

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND
FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA)	Case No. F10009090
)	
vs.)	Judge: Miguel De La O
)	
Quentin Wyche)	
<u>Defendant.</u>)	

MOTION FOR DOWNWARD DEPARTURE FROM THE SENTENCING GUIDELINES

COMES NOW the Defendant, Quentin Wyche, by and through the undersigned attorney, moves this Honorable Court to enter an Order granting this Motion to and as grounds would state the following:

1. After a earlier Guilty verdict, On **November 25th, 2013**, Quentin was sentenced to 20.5 Years Prison(Bottom of the Sentencing Guidelines) followed by 5 Years Probation for Murder in the Second Degree. His prior lawyer orally asked for a downward departure and did not file a written motion citing any of the listed statutory reasons.

2. After all appellate remedies ended on **June 24th, 2016** I filed a Motion to Mitigate on **August 23rd, 2016** within 60 days. A hearing has been set on **October 28th, 2016** as Mr. Wyche has to be transported from Desoto Annex to Miami.

3. We are requesting the court consider F.S. 921.0026(2)(f), "The Victim was an initiator, willing participant, aggressor, or provoker of the incident" and F.S. 921.0026(2)(i) "The offense was committed in an unsophisticated manner and was isolated incident

for which the defendant has shown remorse" as a reason to go below the sentencing guidelines and as grounds to Mitigate. As stated above, no earlier Motions for Downward Departure were filed.

STANDARD OF REVIEW

A trial court may impose a departure sentence based on factors or circumstances which reasonably justify the aggravation or mitigation in accordance with 921.0016. The facts supporting the departure must be established by a preponderance of evidence, Rule 3.701(6).

A trial court's decision whether to depart from the guidelines is a two-step process. **Banks v. State, 732 So. 2d 1065, 1067 (Fla. 1999)**. First, the court must determine whether it can depart, i.e. whether there is a valid legal ground and adequate factual support for the ground for departure. Second, if there is a valid basis for the trial court to permissibly depart, it must determine whether departure is the best sentencing option for the defendant in the pending case. In other words, the first prong is whether the trial court **can** depart and the second prong is whether the trial court **should** depart.

The trial court is required to weigh the totality of the circumstances, including aggravating and mitigating factors. The decision to depart falls within the sound discretion of the trial court.

The trial court's determination as to the first prong is a mixed question of law and fact which will be sustained on review if the trial court applied the correct rule of law and there is competent substantial evidence to support the ruling; whereas the second prong involves a judgement call within the sound discretion of the trial court, which will be sustained on appellate review absent an abuse of discretion.

RECITATION OF THE FACTS

A confrontation had occurred earlier on March 25th, 2010 between Quentin Wyche and Kendall Berry's girlfriend, Regina Johnson. Later that evening, Wyche and Berry appeared ready to have a consensual fight outside the FIU gym. With numerous friends and

onlookers present, Wyche and Berry "squared up" in reparation for their clash. Right, before the fight began, after he was hit Wyche ran away and Berry gave pursuit. The testimony is unclear as whether Berry caught up with Wyche, or whether Wyche consciously stopped and re-engaged in a physical confrontation with Berry. What is undisputed Wyche possessed scissors from his backpack or his person while fleeing and stabbed Berry as the two men confronted each other in front of the gymnasium's door. According to witnesses while Berry lay bleeding, Wyche made some statements to Berry and his friends. ***See Page 2 of 30 (Court Order of Defendant's Post-Trial Motions and Sentencing or Page 796 of the Transcript)***

COURT TESTIMONY

The testimony below applies to both reasons for departure requested at the beginning of the Motion; Victim initiator, willing participant, aggressor or provoker and for the sophistication part of Isolated incident, Unsophisticated and Shows Remorse.

Antoine Bell

A: "Well at that point, he was already--he was over there, squaring off, then somebody had punched Quentin from out of the crowd, then Quentin took off running. Then KB took off running, then I took off running after KB. And then, I tried to tell KB that Quentin had something in his hand." Page 525, Lines 6-11.

Q: "All right. Now, when Quentin turns around to run back towards the rec center doors, does somebody follow him?"
Page 537 Lines 22-25

Q: "Kendall follows him, right?"

A: "Yes"

Q: "And Kendall is running after him, right?"

A:"Yes" Pgs. 538 Lines 1-4.

Q:"All right. What happened once they got to the rec area"?

lines 5-6

A:"Well, it really happened so fast, like it happened

super fast", Lines 7-8.

Gib Jenkins

Q:"Were you playing in the game"?

A:"Playing, yes". Page 638, Lines 2-3.

Q:"Who were you with"?

A:"I was with Quentin, Cooper and Garrett." Page 638,

Lines 7-8.

Q:"Were you all playing on the same team"?

A:"Yea". Page 638, Lines 18-20.

A:"They stepped to Cooper and Quentin, multiple people,
and they started physically attacking them". Page
641, Lines 22-23.

Q:"Okay. So you saw some of these people in the crowd
attack Cooper"?(Quentin's friend) Page 641, Lines 24-25.

A:"Yes.

Q:"Did you see them knock him to the ground"?

A:"Yes". Page 642 Line 1-3.

Q:"Okay. Now you're describing this. How long did this entire thing take place from the time the crowd attacked Cooper until Quentin ran from the back area to the rec center door"? Page 642, Lines 10-13.

A:"I'll say five or ten seconds, five seconds". Page 642, Lins 14-15.

Q:"When Quentin turns and runs back to the rec center doors, does anybody follow after him? Page 642, Lines 21-22.

A:"Yes. Line 23.

Q:"Who"?

A:"Kendall and numerous individuals". Page 642, Lines 21-25.

Q:"Then what happened"? Page 645. Line 2

A:"That attacking proceeded for about ten seconds, I would say. And I tried to get involved and help take people who were attacking Quentin. Page 645, Lines 3-5.

Garret Cottom

Q:"What did you see Kendall do? A: Get ready to fight". Page 672, Lines 20-21.

Q:"How did you-- how did he do that? A: By square--I would say squaring up, standing--putting his fists up and approaching Quentin". Page 672, Lines 23-24.

Q: "At that point in time, did you see Quentin do anything in response"? Page 673, Lines 4-5.

A: "He started -- he started to do the same". Page 673, Line 6.

Q: "And then what happened"? Page 673, Line 7

A: "And then as Kendall approached him, he ran back towards the rec center". Page 673, Line 8-9.

Q: "Okay. So there were other people chasing Quentin along with Kendall"? Page 675, Line 4-5.

A: "Yes", Line 6.

Q: "Do you know how many others"? Page 675, Line 10.

A: "Like I said before, as many as who were with Kendall at that time, which was about **ten**, I would say". Page 675, Lines 11-12.

Marquis Rolle (roommate of Kendall Berry)

Q: "What happened when the defendant approached the group?"

A: "He walked up and, you know, Kendall was like, you got to show me one, like pretty much trying to talk to him, you know, and...", Page 474 Lines 8-12.

Q: What happened when the Defendant approached the group? Page 474, Line 10-12.

A: He walked up and, you know, Kendall was like, you got to show me one, like pretty much trying to talk to him, you know, and ..., Lines 10-12,

Q: And what was the defendant doing at the time?

A: Nothing. Just standing there.

Page 475, Lines 1-3.

Q: Did you ever tell him anything like it will be a one-on-one?

A: Yes, sir.

Page 476, Lines 7-9.

Q: What did Q. do?

A. He turned, then he ran.

Page 477 Lines 8-9.

CASE LAW

The following cases discuss downward departures under §921.0026(2)(f) Fla. Stat(2016);

Fonte v. Florida, 913 So. 2d 670(3rd DCA 2005), the court held the departure reason that the "victim brought the weapon to the fight" and was armed was not enough. The court did not make a finding that the victim was the aggressor and would only say that this may have been so. The court reversed and remanded for sentencing within the guidelines.

Hines v. State, 817 So. 2d 964(2nd DCA 2002), the court held the fact that the jury rejected self-defense did not allow the court to sentence below the sentencing guidelines was error and remanded for a new sentencing. It cited **State v. Rife, 789 So. 2d 288, 296(Fla. 2001)** Conduct that is legally insufficient to excuse the defendant's actions may be legally sufficient to warrant a a

downward departure sentence. Rife was a Statutory Rape case where the Victim was a willing participant despite the fact that consent is not a legal defense to this crime.

State v. Tai Van Lee, 553 So. 2d 258, 259(2nd DCA 1989)

affirmed a Downward Departure sentence in a Murder case based on the victim as the aggressor despite the fact that the jury apparently rejected the defendant's claim of self defense(defendant returned to the scene after sufficiently retreating. In **Tai Van Lee**, victim had smashed the windshield of the defendant's car with a hammer, fought with the defendant and chased the defendant from the scene with the hammer. It was upon the Defendant's return to the scene that the shooting occurred.

State v. Mathis, 541 So. 2d 744,745(3rd DCA 1989)

(Affirming a downward departure sentence in an aggravated battery case because the victim provoked the defendant.

UNSOPHISTICATED, ISOLATED INCIDENT AND SHOWS REMORSE

There are three components for 921.0026(2)(i);

Isolated Incident; No prior arrests as stated in the PSI
Unsophisticated; No planning, spontaneous, no
several and distinctive steps,
all happened in a matter of seconds.

(See above court testimony)

Shows remorse; Apologized to Victim's family
at Sentencing and was very
emotional(Pages 929-934)
Melissa Spillman, Victim's mother
asked the court for leniency for
Quentin(Pages 935, Line 3-7).

CASE LAW(SOPHISTICATION)

In the case of Baksh, 758 So. 2d 1222(4th DCA 2000) the Fourth District Court of Appeal reviewed the lower courts departure and approved the above reason as a valid ground for departure. Also see Fleming, 751 So. 2d 620(4th DCA 1999) where the court discussed "sophistication" and Merritt, 714 So. 2d 1153(5th DCA 1988) where the court discussed that the word "unsophisticated" should be construed liberally in favor of the Defendant.

Two cases that disallowed the above reason include Staffney v. State, 826 So. 2d 509(4th DCA 2002) (the above reason was disallowed where the defendant **climbed into a bed** besides the sleeping victim and her three children and committed a sexual battery as he undressed the victim and put his finger in her vagina) and Florida v. Salgado, 948 So. 2d 12, 17(3rd DCA 2006) (defendant entered a business complex in the middle of the night by using a **bolt cutter** to cut through a barbed wire fence removed radios from cars and broke into six or seven cars).

A. Sophistication Defined

Cases generally define "unsophisticated" as the opposite of "sophisticated" which in turn is defined as "having acquired worldly knowledge or refinement; lacking in natural simplicity or naivete", Staffney, at 512(citing Fleming, 751 So.2d 620, 621(4th DCA 1999) (quoting Amer. Heritage Dictionary of English Lang(1981). Thus a crime is committed in an unsophisticated manner when the acts constituting the crime are "artless, simple and not refined." Staffney(quoting State v. Merritt, 714 So. 2d 1153, 1154 n.3(5th DCA 1998). Also see, State v. Chesnut, 718 So. 2d 312(5th DCA 1998), the Fifth Circuit held that sophistication was not supported by the record when a defendant threw an object at a windshield of the vehicle the victim was driving in order to stop the vehicle so he could assault the victim.

Three cases where the reason was allowed based on the defendant's lack of sophistication, clearly demonstrates *artlessness*, *simplicity*, *naivete*, and *unrefinement*. In State v. Joseph, 922 So. 2d 393(Fla. 3d DCA 2006), the court found that there was competent substantial evidence of the crime being committed in an unsophisticated manner where the defendant simply retained a duplicate payment from a mortgage company without notifying the company of the over payment). In State v. Gibson, 800 So. 2d 727(5th DCA 2001) (finding substantial competent evidence that the defendant committed burglary where the defendant, in order to avoid his angry mother whom he lived, broke into a neighbor's house to find a place to sleep, threw the neighbor's firearm out of a window,

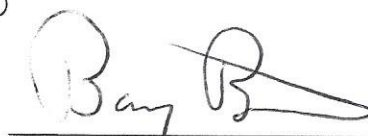
and then was found the next day by the phone, asleep in the neighbor's bed). In State v. Fleming, 751 So. 2d 620 (4th DCA 1999) (finding competent substantial evidence to support that the crime of purchasing cannabis was committed in an unsophisticated manner where the defendant knocked on the apartment door where the police were conducting a search of an apartment, asked to speak to a particular person, and after being told that the person he was seeking was not there and purchased drugs from the police.

The case law uses the term "**several distinctive and deliberate steps**" to commit the crime, see Salgado, above. The facts discuss a verbal disagreement between Quentin and Mr. Berry's girlfriend at a bus stop where he may have thrown a cookie. After Wyche played a basketball game that night there appeared to be a consensual fight between the parties, Quentin chose to run away after being punched, a chase of Wyche (by Mr. Berry and multiple friends as much as Ten(10), a re-engagement between Quentin and Kendal, scissors removed from the backpack or already in his hand, lunging by Kendall towards Quentin and the fatal stabbing of Mr. Berry. This tragic incident was disorganized and happened quickly and clearly was 'unsophisticated' based on the case law and court testimony from the trial.

WHEREFORE, the Defendant respectfully requests this Honorable Court to grant this Motion to Depart Downwards from the Sentencing Guidelines and respectfully request that the sentence of Quentin Wyche be reduced below the lower end of the Sentencing Guidelines.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by E-Filing to, Raymond Araujo, Assistant State Attorney, Miami, Florida, this 24th day of October, 2016.

cc: The Honorable Miguel De La O
Circuit Court Judge
-Office E-Mail



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