

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE NINTH JUDICIAL CIRCUIT
COURT OF GENERAL SESSIONS

State of South Carolina,)
)
)
vs.)
)
Robert W. McCaffery, Jr.,)
)
Defendant.)
_____)

2015-GS-10-00387

**ORDER DENYING DEFENDANT'S
POST-TRIAL MOTIONS**

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APR 01 2019

SC Court of Appeals

This matter comes before the Court pursuant to the Defendant's Post-Trial Motions for Renewal of all Trial Motions and Objections and for a New Trial. After considering such, this Court's ruling is as follows.

This Court's rulings as to all of the Defendant's Trial Motions and Objections remain the same. The Defendant's Motions for a New Trial is DENIED.

Defendant asserts in his Motion for a New Trial that "sympathetic hearsay, lay opinions regarding the "Dear Bob" letter, as well as improper expert opinion regarding authorship of the "Dear Bob" letter were highly prejudicial and exceeded probative value to the extent that the jury obviously did not consider any other evidence in their deliberation, as evidenced by their less than thirty minute verdict, as there was an excess of one hundred and twenty items of evidence sent for their review."

LAW AND ANALYSIS

In a criminal case, the only post-verdict, fact-based remedy available is a motion for a new trial. State v. Taylor, 355 S.C. 392, 585 S.E.2d 303 (2003).

*DLB
P. 10/13*

BY: *[Signature]*
JUDGE J. ARMSTRONG
CLERK OF COURT
2019 MAR 28 AM 11:59

FILED

*cc: Lizzi Law
SOL*

In addressing Defendant's first assertion as to "sympathetic hearsay evidence." The Defendant fails to specify what "sympathetic hearsay evidence" was improperly admitted. Therefore, without such specificity, this Court is unable to evaluate such assertion.

In assessing Defendant's second assertion, "improper lay opinion testimony" regarding the "Dear Bob" letter, there are no specific allegations as to which lay opinions were improper. However, this Court will address such assertion to the extent that it can.

"Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge..." Watson v. Ford Motor Co., 389 S.C. 434, 445-46, 699 S.E.2d 169, 175 (2010). "On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training." Id. at 446, 699 S.E.2d at 175; *see also* State v. Douglas, 380 S.C. 499, 502, 671 S.E.2d 606, 608 (2009) ("Lay witnesses are permitted to offer testimony in the form of opinions or inferences if the opinions or inferences are rationally based on the witness'[s] perception, and will aid the jury in understanding testimony, and do not require special knowledge."). "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." State v. Fripp, 396 S.C. 434, 439, 721 S.E.2d 465, 467 (Ct. App. 2012) (quoting Rule 704, SCRE).

In the Defendant's trial, there were no lay opinions regarding the "Dear Bob" letter. The opinions offered by lay witnesses were simply that, based upon their personal knowledge, they had never seen or heard Gayle McCaffery use the type of language (verbally or in writing) that was used in the "Dear Bob" letter. Therefore, this Court does not believe such opinion testimony was improper.

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JUDGE J. ARMSTRONG
CLERK OF COURT

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Finally, the Defendant asserts that this court allowed "improper expert opinion regarding authorship of the "Dear Bob" letter." This Court disagrees.

Prior to the expert testimony from the State or the Defendant, this Court set forth the framework under which the experts would be allowed to testify. This Court relied upon People v. Coleman 388 Ill.Dec. 465, 24 N.E.3d 373 (2014), in establishing such framework. Dr. Robert Leonard testified on behalf of the State in Defendant McCaffery's trial, that he had reviewed "known" documents that were written by both Gayle McCaffery and Defendant Robert McCaffery. He further testified as to similarities between those known authored documents and the unknown authored "Dear Bob" letter. Dr. Leonard was not allowed to testify as to authorship of the "Dear Bob" letter as alleged by the Defendant.

Therefore, based upon the above, the Court's prior rulings as to all of the Defendant's Trial Motions and Objections remain the same, and the Defendant's Motion for a New Trial is hereby, DENIED.

IT IS, SO ORDERED.

This the 25th day of March, 2019


The Honorable D. Craig Brown
9th Judicial Circuit

Dcb
p. 373

BY
STEPHEN J. ARMSTRONG
CLERK OF COURT
2019 MAR 28 AM 11:59

FILED



State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

D. Craig Brown
Judge

181 North Irby Street
Suite 3605
Florence, SC 29501
Phone: (843) 679-7156
Fax: (843) 679-7157
cbrownj@sccourts.org

March 25, 2019

The Honorable Julie J. Armstrong
100 Broad St. Ste. 106
Charleston, SC29401-2210

Re: State v. McCaffrey; 2015-GS-10-387

Dear Ms. Armstrong:

Enclosed is an Order in the above-referenced case signed by Judge Brown for filing. Please copy the attorneys of record and let us know if you should need anything further.

Thank you for your assistance.

Sincerely,

Stacey R. Minton
Assistant to Judge Brown

Enc.

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APR 01 2019

SC Court of Appeals

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2019 MAR 28 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

FILED

THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

2019 MAR 26

FOR THE NINTH JUDICIAL CIRCUIT

PM 2:13

STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT

WARRANT #: 2014A1010900353,

2019GS1001363

v.

BY _____

INDICTMENT #: 2015GS1000387,

2019GS1001363

ROBERT W. McCAFFREY, JR.,

Defendant.

CHARGE: Obstruction of Justice

ORDER AMENDING SENTENCE SHEET,

INDICTMENT, AND VERDICT FORM

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APR 01 2019
SC Court of Appeals

THIS MATTER CAME BEFORE ME on the 15th of March 2019 upon motion of JENNIFER KNEECE SHEALY, Assistant Solicitor for the Ninth Judicial Circuit, requesting an order from the Court amending the sentencing sheet, indictment, and verdict form that was dated March 8, 2019.

ROBERT W. McCAFFREY, Defendant, was convicted by a jury on March 8, 2019 of one count of Obstruction of Justice and was sentenced by the Court to ten (10) years of incarceration. Defendant was arrested on the aforementioned charge in 2014 and subsequently indicted by the grand jury in 2015. The correct warrant number is 2014A1010900353 and indictment number is 2015GS1000387 for the charge brought by the State at trial.

The State directly presented a second indictment for Obstruction of Justice (2019-GS-10-01363) to the grand jury in February 2019, where it was true billed.

IT FURTHER APPEARS that the State advised the Court prior to the start of the trial that it had elected to go forward on the original 2015 indictment and not the more recent 2019 indictment.

IT FURTHER APPEARS that the warrant number and indictment number listed on the sentencing sheet signed by the Court during sentencing, as well as the indictment and

verdict form signed by the jury foreperson, all reflect the incorrect 2019 indictment number. Those three documents, all dated March 8, 2019, are attached to this Order.

THEREFORE, IT IS HEREBY ORDERED that the amended sentencing sheet signed by the Court on March 21, 2019, along with the correct indictment and verdict form shall supersede and replace the original sentencing sheet, indictment, and verdict form that were each dated March 8, 2019.

AND IT IS SO ORDERED.



D. CRAIG BROWN
Circuit Court Judge

This 21 day of March, 2019.
Charleston, South Carolina

I SO MOVE:

JENNIFER KNEECE SHEALY
Assistant Solicitor
Ninth Judicial Circuit

I CONSENT:

CHRISTOPHER LIZZI
Attorney for the Defendant

2019 MAR 26 PM 2:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ROBERT W MCCAFFREY, JR

AKA: Robert Mccaffrey

Race: White

DC _____

Address: _____

City, State, Zip: _____

DL# 007737815

SID# SC02157578

*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: Obstruction of Justice

In violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0118

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser included Offense,

Defendant Waives Presentation to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation,

Negotiated Sentence,

Recommendation by the State.

ATTEST:

Jennifer Mccode Shealy, Assistant Solicitor SC Bar # 7919

Defendant

_____ Attorney for Defendant SC Bar # 64325

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 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 Service 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 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing
Total: \$ _____ plus 20% fee: \$ _____

Ordered PTUP _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso (Public Def/Probation) \$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 \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: _____

Presiding Judge: P. Clary

Court Reporter: _____

Judge Code: 2110

Sentence Date: 8-21-19

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1000387

A/W: 2014A1010900353

Date of Offense: 03/18/2012

S.C. Code §: 17-25-0030

CDR Code #: 0118

AMENDED

SENTENCE SHEET

JKS20140606215

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2012004559B

ARREST WARRANT NUMBER

2014A1010900353

DATE OF ARREST

June 21, 2014

ACTION OF GRAND JURY

~~TRUE BILL~~

Nancy McKeown

Foreperson of Grand Jury
Date:

JAN 13 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1000387

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2015

THE STATE

vs.

ROBERT W MCCAFFREY JR

DOB: 1971-09-27

W/M

Indictment for

Obstruction Of Justice

FILED

1/26/2015 2:20:42 PM

JULIE J. ARMSTRONG

CLERK OF COURT

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

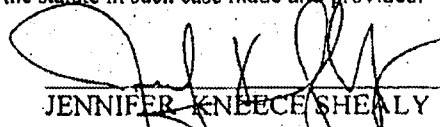
INDICTMENT

At a Court of General Sessions, convened on January 12, 2015 the Grand Jurors of Charleston County present upon their oath:

Obstruction Of Justice

That in Charleston County, South Carolina, on or about March 18, 2012, the Defendant, ROBERT W MCCAFFREY JR, did intentionally prevent, obstruct, impede or hinder the administration of the justice, to wit: the defendant did willfully give the police false and/or misleading information regarding his wife's disappearance; all in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

INDICTMENT NO.: 2019-GS-10-01363

State of South Carolina,)

-vs-)

VERDICT FORM

Robert W. McCaffrey, Jr.,)
Defendant.)

1. As to the charge of Obstruction of Justice, we the Jury unanimously find the Defendant, Robert W. McCaffrey, Jr.:

Not Guilty

Guilty

(Please sign and date this form below.)

Dated: 3/8/19

John B. Baul
FOREPERSON

(Please let the Bailiff know when you have completed this form)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ROBERT W MCCAFFREY, JR

AKA: Robert Mccaffrey

Sex: M

DOB: _____

Address: _____

City, State, Zip: _____

DL# 007737815 SID# SC02157578

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Obstruction of Justice

In violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0118

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)

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

ATTEST:

Jennifer Kneede Shealy, Assistant Solicitor SC Bar # 7919 Defendant Attorney for Defendant 64325 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 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 Service 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 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 (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: \$ _____ Obtain GED

Payment Terms: _____ 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, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

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 (Public Def/Probation) \$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/ca \$ _____
3% to County (if paid in installments) \$ \$ 3.75
TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Phyllis Norton
Court Reporter: Phyllis Norton

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-10-01363
A/W: 2019-GS-10-01363
Date of Offense: 03/18/2012
S.C. Code §: 17-25-0030
CDR Code #: 0118

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SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

Presiding Judge: P. Smith
Judge Code: 2160
Sentence Date: 3-8-19

JKS/0239447/20140606215
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2012004559B

ARREST WARRANT NUMBER

2019-GS-10-01363

DATE OF ARREST

06/22/2014

ACTION OF GRAND JURY

TRUE BILL

Lawrence L. Pan

Foreperson of Grand Jury FEB 04 2019 Date:

VERDICT

DOCKET NO. 2019-GS-10-01363

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2019

THE STATE

VS.

ROBERT W. McCAFFREY, JR.

W/M DOB: 09-27-1971

Indictment for

OBSTRUCTION OF JUSTICE

CDR Code: 0118

John B. ...
Foreperson of Petit Jury

3/2/19
Date:

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APR 01 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened February 2019, the Grand Jurors of Charleston County present upon their oath:

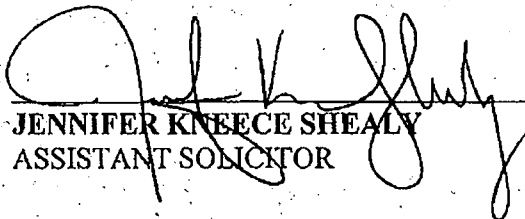
OBSTRUCTION OF JUSTICE

The Defendant, Robert W. McCaffrey, Jr., did on or about March 18, 2012 and March 19, 2012, in Charleston County, South Carolina, intentionally commit an act or acts which prevented, obstructed, impeded, or hindered the administration of justice by intentionally and willfully giving police false and misleading information regarding his wife's disappearance, to wit:

- The Defendant initially failed to disclose to police that he had been in Traveler's Rest, South Carolina to see a paramour during the early morning hours of March 18, 2012; and/or,
- The Defendant did author a letter in the name of his missing wife and gave it to police in order to give the appearance that Gayle McCaffrey had abandoned her family for a paramour; and/or
- The Defendant was dishonest with police by asserting that his wife, upon leaving, had removed a safe from their home that contained \$110,000.

All in violation of the Common Law of the State of South Carolina.

Against the peace and dignity of the State.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

INDICTMENT NO.: 2019-GS-10-01363

State of South Carolina,)

-vs-)

VERDICT FORM

Robert W. McCaffrey, Jr.,)
Defendant.)

1. As to the charge of Obstruction of Justice, we the Jury unanimously find the Defendant, Robert W. McCaffrey, Jr.:

 Not Guilty

 X Guilty

(Please sign and date this form below.)

Dated: 3/8/19

John B. Baul
FOREPERSON

(Please let the Bailiff know when you have completed this form)