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Aug 25 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTNABURG COUNTY
In The Court of General Sessions
Hon. J. Mark Hayes, II

Appellate Case № 2022-000358
Lower Case № 2020-GS-42-03001

State of South Carolina..... Respondent

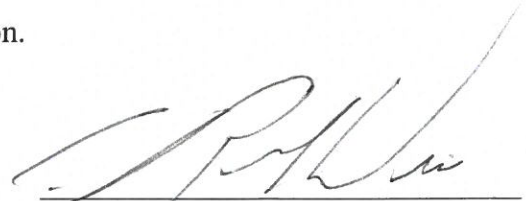
vs.

Wesley Ray Kyzer..... Appellant

Motion to Suspend the Appeal

Wesley Ray Kyzer, Appellant, hereby moves this Court to suspend the appeal in this matter so that the Appellant, pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, may file a Motion for a new trial in the Court of General Sessions for the County of Spartanburg based upon after discovered evidence. This motion is based upon juror misconduct as set forth in the proposed motion attached to this motion.

August 25, 2022



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Attorney for Wesley Ray Kyzer

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
)
 -vs-) Motion for New Trial
)
 Wesley Ray Kyzer,) on After Discovered Evidence
)
 Defendant.) 2020-GS-42-3001

Pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, Wesley Ray Kyzer moves this Court for a new trial based upon after discovered evidence of juror misconduct based upon the following facts:

1. In the trial of this case, the first juror to be call was Torian Richardson, Tr. at 30, ll 13-23. Since the trial , during a Google search by a family member of the jurors to determine if any of them made any comments about the trial, Mr. Kyzer learned that Mr. Richardson was a standout wide receiver at Byrnes High School for Christopher Miller, the head football coach and a witness for the state. In the years 2007 and 2008 Mr. Richardson was part of the AAAA Division I State Championship teams. He received an athletic scholarship to East Carolina University.

2. At the trial, the trial judge asked the jury this question as to the proposed witnesses, of which Christopher Miller was one:

“[I]f you have a close personal, social relationship with any of those individuals, or if you’ve shared any type of employment or work relationship or professional relationship with any of those individuals, I would ask that you please stand at this time” Tr. at 10, ll 16-21. This

question should have required a response from an outstanding player who played on two state championship teams for Coach Miller.

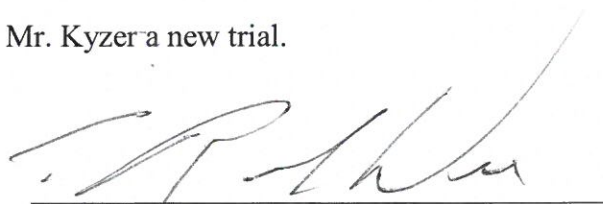
3. Mr. Richardson did not respond to the question. Had Mr. Richardson responded and provide correct answers, the Defense would have stricken Mr. Richardson or asked that he be excused for cause because of the close personal relationship of player and coach.. As he was the first juror called, Mr. Kyzer had strikes to use if he were not excused for cause.

4. The South Carolina Supreme Court has said, “Where a trial judge grants counsel’s request that the judge ask a particular question on voir dire, counsel is entitled to a truthful answer to the question.” *State v. Gullede*, 277 S.C. 368, 370, 287 S.E.2d 488, 490 (1982). Here by not responding, Mr. Richardson gave a false answer.

5. Because Mr. Richardson provided false, or at best misleading information, Mr. Kyzer was deprived of his right to an impartial jury as guaranteed by Article I, § 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the Constitution of the United States of America.

Wherefore, Wesley Ray Kyzer hereby requests that this Court conduct a hearing as to the answers provided by Torian Richardson and grant Mr. Kyzer a new trial.

August 25, 2022



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APPEAL FROM SPARTANBURG COUNTY
In the General Sessions Court
Hon. J. Mark Hayes, II

Appellant Case No. 2022-000358
Lower Case No. 2020GS4203001

State of South Carolina, Respondent.

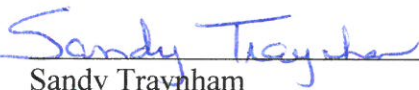
vs.

Wesley Ray Kyzer, Appellant .

CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for Attorney for the Appellant, C. Rauch Wise in the above entitled case. That on August 25, 2022, I did send via US Mail and e-mail, a copy of the Motion to Suspend the Appeal to William M. Blicht, Jr., S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, and wblitch@scag.gov .

August 25, 2022


Sandy Traynham
Secretary

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Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
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SC Court of Appeals

Re: State vs. Wesley R. Kyzer, Appellant Case No. 2022-000358

Dear Ms. Kitchings:

I am enclosing herewith for filing a Motion to Suspend the Appeal together with the Certificate of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt
Enclosure

cc William M. Blicht, Jr.
Barry Barnette