

2015A0210700179

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
STATE OF SOUTH CAROLINA,

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

VS.

ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL AND
RECONSIDERATION OF SENTENCE

SANTONIO TOREZ WILLIAMS,
DEFENDANT.

RECEIVED

Indictment No.: 2016-GS-02-0274
(Murder)

SEP 22 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Robert J. Harte, Clerk of Court, and General
Clerk, do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in this

SEP 05 2017

Robert J. Harte
C.C.P. & G., Aiken County, S.C.
Deputy Clerk

The above-referenced motions came before the Court on August 14, 2017. The Defendant was present for the hearing and represented by Tristan Shaffer. The State was represented on the Motion for New Trial by Deputy Solicitor Bill Weeks and by Assistant Solicitor Cassie Hall during the Motion for Reconsideration of Sentence.

The Defendant was convicted of Murder following a jury trial on February 2, 2017, and was sentenced the same day to fifty (50) years. The Defendant timely filed a motion to reconsider sentence and subsequently filed a Motion for New Trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure.

I. Background

At the trial of this case, Victor Mercuri (Mercuri), an inmate at the Aiken County Detention Center, testified under oath to overhearing the Defendant making incriminating statements.¹ Mercuri's testimony was among a litany of direct and circumstantial evidence

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Robert J. Harte
C.C.P. & G.S.
Sharon Skipper
Deputy Clerk

1 copy to Sol, Atty Shaffer
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¹ Mercuri testified at trial that he heard the Defendant making two statements on separate days regarding the shooting which led to the death of the victim in this case.

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presented by the State at the trial of this case. During Mercuri's direct examination at trial he was questioned regarding charges pending against him and the potential penalty for those charges upon conviction². Mercuri was further questioned regarding whether he had entered into a 'deal' with the State in exchange for his testimony:

Solicitor: Do you want to tell this jury what promises or deals the State has made with you in exchange for your testimony?

Mercuri: Absolutely none at all. No promises, no deals, nothing like that.

(Trial Transcript)

Further, the Defendant's trial counsel cross-examined Mercuri regarding the existence of any promises made in exchange for his testimony and he again denied the existence of any promises. Trial counsel continued questioning Mercuri regarding the possible punishment he could receive for his charges.

Following the trial of this case, Mercuri's charges were resolved in a guilty plea to Armed Robbery on March 2, 2017, before the Honorable Doyet Early, III. At Mercuri's guilty plea, he was again questioned regarding the existence of any promises, other than the plea agreement on the record at that time.³ Again, Mercuri testified under oath that no other promise existed. Mercuri received an eighteen (18) year sentence for Armed Robbery. Mercuri's other pending charges were dismissed as a condition of the plea. Immediately following his guilty

² At the time of the trial in this matter, Mercuri had pending charges for Armed Robbery, Possession of a Weapon During the Commission of a Violent Crime, Possession of a stolen vehicle \$2,000 to \$10,000, Manufacturing Methamphetamine, and Malicious Injury to a Jail.

³ A recommendation of a maximum sentence (cap) of 20 years was made in addition to the dismissal of other pending charges in exchange for Mercuri's plea of guilty to Armed Robbery.



plea, Mercuri provided a written statement (statement) to Defendant's trial counsel recanting his trial testimony regarding statements made by the Defendant and alleging that he had in fact been promised a reduction in his charge to strong arm robbery in exchange for his testimony.

Subsequent to that statement, Defendant filed the Motion for a New Trial.

II. Motion Hearing

At the hearing in this matter, Defendant presented testimony from Mercuri in support of his motion for new trial. Mercuri testified his prior sworn testimony regarding statements made by the Defendant was a lie. Further, Mercuri testified his prior sworn statement regarding the existence of a 'deal' with the State in exchange for his testimony was a lie because he believed that the State had promised him something. Mercuri testified he had expected his charge to be reduced from Armed Robbery to Strong Arm Robbery. Mercuri stated the Defendant should have a new trial. Mercuri testified he had always intended to recant his trial testimony regarding incriminating statements made by the Defendant after his case was resolved and had calculated that he may even be charged with perjury for that action. Mercuri acknowledged he told Judge Early at the time of his plea, under oath, that no other promises had been made other than his plea offer and that the State had indicated to Judge Early during his plea that his trial testimony was helpful. However, he testified at the hearing in this matter that he had already planned to recant his trial testimony after his guilty plea.

Under cross examination, Mercuri's testimony was evasive at times and at other times he outright acknowledged lying. It was clear from Mercuri's testimony he was dissatisfied about the resolution of his charges.

A handwritten signature or set of initials, possibly 'B3', written in black ink in the bottom right corner of the page.

Following Mercuri's testimony, Solicitor Thurmond testified his office had made no deals and no promises to Mercuri in exchange for his testimony. Solicitor Thurmond stated the first time he spoke to him, Mercuri indicated a desire to plea to strong arm robbery, but upon hearing that statement, Solicitor Thurmond immediately advised Mercuri that no offers or deals were being made. Solicitor Thurmond further testified that Mercuri's case was assigned to another prosecutor in the office and that Mercuri's plea offer was made by that prosecutor after the trial of this case.

Following testimony in the hearing, the Defense argued Mercuri's testimony before the Court today was to be held more credible than prior testimony and the Defendant should be granted a new trial. The Defense further argued, in the alternative, the Defendant should be granted a new trial due to the non-disclosure that Mercuri told the State he wanted a reduction in his charge to strong arm robbery.

III. Motion for New Trial – Recantation of Trial Testimony

a. Law

“To obtain a new trial based upon after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.” Jamison v. State, 410 SC 456, 467 (2014), *citing* McCoy v. State, 401 SC 363, 368 (2013), *quoting* Clark v. State, 315 SC 385, 387-88 (1993).

Generally, “[t]he assessment of witness **credibility** is within the exclusive province of the jury.” Tappeiner v. State, 416 SC 239, 250 (2016), *quoting* State v. McKerley, 397 S.C. 461,

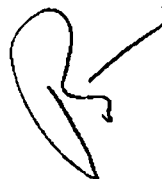


464, 725 S.E.2d 139, 141 (Ct.App.2012). However, “[a] motion for new trial on after-discovered evidence is addressed to the sound discretion of the trial court.” State v. Mayfield, 235 SC 11, 13 (1959) *citing* State v. Clamp, 225 SC 89 (1954). Further, “the credibility of newly-discovered evidence offered 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 [the Supreme Court], resides the power to weigh such evidence; and his judgment will not be disturbed except for error of law or abuse of discretion.” State v. Porter, 269 SC 618, 621 (1977), *quoting* State v. Mayfield, 235 SC 11, 34 (1959), *citing* State v. Corn, 224 SC 74 (1953). “‘The granting of a new trial because of after-discovered evidence is not favored,’ and [the Court of Appeals] will affirm the trial court’s denial of such a motion unless the trial court abused its discretion.” State v. Harris, 391 SC 539, 545 (2011) *quoting* State v. Irvin, 270 SC 539, 545 (1978).

“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” *Id.*, *quoting* State v. Whitener, 228 SC 244, 264 (1955).

b. Findings of Fact and Conclusions of Law

The Court notes that Mercuri testified under oath at the trial of this case that no ‘deal’ existed between himself and the State in exchange for his testimony. He again testified, under oath, at his guilty plea that no other promise had been made to him. At the hearing in this matter, he testified that those statements were untrue. Mercuri testified at the trial to hearing the Defendant make certain statements only to later recant that testimony at the hearing under oath. Mercuri’s statements under oath cannot be reconciled in any way to avoid a conclusion of perjury. Mercuri even indicated that he had planned to present perjured testimony. While the



credibility of Mercuri's trial testimony is a determination for the jury,⁴ his credibility at this hearing is within the discretion of the Court. The Mayfield Court noted "the persons whose testimony is here offered in support of the motion for new trial because of newly-discovered perjury are those who now profess to be perjurers. The primary issue on the motion was their credibility." Mayfeild, at 37. The Court finds the testimony of Mercuri at the hearing to be unreliable and not credible.

Conversely, the Court finds the testimony of the Solicitor Thurmond to be credible and reliable. Having presented no other evidence to support his motion,⁵ the Court finds that the Defendant has presented **no credible or reliable evidence to support his motion** for new trial and hereby **denies** the motion.

IV. Motion for New Trial – Non-disclosure

a. Law

The law regarding claims under Brady are discussed at length in Gibson. Gibson v. State, 334 SC 515 (1999). "Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Id., citing Kyles v. Whitley, 514 US 419 (1995). Brady v. Maryland, 373 US 83 (1963), State v. Dohlen, 322 SC 234 (1996). "This rule applies to impeachment evidence as well as exculpatory evidence." Id., citing United States v. Bagley, 473 US 667 (1985); State v. Von Dohlen, 322 SC 234 (1996). Whether requested by the defense or not, "favorable evidence is material, and constitutional error

⁴ Mercuri was subjected to the 'crucible of cross-examination' at trial, including questioning regarding possible motivation to lie.

⁵ Although other persons were present during meetings between the State and Mercuri, the Defense did not present testimony from those persons nor Mercuri's counsel to support Mercuri's assertion.

results from its suppression by the government if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different...A reasonable probability of a different result is accordingly shown when the Government's evidentiary suppression undermines confidence in the outcome of the trial." *Id.*, quoting *Whitley*, at 432-36. "The court must consider the suppressed evidence collectively, not on an item-by-item basis." *Id.*, quoting *Whitley*, at 436-38.

b. Findings of Fact and Conclusions of Law

The Defense contends that Mercuri's statement alone, (absent any actual agreement with the State), indicating he wanted a reduced charge was discoverable and should have been disclosed to the defense. It is clear from testimony at the hearing that the Solicitor "shut down" that remark and told Mercuri that no promises or deals would be made. The Defense now claims that Mercuri's basic desire to have a favorable outcome in his case was somehow unknown and undisclosed to the Defendant. However, at the trial of this case the Defendant's trial counsel cross-examined Mercuri regarding his possible sentence exposure and regarding who was prosecuting his case.⁶ Moreover, a criminal defendant's desire to have a favorable outcome in his case is such a basic and inherent desire, a mere statement to that regard does not create new and discoverable impeachment evidence. Likewise, non-disclosure of such a statement in no way undermines the confidence in a fair trial – particularly when the party making the statement was impeached on those grounds during the trial. Mercuri's testimony at trial was in addition to significant direct and circumstantial evidence presented by the State and knowledge of the

⁶ Trial Counsel: Okay. And you're looking at 35 years?

Mercuri: Yes, sir.

Trial Counsel: And those 35 years are in the hands of these folks (indicating)?
(Trial Trans.)

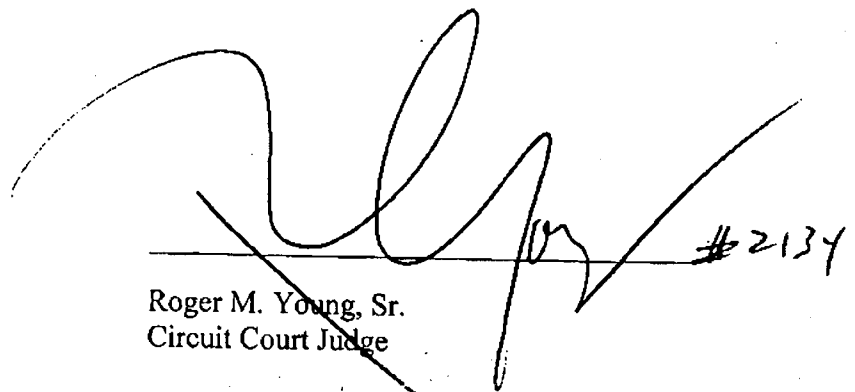


remark in question would not have created a 'reasonable probability of a different result.'
Therefore, the Court finds the Defendant's claim on this motion for new trial to be **without merit** and the motion is **denied**.

V. Motion to Reconsider the Sentence

The Defendant next requested that the Court reconsider the Defendant's sentence of fifty (50) years. The Court heard from the Defense in support of this motion. The State opposed a reduction in sentence. No new material, mitigating evidence was presented during the hearing. This case involves the Defendant killing a 16 year old child as a result of a botched attempt to kill another individual during an act of retaliatory gang violence. The Court finds that the **sentence imposed in this matter was appropriate** and declines to modify the sentence. Accordingly, the Motion for Reconsideration of Sentence is **denied**.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Circuit Court Judge

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August 25, 2017
Chambers, South Carolina