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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Trial Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ADAM DON LAWLESS,

APPELLANT.

Appellate Case No. 2023-000636

FINAL BRIEF OF RESPONDENT

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Appellant's father confessed to this murder to appellant's lawyer on the evening appellant was convicted. Did the trial court err in denying appellant's motion for a new trial based on after-discovered evidence by using an incorrect and impossible-to-meet legal standard to evaluate whether the father's confession could have changed the result if heard by a jury?

II.

Did the trial court err in denying appellant's motion for a new trial based on after-discovered evidence where the jurors admitted discussing appellant's failure to testify during deliberations, in flagrant disregard of the judge's charge and due process?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge properly applied the legal standard in *State v. Spann* and acted within its discretion finding James' confession not credible after considering the vague description of the murder in the confession, the motivation for the confession, and James's behavior after confessing to the crime?

II.

Whether the trial judge properly found the absence of improper burden shifting by finding that juror Adkins' affidavit did not indicate a guilty verdict was reached on account of Appellant's exercise of his right to not testify but reached on consideration of the arguments presented at trial?

STATEMENT OF THE CASE

On October 23, 2018, an Anderson County Grand Jury indicted Adam Lawless, hereinafter "Appellant," for the murder of Tabatha Duncan occurring on or about March 11th and March 12th of 2018. Appellant's case was called to trial on April 10, 2023, and proceeded until April 14, 2023, with the Honorable R. Scott Sprouse presiding. Assistant Solicitor Kristen W. Reeves of the 10th Circuit Solicitor's Office prosecuted the case and William Norman Epps, III, Esq., represented Appellant. At the conclusion of trial, the jury found Appellant guilty of murder. Judge Sprouse sentenced Appellant to serve 30 years imprisonment with credit for 222 days served at the Anderson County Detention Center in addition to the 1,646 days served on house arrest.

On the same day Appellant was convicted and sentenced, Appellant's father, told Appellant's trial counsel that he committed the murder, not Appellant. On April 18, 2023, given this information, Appellant's trial counsel filed a new trial motion based on after discovered evidence and attached a supporting affidavit of his [trial counsel's] recount of Appellant's father's confession. On May 12, 2023, trial counsel amended the new trial motion to include allegations of juror misconduct.

On May 15, 2023, a hearing on the new trial motion was held before Judge Sprouse. Nancy Jo Thomason Esq., appeared on behalf of Appellant due to trial counsel's conflict, and Assistant Solicitor Reeves represented the State. Judge Sprouse heard arguments from counsel and allowed the parties to submit caselaw for consideration at the conclusion of the hearing.

On May 19, 2023, Judge Sprouse issued an Order denying the motion on both grounds. The Order reflects Judge Sprouse considered:

1. The issuance of a post-trial statement by the Defendant's father to defense counsel in which he alleges that he was the person who actually committed the murder; and

2. The submission of an affidavit to defense counsel from the jury foreman in which he asserts that he would have liked to have heard testimony from the Defendant and witnesses on behalf of the Defendant.

(Order Denying New Trial Motion, R. p. 994).

In denying the motion, Judge Sprouse found that Appellant's father's confession was not credible and that no improper burden shifting took place upon consideration of the juror's affidavit. (Order Denying New Trial Motion, R. p. 997 and 999).

Appellant filed a Notice of Appeal on May 22, 2023.

RESPONDENT'S STATEMENT OF FACTS

On March 12, 2018, Officers responded to a call regarding a homicide of a woman located at 202 East Broad Street. The woman, identified as Tabatha Duncan, had suffered multiple stab wounds from a steak knife, amongst other injuries, with the cause of death determined to be from the puncturing of her lungs from stab wounds to her back. (R. p. 567).

Tabatha and Appellant had been dating on and off for approximately two or three years and lived together at their home on East Broad Street, with their shared daughter, and Appellant's son whose mother was from a prior relationship of Appellant's. (R. p. 45-47). Tabatha also had another child with her ex-husband who lived with her parents. (R. p. 44-45). The months, weeks, and days leading up to the Tabatha's murder involved continuous disagreements and arguments between Tabatha and Appellant, as well as between Tabatha and Appellant's parents, Donna and James Lawless.

Child Custody Litigation

At the time of Tabatha's murder, Tabatha and Appellant were in the midst of child custody agreement litigation. Tabatha and Appellant had a custody order in place for joint custody of their child, sharing placement between the two of them on a week-to-week basis. (R. p. 229). Tabatha hired an attorney, Joshua Raffini, Esq., to modify that agreement in April of 2017 to seek primary placement or sole custody of the child. (R. p. 229).

In May of 2017, changes were made by consent order on a temporary basis. The same week to week schedule was maintained regarding placement, however Appellant agreed to supervision until a series of drug tests had been administered, and in addition, the parties were planning to co-parent. (R. pp. 229-230).

In November of 2017, the temporary order was modified due to concerns with Tabatha's housing situation. Appellant was to primarily have custody until Tabatha could gain some stability. Additionally, there was a clause in the temporary modification that if there was need for the child to not be with either parent, Appellant's parents – Donna and James – would receive custody to avoid the child being placed with DSS. (R. p. 231). Until March of 2018, Attorney Raffini believed the final plan was to return to the original week to week placement, with clarifications, and maintain the clause that Appellant's parents would receive custody in the event of DSS intervention. (R. pp. 232-234).

However, on Friday, March 9, 2018, Tabatha called Attorney Raffini to tell him that she had concerns and would not be able to come to an agreement. (R. pp. 234-235). Attorney Raffini testified that he continued to discuss the matter with Tabatha over the weekend, however, it did not appear an agreement would be reached at the final hearing. (R. pp. 235-236). Notably, Attorney Raffini testified that the final order that had been previously prepared, indicated Appellant and Tabatha were to alternate claiming their child as a dependent on their tax returns. (R. p. 236). Tabatha was entitled to claim their child in 2017. (R. p. 236).

Friday, March 9, 2023

At trial, attention was brought to an incident between Donna, Appellant's mother, and Tabatha approximately two days prior to Tabatha's death. Tabatha's sister, Tealisa, testified that Tabatha had learned something about her tax situation, which Donna had handled, and upon visiting Donna at work, she inadvertently got Donna fired from her job at Liberty Tax. (R. pp. 50-51).

On March 9, 2018, Tabatha went to Liberty Tax to get a copy of her tax return. (R. pp. 213-214). A coworker of Donna's, Rebecca Inman, testified that she was assisting Tabatha with

finding that return, however she was having trouble locating it in their systems, so she asked Donna to help her find it. (R. p. 214). Upon Ms. Inman speaking with Donna and finding out that Tabatha's tax return had not been filed with Liberty Tax, Ms. Inman testified that Tabatha appeared to be worried that Donna would be mad at her. (R. pp. 215-216). After discovering that Donna had assisted Tabatha in filing her tax return with a different company, Donna was fired for breach of contract as she was not allowed to assist or file returns outside of Liberty Tax. (R. pp. 216-217 and p. 223). Ms. Inman testified that after Donna was fired, she received a call from James, Appellant's father, inquiring about the situation in a "matter of fact or business matter of fact lawyery type tone." (R. p. 219).

After leaving Liberty Tax, Tabatha returned to her home on Broad Street. Tealisa testified that she and her mother arrived at Tabatha's home around 3:00 PM with Iva Police, Angelica Lawless (Appellant's sister), and James Lawless present at the home. (R. pp. 59-60). Tabatha was there with her and Appellant's child and was visibly upset. (R. pp. 59-60).[1] Tabatha, along with the child, Tealisa and her mother, left the Broad Street residence and went to Tabatha and Tealisa's mother's house. (R. p. 61). Tealisa testified that she heard Tabatha speaking to Appellant on the phone while at their mother's and that Appellant sounded "Loud. Cuss words." (R. p. 61).

Text messages on March 9, 2018, from Appellant's phone show that Donna was encouraging Appellant to take the child away from Tabatha. (R. pp. 589-590 and p. 621). At 12:35 PM Donna texted Appellant "Tabatha is pissing me off." (R. p. 706; State's Exhibit 36 R. p. 953). She later texted Appellant at 1:56 PM regarding the aforementioned situation in which the police were called to the home, that Appellant is the one that "got the money" and that he

[1] Tealisa's testimony regarding why the police were called to the home was not admissible. Tealisa testified that Angelica and James went to see Tabatha after she had gotten Donna fired, and Angelica choked Tabatha and tried to take the child away. (R. pp. 51-58).

needs to "be a man and stand up because she is the one that agreed to it." (R. p. 709; State's Exhibit 36, R. p. 953). At 2:54 PM Appellant sent text messages to Tabatha instructing her to call him and asked why she kept hanging up on him. (R. p. 709; State's Exhibit 36, R. p. 953). Donna again texted Appellant at 4:20 PM "The police left - - the police let them in your house. Your dad fought for you, but he told him only you can stop them. Your dad has been cussed at, hollered at, and all not doing it. You have to get [the child] and bring her to us. He told dad to leave." (R. p. 709; State's Exhibit 36, R. p. 953). She again texted Appellant, "You are the one that has to make her leave." (R. p. 709; State's Exhibit 36, R. p. 953). Appellant received a text from Tabatha at 4:56 PM, "If you can throw me away like that, then you don't care about me." (R. p. 710; State's Exhibit 36, R. p. 953). Donna then texted Appellant at 6:14 PM, "Tabatha thinks it's because I did something wrong, but it's not. It's because she told them I filed taxes using another company's software. (R. p. 710; State's Exhibit 36, R. p. 953).

Instead of staying the night at her mother's, Tabatha returned to Broad Street. (R. p. 61). At 6:44 PM, Tabatha texted Appellant, "I'm headed back there." (R. p. 710; State's Exhibit 36, R. p. 953). At 7:26 PM Donna texted Appellant "She needs to fix my job or I will call IRS on her and claiming [her other child] will win [sic]. She was not living there. She was living with you. Two can play that backstabbing games." (R. p. 712-713; State's Exhibit 36, R. p. 953). Donna repeatedly texted Appellant about her job until the next morning. (R. pp. 713-714; State's Exhibit 36, R. p. 953).

Saturday, March 10, 2018 & Sunday, March 11, 2018

Appellant's phone records show Tabatha and Appellant texting back and forth regarding the status of their relationship. While Appellant was at work, Tabatha texted Appellant complaining about how he believes everyone else but her. (R. p. 714; State's Exhibit 36, R. p.

953). She complained that she was buying groceries and cleaning the house, but he didn't appreciate her help. (R. p. 714; State's Exhibit 36, R. p. 953). Appellant and Tabatha continued to argue back and forth over text about Appellant wanting to kick Tabatha out of the home due to Donna's insistence. (R. pp. 715-716; State's Exhibit 36, R. p. 953).

On Sunday March 11, 2018, Appellant picked up his friend Aaron Kenyon at his house to hang out. (R. p. 143). Appellant and Kenyon went to Kayla Riggins' home, the mother of Appellant's other child. (R. p. 144). Kenyon waited in the car with Appellant's son while Appellant went inside and had sex with Kayla. (R. p. 144). After Appellant and Kayla returned, Appellant and Kenyon drove to Appellant's house where Tabatha and their daughter were waiting. (R. p. 145). Appellant continued to exchange explicit messages with Kayla throughout the evening.

Meanwhile, Tabatha was also exchanging sexual messages with a man named Jeremy Gunnels. (R. pp. 251-253). Tabatha and Gunnells communicated via text, Snapchat, and Facebook Messenger. (R. p. 249). Gunnells testified they texted each other until "Midnight, 1:00 a.m. Somewhere in there." (R. p. 253). Gunnells testified he voluntarily gave a DNA sample to the police and let them download his phone. (R. pp. 254-255).

Kenyon testified that Appellant and Tabatha were having little altercations throughout the night and that there was always tension between the two of them. (R. p. 145-146).

Monday, March 12, 2018: Tabatha's Body is Found

On Monday morning at 7:02 AM, Appellant texted Donna that she did not have to watch their child that day because Tabatha did not go to work. He texted Donna that he believed Tabatha was "going and doing shit behind our back today and she might be going to start trouble." (R. p. 720; State's Exhibit 36, R. p. 953). Kenyon testified that he and Appellant left

for Appellant's job at Meineke at "6:00, 6:30" that morning. (R. p. 163). Video from a Mexican restaurant in Iva near the house captured Appellant driving to work at 6:50 AM. (R pp. 603-604). Appellant's boss at Meineke testified that Meineke's cameras showed Appellant opening the store at 7:30 AM and remained there all day with Kenyon until he was called back to Iva when Tabatha's body was found. (R. pp. 309-310; Defendant's Exhibit 7). Appellant acted normal, laughed, and joked with everyone. (R. p. 311). The lead investigator confirmed he watched the Meineke video and it showed Appellant arrive in the parking lot at 7:21 AM. (R. pp. 672-673). The investigator confirmed Appellant stayed at Meineke all day. (R. pp. 673-674).

Tabatha's sister, Tealisa, testified that Tabatha usually woke up between 6:00 and 8:00 AM. (R. p. 66). When Tealisa woke up at 10:00 AM, she called her mother to see if she had heard from Tabatha. (R. p. 66). Tealisa and Tabatha's mother called Tabatha multiple times that morning with no answer. (R. pp. 67-68). Around noon, Tealisa went to the house to check on Tabatha. (R. p. 68 and 94). Tabatha's car was still in the driveway, so she knocked on the front door and on Tabatha's daughter's window with no answer. (R. pp. 68-69). Concerned, Tealisa went to the police in Iva and asked them to do a wellness check. (R. pp. 69-70). Assistant Chief Christopher Vaughn, then Lieutenant, of Iva Police Department went to the house and knocked loudly on the door at approximately 12:30 PM but received no response. (R. p. 94). Neither Tealisa nor Lieutenant Vaughn checked the back of the house. (R. p. 69 and 94). Tealisa said she would go check Tabatha's daughter daycare, and Lieutenant Vaughn left the scene. (R. p. 96).

Tabatha's mother ("Mama Petty Bettys" in the cell records) and Appellant exchanged text messages beginning at 12:03 PM on Monday. (R. p. 725; State's Exhibit 36, R. p. 953). Tabatha's mother texted Appellant, "I don't know why Tab is not answering her phone and you took the house phone off the hook, but if I don't hear from her in five minutes I'm calling cops."

(R. p. 725; State's Exhibit 36, R. p. 953). Appellant responded, "Call the cops I don't give a shit" and "I don't take house phones to work, and she was with her daughter last night sleeping so I don't have a clue why she ain't answering." (R. pp. 725-726; State's Exhibit 36, R. p. 953). Tabatha's mother wrote back that she was not trying to be smart, she just wanted to talk to her daughter. (R. p. 726; State's Exhibit 36, R. p. 953). Appellant then replied that he hadn't spoken to Tabatha since yesterday. (R. p. 726; State's Exhibit 36, R. p. 953). Tabatha's mother reminded Appellant that he spoke to Tabatha after he sent her to the store and had Kenyon over. (R. p. 726; State's Ex. 36, R. p. 953). He again replied that Tabatha then went to sleep in their daughter's room and he did not speak to her after that. (R. p. 726; State's Exhibit 36, R. p. 953). Two minutes later, Donna texted Appellant, "We are at Wal-Mart in Georgia. I'll go over there and tell her to call her mom soon as I get home." (R. p. 726; State's Exhibit 36, R. p. 953).

Tealisa returned to the Broad Street house at about 1:50 PM. (R. p. 77). She saw Donna in the yard holding Tabatha's (and Appellant's) daughter and James sitting on the porch. (R. p. 77). Donna said she did not know what was going on, put the child in a car, and left. (R. 77-78). Tealisa noticed the glass to the front door was broken and James looked like "he was having a seizure." (R. pp. 77-78).

Lieutenant Vaughn was again dispatched to the house. (R. p. 96). He described James as leaning on a post on the porch with his eyes open but completely unresponsive. (R. p. 98). He then contacted dispatch and Paramedic Shanon Robinson was called to the scene. (R. p. 98). Robinson testified that she was initially on standby status as to this call but was called to the scene for an unresponsive male patient. (R. p. 278). She testified that they evaluated him like any other patient, though they could not identify what was wrong with him because his eyes were open, and he was looking around. (R. p. 279). She was then called to assist with the scene inside

and determined that Tabatha was deceased. (R. p. 279-282). She testified that James was then placed in the back of an ambulance so he could continue to be assessed and that in her opinion, he was not being cooperative. (R. p. 282-283). Robinson testified that James did not appear to be having a seizure, and that he could move all his extremities which indicated he was not likely having a stroke. (R. p. 283). He responded to a sternum rub which Robinson testified he would not have been able to do if he was having a seizure. (R. p. 283). Ultimately, James was not taken to the hospital and eventually answered all of their questions. (R. p. 284).

Lieutenant Vaughn testified that upon entering the home, he stepped into what he described as a mudroom or laundry room and found Tabatha's body lying on the floor. (R. p. 100). He noticed a knife resembling a steak-knife lying in the doorway between his feet and saw a lot of blood in Tabatha's hair on the floor. (R. p. 101). He watched Tabatha's body to detect any signs of life and then made a quick sweep of the house to locate the child and locate any threats, but he did not find anyone in the home. (R. p. 101). Lieutenant Vaughn called Robinson to assist, and Tabatha was determined to be deceased. (R. p. 279-282).

The Investigation

Dr. Brett Woodard performed the autopsy on March 13, 2018. (R. p. 557). Dr. Woodard was deemed an expert in forensic pathology without objection from the defense. (R. p. 557). He testified as to her extensive injuries with her death resulting from injuries to the back of the chest that cut her lungs. (R. p. 567-569). He stated that because he saw the body the day after she was found, he was unable to determine a time of death. (R. p. 567).

The Iva police called Anderson County's forensics, but SLED ended up taking over the investigation. (R. pp. 121-122). Lieutenant Vaughn stayed at the house until SLED released the crime scene at 10:00 PM that night. (R. pp. 119-120). SLED Agent Drew Ledbetter responded to

and further investigated Tabatha's murder. (R. p. 581). Agent Ledbetter testified he arrived at the scene around 3-3:15 PM on March 12, 2018. (R. p. 582). He testified that when he initially entered the home, he entered through the back door and kitchen to not disturb the crime scene. (R. p. 587). He detected what he thought could be Clorox, saw a mop bucket with water, and blood on the kitchen floor. (R. p. 587). He saw a knife at the entrance of the door that was bent and bloody. (R. p. 587). Agent Ledbetter testified that there were Rubbermaid containers around the house and the items in the boxes looked like someone was packing. (R. p. 587). He testified that four phones were collected from the residence. (R. p. 589). One was recovered by a fireplace with a cracked screen, one was recovered from Appellant, one was recovered from the master bedroom, and a house phone with the base was also recovered. (R. pp. 589-590).

Over the course of the investigation, Agent Ledbetter spoke to members of Tabatha's family as well as members of Appellant's family. After speaking with members of Tabatha's family, he decided to interview Ms. Inman at Liberty Tax. (R. p. 595). After doing so, he followed up with Iva Police Department in regard to the March 9th confrontation. (R. p. 596). He also spoke with Tabatha's attorney, Mr. Raffini. (R. p. 596).

In speaking with Appellant's family – Donna, James, and Angela – he received a Walmart receipt from Donna dated 12:52 PM on March 12, 2018. (R. p. 599). Only James Lawless could be seen on the footage from Walmart. (R. p. 600). He testified that after speaking with Donna, James and Angela, he found there to be inconsistencies within the statements. (R. p. 601). Agent Ledbetter testified that he received information that a witness saw a large black SUV at the Broad Street residence on the day of Tabatha's murder. (R. p. 601). The witness saw a red Chevy Cavalier at the car wash on the day of the incident and saw what they believed to be the same vehicle on the news the next day. (R. p. 602). The witness then reported that the news had set up

a camera at the Broad Street residence and showed what the witness believed to be the same red vehicle she identified at the car wash and on the news. (R. p. 602). Ownership of the red Chevy Cavalier was determined to be that of James Lawless, and upon further inquiry, Donna Lawless drove a black Toyota Sequoia. (R. p. 602).

Agent Ledbetter then contacted Kenyon on March 14, 2018. (R. p. 637). Kenyon denied involvement in Tabatha's murder in his March 12th statement to police and on March 14th to Agent Ledbetter. (R. p. 637-639). On March 15th, Kenyon gave a statement implicating Appellant in Tabatha's murder but denied that Kenyon himself injured her. (R. p. 640).

On direct examination, Kenyon said Appellant "was my best friend." (R. p. 141). On Sunday, he and Appellant smoked pot and played video games. (R. p. 145). Appellant and Tabatha had "little altercations" throughout the evening and argued about Appellant going with her to go to the store to get bread for dinner. (R. pp. 145-146). Tabatha ended up going to the store alone and when she returned, she threw the money in Appellant's lap. (R. p. 146). The children went to bed in their respective rooms, and Kenyon testified that Appellant and Tabatha continued to argue. (R. pp. 148-149). He was unsure what they were arguing about and went outside because he hated when they argued. (R. p. 149). He testified that he heard a scream and at some point, he went back into the house. (R. p. 150).

When presented with further questions, Kenyon stated, "Pretty sure if it's in the statement, it's there." (R. p. 154). The March 15th statement Kenyon gave to Agent Ledbetter, reflected that Kenyon heard a scream, and then went inside to check on the children. (R. p. 154). He didn't see Tabatha, but it looked like she was laying in the bed in her daughter's room sleeping. (R. p. 154). He went to bed and woke up in the middle night, checked on the children again, and went back to sleep. (R. p. 155). Kenyon and Appellant had to be up at 6:00 AM to go

to work and when he was taking the children to the car, Kenyon saw Tabatha's feet and blood. (R. p. 155). He confirmed that in his statement he stated that Appellant told him to leave their daughter because Tabatha was going to take care of her, but Kenyon did not believe she could care for her after what he saw. (R. pp. 155-156). He saw Appellant holding a knife with a silver handle in the kitchen. (R. p. 156). He acknowledged giving other statements protecting Appellant because he was scared, and Appellant is his best friend. (R. p. 158). Kenyon said his "heart" changed from his initial statements. (R. p. 158).

The defense presented Kenyon with a letter he had written Appellant. The letter shows Kenyon's guilt for implicating his best friend in the murder. The letter begins, "They kept saying that they weren't gonna stop unless I wrote what they wanted to." (R. p. 195; Defendant's Exhibit 6, R. p. 970). He writes "I feel like it's my fault you're in there," and "I'm sorry I got scared when they kept saying they were gonna ruin my life if I didn't say what they wanted." (R. p. 199; Defendant's Exhibit 6, R. p. 970). He further testified that because he said it in the statement it does not mean what he said was true and that he does not know what happened to Tabatha. (R. p. 199 and p. 205).

Neither Appellant, nor his parents, testified at trial. The jury returned a guilty verdict as to the murder charge and Appellant was sentenced to 30 years with credit for time served.

STANDARD OF REVIEW

"The decision whether to grant a new trial rests within the sound discretion of the trial court, and this Court will not disturb the trial court's decision absent an abuse of discretion." *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983).

ARGUMENT

I. The trial judge properly applied the legal standard in *State v. Spann* and acted within its discretion finding James' confession not credible after considering the vague description of the murder in the confession, the motivation for the confession, and James's behavior after confessing to the crime.

Appellant argues the court erred in its application of the *Spann* test, in which 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." *State v. Spann*, 334 S.C. 618, 620-621, 513 S.E.2d 98, 99 (1999). Specifically, Appellant alleges error in the court's conclusion of the first factor, arguing that Judge Sprouse imposed an impossible to meet standard on top of the *Spann* test in his credibility analysis.

The trial court is tasked with weighing new evidence in a new trial motion, and "unless his findings are influenced or controlled by error of law or unless his conclusions are so illogical and unreasonable as to amount to an abuse of discretion" his judgement will not be disturbed. *State v. Corn*, 224 S.C. 74, 77 S.E.2d 354 (1953). This Court is bound to affirm the trial court if reasonably supported by the evidence. *State v. Mercer*, 381 S.C. 149, 167, 672 S.E.2d 556, 565 (2009). "[T]he 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." *State v. Wakefiel*d, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024).

Appellant mostly presents a hindsight analysis of the defense's theory and presentation at trial had James' confession been presented to the jury. However, the trial court is restricted to the evidence presented at trial and the evidence presented by the defendant in support of his new trial

motion and is not permitted to consider the alternate defense strategy had the newly discovered evidence been considered in the defense's theory.

Here, the trial court found that Epps accurately relayed James' confession to the court, however remained doubtful as to the credibility of the confessor. (Order Denying New Trial Motion, R. p. 996). The court concluded that the confession does not contradict the evidence against Appellant and that James and Donna's involvement was queried at trial. Had James' confession been introduced, as well as Donna's supporting testimony that she had been aware that James committed the crime, the State would have undoubtedly attacked the credibility of the confession itself. (Order Denying New Trial Motion, R. pp. 996-997).

James and Donna's activities before and immediately after the murder were discussed throughout Appellant's trial. The State argued Donna and James attempted to help Appellant by covering up Appellant's involvement in Tabatha's murder. The State presented evidence that there was a dispute between Donna and Tabatha over Tabatha's tax returns resulting in arguments between Tabatha and Appellant. The State showed that James was present when Tabatha's body was found, and video evidence showed that James appeared to fake a seizure. (R. p. 283; Defendant's Exhibit 4). There was evidence of James' car at the Broad Street home around the time of the murder, and James' DNA was recovered on the bloody knife found near Tabatha's body at Appellant and Tabatha's home. (R. pp. 508-509).

The materiality of the confession is not in question, as the State theorized that Donna and James were involved in assisting Appellant in covering up Tabatha's murder. However, the trial court found "before the Court could conclude that the evidence would have changed the outcome, there must be no doubt as to the credibility of the evidence." (Order Denying New Trial Motion, R. p. 996). Appellant raises issues as to the credibility standard the trial court applies,

arguing that it imposes an additional impossible to meet factor to the *Spann* test. Regardless of the trial court's language, "[i]n [] post-trial setting[s] our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) *See State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("This issue comes down to a matter of the credibility of the witnesses, which we leave to the trial court's discretion."). In making the determination that James' confession was not credible, the circuit court considered the details of the confession, James' behavior after making the confession, the involvement of James and Donna throughout the case, and the circumstances of the confession itself.

Considering the State's theory suggested Donna and James attempted to cover up Tabatha's murder to protect Appellant, the trial court doubts the reliability of the confession. (Order Denying New Trial Motion, R. p. 996). Such a conclusion is supported by the record as Donna and James were heavily involved in Appellant's case and on a first name basis with Epps, and a confession from a family member the day of Appellant's conviction naturally raises reliability concerns and would not be a surprising motive under the circumstances of this case.

The trial court also considers the sincerity of the confession and James' behavior under the circumstances. The trial court notes there is no independent statement from James Lawless, no video recording, or any other evidence of his confession presented to the court. The court further noted that the statement James provided appeared to be intentionally vague and could easily be denied by James Lawless should law enforcement attempt to prosecute him or if Epps were called as a witness in a retrial of the Defendant.

> Epps alleges that Lawless told him that an argument ensued between Lawless and the victim, resulting in the victim obtaining a knife. A struggle over the knife allegedly resulted in the victim being cut. Epps then alleges that Lawless said that he "blacked out"

> and "when he came to, he saw Tabatha on the mudroom floor, covered in blood." Lawless then allegedly outlined the steps he took to clean up the residence and dispose of his bloody clothes and the victim's cell phone.

(Order Denying New Trial Motion, R. p. 995). Further, the details James presents are not new from the details presented at trial, and considering James and Donna were present at Appellant's trial, the confession does not offer any exonerating details. Considering James was not present at the evidentiary hearing and retained counsel, it is likely that the confession would be presented to the jury through Epps, and under the circumstances it would simply be James' vague confession against Epps' recollection.

The confession seems to be carefully crafted and intended to only be offered had Appellant been convicted in an attempt to manipulate the criminal justice system. Appellant had every opportunity to inform his lawyer or law enforcement if James murdered Tabatha, yet he did not. Such a failure demonstrates that James did not murder Tabatha, or that Appellant risked conviction, hoping for an acquittal so that his father would get away with Tabatha's murder. The latter is unlikely. *See State v. Fowler*, 264 S.C. 149, 155-156, 213 S.E.2d 447, 450-451 (1975) ("Where the newly discovered evidence is incredible and improbable under all the circumstances, the motion will be denied. '. . .; and ordinarily accused may not claim a new trial to produce evidence of such a confession where it was known to him prior to his conviction, or where he failed to exercise ordinarily diligence to procure the testimony of the alleged confessor.'").

The above facts and circumstances were properly considered by the trial judge and amply support his conclusion that Appellant had failed to establish grounds for a new trial motion based on James's confession. It follows that the denial of the motion did not constitute an abuse of discretion.

II. The trial judge properly found the absence of improper burden shifting by finding that juror Adkins' affidavit did not indicate a guilty verdict was reached on account of Appellant's exercise of his right to not testify but reached on consideration of the arguments presented at trial.

"The general test for evaluating alleged juror misconduct is whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence. *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (citing *State v. Smith*, 338 S.C. 66, 525 S.E.2d 263 (Ct.App.1999)."Where a defendant seeks a new trial on the basis of juror misconduct, he is required to prove both the alleged misconduct and the resulting prejudice. *Ziegler, supra* (citing *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (Ct.App.2004); *see also State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial).

"Initially, the trial judge must make a factual determination as to whether juror misconduct has occurred." *Ziegler*, 364 S.C. at 109, 610 S.E.2d at 867; *See Smith*, 338 S.C. at 71, 525 S.E.2d at 266; *see also Aldret*, 333 S.C. at 315, 509 S.E.2d at 815 (holding where affidavits supporting juror misconduct are credible, the trial court must conduct an evidentiary hearing to determine if misconduct occurred). "Only if the trial court finds a juror is guilty of misconduct must the judge determine whether the misconduct affected the verdict, warranting a new trial." *Ziegler, supra* (quoting *State v. Covington*, 343 S.C. 157, 164, 539 S.E.2d 67, 70 (Ct.App.2000).

"As a general rule, juror testimony is inadmissible to impeach a jury verdict." *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995). "Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict." *Id*. However in *Hunter*, our Supreme Court "carved out an exception to this rule, holding that juror testimony is competent in cases involving internal misconduct where necessary to ensure due process, *i.e*., fundamental fairness." *Id*.; *see also Aldret*, 333 S.C. at 312, 509 S.E.2d at 813 (finding premature

jury deliberations may affect fundamental fairness of a trial such that the trial court may inquire into such allegations and may consider juror affidavits in support of such allegations); *Ex Parte Greenville News*, 326 S.C. 1, 482 S.E.2d 556 (1997) (stating juror testimony regarding internal misconduct is generally inadmissible to impeach a verdict except when necessary to ensure fundamental fairness); *Hunter*, 320 S.C. at 88, 463 S.E.2d at 316 (noting juror's testimony was properly considered as basis for impeaching jury verdict, where juror claimed racial prejudice played role in determining defendant's guilt).

Here, the trial court reviewed a statement juror Adkins provided to the defense after the trial, which detailed the jury's thoughts on the trial and the evidence presented. The trial court determined that fundamental fairness could be at issue and considered the affidavit from juror Adkins, along with copies of returned juror surveys the Solicitor issued post-trial. (Order Denying New Trial Motion, p. 5). Because the affidavit of juror Adkins concerns internal jury deliberations, they can only be reviewed if the allegations suggest that fundamental fairness, *i.e.* due process was denied. *Hunter*, 320 S.C. at 88, 463 S.E.2d at 316. Thus, for this Court to find that a new trial is warranted, there must be a finding that Appellant was denied due process because jurors disregarded the trial court's instruction that Appellant's exercise of his right to remain silent should not be considered during jury deliberations. Considering the affidavit of juror Adkins as a whole, the trial court determined that the verdict was not reached solely on account of Appellant's failure to testify, but in consideration of the trial in its entirety.

The trial court notes the factual issues the juror used as a basis for his decision. The juror complimented the attorneys' opening statements and stated that Aaron Kenyon's testimony was credible and a factor of his verdict. He stated he did not believe the defense showed that his testimony should not be considered credible due to Kenyon lying in the past. (Order Denying

New Trial Motion, R. p. 999). He stated that he did not believe the child was in the residence within the time frame of Appellant leaving for work and when the body was found because the child would have been crying and screaming in the house. (Order Denying New Trial Motion, R. p. 999). He also stated that that the evidence presented showed that Donna and James had been in the house before the body was found considering James' DNA was found on the knife. (Order Denying New Trial Motion, R. p. 999).

The comments giving rise to the new trial motion appear to criticize the defense strategy and its tactics. The trial court concluded that it appears the comments are directed at the Defendant's attorney's trial strategy rather than specifically at the Defendant's choice to not testify. (Order Denying New Trial Motion, R. p. 999). The statement expresses that he "would have liked" for Appellant and other witnesses to be "called to the stand." (Order Denying New Trial Motion, R. p. 999). The focus is on what witnesses the defense attorney did not call rather than on the Defendant exercising his Fifth Amendment right to remain silent.

Further, he explains how the prosecutor did a good job and the defense attorney did not and concludes his affidavit by reiterating how the "defendant is innocent and was the prosecution job to prove guilt. With the evidence and testimony given during the trial I believe the prosecution was able to put together a good case giving us the ability to find the defendant guilty of murder." (Order Denying New Trial Motion, R. p. 999). Based upon these comments, it does not appear the impartiality of the jury was affected, nor does it appear consideration of Appellant's exercise of his right to remain silent contributed to the jury's verdict in light of the evidence presented.

As such, the trial judge properly considered the juror affidavit and reasonably concluded that the jury did not reach its verdict due to improper burden shifting. Appellant had failed to

establish grounds for a new trial motion based on juror misconduct. It follows that the denial of the motion did not constitute an abuse of discretion.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm Appellant's conviction and sentence.

Respectfully submitted,

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January 24, 2025

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Jan 24 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

Respondent,

v.

ADAM DON LAWLESS,

Appellant.

Appellate Case No. 2023-000636

PROOF OF SERVICE

I, Brandy Rankin, as an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief and Proof of Service has been forwarded to Appellant's counsel, David Alexander via email today, January 24, 2025 to Dalexander@sccid.sc.gov and to his assistant, Chris Stock at CStock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This is the 24th Day of January 2025.

Brandy Rankin

Brandy Rankin, Legal Assistant to
Kaylee C. Kemp
Assistant Attorney General

Brandy Rankin

From:	Brandy Rankin
Sent:	Friday, January 24, 2025 3:30 PM
To:	Alexander, David
Cc:	Stock, Chris; Kaylee Kemp
Subject:	Final Brief of Respondent - Adam Don Lawless - Appellate Case No. 2023-000636
Attachments:	LAWLESS FBOR.pdf

Dear Mr. Alexander,

Please find attached the Respondent's Final Brief and Proo of Service in the above-captioned case. These documents will be filed with the South Carolina Court of Appeals today, January 24, 2025, along with a copy of this email.

Have a great day!

Sincerely,
Brandy Rankin

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