

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE
COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

CASE NO.: 15-CF-673B

vs.

MARK D. SIEVERS,
Defendant.

_____ /

MOTION FOR NEW TRIAL

COMES NOW the Defendant, MARK SIEVERS, by and through the undersigned counsel,
and pursuant to Fla. R. Crim. P. 3.580; 3.590; 3.600, and in furtherance thereof states as follows:

Procedure/Timeliness

1. The above-named defendant was convicted of first-degree murder and sentenced to death on the same on January 3, 2020.
2. Pursuant to Fla. R. Crim P. 3.3.590(b):

A motion for new trial or arrest of judgment, or both, or for a new penalty phase hearing may be made within 10 days after written final judgment of conviction and sentence of life imprisonment or death is filed. The motion may address grounds which arose in the guilt phase and the penalty phase of the trial. Separate motions for the guilt phase and the penalty phase may be filed. The motion or motions may be amended without leave of court prior to the expiration of the 10 day period, and in the discretion of the court, at any other time before the motion is determined.

Verdict is Contrary to the Weight of the Evidence

3. Pursuant to Fla. R. Crim. P. 3.600(a)(2), a Motion for New Trial shall be granted when
[t]he verdict is contrary to law or the weight of the evidence.
4. In the above-styled matter the jury verdict is contrary to the weight of the evidence.
5. Pursuant to Ferebee v. State , 967 So.2d 1071 (Fla. 2nd DCA 2007):

When considering a motion for new trial under rule 3.600(a)(2) based on a claim that the verdict is against the weight of the evidence, the trial court

must exercise its discretion to determine "whether a greater amount of credible evidence supports" an acquittal. Id. at 1044. "Rule 3.600(a)(2) thus enables the trial judge to weigh the evidence and determine the credibility of witnesses so as to act, in effect, as an additional juror." Tibbs v. State, 397 So.2d 1120, 1123 n. 9 (Fla.1981).

6. The only direct evidence of MARK SIEVER's culpability came from CURTIS WAYNE WRIGHT.
7. It was undisputed that CURTIS WAYNE WRIGHT had lied several times to law enforcement during the course of his initial meeting, is a five-time convicted felon, had manipulated his neighbors into providing him a false alibi, and received a preferential plea in exchange for his testimony.
8. Further, there were several facts from CURTIS WAYNE WRIGHT that were directly or indirectly contradicted by more credible witnesses at trial¹.
9. To find the CURTIS WAYNE WRIGHT was credible the jury would have had to give greater weight to his testimony than more credible witnesses who were not subject to a cautionary jury instruction regarding co-defendant testimony.
10. Accordingly, the verdict is contrary to the weight of the evidence and a new trial is warranted.

Prejudice with Respect to Juror Misconduct

11. Pursuant to Fla. R. Crim. P. 3.600(b), *[t]he court shall grant a new trial if any of the following grounds is established, providing substantial rights of the defendant were prejudiced thereby.*
12. More specifically, Fla. R. Crim. P 3.600(b)(4) *[a]ny juror is guilty of misconduct.*

¹ Dr. Coyne testified that the claw protrusion of the claw hammer was never used in the attack; there was no biological or trace evidence found on the jumpsuit by the side of the road; there was no biological evidence found inside the black backpack.

13. In a recent interview with WINK News, the jury foreperson relayed that the jury decided that they believed the testimony of Dr. MARK PETRITES describing a phone conversation after MARK SIEVERS failed to inquire as to the status of Dr. TERESA SIEVERS' condition, instead asking whether a robbery² had occurred.
14. The jury foreperson also stated that the jurors found CURTIS WAYNE WRIGHT credible because, "[y]ou don't get on the witness stand and hit somebody with a hammer unless it's true."

Prejudice with Respect to Newly Discovered Evidence

15. Pursuant to Fla. R. Crim. P. 3.600(b), *[t]he court shall grant a new trial if any of the following grounds is established, providing substantial rights of the defendant were prejudiced thereby.*
16. More specifically, Fla. R. Crim. P 3.600(b)(8) *[f]or any other cause not due to the defendant's own fault, the defendant did not receive a fair and impartial trial.*
17. The same WINK News report referenced in paragraphs 13 through 15, the jury foreperson stated that the jury found Dr. MARK PETRITES' testimony especially persuasive.
18. During the guilty/not guilty phase of the trial Dr. MARK PETRITES testified that neither he nor his wife were especially close to MARK SIEVERS.
19. After the guilty/not guilty phase of the trial, the Defendant's step-mother found a letter from MICHELLE PETRITES-WILCOX, Esq., Dr. MARK PETRITES' wife, outlining

² Although the word used in the testimony was "robbery" the fact pattern would support the correct term would be "burglary."

the depth of the relationship between MARK SIEVERS and MICHELLE PETRITES-WILCOX, Esq.

20. The letter from MICHELLE PETRITES-WILCOX, Esq. directly contradicts the testimony of Dr. MARK PETRITES.

21. The letter from MICHELLE PETRITES-WILCOX, Esq. was not available to the Defense prior to trial.

22. The letter from MICHELLE PETRITES-WILCOX, Esq. would have been valuable for impeachment purposes.

23. The Defendant did nothing to conceal or obfuscate the existence of the letter from MICHELLE PETRITES-WILCOX, Esq. or the contents therewithin.

24. Thus, the unavailability of the letter from MICHELLE PETRITES-WILCOX, Esq. was not due to any fault of the Defendant.

WHEREFORE the Defendant, MARK SIEVERS, hereby moves this Honorable Court for a new trial and for such further relief as this Honorable Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically furnished to the persons and entities appearing upon the Service list below on this ____ day of January, 2020.

Service List:

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Respectfully submitted,

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