

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No: 07-015018-01

Hon. Brian R. Sullivan

-vs-

DAVONTAE SANFORD,

Defendant.

Kym L. Worthy P38875
Attorney for Plaintiff
1441 St. Antoine
Detroit, MI 48226
(313) 224-5777

Samuel C. Damren P25522
Jonathan S. Feld P77458
Heidi A. Naasko P58783
Attorneys for Defendant
400 Renaissance Center
Detroit, MI 48243
(313) 568-6519

OPINION OF COURT

Defendant filed a motion for relief from judgment about April 15, 2015. MCR 6.500. The court ordered the prosecutor to respond on July 23, 2015. The People filed a motion to extend the time to respond on September 1, 2015. The court granted that motion on October 5, 2015. MCR 6.506.

The prosecutor then sought indefinite additional time to respond to the 6.500 motion because it had requested the Michigan State Police (MSP) to reinvestigate the case.¹ The

¹Prosecutor Worthy sent a letter to the Director of the Michigan State Police requesting a reinvestigation of the

defense agreed to the extension and the court granted that motion.

MSP performed an investigation, at least in part, and on May 19, 2016 stated " ... there is nothing to further be added to this report."

On June 8, 2016, the parties presented a stipulation without legal authority, in conference, to both set aside defendant's conviction and release defendant from custody. The MSP investigation report had not yet been provided to the court. The factual basis of the stipulation was that Police Officer Tolbert changed his statement as to how the diagram of the crime scene was created. In addition, prosecutors also made oral representations to the court in the presence of defense counsel about the quality of the evidence.

The court ordered the People to verify the oral representations and supplement the joint stipulation to conform to the oral representations. The court also requested that the MSP investigation report be provided to it for review. The court signed the order based on both the joint stipulation of the parties and oral representations made to the court.

With the consent of the defense, the People provided the court with the 114 page Michigan State Police investigator report. The defense was not provided with a copy. The September 11, 2015 and November 3, 2015 transcripts of Michael Russell was also provided but not any other supporting interviews, documents or information.

About June 24, 2016 prosecutors and defense counsel provided a supplemental stipulation to the court. That stipulation corrected the earlier oral representations, withdrawing them, as they could not be verified. It also reiterated the People's position on dismissal of the case had not changed.

The court reviewed the 114 page MSP report and the September 11, 2015 and November 3, 2015 transcripts of interviews of Michael Russell.

Based on the supplemental joint stipulation dated June 24, 2016, the People still seek to dismiss the charges against defendant without prejudice, and the defense concurred.²

"The function of criminal court proceedings historically has been a search for truth and justice – an honest endeavor to find out if the accused is guilty or innocent." *People v Marsh*, 14 Mich App 518, 546 (1968). That function needs to be fulfilled in this case. This case is thick with speculation, conjecture, confusion and unanswered questions; far thinner on evidence. The MSP investigation does not appear to answer or resolve the outstanding questions in this case. The unanswered questions cloud rather than clarify the case. For instance:

- Glover, the surviving eyewitness, testified one of the perpetrators entered and remained in the bedroom during the search of the house. He was dressed in black pants, was a "younger person" whose voice

²No hearing was held in open court, although MCR 6.508 provides a vehicle for presenting evidence. See also MCL 767.29, which requires the reasons stated on the record.

was “not deep.”

Sanford’s black dickies (pants) were seized. Those pants tested positive for gunpowder residue on both thighs.

This is some evidence Sanford was at least present at the discharge of a weapon.

No explanation for the gunpowder on defendant’s pants has been provided. It was simply ignored.

- Sanford told police he washed his gym shoes. He told police the reason he washed them was he wanted to wear clean shoes to school – although he told police he was not attending school at the time.
- The account of the only surviving witness of the multiple murders conflicts substantially with the multiple statements offered by Smothers.
- Smothers was subpoenaed to testify in court twice.

Smothers refused to testify both times – once on the advice of attorney Gabi Silver. The other was on advice of attorney James Howarth, the current attorney of record.

Smothers has never been subjected to cross-examination on any of his statements.

- Smothers’ account of the encounter with Glover in the child’s bedroom doesn’t match that given by Glover. The words spoken to her were markedly different.
- Glover heard rummaging in a bedroom next to the one in which she hid and in the basement *at the same time* the person was in the room with her with a “big gun” and stayed in the room the whole time, as others ransacked the house. That is evidence of several persons in the house.
- Smothers told police he left his gun with Nemo, then went in the back bedroom, talked to an adult without a gun and said “everything’s all right.” Then Smothers said he left the room and “went into the basement.” This information is inconsistent with Glover’s testimony.

- Other conflicts exist. These include a gun matching the one Smothers later had; statements of other witnesses (Payne and Davis) that are not explained or accounted for; residue of gunpowder on pants of a participant named by Sanford.

Sanford said it was a robbery. Smothers said it was a "hit" (murder for hire) ordered by Leon Payne.

Then there is the uninvestigated perjury of William Rice. The defendant presented Rice – the former head of Detroit Police Homicide – as a witness for defendant.³ Rice subsequently pled guilty of perjury for presenting this false testimony on behalf of Sanford and is serving a prison sentence for that (and other) offense(s).

The presentation of Rice's perjured testimony served as a major obstacle to the relief sought by defendant, and determining the truth of the case.

No investigation into that deliberate presentation of false testimony appears to have been made as it relates to this case and no explanation of it has been presented to the court.

Moreover, on the night of the initial investigation while Sanford was in contact with the police, eight phone calls were made by Detroit Police Homicide Investigator Dale Collins to Rice. Telephone records show that Rice's cell phone received eight calls during the night (while his "nephew" defendant was making a statement) at: 1:39 a.m., 2:54 a.m., 2:55 a.m., 3:11 a.m., 6:26 a.m., 6:44 a.m., 7:05 a.m., 8:03 a.m. and 2:35 p.m.

³The defense apparently did not verify Rice's alibi before presenting him as a witness nor did the defense

Rice denied on the record that he received those calls.

The big question still looms as to why the calls were made and whether information about the case was conveyed all during the night.

Collins was not interviewed about those calls by MSP.

These and other factual disputes remain unanswered, maybe unexplained and have generated significant confusion about the case. The confusion needs to be clarified, facts need to be accounted for and the unanswered questions investigated to properly resolve the matter under law to render a just result for the four deceased victims, Glover and for Sanford. Humanitarianism is not the exclusive invocation of only one side. *Marsh, Id.* Truth is not defined by who speaks first, the loudest or repeats it most often. Rather, it is generally that which corresponds to the facts. The facts need to be discovered through professional unbiased investigation to substantive conclusions, legal and factual, wherever they lead, and to whoever may be implicated. Nothing short of the truth, if still ascertainable after this vast obfuscation of facts and maneuvering, will satisfy a bewildered populace as to why the crimes are not solved and the investigation only produced more unanswered questions and greater confusion. What has been presented so far, in the manner and form elected, has done little to resolve the issues.

CONCLUSION

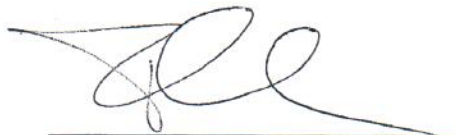
speak to trial attorney Robert Slameka, who listed Rice on the witness list for trial.

Where all this has led is that the prosecutor has elected in good conscience not to proceed with the case because of the extensive taint of the evidence. That taint appears to extend to both sides.

The determination of whether to proceed or not to proceed is a matter vested by law within the province of the prosecutor. *People Ex Rel Leonard v Papp*, 386 Mich 672 (1972); *People v Nelson*, 66 Mich App 60 (1975); *Genesee County Prosecutor v Genesee Circuit Judge*, 391 Mich 115 (1974). This court will not second guess that judgment.

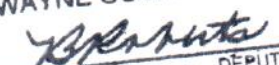
The People's motion, stipulated to by defendant, is granted. The case is dismissed without prejudice; and

IT IS SO ORDERED.



BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: 7-19-16

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY  DEPUTY CLERK