

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 02 2024

Appeal from Barnwell County SC Court of Appeals

Honorable Courtney Clyburn Pope, Circuit Court Judge

SAMMIE LEE GERRICK,

APPELLANT,

v.

THE STATE,

RESPONDENT.

APPELLATE CASE NO. 2023-002012

APPELLANT'S PRO SE ANDERS BRIEF

Sammie Lee Gerrick
SCDC #165940
Allendale Corr, Inst. F3-A1
1057 Revolutionary Trail
Fairfax, SC 29829
Appellant Pro se

STATEMENT OF ISSUES ON APPEAL

Whether the trial court abused its discretion where it failed to make a finding of facts and conclusion of law for each issue concerning newly discovered evidence:

I.

Did the trial court abuse its discretion where it denied Appellant's new trial motion, Rule 29(b), SCR Crim P, where Appellant submitted evidence that Dr. Ross' trial testimony was directly contradicted by Dr. Ross' PCR testimony?

II.

Did the trial court abuse its discretion where it denied Appellant's new trial motion, Rule 29(b), SCR Crim P, where Appellant submitted evidence that Tyrone Donaldson was seen alive by three witnesses after Tyrone Donaldson was pronounced deceased at 2:30 PM on July 21, 2011?

III.

Did the trial court abuse its discretion where it denied Appellant's new trial motion, Rule 29(b), SCR Crim P, in failing to find letter of Dustin Robert Williamson was after-discovered evidence?

1.

STATEMENT OF THE CASE

A Barnwell County Grand Jury indicted Appellant for the offense of murder (indictment number 2013-GS-06-00274) on August 22, 2013. Appellant was indicted a second time (indictment number 2013-GS-06-00465) on November 14, 2013. 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, lines 21-25. He was sentenced to life without parole. R. 768, lines 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 the application on September 30, 2016. With the assistance of counsel, Appellant filed an amended application of 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 Scramton 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 South Carolina Supreme Court. The state filed a return to the petition on August 2, 2019. Appellant filed a reply on September 16, 2019. By order dated September 16, 2019, the South Carolina Supreme Court transferred the appeal to the South Carolina Court of Appeals pursuant to Rule 243(1), 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), SCR Crim P., R. 771-772. An evidentiary hearing was held on July 20, 2023, before the Honorable Courtney Clyburn Pope, Assistant Attorney General Christina Allard represented the state. Appellate proceeded pro se. R. 773. By order filed July 26, 2023, the court denied Appellant's motion for a new trial. R. 774.

On October 10, 2024, LARA M. CAUDY, Esquire, Senior Appellate Defender, filed an Anders Brief on behalf of Appellant.

This pro se Anders response follows:

I.

Did the trial court abuse its discretion where it denied Appellant's new trial motion, Rule 29(b), SCR Crim P, where Appellant submitted evidence that Dr. Ross' trial testimony was directly contradicted by Dr. Ross' PCR testimony.

Relevant Facts

During Appellant's trial, November 18 - November 21, 2013, Dr. Janice Edwards Ross ("Dr. Ross"), forensic pathologist, testified to the following: (Direct by State):

We do full body X-rays to look for broken bones, to look for lead bullets, pieces of knives or whatever.

R. 440, Lines 3-5.

Did you X-ray the body? Did you find any skull fractures or any sort of fractures to the skeleton of Tyrone? We found no fractures and we found no bullets. So no bullets, no evidence of a skull or a bone fracture anywhere? Correct.

R. 440, Lines 9-15.

And then externally the only marks I could see were some defects in the back of the left forearm. They were splits in the skin consistent with a laceration.

R. 441, Lines 5-7.

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 a soft tissue or a soft -- or an arm as a cause of death, but the whole scenario makes, makes -- together makes it a homicide for manner of death. Okay. And you then concluded that that mechanism was suffocation then; is that correct? Yes. And that could be either from being strangled with some soft item or something like that; is that correct? Yes.

R. 445, Lines 1-15.

And you're familiar then with the concept of defensive wounds or evidence that individuals were in some sort of a struggle? Yes. And looking at those pictures, are those pictures -- are those scratches consistent with an individual being scratched by someone? Yes. These are thin, very linear, what we call scratch abrasions that can be seen with being scratched by fingernails. By fingernails? Uh-huh. Okay. And again, looking at the pictures, this is what you're talking about here with these scratch, these thin scratch marks. That can be consistent with being scratched by fingernails? Yes.

R. 446, Lines 7-23.

-- as the scratches? Now looking at State's 19, same thing, scratches on the arm area? Yes. And that's all consistent with being scratched by fingernails; is that correct? Yes.

R. 447, Lines 9-17.

... I want to conclude, Dr. Ross, with one of your other findings. And I believe you already mentioned this before, but you found defensive wounds on Tyrone's left forearm; is that correct? Correct. And I'm going to show you what's been marked as State's Exhibit 62. And if you can tell me what that is.

R. 447, Line 22 - R. 448, Line 3.

Dr. Janice Edwards Ross: Cross by Defense

The photographs that the State showed you a few minutes ago showing a little scratch marks --

And you indicated they could be consistent -- yes. -- with fingernail marks? Yes. But they could be something else also, correct? We don't know, correct.

R. 449, Lines 13-20.

And did you do any kind of probing into his nostrils or into his throat to see if he may have dirt there? There was none; right? Not that we could see. --

R. 451, Lines 13-17.

Your report indicates there's -- that the neck area is unmarkable; is that right? Correct. So there's no indication of strangulation from what you could see from at his body; correct?

We could not see any -- see that because of the decomposition. All right, well, I guess my point is we all know he was buried, but we just don't know exactly how it happened; do we? Correct.

R. 451, Line 21 - R. 452, Line 6.

Dr. Ross - Redirect by State:

And so once you did that, then you did your final report and it was suffocation; is that correct? Yes.

R. 453, Lines 18-20.

PCR Evidentiary Hearing

Dr. Janice Ross - Direct by Petitioner.

Okay. And can you say with any certainty what the cause of death actually was? No. All I can say is what was not there. There was no ---

R. 121, Lines 1-4.

Dr. Ross - Direct by Petitioner - continued:

--- there was no internal bleeding, there was no fractures, there looked like possibly could've been some injury to the forearms may have been a defense wound because of the discoloration of the skin. I can't say that there was a lot of bruising around the head, for instance, that would cause him to go unconscious. So the cause of death is kind of rule everything else so far.

Is kind of what? Rule out everything else. Right. And you suggested at trial that it was possibly asphyxiation. Correct. Can you say for certain that it was asphyxiation? No. So if you can't say that, you can't say that to a reasonable degree of certainty. Correct. And if you can't say that, you can't say that somebody was strangled to death, can you? No, I cannot.

R. 121, Lines 6-25.

And was there any marking on the neck that you could identify? I understand he was decomposing, but anything on the neck that you could identify from strangulation or being choked out? No, there was not. There was no fracture of the larynx or the hyoid bone. Okay. And any bruising on the neck? Not that I could identify,

R. 122, Lines 1-8.

And as far as being rendered unconscious and buried, he had not inhaled a lot of dirt or anything, had he? Not that I -- let me double check. No.

R. 122, Lines 9-12.

Appellant contends the trial court abused its discretion in denying his motion for a new trial, Rule 29(b) SCR Crim P.

Dr. Ross' trial testimony was contradicted by her testimony at Appellant's PCR evidentiary hearing. Dr. Ross testified during Appellant's trial that the decedent, Tyrone Donaldson likely died from "some kind of asphyxiation" or "some kind of strangulation." R. 445, Lines 1-8. However, she admitted there was 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, line 13-452, line 6.

Dr. Ross testified at Appellant's PCR evidentiary hearing that "there was no fracture of the larynx or hyoid bone." PCR transcript 122, Lines 5-6.

Appellant provided the trial court with a copy of the autopsy report from Dr. Ross, the report from the Tennessee Body Farm. Appellant also provided the court with several other documents in support of his motion for a new trial, such as a letter from Dustin Williamson and both indictments (indictment no. 2013-BS-06-00274) and (indictment no. 2013-BS-06-00465).

As stated in Appellate Defender, Lara M. Caudy, Esq., Brief that "the documents were never marked or

or admitted as exhibits during the motion hearing" and that Ms. Gudy's attempts to obtain from the Attorney General's Office who represented the state before the circuit court, and from the trial judge without success. That due to the documents never marked as exhibits, a copy was not retained by the Barnwell County Clerk of Court. Appellate, Anders Brief page 20.

For a defendant to be convicted of murder, his act must be the proximate cause of the victim's death, State v. DesChamps, 126 S.C. 416, 420, 120 S.E. 491, 493 (1923). Proximate cause is defined as "that cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. Id.

Here, Dr. Ross' testimony and the effect of the difference in her opinion at trial and at PCR evidentiary hearing led the jury to believe and credit facts that were not true.

As stated in Ex parte Robbins, 560 S.W.3d 130 (Ct. Crim. App. Texas 2016) ("It is hard to imagine any reasonable jury's returning a conviction when no one can even say confidently that a murder has been committed!").

II.

Did the trial court abuse its discretion when it denied Appellant's new trial motion, Rule 29(b) SCR-CrIMP, where Appellant submitted evidence that Tyrone Donaldson was seen by three witnesses after Tyrone Donaldson was pronounced deceased at 2:30 PM on July 21, 2011?

Relevant Facts

During Appellant's trial, Ms. Shaneka Lakeisha Deloach testified that Tyrone Donaldson and her were related; that he was her grandmother's nephew and knew him all her life. That she did not personally know Appellant, Sammie Gerrick but knew him from being around the area. Ms. Deloach pointed Appellant out in the courtroom.

R. 234, Line 11 - 235, Line 3; R. 239, Lines 8-10.

Ms. Deloach testified that she observed Appellant and Tyrone Donaldson talking on July 21st, 2011 at 3:15 P.M.

R. 235, Lines 4-14; R. 240, Lines 17-18.

Ms. Dorothy Creech testified that she was the branch manager of the Enterprise Bank in Blackville, South Carolina and that she saw Ap-

pellant and Tyrone Donaldson on July 21st, 2011
at 2:54 P.M. at the drive thru.

R. 543, Lines 11-12, Lin 16;

The above was captured on the bank's security camera.

Joe Thomas testified at Appellant's trial. Mr. Thomas testified that he knew the defendant and Tyrone Donaldson since childhood, that they grew up together.

R. 573, Lines 9-16.

Testified that he saw Appellant speeding away from stop sign with a car following Appellant and described Appellant's Chrysler Truck as gray and burgundy.

R. 574, Lines 4-575, Line 10.

Mr. Thomas also testified that he called Appellant, jiving with him.

R. 575, Lines 14-18; R. 574, Lines 5-8.

During Appellant's trial, the trial judge erred in failing to admit a letter written by Dustin Williamson that threatened several individuals and confessing to murder and proclaiming the innocence of another man [Sammie Gerrick] Appellant herein.

Appellant discovered the full contents of the letter in Williamson v. Stirling, 912 F.3d 154 (4th Cir. 2018):

"On November 22, 2013, Williamson gave Barnwell County correctional officers a letter addressed to Sheriff Ed Carroll. Carroll was out of town, asked Chief Deputy David Deering to open the letter. Williamson's letter ranted against several individuals, confessed to murder, and proclaimed the innocence of another man [Sammie Gerrick]. It also threatened violence against ten law enforcement officers and Judge Early of the

State's Second Judicial Circuit, which includes Barnwell County." (See J.A. 324, 326-27)... id, 160. (Footnote 2 - "Citations herein to 'J.A. _____'" refer to the contents of the Joint Appendix filed by the parties in this appeal.)

Appellant contends that the disclosure of Dustin Williamson's letter was clearly material to the preparation of Appellant's defense. Due to Dustin Williamson invoking his Fifth Amendment right to remain silent and not incriminate himself, Appellant was unable to discover and fully use the contents of the Williamson letter, as well as it involved an ongoing investigation of Mr. Williamson. R. 119, line 7-122, Line 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.

Appellant contends that based on after discovered evidence, where Appellant proved the new evidence from the second autopsy and Dr. Ross' trial testimony contradicted by her PCR testimony if a new trial was granted, would change the result.

Rule 29(b), SCR Crimp, 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 at 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 that the 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").

After Appellant was convicted, Dr. Ross testified at Appellant's state PER evidentiary hearing that there was sign of asphyxiation, that she could not say that asphyxiation was the cause of death to a reasonable degree of certainty and based on the fact that she could not say that that she could not say that somebody was strangled to death. And based on the results of the Tennessee Body Farm being in conflict with Dr. Ross trial testimony. Appellant contends he presented sufficient evidence that would change the result if a new trial were, which was discovered after Appellant's trial. 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 arguments, Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

Respectfully Submitted,
x Jammie Lee Herrick
Jammie Lee Herrick
Appellant, pro se

Dated this 20 day of November, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Barnwell County SC Court of Appeals
Honorable Courtney Clyburn Pope, Circuit Court Judge

SAMMIE LEE GERRICK,

APPELLANT,

v.

THE STATE,

RESPONDENT.

APPELLATE CASE No. 2023-00202

CERTIFICATE OF SERVICE

The undersigned, certifies that a true copy of Appellant's pro se Anders Brief in the above referenced case has been served upon Melody J. Brown, Esquire, Office of the Attorney General for South Carolina, P.O. Box 11549, Columbia, SC 29211-1549, by placing in the United States Mail with first-class postage affixed thereto, this ____ day of November, 2024.

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November 20, 2024

South Carolina Court of Appeals
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SC Court of Appeals

Re: Sammie Lee Gerrick v. State
Appellate Case No. 2023-002012

Dear Clerk,

Enclosed please find the original and one copy of "Appellant's Pro Se Anders Brief" with Certificate of Service.

Please file the original with your office and date-stamp the copy and return to me in the self addressed postage prepaid envelope.

Thank you for your assistance in this matter.

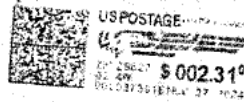
Respectfully Submitted,

Sammie Lee Gerrick

Enclosure

cc: Melody J. Brown, Esquire
w/ Certificate of Service

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