

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Case No. 2012-213222

The State of South Carolina,.....Respondent.

v.

Jody Lynn Ward, #300644,.....Appellant.

REPLY BRIEF TO THE RESPONDENTS
INITIAL BRIEF PURSUANT TO SCACR
RULES 208 (a) (3)

RECEIVED
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SOUTH CAROLINA
COURT OF APPEALS

Jody Lynn Ward, #380644
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STATEMENT OF ISSUE ON APPEAL

1.) Whether the court erred by denying appellant's Motion For New Trial based on After Discovered Evidence S.C.Crim.R 29(b), Motion For Appointment Of Counsel, And Motion For Private Investigative, And expert Funds/Expenses, Under Due Process And Equal Protection Of Law, U.S. Const. Amend. XIV §1, And Ake V. Oklahoma, 470 U.S. 68 (1985)?

2.) Whether the court erred by denying appellant's Motion For Reconsideration, And Motion To Arrest of Judgment Of Order denying Motion For New Trial, In a violation of Due Process And Equal Protection of Law, U.S. Const. Amend. XIV §1, And in a violation of Ake V. Oklahoma, 470 U.S. 68 (1985) Since appellant Is a Mental Health Patient, And IT being a Conflict of Interest Within the Clerk of Court's Office, and since the Lieber Mailroom held the Affidavit Of Rondie J. Ward that Clearly supported the Motion For New Trial?

3.) Whether the court erred by denying Motion For New Trial, based on After Discovered Evidence S.C.R.Crim.P Rule 29(b); Motion For Appointment Of Counsel; Motion For Private Investigative and expert Funds/Expenses; Motion For Reconsideration And Motion To Arrest of Judgment that resulted in an abuse of discretion amounting to an error of Law? ; as the abuse of discretion is both error of the rulings and resulting prejudice as well as denial of access of courts just because Appellant is an indigent status and pro se litigant for clerk to misuse there authority , and correctional mailroom to hold affidavit?

STATEMENT OF ISSUES ON APPEAL

- 4.) WHETHER THE COURT ABUSED ITS DISCRETION AMOUNTING TO AN ERROR OF LAW: BY FAILING TO GRANT AN EVIDENTIARY HEARING WHICH AMOUNTED TO A DEPRIVATION OF LEGAL RIGHTS OF APPELLANT, BY DENYING HIM FULL ACCESS TO THE COURTS JUST BECAUSE HE IS AN INDIGENT PRO SE LITIGANT, AND MENTAL HEALTH PATIENT, THE RULING WAS AN ERROR AND APPELLANT WAS/DID RESULT IN PREJUDICE TO DENYING MOTION FOR NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE PURSUANT TO S.C. CRIM.P. 29 (b), MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR INVESTIGATIVE, AND EXPERT FUNDS/EXPENSES, UNDER DUE PROCESS AND EQUAL PROTECTION OF LAW, U.S. CONST. AMEND. XIV §1, IS FOR ALL?
- 5.) WHETHER APPELLANTS DUE PROCESS AND EQUAL PROTECTION WAS VIOLATED BY COURT DENYING APPELLANTS MOTION FOR NEW TRIAL, MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR PRIVATE INVESTIGATIVE, AND EXPERT EXPENSES, WHICH RESULTED IN AN ABUSE OF DISCRETION AND APPELLANT WAS THEREBY PREJUDICE BECAUSE IT WAS CLEAR AND CONVINCING EVIDENCE THAT WAS SUBMITTED TO SUPPORT AN EVIDENTIARY HEARING, AND MOTION FOR NEW TRIAL BECAUSE THE AFFIDAVITS OF APPELLANT, LETTER MICHAEL ABNER, AND SWORN AFFIDAVIT OF RONDIE J. WARD, AND AFFIDAVIT OF ASHTON WARD SUPPORTED NEW TRIAL MOTION U.S. CONST. AMEND. XIV §1, IS FOR ALL?
- 6.) WHETHER THE COURT ABUSED ITS DISCRETION BY DENYING APPELLANT MOTION FOR RECONSIDERATION, AND ARREST OF JUDGMENT, DUE TO CONFLICT OF INTEREST WITHIN CLERK OF COURT AND A DENIAL OF ACCESS OF COURT DUE TO INDIGENT MENTAL HEALTH PATIENT WHO CANNOT AFFORD LEGAL COUNSEL AND AFFIDAVIT OF RONDIE J. WARD BEING DENIED TO FILE THAT SAYS "MICHAEL ABNER DID TELL ME THAT HE PAID THEM BOYS TO KILL JODY,"?

STATEMENT OF THE CASE

Appellant (Jody Lynn Ward) was indicted in July 2003 in Georgetown County for the alleged murders of Wilford Brown and Elton Rutledge, Jr.

Appellant proceeded to trial by a jury and Judge on March 15-18, 2004. The Jury ultimately convicted Appellant as indicted and the Honorable Paula H. Thomas sentenced Appellant to two-2 concurrent life sentences. A timely notice of appeal was filed and the appeal was reviewed pursuant to Anders v. California in which the Court of Appeals affirmed the sentences and convictions January 26, 2007 (2007-UP-048). A timely rehearing was filed and rehearing was denied March 22, 2007. Subsequently thereafter Appellant filed a Petition For Writ Of Certiorari. The Petition for certiorari was withdrawn by Appellant June 29, 2007 and the remittitur was thereafter handed down to the circuit court. Appellant filed his first application for post conviction relief ("PCR") July 11, 2007. An evidentiary hearing was convened May 1, 2008. By way of Written Order the Honorable Judge Steven John denied the application.

On May 27, 2008, Appellant submitted a timely Rule 59 (e), SCRPC, Motion to alter/amend judgment. August 6, 2008, Judge John denied the rule 59 (e) motion. A timely notice of appeal was filed and appellant filed for writ of certiorari August 20, 2009, and the remittitur was handed down September 8, 2009.

Appellant filed his second pcr application July 13, 2009 based on "New Rule" of Law, while his first pcr was currently being reviewed on certiorari. Respondent made a Return and Motion to dismiss. A conditional Order Of Dismissal was issued and appellant

made his timely opposition to the dispositive pleading. January 13, 2010 a Final Order was issued granting the respondents motion to dismiss. A timely notice of appeal was filed in the lower court that was ultimately denied and dismissed. The remittitur was handed down about April 1, 2010.

Appellant filed a third pcr application May 4, 2010 based on a New Rule of law. The respondent filed a return and motion to dismiss June 1, 2010. Appellant lodged a timely opposition to the respondent's dispositive pleading June 14, 2010. A conditional order was issued and Appellant lodged a timely opposition to the conditional order. A final order was issued granting the respondents' motion on July 20, 2010. A timely notice of appeal was filed, accompanied with a pro-se petition August 18, 2010. Appellant filed a reply brief, certiorari was ultimately denied August 18, 2011.

Appellant filed a notice of petition for original jurisdiction petition for writ of habeas corpus in South Carolina Supreme court on October 31, 2011. It was ultimately denied on November 16, 2011; to fully exhaust all state remedies. Appellant files a motion for a new trial based on after-discovered evidence on May, 7, 2012. On July 23, 2012 Rondie J. Ward, Appellants uncle went to the Georgetown County Clerk Of Court To file an affidavit that clearly supported the motion for new trial and paid .50¢ and Clerk Ms. Jennifer M. Lawrence Notarized the affidavit but failed to file it. My uncle Rondie J. ward went and mailed me a copy of the affidavit and the Lieber correctional Institution mailroom held the affidavit due to the contents had to be reviewed and Appellant filed an EMERGENCY STEP 1 GRIEVANCE to get the affidavit,

and while Appellant was waited to get the affidavit approved to be released the Court issued an Order Denying Motion For New Trial, motion for appointment of counsel, and motion for expenses on July 31, 2012. Appellant filed a timely notice of appeal dated August 6, 2012. And on August 7, 2012 the appellant filed a motion for reconsideration and/or motion to reconsider order/judgment denying motion for new trial; motion for appointment of counsel and motion for investigative & expert expenses, and while this motion was pending On August 30, 2012 Appellant filed Motion to Arrest of judgment/order denying motion for new trial, motion for appointment of counsel and motion for expenses for expert witness after the discovery of Ms. Jennifer M. Lawrence Georgetown County Clerk of court employee had signed a petition to have Appellants Third Bond hearing denied dated back to September 22, 2002. On September 25, 2012 the Honorable Benjamin H. Culbertson issued an Order Denying motion to arrest judgment. On September 28, 2012 Appellant wrote to the Georgetown County Clerk's office for the disposition of the motion for reconsideration that was still pending and the Clerk mailed to me On October 3, 2012 order denying arrest of judgment. On October 4, 2012 Appellant files his timely Notice of Appeal with attached orders. Appellant thereafter filed his initial Brief; and designation of matter on Appeal. The Respondent's then Motion the Court for an extention of time to file initial brief and designation of matter on Appeal. Thereafter they made 3 more extentions of time to file their intial brief, which was filed on Appellant on August 7, 2013. The Appellant files his reply to the Respondent's intial brief on August 14, 2013. This Appeal follows:

ARGUMENT

The Appellant presented After-Discovered Evidence that clearly supported a Motion for new Trial based on After-Discovered Evidence. Appellant submitted a Sworn Affidavit, Sworn Affidavit of Rondie J. Ward, Sworn Affidavit of Ashton Ward, and a letter written to his mother from serial killer Michael Abner. Appellant was convicted by jury for two (2) alleged murders that the newly Evidence clearly refute, and since Appellant's first jury never heard this Evidence he should have atleast been GRANTED an Evidentiary Hearing for oral argument's because Appellant meets the five (5) criteria Pursuant to State V. Spann, 334 S.C. 618, 513 S.E. 2d 98 (1999) for after-discovered evidence that was set by the South Carolina Supreme Court, Therefore the Judge abused his discretion that amounted to resulting prejudice to Appellant the moving party.

INTRODUCTION

The Appellant would respectfully submit a Reply Brief to Address matters raised by the Respondent's. The Respondent's Waived and Abandoned any RIGHT to the Appeal whenever they fail to make any type of DEFENSES in the lower Court. The South Carolina Court of Appeals has made it clear that if any party fails to assert any type of Defense in the lower Court it's Abandoned & Waived and therefore can not be considered on Appeal because it was 'nt RULED on in the lower Court. See: State V. Torrence, 305 S.C 45, 406 S.E.2d 315 (1991); Toyota of Florence Inc. V. Lynch, 442 S.E.2d

Appellant herein asserts that the Circuit Court committed an 'Error of Law amounting to Abuse of discretion' when the Court failed to Appoint Counsel and Funds for a Investigator, without Counsel PRO-SE incarcerated Appellant could not sufficently marshall the facts and evidence and to present case to the Court, this was especially error as Appellant is mentally ill prisoner without the resources or acumen to pursue this complex case and an OUT OF STATE WITNESS etc,.

In particular Rondie Ward Affidavit is Indicitive of the type of Admissible Evidence that could be marshalled and presented (ie

' That Michael Abner did tell me (Rondie ward) that he paid them boys to kill Jody/(Appellant).Pursuant to S.C.R.E. Rule 804(b)3 'Statement against interest',this Statement of Rondie Ward would be Admissible,in Fact Respondent conveniently omitted that the jury was charged with SELF_DEFENSE,and this Statement went directly to elements of that Defense,and is thus material and relevant evidence.The purported letter from Michael Abner is corroborated by both Rondie Ward and Carol ward and Ashton Ward,and since Abne has never previously admitted to this crucial fact it cannot be said Appellant has not exercised due diligence,See:State V.Spann, supra,and of course,these statements are material in the sense that they support the defenses charged to the jury.

It must be noted that Appellant Motion for new Trial based on after-discovered evidence Petition was Summarily dismissed under guise of Rule 12 (b)(6) that Appellant failed to state facts sufficient to constitute a cause of action clearly this dismissal constituted an Error of law as well as all of Appellant's allegations are deemed to be true for purposes of summary judgement,See:Anderson V. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505,91 L. Ed. 2d 202 (1986);Summary Judgment Standard. clearly the facts asserted,if true,would warrant a New trial and the Court erred in not allowing Appellant a hearing on the merits of Appellants Rule 29(b) Motion.The Attorney General attempts to resolve the alleged facts in their favor at the Summary Judgment stage and clearly is improper as 'all inferences shall be construed toward non-moving party'Id.

Without Counsel and without a evidentiary hearing,then it

would be impossible to expect a mentally ill prisoner to carry the burden of producing Out of State Affidavits, and other evidence to show Michael Abner admitted to sending Appellant's two alleged victims to kill Appellant, which goes directly to SELF-DEFENSE. See: Abate V. Abate, 660 S.E. 2d 515 (App. 2008).

It is clear from the Record the Affidavits of Rondie Ward were not properly filed by the clerk of Court and Affidavits of Appellant (See: Record on Appeal pg. 117-119) clearly are affirmative evidence to overcome the presumption of irregularity and this is exact type of evidence that would be submitted at Rule 29(b) Evidentiary hearing on the MERITS, to summarily deny Counsel and a HEARING on merits amounts to 'Abuse of Discretion. As to the weight of the evidence Appellant would Appellant would again point out the evidence that Michael Abner paid Appellant's two 2 alleged victims to kill Appellant goes directly to SELF-DEFENSE, that was charged to Appellant's Jury. See: Woodell by Allen V. Marion School Dist. one, 414 S.E. 2d 792 (ct. App. 1992). And in Appellant's case as far as overwhelming evidence of guilt, it was the States evidence presented at Trial that the Trial Judge was forced to charge the jury with SELF-DEFENSE jury instruction, because defense Counsels did not put up defense and advised the Appellant not to take the stand in his own defense. Furthermore the States Key witness Denise Langston Cox was a scorned ex-girl-friend who had already given 5 different statements which none of the statements implicated the Appellant on her (6) sixth interview investigators interrogated her for five hours before the tape was turned on and they put a warrant for obstruction of justice in

front of her and bought her confession/interview because the Judge had signed the warrant yet until this day it was never served on her.See:Tr. T. Pgs. 442 lines 22 through pg. 451

It's clear by the record that Denise Langston Cox was impeached at trial,with her prior inconsistent statements made and other things she was not being truthful about.Therefore the evidence was not overwhelming and the only other best witness who was the States witness Lewis Bazen testified that the Appellant told him that the boys had shot at him and put 5 or 6 bullet holes in the Suzuki Sidekick.See:Tr. T. pg. 629 lines 1 through lines 7

which was corroborated by the States Case and now by Michael Abner's statement and Rondie Wards Affidavit Supports "That Abner payed Appellants 2 Two Alleged victims to kill Appellant.See: Record on Appeal Pgs.71 and 72 is the reciept from the Clerk of Court where he paid 50¢ to have Affidavit Notarized 7 days before the 29(b) motion was Summarily Dismissed.Thus, does this After-Discovered evidence is material to the SELF-DEFENSE charge to the Jury.Also note that the Appellants Trial Counsel put up NO DEFENSE and encouraged Appellant not to take the stand in his own behalf.Yet based solely off the States Case the jury was charged with SELF-DEFENSE.And since this Newly Discovered/After Discovered evidence was material to the guilt and for the Jury to make any determination as far as the weight of the evidence and for the jury to Judge whether that evidence is true or not a new Trial would have to be granted for testimony.But at this time we must first and foremost must determine in this Appeal if Appellant should have been given an Evidentiary hearing after Counsel was Appointed.

Thus, there is a reasonable probability that if Jury hears evidence Michael Abner paid victims to kill Appellant I would be Acquitted of Murder by virtue of SELF-DEFENSE. See: State V. Spann, 334 S.C. 618, 513 S.E. 2d 98 (1998).

The State relies on State V. Mercer, 672 S.E. 2d 565-67, Mercer had a full evidentiary hearing for the Court to reach that Conclusion, however Appellant has not had Counsel or a hearing on the merits.

Rondie and Carol Ward Affidavits must be considered as they are material to guilt or innocence of Appellant and are such that a hearing should be held on the merits. See: Record on Appeal pgs. 71 -72 and 112.

Counsel should be appointed as new evidence clearly meets (5) prongs of State V. Spann, Supra.

CONCLUSION

Appellant respectfully ask this Court for a GRANT of REMAND to lower Court for a full evidentiary hearing on the merits.

Respectfully Submitted,
1/1 Jody Lynn Ward, #300644
Jody Lynn Ward, #300644

Appellant Pro-Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-213222
Case No. 2003-GS-22-1030&1031

The State of South Carolina,.....Respondents.

V.

Jody Lynn Ward, #300644,.....Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Motion for New Trial based on After Discovered Evidence Pursuant to SCRCrim.P Rule 29 (b)
2. Fortior Exhibit A- Letter sent to Lynn Ward from Serial Killer Michael Abner
3. Fortior Exhibit B- Michael Abner offender sheet & News Article
4. Fortior Exhibit C- Medical records where Michael Abner Stabbed Appellant/Jody Lynn Ward
5. Fortior Exhibit D- Incident report where Michael Abner Stabbed Appellant/Jody Lynn Ward
6. Fortior Exhibit E- Proffer Testimony of Rondie J. Ward; Carol S. Ward; Lynn Ward; Ashton J. Ward; Attorney Wesley Locklair; And Margaret Ann Kneece
7. Fortior Exhibit F- Sworn Affidavit of Ashton J. Ward; Appellant/ Jody Lynn Ward Sworn Affidavit
8. Motion for Expenditure of Funds for Investigative And Expert Services, Pursuant to S.C. Code Ann §17-3-50 (b)
9. Motion for Appointment of Counsel/Indigent Funds form Attached pursuant to S.C. Code Ann § 17-3-10
10. Certificate of Service

11. Motion for Reconsideration and/or Motion to Reconsider Order /Judgment denying Motion for New Trial; Motion for Appointment of Counsel and Motion for Investigative & Expert Expenses
12. Exhibit A- Sworn Affidavit of Rondie J. Ward dated 7-23-12 Notarized by Clerk of Court of Georgetown Ms. Jennifer M. Lawrence
13. Reciept from Georgetown County Clerk of Court for .50¢ for Notary Public cost
14. Exhibit B- Sworn Affidavit of Jody Lynn Ward/Appellant Dated August 6, 2012
15. Exhibit C- Emergency Step 1 Grievance filed against mailroom staff here at Lieber Correctional Inst.
16. Exhibit D- Letter wrote to Georgetown County Clerk of Court sent to Clerk Keith Moore dated June 29, 2012 pertaining to why they are refusing to file my Uncle Rondie J. Ward Sworn Affidavit that clearly supported Motion For New Trial
17. Exhibit E- Letter wrote to Georgetown County Clerk of Court about my uncles Sworn Affidavit/Rondie J. Ward, and Courts response
18. Exhibit F- Request Witnesses to be Subpoena for Evidentiary hearing
19. Exhibit G- Order of Transportation for Motions hearing
20. Exhibit H- Petition signed Against Appellant/Jody Lynn Ward to have his third (3rd) bond hearing denyed and she is the Clerk of Couert for Georgetown #35 Jennifer Lawrence who signed it, which she is a conflict of interest to deny filing my uncles Sworn Affidavit, and she being the one that notarized it I'm pro se and a mental Health Indigent Inmate
21. Motion To Arrest of Judgment/Order Denying Motion for New Trial; Motion for Appointment of Counsel and Motion for Expenses for expert witness
22. Fortior Exhibit A- Order Denying Motion for New Trial; Motion for Appointment of Counsel and Motion for Expenses for Experts
23. Fortior Exhibit B- Sworn Affidavit of Rondie J. Ward dated July 23, 2012 8 days before Order issue Denying Motion for New Trial, Affidavit was notarized by Georgetown County Clerk of Court Ms. Jennifer M. Lawrence
24. Fortior Exhibit C- Petition signed on Appellant/Jody Lynn Ward to Deny 3rd Bond hearing signed at #35 Jennifer Lawrence the Georgetown County Clerk Of Court

25. Fortior Exhibit D - Complaint filed Against Clerk of Court Ms. Jennifer Lawrence for conflict of interest for failing to File my Uncle Rondie J. Wards Sworn Affidavit, filed with the S.C. Supreme Court Disciplinary Counsel

26. Proposed Order for the Honorable Court Granting Arrest of Judgment & Motion for Reconsideration of order denying Motion for New Trial, Motion for Appointment of Counsel, and Motion for Expenses and Order of Transportation for Motions Hearing, and a Response from S.C. supreme Court Disciplinary Counsel pertaining to Clerk of Court Ms. Jennifer Lawrence

27. Letter to S.C. court of Appeals and Letter to Georgetown County Clerk of Court with Attached Notice of Appeals Filed with Attached Orders of Denying Motion for New Trial, Motion for Appointment of Counsel and Expenses for Expert Witness Dated July 31, 2012 Order Denying Motion for Reconsideration dated August 20, 2012 and proof I was never given the Order until October 11, 2012, and the Oder Denying Motion Arrest Judgment dated September 25, 2012

28. Proposed order Granting Motion for Reconsideration dated October 1, 2012 and Judge sent it back with proof on October 31, 2012

CERTIFICATE OF CERTIFICATION

I Certify that this Designation contains no matter which is irrelevant to this Appeal.

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AUG 19 2013
SC COURT OF APPEALS

Respectfully Submitted

151 Jody Lynn Ward, #300644

Jody Lynn Ward, #300644
Appellant Pro se

Date:

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The State of South Carolina,.....Respondents.

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CERTIFICATE OF SERVICE

I Certify that I have served the attached 1.)Reply to the Respondents Initial Brief Pursuant to SCACR Rule 208 (a), (3) 2.)Designation of matter to be included in the Appeal Pursuant to SCACR Rules 209 (a), 3.)Certificate of Service ON THIS 14th Day of August, 2013, by placing a true and correct copy in the United States Postal mail Postage prepaid to the below named Respondents Attorney of record to this Appeal, Addressed as follow 4.)^{s)}Motion for leave/relax rules; ⁶⁾Record on Appeal; Final Brief.

1.) Office of the Attorney General

Attn: William Edgar Salter III, Assistant Attorney General

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William Edgar Salter III, Assistant A.G.

Respectfully Submitted,

151 Jody Lynn Ward #300644

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Appellant Pro Se