

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
vs. : **No. CR-1445-2012**
HYSON FREDERICK, :
Defendant : **Post-Sentence Motion**
 : **Oral Motion to Preclude Hearing**
 : **Supplemental Motion**

OPINION AND ORDER

By Information filed on October 8, 2012, Defendant was charged with numerous criminal counts related to a robbery that occurred on December 11, 2011 at the home of Bruce and Brenda Ginther of 59 Ross Street, Williamsport PA.

Following a lengthy jury trial on October 31, 2013, Defendant was found guilty of conspiracy, four counts of robbery, one count of burglary, one count of criminal trespass, one count of theft by unlawful taking, one count of receiving stolen property, two counts of simple assault by physical menace, two counts of terroristic threats, one count of possessing instruments of a crime, one count of firearms not to be carried without a license, and one count of computer trespass.

On February 4, 2014, Defendant was sentenced to 25 to 50 years of incarceration in a state correctional institution.

On February 13, 2014, Defendant filed a post-sentence motion, which included a motion for judgment of acquittal and a motion for a new trial. Defendant contends that the burglary and robbery counts should be dismissed because there was insufficient evidence to sustain the verdict or, in the alternative, that the guilty verdict

was against the weight of the evidence.

Argument on Defendant's motion was scheduled for April 14, 2014. On that date, Defendant filed and first presented to the Court a written motion for a new trial based on after-discovered evidence. Additionally, the Court provided to the parties a copy of a letter verification allegedly from Miranda Welch dated April 7, 2014, which the Court received on April 11, 2014.

In lieu of proceeding to an argument on the post-sentence motion, the Court continued the argument to a future date and time. Further, the Court scheduled a hearing on the motion for new trial based on after-discovered evidence. Finally, the Court gave defense counsel an opportunity to file a supplemental motion for a new trial based on the Miranda Welch letter if he wished to do so. The future hearing and argument would address Defendant's post-sentence motion, his motion for a new trial and, if filed, the supplemental motion for a new trial.

The Commonwealth has preliminarily asserted that Defendant is not entitled to a hearing in connection with the motion and/or supplemental motion for a new trial. This Opinion shall address such.

In the motion for a new trial based on after-discovered evidence filed on April 14, 2014, Defendant asserts that Kaiyim Boyce pled guilty to robbery, and conspiracy to commit robbery, burglary and other related offenses in exchange for a three to six year plea agreement. Under a different docket number, Mr. Boyce was charged in connection with the same "home invasion robbery" as Defendant. Mr. Boyce

was not called as a witness at Defendant's trial by either the Commonwealth or defense. On November 19, 2013, Mr. Boyce was sentenced in accordance with his negotiated plea agreement.

Defendant's counsel alleges further in the motion that he received written correspondence from the Defendant on April 9, 2014, which contained written statements signed or purporting to be signed by Mr. Boyce. Attached to Defendant's motion are two written letters allegedly signed by Mr. Boyce dated March 28, 2014.

The first letter indicated that Mr. Boyce "was warned" that if he were to testify on Defendant's behalf during Defendant's trial, his plea agreement would be revoked. Because he felt intimidated and forced to not come forward, he chose not to testify. He noted that his failure to testify "may have altered the judgment brought forth against" Defendant. He further noted that the information, testimony and/or statements that he was forced to withhold possibly would have been detrimental to the Commonwealth's case against Defendant and "very well may have altered a jury's/judge's verdict in this matter."

In his second letter, he verified that Defendant did not have knowledge of and/or participate in the events that took place in connection with the robbery at the Ginther residence on December 11, 2011. He also claimed that his willingness to come forth with this information was obstructed by the Williamsport Police Department and the Lycoming County District Attorney's Office.

He indicated that he was available to testify at trial and had he been

subpoenaed as a witness, he would have testified under oath to the “fact” that Defendant did not have knowledge of and/or participate in the robbery that occurred at the Ginther residence.

In the April 7, 2014 letter, Ms. Welsh stated that she and Defendant lived at 338 High Street in Williamsport. During the “couple months” leading up to December, Defendant and Anthony Rudinski, a witness against Defendant at Defendant’s trial, were in contact in order that Mr. Rudinski could purchase heroin from Defendant.

She noted that on the night of December 11 and the early morning of December 12 while she and Defendant were lying in bed watching a movie, Mr. Rudinski came to their residence with cell phones and a bag of jewelry and offered to exchange the items for heroin. She picked out some of the items that she wanted for herself and her daughters. Defendant picked out other pieces of jewelry and “paid Mr. Rudinski with heroin.” Mr. Rudinski noted that he had other items “at his mother’s home” then he and Defendant left.

She also stated that approximately a week before her arrest on January 19 (year unknown), Mr. Rudinski contacted Defendant about Mr. Rudinski being sent to rehab. Mr. Rudinski came over to their home in possession of a bag. Inside the bag was a shotgun. Apparently, Mr. Rudinski left the bag at their home, because he was on his way to rehab.

She further noted that on February 28, 2012, Agent Sorage of the Williamsport Bureau of Police interviewed her and the above-referenced details were

discussed.

To obtain relief based on after discovered evidence, the defendant must demonstrate that the evidence: (1) has been discovered after trial and could not have been obtained at or prior to the conclusion of trial by the exercise of due diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) is of such a nature and character that a different verdict will likely result if a new trial is granted. Commonwealth v. Pagan, 597 Pa. 69, 106, 950 A.2d 270, 292 (2008); Commonwealth v. Randolph, 582 Pa. 576, 587, 873 A.2d 1277, 1283 (2005).

“A post-sentence motion for a new trial on the ground of after-discovered evidence must be filed in writing promptly after such discovery.” Pa.R.Crim.P. 720(C). It is in the judge’s discretion to schedule a hearing on the motion. Pa.R.Crim.P. 720 (B)(2)(b).

Contrary to the Commonwealth’s contention, the Court is of the opinion that a hearing is warranted. While the Court cannot predict the evidence that will be produced at such a hearing, or whether it will satisfy the required burden of proof, Defendant has, at the very least, facially asserted a right to a hearing on after-discovered evidence.

Based upon the statements and what was represented to the Court during the on the record conference in this matter, the Court finds that Defendant is entitled to present evidence to meet his burden. The statements and the alleged facts are such that

Defendant may be able to credibly argue that these facts could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence, they are not merely corroborative or cumulative, they will not be used solely to impeach the credibility of a witness, and they would likely result in a different verdict if a new trial was granted.

With respect to this final element, it is important to note that the Commonwealth heavily relied on the testimony of Anthony Rudinski. He testified that Defendant was directly involved in the robbery. Testimony from another participant in the robbery which exculpates Defendant has the potential to be determinative evidence before a jury. Moreover, another witness who testifies as to how the shotgun found its way to Defendant's residence also could be a powerful defense witness.

ORDER

AND NOW, this ___ day of April 2014, the Court **DENIES** the Commonwealth's oral motion to preclude a hearing on Defendant's motion for a new trial based on after-discovered evidence and any supplemental motion to be filed.

The hearing shall be held on the **30th** day of **May 2014** at **10:00 A.M.** in **Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (KO)
Julian Allatt, Esquire
Gary Weber, Lycoming Reporter

Work File