

**District of Columbia
Court of Appeals**

Nos. 01-CF-594 and 01-CF-617

THOMAS HAGER,

Appellant,

F-788-99, F-8602-97

v.

UNITED STATES,

Appellee.

BEFORE: Farrell, Reid, and Washington, Associate Judges.

O R D E R
(Filed November 12, 2004)

On consideration of appellant's petition for rehearing, it is

ORDERED that the petition for rehearing is granted to the extent that the court's opinion in these appeals, reported at 856 A.2d 1143 (D.C. 2004), is amended as follows:

1. The sixth sentence in the first column of 856 A.2d at 1145, is amended by deleting the words "identified as David Parker."

2. The seventh sentence in the first column of 856 A.2d at 1145, is amended to read as follows:

Ms. Watkins remained in the bedroom with the child and the shorter of the two men, whom she identified as Mr. Hager.

3. Footnote 12 of 856 A.2d at 1146, is amended to read as follows:

She stated that Mr. Hager was 5'4" in height, the same as her height. On cross-examination, Ms. Watkins was confronted with her statement to the police hours after the crimes, that the shorter of the two assailants was 5'9". She responded:

I'm not good with heights. So I said that because I was thinking about my first husband's height, but then after I thought about it, by him being right behind me and me being able to see him at eye level then I knew he was my height. Because I know five nine is taller than I am. And that was an incorrect statement.

Defense counsel asked Ms. Watkins, “[t]hat other person was six feet tall or over; am I correct?” She responded, “Yes.”

4. The fourth sentence in the second column of 856 A.2d at 1149, is amended to read:

Lloyd Johnson, who had seen Mr. Parker with a .40 caliber Glock gun, and who ‘used to see [Mr. Hager and Mr. Parker] together,’ maintained that sometime after the March 30, 1995 murder, he saw Mr. Hager and Mr. Parker talking, after which Mr. Parker told Mr. Johnson that he “had killed a dude on Nelson Place . . . [and consequently] . . . he got rid of the Glock.”

5. The seventeenth line from the bottom of the paragraph in the first column of 856 A.2d at 1151 (“Mr. Hager responded: ‘Yes , but I ain’t telling you [anything].’”) is amended by adding the following footnote at the end of the sentence:

Mr. Johnson testified as follows in response to the prosecutor’s questions:

Q Did you ask [Mr. Hager] about his role in the offense?

A Yes. During the conversation that me and him were having, we were going back and forth talking and I said, ‘But you was with it though, right?’ He said, ‘Yes, But I ain’t telling you [anything].’

Q When you say ‘you were with it,’ what do you mean ‘you were with it?’

A Meaning he was with the whole thing, with the murder with Dave [Parker].

Q And when you say with it, can you say – can you give another term for being with it?

A You were together with him. I don’t know.

PER CURIAM

Copies to:

Honorable Lee F. Satterfield

Honorable Judith E. Retchin

Clerk, Superior Court

Richard K. Gilbert, Esquire
601 Pennsylvania Avenue, NW
Suite 900, South Building
Washington, D.C. 20004

John R. Fisher, Esquire
Assistant United States Attorney