before informing anyone of the statement and doing so only after all other parties are deceased is extremely suspicious and calls into question the truthfulness of his testimony.

If taken at face value, Mr. Roach's testimony may meet the factors as enumerated by Spann and necessitate the grant of a new trial. However, this Court is also required to assess the credibility of the testimonial evidence offered by the Defendant in support of his motion.

For a myriad of reasons, this court does not find the testimony of Ajanæ Roach credible. In each of his interviews with law enforcement leading up to the Defendant's trial, Mr. Roach

identified the Defendant as the individual who shot and killed James Dillard. His testimony in that trial was consistent with each of his prior statements. In 2003, Mr. Roach testified that on the night of the murder he walked with the Defendant to the Citgo gas station in Yemassee where they saw the Victim, James Dillard. Mr. Dillard knew the Defendant's brother and agreed to give both Defendants a ride. Mr. Roach admitted that he pulled out the gun, told the Victim to pull over, and forced him to get into the trunk of the car. It was at this time that the Defendant told Mr. Roach that they needed to kill Mr. Dillard since he knew him and could identify him. The Defendant told Mr. Roach to drive to an isolated area where the Defendant removed Mr. Dillard from the trunk and executed him.

During the evidentiary hearing, Mr. Roach recanted the vast majority of his prior testimony and stated he was the one that killed Mr. Dillard, not the Defendant. His affidavit further states that the Defendant was an innocent bystander who had no idea what Mr. Roach was going to do and never got out of the car during the murder. However, Mr. Roach's recent testimony is inconsistent with even the Defendant's own statements to law enforcement.

During cross-examination at the evidentiary hearing, the Defendant admitted that he lied to investigators when he denied any knowledge of the murder during his initial interview. He also admitted that in subsequent interviews he changed his story multiple times, each time admitting more culpability in the crime. He finally told investigators that he was not only present when Mr. Roach shot and killed James Dillard, but standing right next to him.

Mr. Roach's recent testimony that the Defendant never exited the vehicle while he killed the victim clearly contradicts the Defendant's own admissions and casts substantial doubt on the validity of his testimony. When questioned about this during the evidentiary hearing, Mr. Roach was unable to answer why the Defendant would have admitted to officers he was present for the

murder if he never exited the vehicle. He then changed his story and said he could not remember where the Defendant was when the final shot was fired.

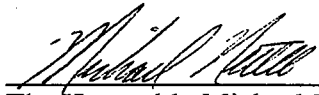
During the evidentiary hearing, the Defendant first denied that he told investigators he saw Mr. Roach fire the shot that killed Mr. Dillard. When confronted with his prior statement, he again changed his story. He said that he did, in fact, get out of the car but he stayed in close proximity to the vehicle. He also stated that the victim was close to the road when he was killed so he was able to see everything that was happening from where he stood near the car. This contradicts testimony from the trial that showed the victim's body was found behind a row of bushes and trees approximately 50 feet from the road and not visible from where the car was parked.

As noted above, our courts have frequently stated that recantation testimony is ordinarily unreliable and should be subjected to the "closest scrutiny" when offered as ground for a new trial. Porter, 269 S.C. at 621. The recantation of testimony here is not simply a third-party witness, but a Co-Defendant who is attempting to absolve the Defendant of any responsibility in the crime for which he has been convicted. Mr. Roach is also obviously aware that he cannot be tried for the murder of James Dillard since he has already pled guilty for his involvement. He is scheduled to be released in six years and has nothing to lose in now taking full responsibility for the murder. The Defendant, on the other hand, has thirty years left on his sentence and all of his other remedies have been exhausted.

CONCLUSION

After assessing all the evidence, this Court finds that the circumstances surrounding the recantation of Ajanae Roach and the testimony of Otis Harris are unreliable. For the foregoing reasons, the Defendant's motion for a new trial pursuant to Rule 29(b) SCRCrimP is **DENIED**.

AND IT IS SO ORDERED.



The Honorable Michael Nettles
Chief Administrative Judge
14th Judicial Circuit

August 12, 2016
Beaufort, South Carolina