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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Courtney Clyburn Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2023-002012

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by denying Appellant's motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP?

STATEMENT OF THE CASE

A Barnwell County Grand Jury indicted Appellant at the November 2013 term of General Sessions for the offense of murder. R. 795-796. On October 29, 2013, a hearing was held before the Honorable Doyet A. Early, III pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), to determine Appellant's competency to stand trial. R. 1. After Appellant was found competent, a second hearing was held on November 13, 2013, before Judge Early to resolve numerous pretrial motions. R. 1.

Appellant's case was called to trial on November 18, 2013, before Judge Early, and a jury. Assistant Attorneys General S. Creighton Waters and Jason S. Anders represented the state. Daniel W. Williams represented Appellant. R. 1.

On November 21, 2013, the jury found Appellant guilty as indicted. R. 761, ll. 21-25. He was sentenced to life without parole. R. 768, ll. 17-21.

The Court of Appeals affirmed Appellant's conviction and sentence. State v. Gerrick, 2016-UP-092 (S.C. Ct. App. Filed February 24, 2016). On March 15, 2016, Appellant filed an application for post-conviction relief (PCR). The state filed a return to this application on September 30, 2016. With the assistance of counsel, Appellant filed an amended application on May 3, 2018. An evidentiary hearing was held on May 9, 2018, before the Honorable R. Scott Sprouse. Assistant Attorneys General Julie Coleman and Caroline Scrantom represented the state. Charles Grose represented Appellant. By order filed July 27, 2018, the PCR court denied Appellant relief. The court subsequently denied Appellant's Rule 59(e), SCRPC, motion to alter or amend by order filed August 24, 2018.

On April 5, 2019, Appellant filed a petition for writ of certiorari with the Supreme Court. The state filed a return to this petition on August 2, 2019. Appellant filed a reply on September 16,

2019. By order dated September 16, 2019, the Supreme Court transferred the appeal to the Court of Appeals pursuant to Rule 243(l), SCACR. The Court of Appeals denied the petition for writ of certiorari on December 10, 2021. The remittitur was sent on January 18, 2022.

On June 12, 2023, Appellant filed a *pro se* motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP. R. 771-772. An evidentiary hearing was held on Appellant's motion on July 20, 2023, before the Honorable Courtney Clyburn Pope. Assistant Attorney General Christina Allard represented the state. Appellant proceeded *pro se*. R. 773. By order filed July 26, 2023, the court denied Appellant's motion for a new trial. R. 794.

This appeal follows.

STATEMENT OF FACTS

Kimberly (“Kim”) Smith, the decedent’s girlfriend at the time of his death, last heard from the decedent, Tyrone Donaldson, around 1:30 pm on July 21, 2011. She sent him numerous text messages that afternoon and called him when she got off of work that evening, but Tyrone never responded. When she got home, Kim noticed Tyrone’s small white Honda was not in the driveway. R. 166, l. 16 – 167, l. 24. Upon entering the house, she asked Tyrone’s young daughter if she had seen her father. According to Kim, the daughter “said she didn’t know where he went but he came in the house and changed his shoes and he went in the closet and got a gun out and left. Said he’d be right back.” R. 168, ll. 4-18.

Kim drove around Blackville that evening looking for Tyrone and stopping in areas where she knew he would “hang out” but she did not find him. R. 168, l. 25 – 169, l. 12. She then contacted Tyrone’s mother, who said she had not heard from Tyrone since earlier that day. R. 169, l. 25 – 170, l. 8. According to Kim, it was unusual for Tyrone not to respond to text messages and phone calls, and she had never known him “to just leave and not call like this.” R. 167, ll. 9-15; R. 171, ll. 22-24.

Maurice Williams had known Tyrone “all [his] life growing up” and Appellant “was kind of part of my family.” He and Appellant “lived right next door to each other.” R. 176, ll. 15-21; R. 178, ll. 11-14. Maurice testified that he received a phone call from Appellant on Friday, July 15, 2011. According to Maurice, Appellant said he was in jail and asked Maurice “did I have any money and how [much] I had to contribute towards getting him out of jail.” Maurice told Appellant he “only had \$2,500 which [he] was saving up for a down payment on a house.” R. 178, l. 21 – 179, l. 18. He testified that Appellant “told [him] to get with Tyrone [the decedent]. And that was basically the end of that conversation.” R. 179, ll. 19-23.

Maurice claimed he “did get with Tyrone” and Tyrone already knew “that Sammie [Appellant] was wanting us to get him out of jail” and he would “get back with me when he find out how much it cost.” R. 179, l. 23 – 180, l. 1. Tyrone contacted him a few days later and said it was going to cost \$6,600 “to get him out.” R. 180, ll. 11-14. Tyrone told Maurice “that he couldn’t pay it all by himself. And, you know, would I help him. Would I give half.” R. 180, ll. 15-20. Maurice was concerned about being paid back, but claimed Tyrone told him “that Sam [Appellant] said he’d give it [the money] to us 30 minutes after he get out of jail.” R. 180, l. 21 – 181, l. 4. He ultimately agreed to meet Tyrone at the bank on the morning of July 21, 2011, and give Tyrone his half of the money. Maurice claimed he met Tyrone shortly after 10:00 a.m., gave him \$3,300, and then went back to work. R. 181, l. 10 – 184, l. 13.

Tyrone called Maurice later that day between 1:00 and 1:30 p.m. and said, “I got him [Appellant]. We’re on our way back to Blackville. Do you want to talk to him?” R. 184, l. 18 – 185, l. 3. According to Maurice, Appellant got on the phone and said, “I appreciate y’all doing that for me. We going to get the money [that Appellant owes them]. I’m going to bless y’all boys.” He claimed Appellant was “insinuating [by this last comment] that he was going to give us more money than we gave him.” R. 185, ll. 4-18. Maurice also testified that Appellant said, “Tyrone should have my [Maurice’s] money when I get off work.” R. 186, ll. 7-14.

Maurice next heard from Tyrone between 2:00 and 2:30 p.m. Tyrone told Maurice that he had dropped Appellant off at home to change his clothes and that Tyrone had went home as well to switch cars before “going back to get the money.” R. 185, l. 19 – 186, l. 6. Maurice claimed that he “had no more contact with either one of them” after this conversation so he called Tyrone when he got off work around 5:30 p.m. to check on his money. He called Tyrone numerous times, but there

was “no answer.” R. 186, ll. 15-22. Maurice found this to be “unusual” especially since they “had been talking all day.” R. 88, ll. 5-10.

Later that night sometime between seven and eight o’clock, Maurice spoke to Appellant in the yard near the side of Appellant’s house.¹ Maurice said Appellant “asked me did I see Tyrone. And I was like, no, the last time I talked to him y’all was together. He was like, well I gave him the money. He got your money.” Maurice claimed Appellant told him he and Tyrone “went out there and dug the safe up . . . [and] when we got the safe open and Tyrone seen all those hundred dollar bills, he kissed me on my forehead.” According to Maurice, Appellant did not say where the two went to dig up the safe, but he said there was between \$90,000 and \$100,000 inside. Maurice testified that Appellant then said “we took that money and we loaded that little Honda down with money. Had the back of that Honda loaded down with money because I didn’t want to ride with it in the truck.” He claimed Appellant said, “Tyrone took off going his way and he [Appellant] went his way” and then Appellant asked, “[D]o you reckon that n***** took my money?” After this conversation with Appellant, Maurice had “a nervous feeling” and “didn’t know what was going on.” R. 188, l. 22 – 190, l. 20.

The following night, Maurice received a text message from a phone number he did not recognize. The text message said, “help me this Tyrone am hurt Kim ex got me help please.” After he got this text message, Maurice said he called his friend, Jamaal Berry. Jamaal told Maurice that he had received “basically the same text” from the same number. R. 195, l. 4 – 197, l. 5. Maurice claimed that “the way he [the person who sent the text message] spelled I’m” stood out to him because “it was spelled am, A-M instead of I-M.” He testified, “When I paid attention to it, I was like, I know somebody else that text like that. So I went . . . through my phone and I have some

¹ As noted above, Maurice testified that he and Appellant were next door neighbors. See R. 178, ll. 12-14.

texts from Sammie Gerrick [Appellant] in there. And all the text [messages] in there where he used the word I'm, he misspelled it A-M. The same exact way." R. 197, l. 12 – 198, l. 1.

Maurice further claimed that when he saw Appellant on July 22, 2011, the day after Tyrone disappeared, Appellant "had some scratch marks on his chest." Maurice asked Appellant "what happened" and Appellant told him that law enforcement had tazed him when he was arrested earlier in July and "they had him face down in the parking lot on the pavement. So . . . he was insinuating that the pavement rubbed against his chest and scratched him." R. 200, l. 19 – 201, l. 17.

In July 2011, Bradley Smith lived in Blackville with his mother, his brother, and Appellant. Smith's mother, Claudette Daniels, was Appellant's girlfriend for nearly a decade and the two were dating in July 2011. R. 228, l. 24 – 229, l. 24. Smith claimed he saw Appellant and Tyrone Donaldson on July 21, 2011, the day Tyrone went missing. He said he first saw the two at his house around one or two o'clock in the afternoon. He explained, "Tyrone pulled up. Sam [Appellant] was in the car with him. He [Tyrone] dropped him [Appellant] off. Sam came in the house, changed [his clothes]. Tyrone left. Tyrone probably about 30, 40 minutes later came back. Tyrone was sitting outside on the phone. . . . Then Sam came out [of] the [bed]room, got in the car with him [Tyrone]. And they talked and he [Appellant] got back out the car, went behind the barn, grabbed two shovels, put them in the back of his [Appellant's] pickup truck. And he [Appellant] pulled out first [in his pickup truck], then Tyrone pulled out after [in his own car]." R. 230, l. 9 – 231, l. 11.

Smith saw Appellant again later that night around ten o'clock. He claimed he "could tell something was wrong . . . because he [Appellant] was sitting outside on the steps for hours. He just looked . . . like he was facing - - like he had a lot on his mind." R. 231, ll. 12-24.

Shaneka DeLoach saw Appellant and Tyrone Donaldson around 3:15 p.m. on July 21, 2011, at a "BP gas station." She claimed, "I seen Tyrone sitting in the car. Tyrone never got out his car.

And Sam [Appellant] was standing at the driver's side talking to Tyrone. And I kept noticing that they could have been fussing because he [Appellant] was moving his hands and like looking real mean." R. 236, ll. 9-23. DeLoach said that "Tyrone was in a white Honda Civic" and she thought Appellant was driving a burgundy Dodge truck. R. 236, l. 24 – 237, l. 7. She later admitted she never actually saw Tyrone, she simply recognized his car. R. 237, ll. 21-22; R. 239, ll. 11-15. According to DeLoach, when Appellant left the gas station he headed in the direction of Denmark, but she could not remember which direction Tyrone went. R. 238, ll. 7-15.

Jamaal Berry knew Appellant, Tyrone Donaldson, and Maurice Williams. Maurice was his best friend. Jamaal first learned Tyrone was missing when Kim, Tyrone's girlfriend, called him on July 21, 2011, and asked whether he had seen or heard from Tyrone that day. Maurice called Jamaal later that night and said "[h]e needed to talk to me real bad. Come to Blackville right now." R. 244, l. 14 – 245, l. 10. According to Jamaal, when he got to Maurice's house around eight or nine o'clock, Maurice "was really scared" and told him "what was going on with Sammie Gerrick [Appellant] and the money." R. 245, l. 11 – 246, l. 4. Specifically, Maurice told Jamaal that Appellant allegedly told him "about that safe in the woods" and "about digging up the safe out in the woods and putting that money in Tyrone's car." R. 252, ll. 11-23. Jamaal also claimed Maurice told him "if anything happened to him tell the police Sam [Appellant] did something to me." R. 253, ll. 5-6.

The following night, July 22, 2011, Jamaal received an unusual text message from a phone number he did not recognize. The message said, "Help me I'm hurt Kim's ex-husband has me or something similar to that or whatever." Jamaal said he talked to Maurice and Kelsea Hallingquest, Tyrone's sister-in-law, about the text message because they had both received a similar message. He also called Appellant. According to Jamaal, when he told Appellant about the text message,

Appellant said, "I told you it wasn't me. Maybe this will take some heat off me, or something like that." R. 246, l. 18 – 249, l. 10.

Kelsea Hallingquest was Tyrone's sister-in-law and was living with him at the time of his death. On the morning of July 21, 2011, Tyrone asked her to babysit his daughters and then left. She said she "knew he was going to get Sammie [Appellant] out of jail, but [she] didn't know what jail he was in." Kelsea claimed Tyrone returned later that afternoon sometime after one o'clock, changed his shoes, and left again, this time with a shotgun. She said Tyrone told her that he was leaving, but did not tell her where he was going. R. 254, l. 9 – 257, l. 2. When Tyrone did not return later that night, she called his friends looking for him, but she "couldn't get anybody." R. 257, ll. 3-18.

The following night, July 22, 2011, Kelsea received a text message from a phone number she did not recognize. The message said "help me sister-in-law Kim ex-husband got me am hurt." R. 257, l. 25 – 258, l. 10. She claimed Tyrone never called her his sister-in-law and that she "was either Kelsea or his sister." R. 258, ll. 11-18. Later that same day, Lana Joyner called Kelsea and said she had seen Tyrone's car parked behind the China Express in Orangeburg. After Lana called her, Kelsea reported this information to the Blackville Police Department and drove to Orangeburg. R. 259, l. 25 – 261, l. 12.

Tyrone's mother, Carol Bracey, contacted the Blackville Police Department on July 22, 2011, and reported Tyrone missing. After speaking with Bracey, law enforcement began investigating Tyrone's disappearance and entered the "vehicle information" for his white Honda Civic into the "National Crime Information Center" (NCIC) database. The Orangeburg Public Safety Department located Tyrone's vehicle on July 22, 2011. R. 265, l. 5 – 266, l. 9.

That same day, July 22, 2011, John Holston, the chief of police for the Blackville Police Department, interviewed Appellant for the first time after learning Appellant was the last person seen with Tyrone before he went missing. According to Holston, Appellant told him during this interview that Tyrone had gotten him out of jail that day, that they had gone to Enterprise Bank so Appellant could cash a check, and then they “went to the Junior Food Mart, which is the BP station in Blackville.” Holston claimed Appellant said this was the last time he had seen Tyrone. R. 266, l. 14 – 267, l. 9.

Holston interviewed Appellant a second time on July 23, 2011. During this second interview, Appellant told Holston the same account he had given the day before, but provided more detail. According to Holston, Appellant explained during this interview that he had been sentenced to six months imprisonment for failing to pay child support and that he was later charged with escape after he ran from the courthouse while he was in custody. Appellant said a Bamberg County Detention Center employee named Johnell Rice helped him contact Tyrone several times while he was in jail about getting the money to post his bond. Tyrone ultimately picked Appellant up on that Thursday morning, July 21, 2011, in his white Honda Civic and drove him home. After he “cleaned up,” Appellant and Tyrone went to Enterprise Bank where Appellant cashed a check for a hundred and four dollars. The two then went to Junior Food Mart where Appellant put thirty dollars worth of gas into his 1998 Dodge pickup truck. Appellant again indicated that this was the last time he had seen Tyrone before he disappeared. R. 268, l. 6 – 271, l. 9. Also, during this interview, Appellant told Holston Tyrone had given him his ATM card that day and he had since used it. R. 267, l. 10 – 268, l. 4; R. 271, ll. 19-24.

During this second interview, Holston claimed he noticed scratches across Appellant’s arms and chest and photographed them. R. 272, l. 11 – 273, l. 13. Lieutenant Shaun Harley, an agent

with the South Carolina Law Enforcement Division, who sat in on this interview, also claimed he noticed scratches on Appellant's arms and chest. According to Harley, Appellant said he received these scratches while he was incarcerated at the Bamberg County Detention Center when "a light fixture fell on top of him."² R. 316, l. 1 – 317, l. 3.

About a week later on July 30, 2011, Holston received a phone call from Appellant. Holston claimed that when he answered Appellant said, "Tyrone's not - - he not dead . . . they've got him. He said that Black's got Tyrone and they want \$25,000 in cash for him. He said, I don't have that kind of money, but I'll do anything to get him back . . ." Holston testified he asked Appellant "do you know where he [Black] got him [Tyrone]" and Appellant said "over around Springfield . . . where Black was from." He claimed he instructed Appellant that "if they call you back, get more information and then call me back and then we'll see where we'll go from there." R. 273, l. 20 – 275, l. 22. According to Holston, Appellant also told him during this conversation that he had talked to Tyrone and Tyrone said "he was hurt and that he needed help, and they got me." R. 275, l. 23 – 276, l. 3.

Appellant's wife, Charlene Gerrick, chose to invoke her marital privilege not to testify about her communications with Appellant. R. 296, l. 18 – 298, l. 7. According to Charlene, Appellant came to her house on July 21, 2011, the day Tyrone disappeared, around nine or ten o'clock at night. She claimed that after they "spent some time together," she "took him [Appellant] to go get a white car . . . back up in the woods." She said they went down a paved road and then "turned and went on a dirt road" into the woods. She identified the car as a white Honda Civic. Charlene alleged that Appellant "got out [of] my car, got into that car [the white Honda Civic], and we came

² Danny Abraham, a corrections officer at the Bamberg County Detention Center, testified that on July 19, 2011, he found glass from a broken light fixture on the ground of Appellant's cell. However, he claimed he examined Appellant and Appellant did not have any cuts on his arms or chest nor was he bleeding. R. 487, l. 2 – 488, l. 25.

back out [of the woods] and he drove it over to Orangeburg” and parked it behind “the China Express.” After Appellant parked the car, Charlene gave him a ride back to her house and Appellant went home. R. 303, l. 10 – 308, l. 19.

On August 3, 2011, Charlene was interviewed by Lieutenant Harley. She told Harley about driving Appellant to the woods to move the white car and how Appellant had driven the white car to the China Express in Orangeburg. Charlene later accompanied the police out to the wooded area off the dirt road where she had gone with Appellant. R. 309, l. 5 – 310, l. 9.

The next day, August 4, 2011, a team of officers from SLED, the Barnwell County Sheriff’s Office, and the Blackville Police Department searched the wooded area Charlene had shown them. During the search, an officer “came across a disturbed area . . . and when he poked his stick into the ground . . . an odor came up.” The odor smelled like decomposition. R. 328, l. 3 – 329, l. 22. After this discovery, the officers requested SLED’s crime scene division “come down to look at the area.” R. 329, l. 23 – 330, l. 5.

Melissa Skipper Wallace, the lead crime scene technician, and her team arrived at the site around 10:45 a.m. Wallace claimed that when she probed the ground in the area identified as a “potential burial site,” it “smelled like rotten meat.” The officers sifted through the soil searching for any evidence. Once they located what appeared to be cotton material from a shirt, they notified the coroner. After the coroner arrived, they continued to excavate the area and, around 10:30 that night, they removed the body of a Black male later identified as Tyrone Donaldson. R. 408, l. 17 – 410, l. 15; R. 411, ll. 19-21; R. 331, ll. 6-25. The body was decomposing and there “were bindings around the wrists and ankles. R. 415, l. 10 – 416, l. 5.

During their search of the area near the burial site, law enforcement found a fishing lure and “some green netting.” However, these items were not collected or preserved because they “thought it could possibly be trash.” R. 411, ll. 5-18; R. 430, ll. 3-9.

After law enforcement discovered the body, they searched Appellant’s pickup truck, his home with Claudette Daniels, and Charlene Gerrick’s house. R. 332, ll. 10-21. All of the searches took place on August 5, 2011. During the search of the home Appellant shared with Claudette Daniels, law enforcement found “green netting and fishing lures which were similar to what [they] had seen [near] the body.”³ R. 427, ll. 13-20; R. 615, l. 17 – 616, l. 12. They collected the green netting and fishing lures from Appellant’s house but could not compare them to the netting and fishing lure found near the body because law enforcement never collected these items from the grave site. R. 429, l. 25 – 430, l. 12; R. 435, ll. 15-23.

Dr. Janice Ross, the pathologist who conducted the autopsy, testified that when she received the body it “was very much covered with dirt and was decomposing.” She maintained that the decomposition was “moderate to severe,” that there was “skin slippage” where the “skin actually falls away from the body, and some soft tissue had deteriorated.” R. 438, l. 21 – 439, l. 18. According to Dr. Ross, the advanced stage of the decomposition made it difficult to see any bruising, abrasions, or other external soft tissue injuries. However, she did do a full body x-ray and found no bone fractures or bullets inside the body. R. 439, l. 22 – 440, l. 20.

Dr. Ross testified that “externally the only marks [she] could see were some defects in the back of the left forearm. They were splits in the skin consistent with a laceration.” R. 441, ll. 5-7. She claimed this could have been a defensive wound. R. 448, ll. 2-22. In addition to this external

³ Bradley Smith, Claudette Daniels’ son, testified that about a year before Tyrone went missing, he, Appellant, his brother, and his mother put down new sod around their house. He claimed the sod came with “some sort of green netting” around it. See R. 231, l. 25 – 232, l. 10.

wound, Dr. Ross also observed “some ligatures that were essentially like shoestrings around his wrists and his ankles.” R. 441, ll. 1-4. The ligatures left marks on the skin. R. 442, l. 2 – 444, l. 19. Dr. Ross maintained, “The fact that he was buried underneath dirt, and without evidence of shooting or fractured skull, for instance from a beating, it is most likely that there was some kind of asphyxiation. In other words, some kind of strangulation around the neck with . . . an arm as a cause of death. But the whole scenario . . . together makes it a homicide for manner of death.” R. 445, ll. 1-8. She also opined that his death could have resulted from “being incapacitated and then buried” alive. R. 445, ll. 9-18.

On cross-examination, Dr. Ross said there was no dirt inside Tyrone’s throat or nostrils. She also admitted that there were no visible signs of strangulation on the body. She conceded that while “we all know he was found buried,” she does not know exactly how he died. R. 451, l. 13 – 452, l. 6.

Angela Cotton, the assistant branch manager for SRP Federal Credit Union in Barnwell, testified that Tyrone Donaldson’s ATM card was used at 8:01 p.m. on July 21, 2011, at the ATM machine at Enterprise Bank in Blackville. This withdrawal was for \$302.50. Tyrone’s card was used again on July 22, 2011, at 12:31 a.m. for a “bill payment transaction” to SCANA Energy in the amount of \$603.50. It was used a third time at 12:34 a.m. on July 22, 2011, for a “bill payment transaction” to SCANA Energy in the amount of \$103.50. On July 22, 2011, at 8:17 a.m., the card was used at an ATM machine at Bank and Trust in Barnwell. This withdrawal was for \$403.00. The card was then used three times at 8:21 a.m., 8:22 a.m., and 8:25 a.m. on July 22, 2011, at the Palm Pantry in Bamberg. The first two transactions were withdrawals from an in-store ATM. The third was an in-store purchase. The amount of the transactions were \$202.00, \$102.00, and \$35.00, respectively. The card was last used at 8:37 a.m. on July 22, 2011, at Bamberg Auto Parts in the

amount of \$36.36. R. 549, l. 7 – 555, l. 20. Cotton claimed that in order to make these ATM withdrawals one would have to have had the “PIN number.” R. 556, ll. 9-14.

Law enforcement collected several receipts indicating Appellant was the one who used Tyrone’s ATM card. See R. 374, ll. 20-22; R. 387, ll. 1-19. Appellant also admitted to using the card during his interview on July 23, 2011. R. 271, ll. 19-24; R. 277, l. 7 – 278, l. 3. He said he and Tyrone had received \$18,000 from the sale of “backhoe equipment” and that this joint money was in Tyrone’s bank account, which is why Tyrone gave him his debit card on July 21, 2011 and provided him with the “PIN number.” R. 323, l. 20 – 324, l. 23.

Lieutenant Harley interviewed Appellant again on August 17, 2011. Appellant was incarcerated at the Charleston County Detention Center at the time because of a “violation of bond or probation.” R. 325, ll. 19-24; R. 332, l. 22 – 333, l. 12. The U.S. Marshall’s Task Force transported him to the Barnwell County Sheriff’s Office.⁴ R. 333, ll. 7-12. During this interview, Appellant allegedly mentioned a man named “Big Joe” and talked about going to Orangeburg but did not admit to moving the white car. R. 358, ll. 1-4.

After this interview, Appellant was served with a warrant for murder and transported to the Barnwell County Detention Center. R. 358, l. 24 – 359, l. 3. A couple of hours later, Appellant contacted someone at the detention center and requested to speak with law enforcement again. He was transported back to the Barnwell County Sheriff’s Office. During this second interview on August 17, 2011, Appellant allegedly told law enforcement that Tyrone was supposed to complete a drug transaction with Andre Hightower, O’Shane Dixon, and a “Big Joe” after the two parted at the Junior Food Mart that afternoon. Tyrone was supposed to give Appellant \$7,000 from the

⁴ It is unclear from the record why the U.S. Marshall’s Task Force transported Appellant as opposed to a different agency.

transaction and Appellant was “to repay Tyrone Donaldson \$3,000 out of that 7,000” for the bond money. Appellant also allegedly admitted to moving Tyrone’s white Honda Civic. Lieutenant Harley claimed Appellant told him “Andre Hightower called and told me to do it” and Hightower was supposed to pay him \$400. R. 362, l. 4 – 365, l. 18.

Moreover, Appellant told Harley that he had last seen Tyrone around 3:45 that afternoon and denied he had ever been to the wooded area where the body was found. Harley said he “bluffed” and told Appellant that one of the homeowners who lived in one of the two houses off Sunshine Road near where the body was found had described seeing a Dodge pickup truck similar to his truck. Appellant still denied he had ever been to that area. R. 368, l. 25 – 371, l. 8.

The next day, August 18, 2011, Appellant requested to speak with Jeff Croft, who at the time was an investigator with the Barnwell County Sheriff’s Office. Appellant allegedly explained how his truck could have been seen in the area near the burial site. Croft claimed Appellant’s “explanation” was “a drug deal gone bad.” According to Croft, Appellant said that there was a “kilo of cocaine that had been messed up” and “[t]he money was never received by the person who supplied the cocaine” who was “a gentleman by the name of Big Joe.” Appellant allegedly went on to say that “when Mr. Donaldson had gotten him out of jail they had discussed about the package [the cocaine] being messed up and that Mr. Donaldson had between eight- and \$9,000 that he was going to take out there and make things right.” Appellant supposedly said that he went to Andre Hightower’s house with Tyrone and Andre “lured them” into the woods a “pretty good way” behind the house. When they went out into the woods, they met Big Joe, O’Shane Dixon, and Andre Hightower. Croft testified that Appellant told him O’Shane and Andre then “grabbed Tyrone and Big Joe began to hit him.” Appellant was told to leave to “go get the money” so he left in his truck to see if he could find some money. R. 599, l. 9 – 601, l. 1.

Lieutenant Harley testified that the narcotics division at the Barnwell County Sheriff's Office had never conducted any narcotics investigations involving Tyrone Donaldson. There was also no mention throughout the community about Tyrone being involved in drug activity. R. 376, ll. 11-22. Harley also interviewed Andre Hightower and O'Shane Dixon to corroborate Appellant's statements, but he found no evidence either was involved in Tyrone's death.⁵ R. 376, ll. 2-10. He also interviewed Kim Smith's ex-husband, Andre Smith, based on the text messages Maurice Williams, Kelsea Hallingquest, and Jamaal Berry had received, but Smith did not know anything about the case. R. 375, l. 3 – 376, l. 1.

Early Glover, who was incarcerated at the time of trial at the Orangeburg County Detention Center, admitted that, in addition to his pending charges, he had prior convictions for criminal domestic violence of a high and aggravated nature and third degree burglary. He also served prison time for a probation violation. Glover testified that in October 2011, he was incarcerated at Kirkland Correctional Institution and met Appellant. R. 579, l. 23 – 581, l. 16. Glover claimed he "struck up a friendship with" Appellant and, a few days after they met, Appellant told him "he was in a bind" and "needed two people." Appellant "was saying [something] about a statement. He needed a statement." R. 582, ll. 4 – 583, l. 25. Glover agreed to help Appellant in exchange for a thousand dollars. R. 585, ll. 7-13. A few days later, Appellant allegedly gave a statement to Glover and told Glover "this is how it [the statement] need to be written." R. 584, ll. 2-22. Glover then took the statement to his cell and copied it in his own handwriting and signed the back page. R. 584, l. 24 – 586, l. 19. He then gave the statement he wrote and the original one Appellant wrote back to Appellant. However, Appellant never paid him the one thousand dollars. R. 588, ll. 2-21; R. 590, ll. 19-22. Glover could not remember what the statement said, but he recalled the name

⁵ Andre Hightower and O'Shane Dixon testified at trial. Both denied any involvement in the death of Tyrone Donaldson. See R. 558, l. 12 – 559, l. 16 and R. 565, l. 18 – 570, l. 5.

Tyrone and that Tyrone, Appellant, and Glover were “supposed to meet two guys . . . in the woods somewhere” and “Sammie [Appellant] and one of the guys started arguing” and Glover “was told to stay in the car.” R. 586, l. 5 – 587, l. 21.

The jury ultimately found Appellant guilty and he was sentenced to life without parole. R. 761, l. 21 – 762, l. 6; R. 768, ll. 17-21.

STANDARD OF REVIEW

“A motion for a new trial based on after discovered evidence is addressed to the sound discretion of the trial judge.” State v. Harris, 391 S.C. 539, 544-45, 706 S.E.2d 526, 529 (Ct. App. 2011) (quoting State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978)). “This court will affirm the trial court’s denial of such a motion unless the trial court abused its discretion.” Harris, 391 S.C. at 45, 706 S.E.2d at 529 (citing State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197-98).

ARGUMENT

The trial court abused its discretion by denying Appellant's motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP.

Relevant Facts

Appellant told the trial court that his family paid for a second autopsy to be performed on the decedent, Tyrone Donaldson, at some point after Appellant's jury trial. The second autopsy was performed by the Tennessee Body Farm.⁶ R. 780, ll. 13-18; R. 781, l. 22 – 782, l. 16; R. 783, l. 9 – 789, l. 22. Presumably, the findings from the Body Farm conflict with the findings of Dr. Janice Ross, the pathologist who conducted the original autopsy. Dr. Ross testified during Appellant's trial that the decedent likely died from "some kind of asphyxiation" or "some kind of strangulation." R. 445, ll. 1-8. However, she admitted there were no visible signs of strangulation on the body. Dr. Ross maintained that while "we all know he [the decedent] was found buried" she does not know exactly how he died because of the advanced stage of decomposition. R. 451, l. 13 – 452, l. 6.

Appellant provided the trial court with a copy of the autopsy report from Dr. Ross and the report from the Tennessee Body Farm. The trial court told Appellant it would review the documents before ruling on Appellant's motion for a new trial. However, the documents were never marked or admitted as exhibits during the hearing.⁷ Appellant also provided the court with several other documents in support of his motion for a new trial, such as a letter from Dustin

⁶ Appellant is likely referring to the University of Tennessee Anthropological Research Facility, better known as the "Body Farm."

⁷ Undersigned counsel attempted to obtain these documents from the Attorney General's Office, who represented the state before the circuit court, and from the trial judge without success. Because the documents were never marked as exhibits, a copy was not retained by the Barnwell County Clerk of Court.

Williamson, who invoked his Fifth Amendment right against self-incrimination during Appellant's trial and did not testify. R. 119, I. 7 – 122, I. 25.

By order filed July 26, 2023, the trial court denied Appellant's motion for a new trial. The court determined there was "no factual basis to grant" Appellant's motion. R. 794.

Discussion

The trial court abused its discretion by denying Appellant's motion for a new trial pursuant to Rule 29(b), SCRCrimP, based on after discovered evidence when Appellant proved the new evidence from the second autopsy would probably change the result if a new trial were granted, was discovered after Appellant's trial, could not have been discovered prior to trial, is material, and is not being merely cumulative or impeaching.

"Rule 29(b), SCRCrimP, provides for a motion for a new trial based on after discovered evidence. To prevail on a motion for a new trial based on after discovered evidence, the moving party 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 the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Wakefield, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024) (citing State v. Spann, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999)).

"In deciding these motions, the circuit court is limited to reviewing the transcript of, and evidence presented at, the defendant's trial and any other evidence the party moving for a new trial presents as after discovered evidence." Wakefield, 443 S.C. at 126, 903 S.E.2d at 490 (citing Spann, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (requiring after discovered evidence to be "such that it would probably change the result if a new trial were granted") and Jamison v. State, 410 S.C. 456, 469, 765 S.E.2d 123, 129-30 (2014) (noting the traditional after discovered evidence

test presumes that the trial court “is in a position to weigh the new testimony against that provided at the prior trial and assess whether an acquittal verdict would enter based upon new evidence”)).

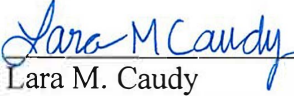
At some point after Appellant was convicted, his family paid the Tennessee Body Farm to perform a second autopsy on the decedent. Presumably, the findings from the Body Farm conflict with the findings of Dr. Janice Ross, the pathologist who conducted the original autopsy. During the evidentiary hearing on Appellant’s motion, Appellant presented sufficient evidence to prove the new evidence from the second autopsy would probably change the result if a new trial were granted, was discovered after Appellant’s trial, could not have been discovered prior to trial, is material, and is not being merely cumulative or impeaching. Consequently, the trial court abused its discretion by denying Appellant’s motion for a new trial.

Respectfully, this Court should reverse Appellant’s conviction and remand for a new trial based on this after discovered evidence.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Courtney Clyburn Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2023-002012


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sammie L. Gerrick states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's evidentiary hearing, which was held on July 20, 2023, before the Honorable Courtney Clyburn Pope, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the proceeding.

WHEREFORE, she asks the Court to relieve her as counsel for Sammie L. Gerrick.

Respectfully Submitted,


Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 10 2024
SC Court of Appeals

Appeal from Barnwell County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT


APPELLATE CASE NO. 2023-002012

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Complete Trial Transcript Dated October 29, 2013; November 13, 2013; and November 18, 2013 through November 21, 2023;
- (2) Motion for New Trial Based on After Discovered Evidence filed June 12, 2023;
- (3) Complete Hearing Transcript Dated July 20, 2023;
- (4) Order Denying Defendant's Motion for a New Trial filed July 26, 2023;
- (5) Indictment;
- (6) Sentence Sheet.

I certify that this designation contains no matter which is irrelevant to this appeal.


Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 10th day of October, 2024.

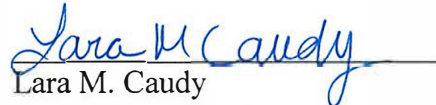
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Oct 10 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

This 10th day of October, 2024.

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STATE OF SOUTH CAROLINA

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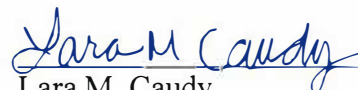
SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2023-002012

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS); and on Sammie L. Gerrick, #165940, at Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827, this 10 day of October, 2024.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT