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Court of Common Pleas

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By: ANTHONY THOMAS MIRANDA 0090759

Confirmation Nbr. 788222

STATE OF OHIO

CR 95 324431-C

vs.

Judge:

DERRICK WHEAT

STUART A. SAFERIN

Pages Filed: 6

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO)	CASE NO. CR-95-324431
)	
Plaintiff)	JUDGE NANCY MARGARET RUSSO
)	
vs.)	<u>STATE'S MOTION TO DISMISS</u>
)	<u>WITHOUT PREJUDICE</u>
EUGENE JOHNSON,)	
LAURESE GLOVER,)	
DERRICK WHEATT)	
)	
Defendants.)	

Now comes Timothy J. McGinty Prosecuting Attorney of Cuyahoga County, on behalf of the State of Ohio, by and through his undersigned assistant, and respectfully moves the Court to dismiss this case without prejudice for the reasons more fully stated in the Brief attached hereto.

Respectfully submitted,

TIMOTHY J. MCGINTY
Cuyahoga County Prosecuting Attorney

/s/ Anthony T. Miranda

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BRIEF

Defendants Johnson, Glover, and Wheatt were convicted of murder in the February 10, 1995 shooting of Clifton Hudson, Jr. This Court granted a new trial in March 2015, which the Eighth District affirmed in May 2016. The State now requests that this Court dismiss this case without prejudice.

The State concedes that the strength of its case has been considerably weakened by the passage of time. Using only witnesses presented at trial in 1996, the State is not in a position to retry this case since the State's primary witness has recanted her identification of Defendant Johnson as the shooter.

However, the State does wish for the opportunity to further investigate information which was not used at the time of trial and to then make a decision of whether to dismiss with prejudice. Jerry Vaughn told police in 1995 that he observed the shooting and identified Eugene Johnson as the shooter. *See* Police Report (Feb. 11, 1995), Ex. A. Jerry Vaughn, a neighbor at 1736 Strathmore, was on the State's trial witness list but did not testify at trial. He was incarcerated at the time and has a lengthy criminal record since the trial. Additionally, Mr. Vaughn's home was a football field away from the shooting and the shooter ran in the opposite direction. If Mr. Vaughn was at the corner of Strathmore and Elderwood, as described in the police report, he was still in excess of 75 yards away from the shooting. So if the State does locate Mr. Vaughn, it will have to carefully examine his version of events. Mr. Vaughn also stated that he was standing with a neighbor, Mr. Braswell, at the time of the shooting. *See* Police Report (Feb. 11, 1995), Ex. B. The State is currently looking for Mr. Braswell to see what if anything he recalls.

The State has never interviewed Mr. Vaughn since the trial and additional time is needed to determine the extent of his knowledge of the crime. The State has been attempting to speak with Mr. Vaughn but cannot locate him.

This Court's granting of a new trial was ordered in part because it found the statements of two brothers in the police reports were newly discovered evidence. Eddie Dante Petty, who was 10 years old at the time of the crime, has been located and nothing he recalls his relevant to either side. However, the State has been unable to locate or speak with Gary Petty, who was 8 years old at the time of the shooting. Speaking to Gary Petty might help determine with greater specificity the nature of his statement to police that he observed the shooter "exit the driveway of the Post Office parking lot".

Pursuant to Crim.R. 48(A), the State asks this Court to dismiss the underlying criminal case without prejudice pending the State's investigation. "When the state makes a motion to dismiss a case pursuant to Crim.R. 48(A), a trial court has two options: 1) grant said motion; or 2) deny it and order the case to proceed to trial." *State v. Robinson*, 9th Dist. Summit No. 22225, 2005-Ohio-269, ¶ 7. "To dismiss a case with prejudice on a Crim.R. 48(A) motion, a trial court must find a deprivation of a defendant's constitutional or statutory rights, the violation of which would, in and of itself, bar further prosecution." *Id.* This Court ordered a new trial in this case and made no finding of a violation which would bar further prosecution. Therefore, the State respectfully submits that dismissal without prejudice is appropriate in this case at this time. It is difficult to evaluate and reconstruct a case twenty years after an event.

Respectfully submitted,

TIMOTHY J. MCGINTY
Cuyahoga County Prosecuting Attorney

/s/ Anthony T. Miranda

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SERVICE

A true and accurate copy of the foregoing State's Motion has been sent by electronic mail on June 27, 2015, to:

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/s/ Anthony T. Miranda

Assistant Prosecuting Attorney

SUPPLEMENTARY REPORT

EAST CLEVELAND POLICE DEPT.

cca EC9503123

OFFENSE/
INCIDENT SHOOTING/FATAL

related
cca EC

LOCATION 1706 STRATHMORE EAST CLEVELAND, OHIO 44112

Additional details of offense or accident progress of investigation, etc.

02/11/95

VICTIM: CLIFTON R. HUDSON, B/M/19YQA

DDO:02/10/95

This date, Detectives responded to 1736 Strathmore in the attempt to meet with witness Jerry Vaughn, B/M/38YQA, who was in the area when the above victim was shot and killed and observed the suspect shoot same. Detectives after making several arrest obtained photo's of the Juvenile Males involved in the above Offense.

Once at 1736 Strathmore, Detectives met with Mr. Vaughn, who was asked to identify the male he observed shoot the victim. He advised detectives that the male was Black, Tall about 6'0", and very slender build. He said the male was wearing a dark colored coat believed to be Blue with a Green and Maroon collar. He was shown three Polaroid photo's which contained Derrick J. Wheatt, Laurese G. Glover, and Eugene Johnson. After reviewing all three photo's with-out hesitation he picked the photo of Eugene Johnson as the male that shot and killed the above victim, after chasing him up Strathmore from the bridge near Manhattan. He said that the only thing that was different about the photo was that the suspect had on a hood or a skull hat.

The Witness was unable to come to the bureau for a written statement and was advised that one could be obtained at a later time.

Detectives Johnstone/Perry
February 11th, 1995

STATE'S EXHIBIT

A

Date 2-11-95

S. Perry
APPROVED BY

Det. Vincent R. Johnstone
INVESTIGATING OFFICER

SUPPLEMENTARY REPORT

EAST CLEVELAND POLICE DEPT.

oca EC9503123

OFFENSE/

related

INCIDENT SHOOTING/FATAL

oca EC

LOCATION 1704-1706 STRATHMORE EAST CLEVELAND, OHIO 44112

Additional details of offense or accident progress of investigation, etc.

02/10/95

VICTIM: CLIFTON HUDSON B/M/19yoa

DOB:02/10/95

This date, Detectives responded to the area of Strathmore and Manhattan regarding the above offense. Upon arrival, met with Airron D. Dozier (B/F/20 DOB:03/15/74, Ph:761-5641, Address:14716 Ardenall), and Johnathan E. Dozier (B/M/19, DOB: [REDACTED], PH: [REDACTED], Address:14716 Ardenall), who approached Detectives and stated that they didn't witness anything, but their Uncle (Robert Hunt), arrived home at 14716 Ardenall at about 6:05 P.M., stated that he was standing on Manhattan at Ardenall when he heard 5 to 6 gun shot's coming from the area of Strathmore and Manhattan. He advised them (Airrion and Jonathan), that seconds after hearing the gun shot's he observed a Black Chevy Blazer, 2-Door, Older model, 4x4 turn right from Strathmore in the North direction onto Manhattan. Once on Manhattan turned left on Ardenall operating West-Bound, when he observed the driver of the Blazer to be Laurese Glover of knowles in the City of East Cleveland aka Quink he's known to be part of the Tribe Gang which hangs out in the area of Shaw Avenue, Allegheny and Ardenall. He advised them that the driver of the Chevy hangs with Ramone Malone (14724 Euclid Avenue) and Derrick Wheatt (aka Lil Joe) of 14621 Ardenall.

During the interview with Jonathan Dozier, he stated that he had just gotten off from work and while in the area of Euclid Avenue and Strathmore he observed the Red and Blue lights from the police car's on Strathmore near Manhattan and went to see what was happening. He related that he was unable to see anything. Both Airrion and Jonathan were given a business card and advised to contact detectives with any additional information.

While in the area, Detectives were approached by Richard Coleman (B/M/30, DOB: [REDACTED], Address:1753 Strathmore, Ph: [REDACTED]), who stated that a male by the name of Jerry Vaughn of 1736 Strathmore witnessed the shooting. After this information was received, Detectives responded to 1736 Strathmore and met with Jerry Vaughn, who stated that he observed the shooting and was willing to come to the Bureau to make a statement about what he witnessed. He was transported to the Detective Bureau and interviewed. During the interview the following was learned.

Jerry Vaughn stated that he was standing on the corner of Elderwood and Strathmore talking with a friend (Bill Braswell of 1730 Strathmore), when he observed a male running in his direction being followed by another male who he identified as a Young Black Male, Slender Build, Tall, who was shooting at the male in-front of him. He stated that he could identify the suspect. He stated that he ran home and saw nothing else. He was given a card and advised to contact detectives with any additional information he might have relative to the above offense.

Detectives Johnstone/Sgt. Perry/D. J. Miklovich

February 10th, 1995

date 2-16-19-95

[Signature]
 Approved By

[Signature]
 In

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STATE'S EXHIBIT

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