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SC Court of Appeals

STATE OF SOUTH CAROLINA) RECORDED IN THE COURT OF GENERAL SESSIONS
) FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) CASE Nos.: 2007-GS-18-1206 and
) 2010-GS-18-0707

CHERYL GRAHAM
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) DORCHESTER COUNTY

v.)

TIFFANY ANN SANDERS,)

Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

2018 FEB -5 PM 4:38

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This matter came before the Court on the Defendant's Motion for a New Trial on May 30, 2017. The Defendant was present and represented by Elizabeth A. Franklin-Best, Esquire. The State was represented by 1st Assistant Solicitor Donald N. Sorenson. The Defendant's Motion for a New Trial is based upon after-discovered evidence pursuant to South Carolina Rules of Criminal Procedure, Rule 29(b). The Defense sought to introduce the testimony of the Defendant's co-defendant, Sean Kammerer and the State objected on the basis that the testimony is not after-discovered because Mr. Kammerer was known to the Defendant since their arrest in 2007 and his testimony could have been ascertained through the exercise of reasonable diligence prior to the Defendant's 2010 trial. Additionally, the Defendant and the State presented supplemental memorandums for the Court's review.

The Court has carefully considered both party's memoranda in addition to the arguments presented at the hearing on the Defendant's Motion for a New Trial on May 30, 2017. For the following reasons, I agree with the State's position and deny Defendant's Motion for a New Trial:

Mr. Kammerer's testimony is not necessary to decide this issue because it does not fit within the definition of newly-discovered evidence. Kammerer was known to the Defendant at

least since their arrest in 2007. While the Defendant may be correct in her assertion that Kammerer would not have wanted to testify at her PCR hearing while he was pursuing his own legal remedies through the PCR process, that fact does not mean that Kammerer was unavailable at the time. The Defendant had the means to subpoena Mr. Kammerer's testimony pursuant to Rule 45 of the SC Rules of Civil Procedure.

The fact that control is to be judged at the time of trial strengthens the State's position. Mr. Kammerer pled guilty to his charges in 2008, and had been incarcerated in the South Carolina Department of Corrections for over two years prior to Defendant's trial. As is the case for all guilty pleas, Mr. Kammerer was advised that he was surrendering his right to remain silent and his right against self-incrimination. Thus, he no longer enjoyed the privilege of refusing to testify upon the Court's acceptance of his plea. Therefore, at the time of her trial, Kammerer was available for Defendant to subpoena or attempt to interview. The reasoning behind Defendant's decision to not call Kammerer to the stand during her trial is immaterial to the Court's decision today. Due to Defendant's knowledge of Mr. Kammerer and the available legal means for obtaining his testimony at the time of trial, the testimony cannot be newly discovered evidence under the relevant definition.

THEREFORE IT IS ORDERED that the Defendant's Motion for a New Trial be DENIED.

IT IS SO ORDERED!



Honorable Diane S. Goodstein
Presiding Judge
First Judicial Circuit

St. George, South Carolina

January 5, 2018