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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of General Sessions

Appellate Case No. 2025-000772

The Honorable R. Ferrell Cothran, Circuit Court Judge

State of South CarolinaRespondent,

v.

George Smith.....Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT

1. **The circuit court erred in not granting George Smith a new trial pursuant to South Carolina Rules of Criminal Procedure, Rule 29(b) when Smith proved at the evidentiary hearing that his trial counsel operated under an actual conflict of interest during the pendency of his representation.**

The issue before the Court is whether the denial of Smith's motion for a new trial under Rule 29(b), South Carolina Rules of Criminal Procedure, should be reversed. Contrary to the lower court's holding, Smith met his burden at the evidentiary hearing to demonstrate that trial counsel operated under an actual conflict of interest during the pendency of his representation, which directly undermined the fairness and integrity of the proceedings.

Smith is entitled to relief because of the belated discovery that his trial counsel, Mr. Devoe, represented both Smith and Brodtus Black—the victim's brother—in overlapping criminal proceedings. The argument that this conflict was discoverable earlier, and therefore not “after-discovered,” misapprehends the realities facing criminal defendants: trial counsel's obligations of disclosure to the client are fundamental, and Smith was unaware and unable to discover the conflict absent counsel's candor. Indeed, Smith testified that had he known of the dual representation, he would have insisted counsel be replaced, thus avoiding representation by an attorney whose loyalties were necessarily divided. The record contains a public index entry establishing the simultaneous representation, which counsel never disclosed and which Smith only discovered years later, well after the conclusion of his trial and direct appeal.

Under governing South Carolina precedent, when a criminal defendant demonstrates that his attorney's duties to another client are contrary to his own interests, an actual conflict of interest arises. Simultaneous representation of Smith and a key family member of the victim squarely fits

within the situations recognized in *Staggs v. State*¹ and *Gregory*², where the Supreme Court held that divided loyalties are inherently prejudicial and relief is warranted without any further showing of actual prejudice. Smith’s defense was compromised: counsel was less than fully prepared and failed to vigorously investigate alibi witnesses, failed to meaningfully challenge the testimony of the victim’s family, and neglected to advise the court appropriately regarding sentencing. This failure stems directly from the conflict at the heart of these proceedings.

Rule 29(b) provides for a new trial where after-discovered evidence is “material” and would “probably change the result” if presented. Here, the conflict, discovered long after trial, is not cumulative nor impeaching evidence, but strikes at the very heart of Smith’s right to counsel and a fair trial. No higher value under South Carolina law exists than conflict-free counsel, and the appellate record is clear that this was not provided.

Moreover, the lower court and the respondent argue that the evidence against Smith was “overwhelming,” but they do so without acknowledging the subtle and insidious ways that divided loyalties can undermine effective advocacy—even in so-called clear cases. South Carolina law does not require Smith to prove actual prejudice; it is enough to show his defense was compromised due to an actual conflict, which the record amply supports. The outcome of Smith’s case could well have been different had his trial attorney’s attention and preparation not been divided by concurrent representation of the victim’s brother.

In sum, Smith respectfully urges this Court to reverse the denial of his Rule 29(b) motion, remand for a new trial, and restore his right to effective, conflict-free representation as guaranteed

¹ *Staggs v. State*, 372 S.C. 549, 643 S.E.2d 690 (2007).

² *State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005).

by law. The facts and law compel this result, and to hold otherwise would be to condone a violation of the foundational principles of fairness in criminal proceedings.

CONCLUSION

The Court should order a new trial.

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