

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON )

INDICTMENT#(s) 2010-GS-15-00501;  
502; 504; 505; 507; 2010-GS-15-00703;  
704; 705; 707; 707

vs.

Order Denying Motion for New Trial

Antwan McMillan  
&  
David Jakes

**RECEIVED**

**Mar 15 2024**

**SC Court of Appeals**

**Facts and Procedural History**

Shortly before midnight on the night of June 3, 2010, Jesse King, an explosive disposal specialist in the United States Army, was driving along I-95 in Colleton County with his wife on the way to a military base in Pensacola, Florida, while his mother-in-law followed behind them towing a U-Haul trailer with her truck. As they passed through Colleton County, King's mother-in-law began to experience mechanical problems with her truck, and they all pulled off at an exit and stopped on a deserted road next to the highway. King then called a tow truck operator, arranged for him to come to their location, and began transferring the U-Haul trailer from his mother-in-law's truck to his own. While he was crouched down behind his truck connecting the trailer, a light-colored sedan screeched to a halt at a nearby intersection, and a man with something wrapped around his face jumped out of the back of the sedan, pointed a large pistol at King's mother-in-law, and yelled for her to put "em" up. In response, King sprang up, drew his own firearm, pointed it at the man, and ordered him to get back into his car and

drive away. However, the man turned his gun in King's direction, so King shot at the man until the man fell to the ground. At that moment, the man's confederates inside the sedan began yelling, and one of the men fired several shots at King and the others, striking both of their trucks with bullets. The man who had been shot by King then dropped his gun and crawled into the sedan, and the sedan rapidly sped away from the scene.

Once the would-be robbers were gone, King and the others called 911 to report the shooting and attempted robbery, and law enforcement officers were quickly dispatched to their location. Shortly thereafter, Detective Jeffrey Scott of the Colleton County Sheriff's Office arrived at the scene, interviewed the victims, and began searching for evidence. During his search, he located blood stains, a .50-caliber pistol that had been stolen from a California police department in 2002, and several spent shell casings fired from both a nine-millimeter pistol and a .357-caliber weapon. He then collected that evidence and took swabs of the blood stains, and the evidence was subsequently submitted to the South Carolina State Law Enforcement Division ("SLED") for analysis.

Meanwhile, David Jakes was brought to the emergency room at the Colleton Medical Center suffering from multiple gunshots wounds, and staff members at the hospital reported his arrival to law enforcement officers. In response, Sergeant Jackie Lawson of the Colleton County Sheriff's Office went to the hospital and spoke with the individuals who brought Jakes there, including Shaquita Bryant. However, those

individuals were all uncooperative and provided Sergeant Lawson with inconsistent stories about Jakes.<sup>1</sup>

Shortly thereafter, law enforcement officers located the sedan involved in the incident at Jakes's grandmother's home. The officers then secured it, and a subsequent search of the vehicle led to the discovery and collection of fingerprints, palm prints, bloods stains, nine-millimeter shell casings, gloves, various items of clothing, and an open bottle of gin.<sup>2</sup> Upon further investigation, the officers discovered the sedan was registered to someone named David Jenkins while the vehicle's license plate was actually associated with a different vehicle registered to Brenda McMillan, who was the mother of Defendant McMillan.

Later that day, James Davis and his family contacted officers with the Colleton County Sheriff's Office to discuss Davis's role in the shooting and attempted robbery. During Davis's conversation with the officers, he initially denied any involvement in the crimes. However, after he spoke with his family, Davis told the officers about what happened and was placed under arrest.<sup>3</sup> Then, on the following day, McMillan

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<sup>1</sup> Although initially uncooperative, Bryant later provided more information to an investigator about how Jakes ended up at the hospital. Specifically, she told the investigator she saw "Chippy," "Dinky," and "Rat" together, "Chippy" helped load Jakes into her vehicle, and she and her friends brought Jakes to the hospital. Notably, James Davis's nickname was "Chippy," Jakes's nickname was "Dinky," and McMillan's nickname was "Rat."

<sup>2</sup> Upon analysis, a forensic DNA expert determined the blood found both at the crime scene and inside the sedan involved in the incident belonged to Jakes. Furthermore, the expert determined Jakes's DNA, Davis's DNA, and DNA similar to McMillan's were present on several of the items recovered from the sedan. Likewise, an expert in latent fingerprint examination conducted testing of the prints recovered from the sedan and determined many of the prints were left by McMillan and Davis.

<sup>3</sup> Later on during trial, Davis recounted the details of the incident. Specifically, he stated he headed to Walterboro, South Carolina, in a gray sedan with Jakes and McMillan on

surrendered to authorities and was arrested for his role in the incident, and Jakes was also placed under arrest.<sup>4</sup>

On September 1, 2011, Defendants Antwan McMillan and David Jakes were both found guilty of two counts of Attempted Armed Robbery, two counts of Assault and Battery, 1<sup>st</sup> Degree, and one count of Possession of a Weapon During the Commission of a Violent Crime.

On December 10, 2021, Defendant McMillan filed a motion for a new trial based on after-discovered evidence. Thereafter, on December 29, 2021, Defendant Jakes filed a similar motion.

On July 12, 2023, this court heard the motion for a new trial at the Colleton County Courthouse. The State was represented by Assistant Solicitor Julie Kate Keeney. Defendant McMillan was represented by Jim Brown, Esquire. Defendant Jakes was represented by Tristan Shaffer, Esquire.

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the night of June 3, 2010. As McMillan drove them towards their destination, Davis indicated they passed three people on the side of the road who appeared to be having car trouble. When they saw those people, Davis stated McMillan and Jakes decided to rob them. Davis testified they then turned around, drove back towards the stranded motorists, and stopped their vehicle in a manner that blocked a nearby exit ramp. After that, Davis stated Jakes jumped out, ran towards the people, and demanded they “give it up” at gunpoint. Davis testified he then heard gunshots, McMillan began firing at the motorists, and he helped Jakes—who had been “shot all over”—back into the sedan. Once Jakes was back inside the sedan, Davis indicated they sped back towards their homes despite Jakes’s requests to be taken to a hospital until they passed a car driven by Bryant. At that point, Davis stated they got Bryant to stop and convinced her and her companions to take Jakes to the hospital. Davis indicated he and McMillan then went back to their homes and he remained there until deciding to turn himself in.

<sup>4</sup> Shortly after McMillan was arrested, officers discovered numerous .50-caliber shell casings on a parcel of property located directly across the street from McMillan’s home.

### Law/Analysis

Rule 29 (b) of the South Carolina Rules of Criminal Procedure allows for a defendant to file for a motion for a new trial based upon after discovered evidence if the motion is made within (1) year after the date of the actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP.

“The granting of a new trial based on after-discovered evidence is not favored.” State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 198 (1978). In order to grant of a new trial based on after-discovered evidence, the defendant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” State v. Porter, 269 S.C. 618, 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)).

#### **A. Co-Defendant’s Affidavit Recanting Prior Testimony**

During the motion for a new trial hearing, Defendants presented an affidavit of the cooperating co-defendant, James “Chippy” Davis. The affidavit was obtained by Jakes’ investigator.

In the affidavit, Davis claimed that he was questioned by one officer for hours, fell asleep, and then woke up to another officer (this time Officer Allen Inabinett) yelling

and threatening to throw him in prison for the murder of David Jakes if he did not survive his gunshot injuries. In the affidavit, Davis claims that Officer Inabinett told him that the only way for Davis to stay out of prison was to tell him what he wanted to hear. In the affidavit, Davis claimed he had no knowledge of a robbery occurring the night of the incident.

Notably, during the hearing for a new trial, Davis, who was represented by counsel, invoked his rights under the 5<sup>th</sup> Amendment for the majority of the questions asked of him.

This court reviewed the original interview of Davis that took place on June 4, 2010. In contradiction to Davis's affidavit, Officer Inabinett was the original officer who questioned Davis. Officer Inabinett left the interview room in order to speak with Davis's parents who were at the police station during the time of the interview. Thereafter, Investigator Jeffrey Scott entered the interview room and questioned Davis. Neither officer threatened to throw Davis in prison if he did not tell them what they wanted to hear. Additionally, Investigator Scott told Davis numerous times that he could not make any promises to Davis. Investigator Scott encouraged Davis to be honest and tell the truth.

At one point during the interview, law enforcement stepped out of the interview room and Davis's mom came in to talk to him. She begged him to be honest. After she left the interview room, Davis implicated Jakes and McMillan.

Additionally, this court reviewed Davis's December 21, 2010 written statement obtained by law enforcement. Davis's attorney, Margie Bright Matthews, Esquire was

present for that statement. In this written statement, Davis implicated McMillan and Jakes in the attempted robbery.

Furthermore, this court reviewed Davis's sworn testimony at trial. He testified about how McMillan and Jakes planned out the robbery and attempted to execute the crime. During the trial, Davis repeatedly testified that he was telling the truth about what happened that day.

**After reviewing the trial transcript and other exhibits, this court finds Davis's affidavit/recantation unreliable and not credible. See State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (noting that recantation of testimony is ordinarily unreliable and "[t]o hold such affidavits sufficient to require the granting of a new trial would be to open the door to fraud and perjury, as well as to invite interminable delays in the disposition of causes.").**

Additionally, this court finds the following: (1) the affidavit's recantation is not credible, particularly in light of the fact Davis was not willing to repeat the assertion when under oath in a courtroom; and (2) the fact that it is so uncredible—inherently and otherwise—coupled with the contradictory and consistent position Davis previously took through his earlier interview statement, written statement, and trial testimony ensure that uncredible statement was not something that would probably change the result of trial in the event a new trial was granted.

#### **B. Plea Deal or Implied Deal**

During the new trial hearing, Defendant McMillan made an additional argument that the State has some type of either explicit or implied deal with Davis. However, this court finds no merit to that argument.

At trial, Davis testified that he did not have a “deal” at the time of trial. He testified that at one point he had an offer to plead to an accessory charge but that deal had expired. During the new trial hearing, Davis confirmed he did not have any type of deal when he testified at the original trial. There is absolutely no evidence that the Solicitor’s Office made any type of explicit or implicit deal with Davis other than the accessory offer that was testified to during the trial.

A movant seeing a new trial bears the burden of proving the claim. The argument presented by defense counsel is premised entirely upon unsupported speculation and is directly refuted by the sworn testimony previously given.


Therefore, this claim is devoid of any evidentiary support and lacks any credibility.

**CONCLUSION**

This court finds Davis’s affidavit/recantation unreliable and not credible. In addition, this Court finds absolutely no evidence of an undisclosed plea deal or any implied plea deal.

THEREFORE, this Court DENIES the above-referenced Defendants’ motion for a new trial based on after-discovered evidence.

IT IS ORDERED!

  
The Honorable Robert J. Bonds  
Circuit Court Judge

2/19/24  
Date