STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Original Jurisdiction

FREDDIE EUGENE OWENS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case : 2024-001397

RETURN TO MOTION FOR RECONSIDERATION
(SECOND MOTION FOR STAY OF EXECUTION)

Petitioner Freddie Eugene Owens's execution is scheduled for Friday, September 20, 2024. On September 18, 2024, at approximately 4:44 pm, Owens, through counsel, filed an "Emergency Motion to Reconsider the Denial of Stay of Execution, Post-Conviction Relief, and Habeas Corpus." Owens rests his request on yet another Golden affidavit. The allegation (based on an affidavit) that Owens was not in the store with Golden when Ms. Graves was shot and killed is inherently suspect. The filing for reconsideration shows only one point very clearly – that Golden has now made a sworn statement that is contrary to his multiple other sworn statements over twenty years, those prior statements being consistent with the other evidence that Owens was the shooter. Importantly, there is no indication that Golden will testify; there is no reasoning to why Owens

would admit the shooting Ms. Graves to officers, his girlfriend, and his mother if he was not the shooter as now claimed; there is no reasoning how one could distinguish the evidence support of the details of Owens's own statements; in short, there is no indication that recantation in these circumstances could be found sufficient to warrant a new trial.[1] Owens reliance on *Johnson* is misplaced.

In *Johnson*,

> Petitioner's request to delay setting an execution date was denied and an execution date was set for October 29, 1999. Petitioner thereafter sought a stay of execution pending the filing of a petition for a writ of habeas corpus based on after-discovered evidence. We granted the stay of execution to consider whether petitioner should be granted leave to move for a new trial based on after-discovered evidence in light of a statement given by Hess on October 22, 1999. In this statement, Hess stated Harbert killed Swanson and she, alone, killed Trooper Smalls.

Johnson v. Catoe, 345 S.C. 389, 393, 548 S.E.2d 587, 589 (2001).

Here, there is no statement by Golden that he is the shooter. In fact, it is just the opposite. He maintains he was not the shooter. Further, there is no statement by Golden identifying another individual as the shooter. Simply that he asserts at the eleventh hour that it is not Owens is insufficient to upset a verdict. *See generally State v. Gregory,* 198 S.C. 98, 16 S.E.2d 532, 534-535 (1941) (offered evidence of third-party guilt that merely "rais[es] a conjectural inference as to the commission of the crime by another" is not admissible). Factually, the type of allegations here do not square with the more direct allegations in the Hess statement at issue in *Johnson.* In fact, this is underscored by the dissenting opinion by Justice Waller expressing the "troubling" point

[1] Moreover, there is another obvious point: " ' Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." *State v. Mayfield*, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (quoting *State v. Whitener*, 228 S.C. 244, 89 S.E.2d 701 (1955)).

was that another individual had personally confessed to committing the murder. 548 S.E.2d at 593. Moreover, the record before the Court shows that he is unlikely to meet the legal requirements for a new trial.

Again, *Johnson* is instructive:

> For petitioner to show he is entitled to a new trial, pursuant to State v. Spann, supra, he must show the 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; (5) is not merely cumulative or impeaching.
>
> We find petitioner has failed to meet the requirement for a new trial that the evidence is "such that it would probably change the result if a new trial were granted." We do not believe it is probable a jury would find Hess credible given her prior inconsistent statements. Beyond these problems with Hess's credibility, we believe, as the referee found, that the known facts about Trooper Smalls's shooting do not correlate with Hess's claim that she killed the trooper. We further find the consistency of Harbert's statements to police and at petitioner's trial undermines the possibility that the result of a new trial would be different. Harbert has consistently claimed petitioner killed both Swanson and Trooper Smalls. Accordingly, we adopt the referee's findings and deny the motion for a new trial

Johnson, at 399–400, 548 S.E.2d at 592–93.

The record evidence here shows multiple statements by Owens admitting guilt, and the forensic evidence supports the details in those statements.

As to the evidence, the pathologist testified that "Ms. Graves died as a result of a single gunshot wound to the head" and died almost instantly (JA 1201, 1204).[2] The store video was played showing both men were armed, both weapons visible on the screen. (JA 1223, 1225). Owens's admissions to investigators (Officers Joe Wood and Ken Evett) was proof not only of

[2] These citations are to documents previously filed with the return in this matter.

Owens's identity at the scene, but also specifically, evidence of Owen's guilt, his malice, and his character:

> Q: We were at the point where you told Mr. Owens that what he was telling you was not adding up, or something to that effect?
>
> A: That's correct.
>
> Q: And did he say anything to you in response to that?
>
> A: He did.
>
> Q: What did he say?
>
> A: He said "the only thing I'm here for is to eat, sleep, shit and piss. I don't give a shit. I was born to be in jail."

(Attachment 2, JA 1240).

Notably, during the guilt phase in 1999, the State presented Owens's mother's statement to law enforcement, after Owens had been arrested for murder of a store clerk off Laurens Road, that Owens had told her that "he had killed a lady" and did not want his mother "to hate him for it…." (Attachment 3, ROA 2066-2081). When Owens was asked by the officer if he was aware that Owens's mother "had indicated that she was going to turn him in," Owens responded "if my mom says anything, tell her I said adios, to kiss her ass too. She can kiss my ass too." (Attachment 2, JA 1240). He added, "Tell Ian and the rest of them assholes to fuck themselves. If I to jail, I go to jail. I don't give a shit." (Attachment 2, JA 1240-1241).

As Officer Wood was writing the information down, Owens:

> just continued on from that point and he said "people tend to think I have a sick and evil mind, but I have a very educated mind. I would like to take the blame for all of this, but I'm not going to take it all myself. I made my mark on Hall Street after I got out of jail selling lots of drugs. I made lots of money. Yeah, I want to be remembered

> as the one who killed the most people in Greenville. I'm a real menace."

(Attachment 2, JA 1241).

When asked to describe Owen's "demeanor during this conversation," Officer Wood testified, "He was cocky. He had a don't-care attitude. He smiled a lot when he was saying this." (Attachment 2, JA 1241). Officer Wood testified, that Owens was "one of two people out of probably 25 years in homicide that I have interviewed that actually gave me cold chills." (Attachment 2, JA 1241). When advised that this case may be a capital case, Owens "said 'I don't give a shit about that either.'" (Attachment 2, JA 1242).

Owens's former girlfriend, Aish Austin, testified Owens said to her, "they went in the store and the lady didn't open up the safe, so he just shot her." (Attachment 2, JA 1262). Owens stated "he went in and he kept asking her to open the safe. She kept throwing up her hands and said she couldn't open the safe, so he just said, 'I shot the bitch.'" (Attachment 2, JA 11262). (*See also* Attachment 2, JA, referencing written statement, "he said they went in and took the money and the lady behind the counter started talking junk and got smart, so he shot her in the head.").[3]

The convenience store manager confirmed that Ms. Graves did not have the authority to open the safe. (Attachment 2, JA 1277). She also testified that a total of $37.29 was not accounted for from the register. (Attachment 2, JA 1277).

Owens's co-defendants Steven Golden and Nakeo Vance, who testified at the initial trial, did not testify at the 2006 resentencing. Vance was brought to court but refused to testify. His prior testimony, however, was read into the record and that confirmed Owens was in the ski mask, while

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[3] Ms. Graves's co-worker testified that Ms. Graves would occasionally "kind of tell them off" if people were "running their mouth" or "wanting to start some trouble.…" (Attachment 2, JA 1251-1252).

Golden wore a stocking to obscure his face. (Attachment 2, JA 1333). Further, his testimony related that Golden and Owens ran back to the car where Vance and Lester Young, another co-defendant in the spree of robberies the four embarked on, were. Owens asked if they heard the gunshot, and stated, "He shot that bitch in the head," while Golden complained that he did not get to shoot his gun. (Attachment 2, JA 1329). Vance's testimony also reflected that Owens had explained that the victim "wasn't opening the safe, so he shot the whore" in Owens's words. (Attachment 2, JA 1329-1340). Owens and Vance had switched guns so that Vance could use the gun that could be heard when pulling the hammer back since Vance would be in the more crowded robbery site and the sound "let everybody know it is a pistol." (Attachment 2, JA 1326). Vance got rid of the gun Owens used to shoot Ms. Graves by throwing it from a bridge. He did so because Owens had admitted using the gun to shoot Ms. Graves. (Attachment 2, JA 1335-1336). Before he threw it away, Vance checked and confirmed that a bullet had been shot leaving an empty shell in his gun where it had been fully loaded. (Attachment 2, JA 1337).

The Solicitor argued Owens made "an intentional and willful choice to kill" Ms. Graves. (Attachment 2, JA 1706). He argued Owens "made the intentional and calculated choice to kill and his punishment should reflect the degree and the magnitude of that choice." (Attachment 2, JA 1706). The defense argued to disregard Owens's statements related by Ms. Owens and essentially all of the Vance testimony as to Owens being the shooter. (Attachment 2, JA 1724-1725). This shows, however, the two stark choices the arguments and evidence presented – either he was the shooter or disbelieve all the evidence (and his own admissions) and find Owens was

not in the store. The jury's verdict was consistent with the first – the one the evidence supported – that Owens was the shooter.[4]

In re Stays of Execution in Cap. Cases, 321 S.C. 544, 471 S.E.2d 140 (1996) provides for the narrow possibility of an additional stay of execution for a successive PCR action. To obtain a stay in such circumstances, a petitioner's "motion must demonstrate that there are exceptional circumstances warranting the issuance of the stay." *Id.,* 321 S.C. at 548, 471 S.E.2d at 142. Owens's latest filing for reconsideration still does not meet that requirement when carefully considered in comparison with *Johson.*

CONCLUSION

Based on the foregoing, the Court should not alter the denial of the motion for stay of execution for additional proceedings.

Respectfully submitted,

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[4] As this Court found in the September 12, 2024 Order, there was no question as to malice, only identity, and both were major participants.

ATTORNEYS FOR RESPONDENT

September 19, 2024