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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Robert E. Hood, Circuit Court Judge
Appellate Case No. 2023-001463

THE STATE,

Respondent,

vs.

RANDOLPH ASHFORD,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"The lower court erred by ruling on Appellant/Petitioner's in-complete filings of the S.C.R.Crim.P. Rule – 29(b). Motion For New Trial Based on After Discovered Evidence."

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the circuit court judge somehow abuse his broad discretion or otherwise err by summarily rejecting Appellant's motion seeking a new trial based on after-discovered evidence without conducting a hearing on the matter when: (1) the evidence identified by Appellant could not and did not constitute after-discovered evidence as a matter of law; (2) Appellant could not possibly have met his burden of establishing what was necessary to warrant a grant of a new trial under the circumstances involved; and (3) no hearing or further information was needed for the circuit court judge to be able to correctly resolve and reject Appellant's motion?

STATEMENT OF THE CASE

In February of 2007, Appellant Randolph Ashford was arrested after he eventually surrendered to the Richland County Sheriff's Office's special response team at the conclusion of a terrifying crime spree. Between April and May of 2007, the Richland County Grand Jury indicted Appellant for one count of first-degree burglary, two counts of kidnapping, one count of first-degree criminal sexual conduct, three counts of carjacking, and two counts of assault with intent to kill. On March 30, 2009, a jury trial was commenced in the Richland County Court of General Sessions with the Honorable G. Thomas Cooper, circuit court judge, presiding. At the conclusion of the five-day trial, the jury convicted Appellant of all the indicted offenses except for first-degree criminal sexual conduct. As to that offense, the jury convicted Appellant of the lesser-included offense of assault and battery of a high and aggravated nature. Following the verdict, the trial judge sentenced Appellant to an aggregate forty-year term of imprisonment.

Subsequently, following an unsuccessful direct appeal and a variety of other unsuccessful attempts to obtain relief, Appellant submitted a pro se motion seeking a new trial based on after-discovered evidence, which was filed on January 31, 2023.[1] [2] On August 16, 2023, the State filed a return opposing Appellant's motion and seeking for the matter to be summarily dismissed. Thereafter, through an order dated August 22, 2023, the Honorable Robert E. Hood, circuit court judge, denied Appellant's motion with prejudice. Following that, Appellant submitted a pro se

[1] Oddly, Appellant's certificate of service for the new trial motion is dated January 20, 2023, but the motion itself was apparently not notarized until January 23, 2023. (Supp. R. pp. 5-11).

[2] Records from several of Appellant's earlier appeals are presently available through the appellate court public index. Appellate Records for Randolph Ashford v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=74670; Appellate Records for Randolph Ashford v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=60973.

response opposing the State's return. Appellant then—in a somewhat unusual fashion—initiated an appeal.[3]

[3] This Court addressed the unusual nature of how Appellant's current appeal was initiated through its November 13, 2023, order, which is available through the appellate court public index. Appellate Records for State v. Randolph Ashford, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=79209.

ARGUMENT

The circuit court judge did not abuse his broad discretion or otherwise err by summarily rejecting Appellant's motion seeking a new trial based on after-discovered evidence without conducting a hearing on the matter because: (1) the evidence identified by Appellant could not and did not constitute after-discovered evidence as a matter of law; (2) Appellant could not possibly have met his burden of establishing what was necessary to warrant a grant of a new trial under the circumstances involved; and (3) no hearing or further information was needed for the circuit court judge to be able to correctly resolve and reject Appellant's motion.

Relevant Facts

Over thirteen years after he was convicted of numerous highly-serious offenses, Appellant filed a motion seeking a new trial based on supposed after-discovered evidence. (Supp. R. pp. 5-7). Importantly though, Appellant did not actually identify anything newly discovered in that motion. (Supp. R. pp. 5-7). Instead, Appellant advised he intended to "show the court the following" before merely pointing to several portions of the testimony contained in the *trial transcript*, including portions of his own testimony. (Supp. R. pp. 5-7). Appellant then followed that by asserting he believed—for reasons unspecified—his first-degree burglary indictment violated the state and federal constitutions along with his right to a fair trial. (Supp. R. pp. 5-7).

In addition to his motion, Appellant also included an affidavit from himself that appeared to more fully identify the basis for his after-discovered evidence claim.[4] (Supp. R. pp. 8-9). Specifically, in his affidavit, Appellant asserted: (1) the State introduced circumstantial evidence of a hat during trial, and a witness testified he had been wearing one; (2) the hat referenced by

[4] Notably, Appellant's "affidavit" was not notarized and does not appear to be sworn and, thus, was not truly an affidavit. See State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (1987) ("An affidavit is a voluntary ex parte statement reduced to writing *and sworn to or affirmed* before some person legally authorized to administer an oath or affirmation. It differs from an oath in that an affidavit consists of a statement of fact *which is sworn to as the truth*, while an oath is a pledge." (emphasis added and citations omitted)).

the State purportedly did not belong to him, and his "physical hat" was not introduced during trial or admitted into evidence; (3) testimony was presented during trial indicating he was checked out by medical personnel on the date of the incident and his vitals were normal; and (4) he purportedly was—contrary to that testimony—not, in fact, checked out by medical personnel on the date of the incident and his vitals were not, in fact, normal. (Supp. R. pp. 8-9).

Based on the obvious deficiencies with Appellant's after-discovered evidence claims, the State responded by opposing the motion and asking for it to be dismissed without a hearing. (Supp. R. pp. 12-15). In doing so, the State—while specifically referencing Appellant's "affidavit"—noted Appellant was a participant in his own trial, had heard the witnesses' testimony, and obviously would have had knowledge *at that time* regarding whether a hat belonged to him or if he received medical treatment on the date of the incident. (Supp. R. pp. 12-15). Therefore, the State argued what was identified by Appellant could not as a matter of law constitute after-discovered evidence or satisfy the conditions necessary for a new trial to be granted based on it. (Supp. R. pp. 12-15). Beyond that, the State noted the matter identified by Appellant was immaterial and inconsequential in light of the other evidence of guilt that had been presented, which had already been deemed "overwhelming" in an earlier post-conviction relief action. (Supp. R. pp. 12-15).

After considering the parties' filings, the circuit court judge summarily rejected Appellant's new trial motion and declined to conduct a hearing on the matter. (Supp. R. pp. 1-4). In so ruling, the circuit court judge concluded Appellant's after-discovered evidence claim was "facially defective" because Appellant was privy to the purported evidence at the time of his trial over *fourteen years* earlier, which meant his motion was not made within one year of the date the identified evidence was actually discovered. (Supp. R. pp. 1-4). Furthermore, the circuit court

judge concluded Appellant failed to make a prima facie showing the purported after-discovered evidence could have reasonably changed the result of his trial under the circumstances involved. (Supp. R. pp. 1-4).

Following that, Appellant submitted a document containing his "objections" to the State's response to his new trial motion. (Supp. R. pp. 16-19). Significantly though, in that document, Appellant did not explain how what he had identified in his motion was newly discovered. (Supp. R. pp. 16-19). Instead, he: (1) accused the assistant solicitor who prepared the State's response of "continu[ing] the overwhelming judicial misconduct" and committing a "fraud on the court" by somehow "presenting new and additional charges;" (2) complained of his defense counsel's supposed ineffective representation; and (3) alleged he could not have known at the time of trial he was being denied a fair one due to his lack of legal training. (Supp. R. pp. 16-19).

Along with that, Appellant submitted yet another affidavit.[5] (Supp. R. pp. 20-21). However, through the latest one, Appellant again did not set out any true after-discovered evidence. (Supp. R. pp. 20-21). Instead, he merely detailed the timing of when he received the State's response to his motion, confirmed he had previously accused his defense counsel of being ineffective both before and after his trial, and now alleged there was no evidence to support his conviction for the lesser-included offense of assault and battery of a high and aggravated nature. (Supp. R. pp. 20-21).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing rulings on a motion seeking a new trial

[5] Like the one before it, Appellant's second "affidavit" was not notarized or sworn and, thus, was also not an actual affidavit. See Morris v. Jensen, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992) (instructing an unsworn affidavit is *not* evidence).

based on after-discovered evidence, an appellate court will not reverse the circuit court judge's rulings absent a clear and manifest abuse of discretion. State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993); see State v. Wells, 162 S.C. 509, __, 161 S.E. 177, 187 (1931) ("[T]he granting or refusing of new trials, on the ground of after discovered evidence, is within the discretion of the trial judge, and this court will not interfere with that discretion, unless it manifestly appears that there was an erroneous exercise of it.").

Analysis

Newly-discovered or after-discovered evidence is "evidence of facts existing at time of trial of which [the] aggrieved party was *excusably ignorant*." State v. Haulcomb, 260 S.C. 260, 270, 195 S.E.2d 601, 606 (1973) (emphasis added). In order to obtain a new trial based on after-discovered evidence, a party must demonstrate the evidence: (1) would probably change the result of the proceedings if a new trial is granted; (2) was discovered after the trial ended; (3) could not have been discovered prior to trial; (4) was material to the issue of guilt or innocence; and (5) was not merely cumulative or impeaching. State v. Taylor, 333 S.C. 159, 176, 508 S.E.2d 870, 879 (1998). When deciding whether to grant a new trial based on newly-discovered evidence, the circuit court judge is tasked with weighing the evidence and determining whether a new trial is warranted under the circumstances presented. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). Importantly though, the granting of a new trial based on newly-discovered evidence is disfavored in South Carolina, and, thus, a party seeking a new trial based on such evidence must satisfy a *heavy* burden in order to be entitled to one. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998); see State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197-198 (1978) ("The granting of a new trial because of after-discovered is not favored, and this Court will sustain the lower court's denial of such a motion unless there

appears an abuse of discretion."); see also United States v. Wilson, 624 F.3d 641, 660 (4th Cir. 2010) (explaining new trials based on newly-discovered evidence should only be granted *sparingly* and in the *rare* circumstance the evidence weighs heavily against the jury's verdict).

In the case sub judice, Appellant contends the circuit court judge reversibly erred by denying his motion seeking a new trial based on purported after-discovered evidence without conducting a hearing on the matter. As support for that contention, Appellant maintains the circuit court judge's decision to summarily dismiss his new trial motion without a hearing constituted a "gross miscarriage of justice" because: (1) the circuit court judge issued his ruling prior to receiving and without giving consideration to Appellant's objections to the State's return to the new trial motion; and (2) the circuit court judge purportedly did not have the "whole" new trial motion before him at the time he ruled because Appellant's personal affidavit had supposedly been separated from the motion as a result of "continued overwhelming judicial misconduct" and neglect of duty. To the contrary, the circuit court judge did not abuse his discretion or otherwise err in any way by denying Appellant's new trial motion because—as a matter of law and just as the trial judge recognized—what Appellant identified as after-discovered evidence was not, in fact, such evidence.

Demonstrating the meritless nature of Appellant's new trial motion, the only purported after-discovered evidence identified by Appellant, which consisted of personal claims he was not in possession of a hat on the date of the incident and was not treated by medical personnel on that date, was and is evidence of facts Appellant necessarily would have known *at the time of his trial* since those facts relate to things that would have naturally fallen within his personal knowledge. Indeed, Appellant's own trial testimony demonstrated such evidence *was*, in fact, already fully within his personal knowledge since, during his sworn trial testimony, he: (1)

identified the clothing he allegedly was wearing on the date of the incident without referencing a hat and in contradiction to an earlier description that had been provided; and (2) he directly refuted earlier testimony that had been presented by a witness for the prosecution by insisting he never received any medical treatment after he was arrested. (Supp. R. p. 98; p. 445; p. 457; pp. 635-636; p. 656; p. 661). Thus, since Appellant's supposed after-discovered evidence was not newly discovered at all but, instead, was already testified to *by him* during trial, it simply could not be and was not a viable basis for an after-discovered evidence claim as a matter of law. See Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence."); see also Haulcomb, 260 S.C. at 270, 195 S.E.2d at 606 ("[A]fter-discovered evidence refers to evidence of facts existing at time of trial of which aggrieved party was excusably ignorant."); cf. Stern v. United States, 219 F.2d 263, 265 (4th Cir. 1955) ("The only basis for Stern's motion for a new trial is newly discovered evidence. This alleged evidence was not newly discovered, it was known to Stern at the time of his trial."); Meriwether v. State, 418 S.E.2d 451, 453 (Ga. Ct. App. 1992) ("The new evidence, he contends, would show that the victim has a history of violence and that family members who testified at trial were attempting to attack Meriwether when the shooting occurred. It is clear from a review of the record, however, that Meriwether testified at trial about prior acts of violence by the victim and he feared that family members were approaching him. We therefore do not see the novelty of evidence of the history of violence."); State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975) ("The testimony of Hughes that he committed the crime was not newly-discovered. Appellant testified

at his trial that he did not commit the crime but had been informed prior to his arrest that Hughes committed it.").

Moreover, even assuming Appellant's personal claims could somehow have constituted after-discovered evidence despite the fact those claims were essentially just a rehashing of a portion of his trial testimony from over a decade earlier, Appellant's guilt or innocence did not in any way hinge on whether he was wearing a hat on the date of the incident or was provided medical treatment after his arrest. Therefore, notwithstanding the fact nothing Appellant presented in support of his new trial was truly newly discovered, none of Appellant's supposed after-discovered evidence could have possibly met the standard necessary to warrant a grant of a new trial as that insignificant evidence could not possibly have had an impact on the outcome of trial in light of the other evidence presented, including Appellant's own cumulative testimony. See State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999) ("In order to prevail in this new trial motion, appellant must show the after-discovered 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."); see also Clark v. State, 315 S.C. 385, 387-388, 434 S.E.2d 266, 267 (1993) (instructing a party seeking a new trial based on newly-discovered evidence *must* show the evidence was—amongst other things—"material to the issue of guilt or innocence").

Finally, to the extent Appellant contends the circuit court judge abused his discretion by supposedly issuing his ruling without all the necessary information and without conducting a full-blown evidentiary hearing on the matter, the circuit court judge had all the information he needed to be able to fully and correctly analyze the merits—and quickly recognize the

insufficiency—of Appellant's after-discovered evidence claim based upon Appellant's motion itself along with its accompanying affidavit, which was filed with the circuit court and directly referenced in the State's return to the new trial motion. And, because Appellant's claims in his new trial motion simply could not have constituted after-discovered evidence as a matter of law even if they were all accepted as unwaveringly true, the circuit court judge had no duty to conduct an unnecessary hearing on the matter when he was already fully equipped with everything he needed to be able to correctly resolve the merits of Appellant's new trial motion. See Rule 29(a), SCRCrimP (instructing post-trial motions "may, in the discretion of the court, be determined on briefs filed by the parties without oral argument").

Therefore, the circuit court judge did not abuse his broad discretion or otherwise err by summarily rejecting Appellant's meritless after-discovered evidence claim without conducting a needless hearing on the matter. See Prince, 316 S.C. at 63, 447 S.E.2d at 181 ("It is well settled that the grant or refusal of a new trial is within the discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of that discretion."); cf. State v. Gray, 438 S.C. 130, 145, 882 S.E.2d 469, 477 (Ct. App. 2022) (concluding the trial judge did not abuse his discretion by denying a new trial motion without a hearing because, based on the allegation raised and the information provided, the requested inquiries were neither necessary nor proper). The circuit court judge's ruling denying Appellant's motion seeking a new trial based on after-discovered evidence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 6, 2025

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by mailing a copy to the following address:

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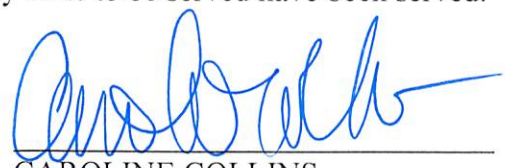
I further certify all parties required by Rule to be served have been served.
This 6th day of March, 2025.



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