

COPY

FILED
SUMMIT COUNTY
JUVENILE COURT

2012 FEB 16 AM 11:27

LINDA TUCCI TEODOSIO
JUDGE

**IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
SUMMIT COUNTY, OHIO**

IN RE: TYREE FEASTER) **CASE NO: DL07-02-0513**
)
) **JUDGE LINDA TUCCI TEODOSIO**
)
)
) **MOTION TO DISMISS**

Now comes the State of Ohio, and hereby moves this Honorable Court to dismiss the above case without prejudice per Juvenile Rule 22.

ShawRica Lester was shot to death on January 26, 2007 at approximately 11:20 p.m. outside the Cage nightclub in Akron. Following an investigation by the Akron Police Department, Tyree Feaster was charged in Summit County Juvenile Court on February 12, 2007 with Murder, a first-degree felony; Felonious Assault, a second-degree felony; Participating in Criminal Gang Activity, a second-degree felony; and Aggravated Riot, a fourth-degree felony, in the shooting death of Ms. Lester.

At the time Ms. Lester was shot and killed, numerous witnesses were present outside the Cage nightclub. However, few were willing to acknowledge or cooperate with Akron Police regarding their having witnessed the actual shooting. Based upon the nature of the crime, Feaster's case was set for a probable cause

hearing on April 18, 2007 with the intent of transferring jurisdiction to the Summit County Court of Common Pleas so that Feaster could be tried as an adult.

The day of Feaster's juvenile hearing, April 18, 2007, the prosecutor had to house some witnesses, who were in fear for their safety, at a hotel and have law enforcement escort them to court. Tyree Feaster's older brother, Garrick "Big Chew" Feaster, was ordered off the Juvenile Court property because he was sitting in the parking lot waving to witnesses as they arrived. Before the hearing, the witnesses who had originally come forward with information about Ms. Lester's death either refused to cooperate with the prosecution or claimed to have not seen anything the night of the shooting. Several potential witnesses claimed to be the subject of threats and intimidation.

Rather than proceed with the hearing, which would fail without any cooperative witnesses, the State resolved the matter with Feaster entering an admission (or plea of guilty) in the Juvenile Court to Involuntary Manslaughter, Felonious Assault with a firearm specification, Participating in a Criminal Gang with a firearm specification and Aggravated Rioting with a firearm specification. As part of the plea proceedings, the Court required Feaster to verbally admit on the record his involvement in the murder of Ms. Lester. Additionally, Feaster and his legal counsel agreed to cooperate against others involved.

As part of this admission, Feaster said: "I went inside the club and like got into an argument with some people in there. When we got into an argument, it involved fighting inside the club, there was a lot of people kicked out, so when I left out, I went to the back of the club and I grabbed the gun.

"When I grabbed the gun, my friend was walking up to me and somebody punched him, and when he fell over, a whole bunch of people ran over like trying to stomp him and stuff, and so I shot – I fired off into the air.

"Once I fired off into the air, everybody backed up, then they ran back up like they was ready to run back up on us again to fight, so I shot two shots off into the crowd. After that, I emptied out the rest of it into the air. Then I took off running and threw the gun inside a graveyard."

Feaster, with the advice of his attorney, agreed to a sentence of four years in juvenile detention, plus a consecutive three-year-sentence on the firearm specifications, which could keep him in custody until he turned 21. By his agreement, Feaster was designated a Serious Youth Offender by the Court and was sentenced to a suspended sentence of 10 years in adult prison plus three years on the firearm specification for a total of 13 years, which could be invoked if he misbehaved while in juvenile detention.

The State of Ohio filed a motion in August 2007 to invoke the adult portion of the sentence because Feaster had participated in fights and a riot at Mansfield Juvenile Correctional Facility, which were documented on video. The Juvenile Court sentenced Feaster in November 2007 to 13 years in adult prison for violating the terms of his suspended adult Serious Youth Offender sentence.

In December 2007, Feaster appealed his Serious Youth Offender sentence. The Ninth District Court of Appeals upheld the original sentence in June 2008.

Feaster appealed that decision to the Ohio Supreme Court in August 2008. In September 2009, the Ohio Supreme Court overruled the Court of Appeals' decision, vacated the judgment and sentence and ordered the case back to the Juvenile Court.

In April 2010, the Juvenile Court denied a motion by Feaster to withdraw his plea. That ruling led to another appeal claiming a procedural error on the part of the Court because the sentencing judge had not properly informed Feaster that he would be on post release control (parole) after his release from prison. According to his appeal, this omission prevented Feaster from entering his plea "knowingly, intelligently and voluntarily."

On August 24, 2011, the Ninth District Court of Appeals ruled in favor of Feaster and ordered his plea to be withdrawn and his agreement voided. The Supreme Court of Ohio ruled on January 18, 2012 that, based on that one issue, Feaster could withdraw his admission to Ms. Lester's death and that the State of Ohio would have to retry its case against Feaster.

Feaster's admissions in 2007, which came as part of his plea and sentencing agreements, are not permitted to be used against him in any new proceedings. The Juvenile Court has scheduled a March 2012 hearing date for the State of Ohio to either prepare for trial or dismiss the charges against Feaster.

In preparing to retry the case against Feaster, the State of Ohio has worked to build the case in the same manner as if it were a new case. The State of Ohio reviewed police reports, interviewed witnesses and cataloged evidence.

However, this case involves a crime that occurred five years ago. Considering the Ninth District Court of Appeals opinion in August 2011 and the January 2012 Ohio Supreme Court ruling, the State of Ohio has worked to re-build its case against Feaster. Co-defendants and witnesses have been located, the original police reports have been reviewed and investigators have obtained and listened to jail telephone calls and searched to locate all other evidence available.

Investigators from the Summit County Prosecutor's Office and Akron Police Department detectives received a list of 10 co-defendants and possible eyewitnesses. The investigators and detectives searched for those people using a variety of tools, government databases, prison records and Internet searches, as well as working through a network of confidential informants.

Two co-defendants or witnesses were located and interviewed at the Summit County Jail. Four others were located and interviewed at three different state prisons.

Co-defendant Earl Davis, while incarcerated in the Summit County Jail, was interviewed in December 2011. Mr. Davis was uncooperative, saying he would not say anything if called to the witness stand.

In January 2012, prosecutor investigators traveled to Richland Correctional Institution and conducted separate interviews of co-defendants Dominique Adams and Demarco Deck. Adams spoke briefly with the investigators. While he recalled making a statement to the Akron detectives in 2007, he claimed he did not know anything about the shooting and would not testify against Tyree Feaster. Inmate Demarco Deck refused to speak with the investigators and denied ever speaking with

the Akron detectives. When Deck was reminded that his statement was recorded, he said that if he gave a statement, it was untruthful.

Co-defendant Ryan Polk was located at the Summit County Jail. In January 2012, Polk advised investigators that he did not want to talk to them, that he had not testified against Feaster in 2007 and still would not testify against him.

Witness Tyran Davis, currently serving a Murder sentence at Mansfield Correctional Institution, was also interviewed in January 2012. Davis denied having made a statement to Akron Police in 2007 identifying Tyree Feaster as the shooter. He said that if the recorded statement showed he did identify Feaster, he was mistaken. He said if brought back to court to testify, he would sit on the stand, cross his arms, shut his mouth and say nothing.

In mid-January 2012, witness Martel Tatum was discovered to be at Lancaster, Ohio's Southeastern Correctional Facility serving a three-year sentence. Tatum denied having ever made statements to multiple Akron Police detectives that identified Tyree Feaster as one of the people with a gun. He stated he would not testify against Tyree Feaster.

Three other eyewitnesses and one other co-defendant remain to be located. Lloyd Burnside, a co-defendant, was interviewed on February 7, 2012. However, Burnside and his family advised investigators that, although he previously testified that he saw Feaster shooting a handgun, he now could not recall having seen anything the night ShawRica Lester was killed, would say nothing about that night and would not cooperate with prosecutors. Co-defendant Recardo Travis and witness Terry

Iverson have not been located. Katina Arnold, the only female witness of the shooting, did not cooperate in 2007 and has not been located.

Although reports state many more were witnesses to this shooting, no others were ever located, identified or came forward.

Akron detectives and investigators for the Summit County Prosecutor continue to search for these individuals. In a further attempt to locate witnesses or find admissions by Tyree Feaster, investigators have obtained and have listened to more than 96 hours of Tyree Feaster's recorded telephone calls from his stay in the Summit County Jail in 2008 and from the time he has been incarcerated at Mansfield Correctional Institution.

The State's case against Tyree Feaster in the shooting death of ShawRica Lester cannot be presented without the sworn and truthful testimony of these witnesses. Without witness cooperation, and due to the law precluding Feaster's own stipulated agreement admitting responsibility for Ms. Lester's death to be used against him, the State cannot move forward with its case.

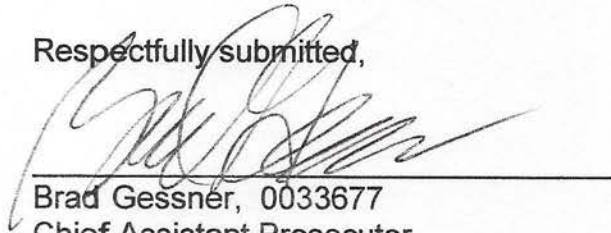
The epidemic of amnesia by the few eyewitnesses who were once willing to come forward, the refusal to cooperate by those who have now changed their stories and a fear of cooperating that appears to be consuming the witnesses and residents of Akron who were present at the time of this victim's tragic death have rendered the State of Ohio unable to present its case against Feaster. Under the Constitutions of the United States and Ohio, a person can only be tried once. If this case is tried now, without these witnesses, this "double jeopardy" would stop Feaster from being

recharged if those witnesses have a change of heart and desire to cooperate in the future.

Therefore, the State at this time moves to dismiss without prejudice the juvenile charges in the above matter and release the defendant forthwith. The State continues to investigate and pursue leads in the pursuit of justice for ShawRica Lester and her family. Charges may be refiled if circumstances change and witnesses choose to stand up and tell the truth about what happened on the night of January 26, 2007.

SHERRI BEVAN WALSH
SUMMIT COUNTY PROSECUTOR

Respectfully submitted,



Brad Gessner, 0033677
Chief Assistant Prosecutor
53 University Ave.
Akron, Ohio 44308
(330) 643-2800

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was mailed to Defendant's counsel, Attorney Jana DeLoach, on February 16, 2012.

