

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiffs,

vs.

HON. TIMOTHY M. KENNY
CASE #04-012890-01-FC

THELONIOUS SEARCY,

Defendant,

_____ /

OPINION & ORDER

At a session of this Court
Held on December 3, 2018
In the Frank Murphy Hall of Justice
County of Wayne, Detroit, MI

PRESENT: Hon. Timothy M. Kenny
Presiding Judge – Criminal Division
Third Judicial Circuit Court of Michigan

In 2005 defendant Searcy was convicted of the first-degree, premeditated murder of Jamal Segars, the assault with intent to murder of Brian Minner and felony firearm. The defendant was sentenced to life in prison without the possibility of parole, and fifteen to thirty years for assault with intent to murder, consecutive to two years on the felony firearm conviction.

In 2006 the defendant's conviction and sentence were affirmed by the Michigan Court of Appeals. The defendant's first motion for relief from judgment was denied June 2, 2009.

The defendant brings a second motion for relief from judgment pursuant to MCR 6.500 et seq. and also seeks relief pursuant to MCL 770.1. In the defense motion it is claimed that newly discovered evidence, if provided at a new trial, would reasonably provide a likely chance of acquittal and the irregularity in the evidence discovered was so offensive to the maintenance of a sound judicial process the conviction should not be allowed to stand. The defense also contends a new trial should be granted because it should appear to the court that justice has not been done.

Pursuant to MCR 6.508 (D) the defendant has the burden of establishing entitlement to the requested new trial.

MCR 6.508 (D) (3) (b) states court may grant relief if the defendant meets the burden of showing that (i) in a conviction following a trial but for the alleged error the defendant would have had a reasonable likely chance of acquittal or (iii) in any case the irregularity was so offensive of the maintenance of a sound judicial process the conviction should not be allowed to stand regardless of its effect on the outcome of the case. The defense claim for relief is based upon the newly discovered evidence of a) the confession of Vincent Smothers and supporting testimony by Marzell Black b) newly obtained forensic testimony regarding the contents of an evidence envelope allegedly containing evidence taken during the autopsy of the homicide victim Jamal Segars and c) a memorandum from the Detroit Law Department.

The Michigan Supreme Court recently set forth the standard for evaluating motions for new trial based on newly discovered evidence. In People v Johnson, 154128 and 154130 (decided July 23, 2018) the Michigan Supreme Court held in order for a new trial to be granted on the basis of newly discovered evidence a defendant must show that 1) the evidence itself was newly discovered 2) the newly discovered evidence was

not accumulative 3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial and 4) the new evidence makes a different result probable on retrial. The forensic evidence offered in this case along with Vincent Smothers' alleged confession in 2014 and 2015, make it clear the *issue* to be determined in this particular case is whether a different result would be probable upon retrial.

In Johnson, the Supreme Court stated in determining whether newly discovered evidence makes a different result probable on retrial the trial court must first determine whether the newly discovered evidence is credible. The Supreme Court has indicated the trial court should consider all relevant factors tending to either bolster or diminish the veracity of the witnesses' testimony. Court held:

"a trial court's function is limited when reviewing newly discovered evidence as it is not the ultimate fact finder. Should a trial court grant a motion for relief from judgment the case would be remanded for retrial not dismissal. In other words, a trial court's credibility determination is concerned with whether a reasonable juror could find the testimony credible on retrial. See *Connelly v United States*, 271 F 2nd 333, 335 (CA 8, 1959) ("the trial court has the right to determine the credibility of newly discovered evidence for which a new trial is asked and if the court is satisfied that on a new trial, such testimony would not be worthy of belief by the jury the motion should be denied.")

At trial, testimony from numerous witnesses indicated a huge outdoor party was being conducted on the grounds at and surrounding Detroit City Airport. Hundreds of people were present and traffic on the streets surrounding Detroit City Airport was at a crawl. Moving along in the bumper to bumper traffic was Jamal Segars, the driver of a silver

Corvette, along with his passenger Brian Minner. As the traffic moved along slowly an individual approached the Segars' Corvette convertible from behind and fired multiple shots striking and killing Mr. Segars, and Mr. Minner was struck in the leg causing him to be hospitalized.

The prosecution theory at trial was that the killing of Mr. Jamal Segars was a case of mistaken identity. The people introduced evidence that the defendant Thelonious Searcy and DeAnthony Witcher had an on-going feud. Witcher testified at trial that he and defendant Searcy had a dispute about money. Prior to the killing of Mr. Segars, Witcher had been shot in the hand and back by Searcy resulting in Witcher's month-long hospitalization. Mr. Witcher never pressed charges against Searcy for that shooting.

On the Labor Day weekend evening of the party at Detroit City Airport both Mr. Segars and Mr. Witcher were attempting to navigate the busy traffic in the area of the party. Both were driving distinctive Corvette convertibles that looked remarkably similar.

At trial, the prosecution called Tiffany King, Latasha Boatwright, Kimberly Jefferies and Dwayne Dye. All were civilian witnesses who happened to be present in the area around the City Airport party. All saw or heard the shooting of Jamal Segars and Brian Minner. All four witnesses identified defendant Searcy in court as someone shooting into the Segars' vehicle and all but witness Tiffany King identified Searcy at a photographic show-up, as well. Several of the witnesses heard other gunshots as well.

Evidence technician Velma Tutt arrived at the shooting scene and among other duties collected seven .45-caliber shell casing from the street or sidewalk area surrounding Mr. Segars' car. Eight .40-caliber shell casings were also found in the same vicinity.

Approximately 90 days after the homicide, defendant Searcy was arrested at his grandmother's home in Clinton Township. According to police testimony, defendant Searcy was found in a bedroom closet hiding behind and above a furnace. Testimony presented at trial indicated the defendant was trying to conceal himself behind a piece of drywall in a crawl space above the furnace. Police testimony indicated pepper spray was needed to remove the defendant from the closet.

During a search of the defendant's arrest location, a .45-caliber handgun was found in the bedroom. The handgun was taken into evidence, was test-fired and compared with the .45-caliber shell casings found at the scene surrounding Mr. Jamal Segars' Corvette automobile. Testimony presented at the trial indicated the seven .45-caliber spent casings found at the homicide scene were fired from the handgun seized from the scene of defendant Searcy's arrest.

Defendant Searcy presented eight defense witnesses at trial. Most offered an alibi for the defendant. Witnesses testified defendant Searcy was at a family Labor Day weekend barbeque and could not have been present at the time of the shooting death of Mr. Segars and the wounding of Mr. Minner.

One of the defense witnesses was the defendant's grandmother, Edna Richardson. She stated Jeffrey Daniels brought the .45-caliber weapon to her home and left it at her apartment. She also indicated she told Daniels to retrieve the firearm, but he was killed before he was able to return and take it away. Ms. Richardson was unable to identify when Mr. Daniels brought the gun to the apartment.

At trial the jury rejected the defendant's alibi and convicted the defendant of first-degree murder, assault with intent to murder and felony firearm.

Defendant Searcy contends that Vincent Smothers' confession to the murder of Jamal Segars is credible and merits granting the defendant a new trial. This court disagrees. Applying the standards set forth in the Supreme Court decision in People v Johnson, a reasonable jury could not find Vincent Smothers' testimony credible at a retrial. This court finds Smothers' testimony as it applies to the murder of Jamal Segars to be incredible for the following reasons:

1. Vincent Smothers admitted and pled guilty to 11 murders between approximately 2004 and 2006. During this time period, while acknowledging 11 homicides, he did not admit to the murder of Jamal Segars. In an interview with law enforcement he acknowledged numerous armed robberies, but did not mention the robbery and death of Mr. Segars.
2. In his interview with the Michigan State Police, and with his defense counsel present, Smothers recanted an affidavit admitting the murder of Jamal Segars. Smothers indicated to the State Police that he was incarcerated in the same prison with defendant Searcy and that Searcy had made comments to Smothers that Searcy had friends on the outside who had been watching Smothers' wife and children.
3. Smothers indicated he had been carefully watching Segars for months in an effort to pull off a robbery of the deceased. This effort was consistent with Smothers pattern of carefully watching to make sure there were not many people around at the time of the robbery.

In his testimony at the post-conviction hearing, Smothers indicated he just happened to see Segars at this party where he described there were "thousands of people present" and he decided to rob the deceased as Segars attempted to drive

through the congested street traffic. This conduct was at variance with Smothers modus operandi in other cases.

Vincent Smothers testified at the post-conviction hearing that both the .45-caliber weapon, as well as the .40-caliber pistol were his. Notwithstanding his claim the weapons used to murder Mr. Segar and assault Mr. Minner belonged to him, Smothers now claims he gave his weapons to the one allegedly involved in the crime with him, Jeffrey Daniels. Mr. Daniels is unavailable to testify because he was killed several weeks after the murder in the present case. The claim the alleged killer would turn over his weapons to someone who mysteriously turns up dead weeks after the homicide is not believable.

Smothers claims he admitted the Segars' murder to Marzell Black several years before filing the affidavits in this case. Marzell Black; however, was a co-defendant of Smothers in a contract killing scheme in which Black acted as the intermediary between the Detroit Police Officer husband of the victim and Vincent Smothers.

Marzell Black is currently incarcerated for his role in the contract killing. During the course of the proceedings against Black and Smothers, Black's confession was introduced indicating not only his own involvement but also that of Vincent Smothers. It is unreasonable to believe an individual such as Vincent Smothers would feel comfortable and free to admit another homicide to an individual who had previously incriminated him in a contract killing.

Vincent Smothers was able to give some detailed information about events in the Jamal Segars homicide. This was information that was readily identifiable from discovery material available to defendant Searcy and, therefore, available to Smothers since the two were, for a period of time, in the same correctional facility. Smothers was

far less detailed and had a far more vague recollection about other circumstances surrounding post-conviction interviews with law enforcement.

The defense claims also that newly discovered forensic evidence mandates a new trial for defendant Searcy. A particular evidence tag was labeled at various times as a .9mm shell casing and a .40-caliber shell fragment. An examination of the evidence envelope witnessed by both the defense expert, David Balash, and a Michigan State Police crime lab analyst, clearly indicates the contents of the envelope was a .40-caliber bullet fragment. While contending this clearly indicates another shooter must have been involved in the killing of Mr. Segars. This court rejects that conclusion.

A review of the post-conviction testimony would lead any reasonable juror to conclude the original red evidence property tag accurately reflected the fact the contents of the envelope was a bullet fragment. The Detroit Police Department property room, however, under their new system, labeled the property on the sealed envelope as being a .9mm shell casing. A reasonable jury would conclude the contents of the sealed envelope when examined were consistent with the contents of the original red evidence tag and inconsistent with the new property room label. A reasonable jury would conclude the contents was a .40-caliber bullet fragment and the property room had made a labeling error.

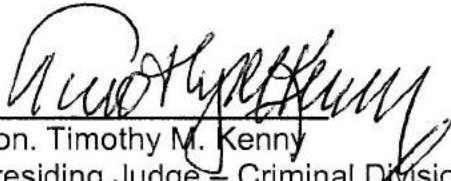
The defendant also contends a memo from an assistant corporation counsel for the City of Detroit Law Department alludes to a second gunshot fatality that occurred the night of the Segars' killing. The memo is not substantiated by any other evidence indicating there was any other fatality in that area of City Airport that evening. The defense merely speculates there might have been a recording of a fatal shooting at

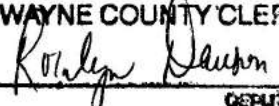
Detroit City Airport registered in some other community. There is no evidentiary basis or reason to believe that is the case here.

The case against defendant Searcy includes four eye-witnesses who positively identified him as a shooter. He hid from the police in his grandmother's apartment at the time of his arrest. Shell casings found in the immediate area around the scene of the murder matched the gun found at the defendant's arrest location. Defendant Searcy's alibi and a series of alibi witnesses were rejected by the jury in the first trial. This evidence is balanced against Vincent Smothers' admission, the forensic evidence offered by David Balash, Marzell Black's testimony and the memo from the Detroit Law Department. The admission made by Vincent Smothers, as it applies to the Segars' murder, is not credible. The forensic evidence, evidence offered by Marzell Black and the City of Detroit memo are equally unconvincing.

For these reasons the defendant fails to meet his burden under MCR 6.502 and People v Johnson and the defendant's motion for relief from judgment is DENIED.

December 3, 2018
Date


Hon. Timothy M. Kenny
Presiding Judge – Criminal Division
Third Judicial Circuit Court of Michigan

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