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Anderson, SC, CUC, CP/SS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
The State,)
)
-VS-)
)
Adam D. Lawless,)
)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment No.: 2018-GS-04-02885

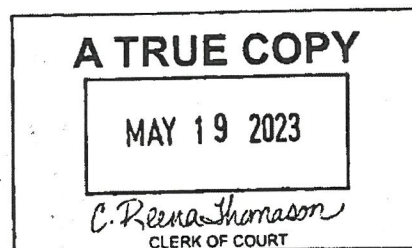
ORDER

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May 22 2023

SC Court of Appeals

PRESIDING JUDGE: R. SCOTT SPROUSE
DATE OF HEARING: MAY 15, 2023
SOLICITOR: KRISTIN W. REEVES
DEFENDANT'S ATTORNEY: NANCY JO THOMASON
COURT REPORTER: LISA SCOTT



This matter is before the Court pursuant to the Defendant's Motion for a New Trial under Rule 29 of the South Carolina Rules of Criminal Procedure. Nancy Jo Thomason represented the Defendant at the motions hearing due to his previous attorney becoming a witness in the post-trial events. The basis of the Defendant's motion is twofold:

1. The issuance of a post-trial statement made by the Defendant's father to defense counsel in which he alleges that he was the person who actually committed the murder; and
2. The submission of an affidavit to defense counsel from the jury foreman in which he asserts that he would have liked to have heard testimony from the Defendant and witnesses on behalf of the Defendant.

The State opposes the motion, arguing that the post-trial statement is not credible and that the juror statement does not directly assert that the Court's instructions on the law were disregarded. The Court heard arguments from counsel and allowed the parties time to submit caselaw for consideration.

FINDINGS OF FACT

This Court has jurisdiction over the parties and subject matter. Venue is proper.

This case was tried in General Sessions Court in Anderson County on April 10-14, 2023. The jury found the Defendant guilty of murder, with a thirty (30) year sentence resulting.

DEFENDANT'S MOTION FOR A NEW TRIAL ON AFTER-DISCOVERED EVIDENCE

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Hinder son, SC CDO, CP/GS

The case surrounds the stabbing death of Tabatha Duncan, who was the estranged girlfriend of the Defendant. Subsequent to the trial, the Defendant's parents came to the office of defense counsel, Norman Epps. The Defendant's father, James Lawless, told Epps that he was actually the person who committed the murder.

Epps submitted an affidavit to the Court on April 18, 2023. In that affidavit, Epps stated that the Defendant's parents were in the parking lot of his office when he returned from the courthouse after the April 14 verdict. They came into the office and spoke with Epps, where James Lawless informed him that it was he who entered 202 E. Broad Street on the morning of March 12, 2018. Epps alleges that Lawless told him that an argument ensued between Lawless and the victim, resulting in the victim obtaining a knife. A struggle over the knife allegedly resulted in the victim being cut. Epps then alleges that Lawless said that he "blacked out" and "when he came to, he saw Tabatha on the mudroom floor, covered in blood." Lawless then allegedly outlined the steps he took to clean up the residence and dispose of his bloody clothes and the victim's cell phone. The Defendant asserts that this statement to Epps constitutes after-discovered evidence that warrants a new trial being granted. The State opposes this motion, challenging the credibility and effect of the statement.

The standard that the Court must apply to grant a new trial is outlined in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999):

"In order to prevail on a motion for new trial based on after-discovered evidence, movant must show that evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching."

The Court concludes that prong (2) of the *Spann* test is met, as this issue arose post-trial. An in-depth analysis is required on the other prongs of the *Spann* test. A review of the evidence presented at trial shows that the victim was killed by stabbing. A bloody knife was found near her body in the laundry room, often referred to during the trial as "the mudroom." There was significant testimony regarding the tumultuous relationship between the Defendant and the victim. The two had a child in common and were involved in Family Court litigation. The attorney representing the victim in Family Court was called as a witness. The State argued to the jury that the evidence in the case showed that Duncan was killed sometime in the evening/early morning hours of March 11-12, 2018 at 202 E. Broad Street, Iva, South Carolina. Testimony from Aaron Kenyon, a friend of the Defendant who was staying at the Defendant's home that night, placed the timing of the incident in the evening of March 11, while testimony of Jeremy Gunnels, an ex-boyfriend of the victim, showed that he and the victim were exchanging sexually explicit messages via social media as late as 1:00 am on March 12. This discrepancy in the times was vigorously attacked by defense counsel at trial. Defense counsel cross examined Kenyon on inconsistent statements that he gave to law enforcement at various times.

The victim's body was found during the afternoon of March 12, 2018. The pathologist who conducted the autopsy was unable to give a time of death. The evidence showed that the

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Defendant left shortly before 7 am on the morning of March 12, 2018 and was at work at Meineke Car Care on Clemson Boulevard until being called back to his residence in the afternoon once the victim's body was found.

The activities of the Defendant's parents both before and immediately after the murder were at issue in the case. The State had James and Donna Lawless both listed as witnesses. Both were sequestered during the testimony along with the other witnesses. The State presented evidence that the victim had a dispute with Donna over the preparation of the victim's tax returns that led to Donna being terminated from her employment. The State presented evidence that James Lawless was present at 202 E. Broad Street when the victim's body was located. A body camera video was put into evidence that showed James Lawless on the front porch acting in an unresponsive manner. He allegedly was having some sort of seizure, although an examination by EMS personnel revealed no diagnosable condition. He was not transported to the hospital.

The State also presented evidence that James and Donna Lawless traveled to Hartwell, Georgia on the morning of March 12 in order to go to Walmart. There also was testimony surrounding a red Chevrolet Cavalier resembling the one belonging to James Lawless parked in an odd way at a car wash near 202 E. Broad Street, with an unidentified individual wearing a "hoodie" walking to the car and then driving it away. James Lawless's DNA was on the bloody knife found near the victim's body.

The State focused heavily on the activities of James and Donna Lawless in its closing argument, painting a picture of them attempting to cover up the crime that the Defendant had committed. The defense closing argument centered around time gaps in the State's case, failures of the State to investigate various things, and the credibility of Aaron Kenyon.

The Court concludes that the alleged confession of James Lawless, if credible, is material evidence, since significant evidence regarding his actions was presented. Accordingly, prong (4) of the *Spann* test is met.

However, the Court is unable to conclude that the newly-discovered evidence probably would have changed the result, especially in light of the State's theory of the case. The State's theory had James Lawless heavily involved in what was essentially a cover-up and obfuscation of evidence in the aftermath of the murder. It is very possible that this "confession" could have been seen as just another act in the efforts of James and Donna Lawless to protect the Defendant. In any event, before the Court could conclude that the evidence would have changed the outcome, there must be no doubt as to the credibility of the evidence. The Court finds that Epps is accurately relaying what James Lawless told him on April 14, 2023. This does not mean that the Court finds the statement credible. James Lawless was heavily involved in this case from its outset. The affidavit itself shows that James and Donna Lawless assisted their son during the pendency of the case. They were on a first name basis with Epps. The Court notes that Donna Lawless allegedly had some kind of overdose of some kind that required her hospitalization. She sent a personalized email to Epps on the evening of April 14, 2023. Donna apparently alleged that she had been aware for some time that her husband had been the one that had actually

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committed the crime. Had this been asserted at trial, the State undoubtedly would have attacked the credibility of the confession itself.

The Court also notes that James Lawless did not give a statement to law enforcement, although it does not appear that any officers went to his residence to talk to him. Regardless, there is no independent statement by James Lawless, no video recording, or any other evidence of his confession. Additionally, it was called to the Court's attention that James Lawless has retained counsel. No lawyer appeared at the hearing on behalf of James Lawless nor has any lawyer contacted the prosecution on his behalf. The actions of James Lawless do not appear to be the actions of someone who is attempting to correct the record for a wrongfully-convicted person and take responsibility for a crime that he himself actually committed. On the contrary, the actions of James Lawless appear to be contrived for the purpose of giving the Defendant grounds to seek a new trial. The statement was done in a manner which could easily be denied by James Lawless should law enforcement attempt to prosecute him or if Epps were called as a witness in a retrial of the Defendant. It would essentially be his word against that of Epps. The statement also appears to be carefully crafted to avoid details that could be investigated for corroboration. The Court does not find the statement credible and accordingly, the Defendant's Motion for New Trial on the grounds of newly discovered evidence is DENIED.

DEFENDANT'S MOTION FOR A NEW TRIAL ON JUROR MISCONDUCT

The Defendant did not testify nor did he present any witnesses. The Court gave a jury charge regarding the Defendant's right to remain silent and the prohibition of any consideration during jury deliberations of the exercise of that right. Neither party took exception to the charge given by the Court on this issue. Subsequent to the trial, the foreman of the jury gave an affidavit to defense counsel discussing the case. He made the following statement which is the basis for this motion:

"After the prosecution and the defense settled, it really shocked me and the other juror's that the defense did not call any one to the stand for questions. I as a juror would have like to have seen Adam, the Coroner and Adam's parents called to the stand which could have provided a time of death as well more questions asked about the parent's involvement in the case. During deliberations this was something every juror would have like to have seen and, in my opinion, could have affected the way the verdict could have gone.

If we would have heard the evidence proving that the friend did lie in his testimony, evidence as to the actual time of death and if the defense could have provided testimony providing more clarification into these it may have made a difference in the verdict given by myself as a juror..."

Juror testimony regarding misconduct ordinarily is inadmissible. Rule 606(b) provides

"...(b) **Inquiry Into Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon

that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes."

An exception to this rule comes in cases where the misconduct affects the fundamental fairness of the trial. State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). The Court considered the affidavit, along with copies of the returned juror surveys that the Solicitor sent out post trial because the Court concluded fundamental fairness could be at issue due to the allegations. Neither side objected to the Court's consideration of these documents. The Court declined to call the jury back in and take testimony from the jurors.

The Court must determine if there was misconduct and if so, whether it prejudiced the Defendant. The parties cite two major cases which address this issue. The first is State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (2005). Zeigler held that a defendant seeking a new trial "is required to prove both the alleged misconduct and the resulting prejudice." If the Court determines that there was no misconduct, the analysis stops. Zeigler emphasizes that the focus of the inquiry is on "extraneous information and influence" or "external influence." The test is defined as "where jurors receive information from deliberations from some outside source." Ordinarily, courts will not invade the "privacy of the jury room to scrutinize how jurors reached their verdict."

The case of Ethier v. Fairfield Memorial Hospital, 429 S.C. 649, 842 S.E.2d 355 (2020) had premature deliberations of a jury as a primary issue, along with improper advocacy by a particular juror. This issue was of sufficient importance for the South Carolina Supreme Court to reverse the case and remand it for a new trial. In that case, clear misconduct was found, as egregious conduct by a particular juror during the course of the trial undoubtedly influenced the outcome. However, the burden on the party seeking a new trial for juror misconduct was not lessened to a great degree, with the Court stating explicitly that "while the burden to demonstrate prejudice is high, when evidence strongly supports the fact that votes were changed as a result of a juror's impermissible conduct, we cannot countenance such a tainted verdict." The two situations addressed in these cases----external sources and premature deliberations accompanied by outright advocacy by a juror---are not in issue in this case. The issue is whether the juror's desire to have more information is misconduct.

The Court must consider the affidavit presented in this case as a whole and place the quoted sections in context with the remainder. James Michael Adkins, who served as foreman of the jury, begins with a general statement of how the experience of being a juror was "very eye-opening" and how it allowed him to see "how our judicial system works." He goes on to explain why "my verdict as a juror" was reached.

He compliments the opening statements made by the attorneys, along with the way the prosecution called the witnesses. The first comment on the facts regards the testimony of Aaron Kenyon:

“...the testimony of the friend staying at the house the day the murder occurred did describe seeing the victim laying in the laundry/mud room floor. The friends statement also described hearing screams from the victim while he was outside due to the victim and Adam fighting. Granted the friend had previously lied several times during statements and interviews and tried to retract his statement about seeing this. I looked at it as credible evidence and a big decision for my verdict. I do not believe the defense did a good job, other than showing he had lied in the past to not make this credible evidence.”

Adkins goes on to discuss the lack of evidence of any child being in residence during the period of time during the day when different people were trying to locate the victim. He stated that that “during that time no one could hear any signs of a child being the house alone. During the time frame of Adam going to work and the time the body was found the child would have been crying and screaming in the house with no one there to take care of her...” He then discusses how he did not believe that the child was in the residence.

The affidavit also addresses the issue of James Lawless. Adkins discusses how the DNA of James Lawless was found on the knife, as discussed above. It is clear from the affidavit that this juror accepted the State’s argument of the heavy involvement of the Defendant’s parents in the time after the murder. He states “...with the testimony and evidence that was presented, showed that the mother and father had been in the house before the victim’s body was reported.”

These are the factual issues which this juror used as a basis for his decision. All of these evidentiary issues were discussed in closing arguments. The controversial comments of this juror which form the basis for this motion surround defense strategy and tactics. It appears to the Court that the comments are directed at the Defendant’s attorney’s trial strategy rather than specifically at the Defendant’s failure to testify. The statement expresses that he “would have liked” for Adam and other witnesses to be “called to the stand.” The focus is on what witnesses the defense attorney did not call rather than on the Defendant exercising his Fifth Amendment right to remain silent. He does use the phrase “during deliberations” when discussing what the jury would have liked to have seen. He also said it “could have affected the way the verdict could have gone.” These statements are concerning, but do not rise to the level of the Court finding misconduct when considered in light of the statements in the next paragraph, where he explains how the prosecutor did a good job and the defense attorney did not. He concludes his affidavit by reiterating how the “defendant is innocent and was the prosecutions job to prove guilt. With the evidence and testimony given during the trial I believe the prosecution was able to put together a good case given us the ability to find the defendant guilty of murder.” This leads the Court to conclude that no improper burden shifting took place.

There was no evidence of juror misconduct in the two returned post-trial juror surveys that the State provided to the Court.

Accordingly, the Court finds that the actions of the jury do not constitute misconduct and the Defendant's Motion for a New Trial on the grounds of juror misconduct is DENIED.

WHEREFORE IT IS ORDERED, that

1. The Defendant's Motion for a New Trial on the grounds of after-discovered evidence is DENIED; and
2. The Defendant's Motion for a New Trial on the grounds of juror misconduct is DENIED.

AND IT IS SO ORDERED!

May 19, 2023

Anderson, South Carolina



R. Scott Sprouse, Judge

Tenth Judicial Circuit

