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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2025-UP-371
(S.C. Ct. App. Submitted October 23, 2025-Filed November 5, 2025)

THE STATE,

RESPONDENT,

V.

ADAM DON LAWLESS,

APPELLANT

APPELLATE CASE NO. 2023-000636

APPENDIX

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STATEMENT OF THE ISSUES ON APPEAL

1.

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?

2.

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?

STATEMENT OF THE CASE

On October 23, 2018, an Anderson County grand jury indicted appellant Adam Don Lawless for the murder of Tabatha Duncan. R. 973. Five years later, on April 10, 2023, appellant was tried in Anderson before the Honorable R. Scott Sprouse and a jury. R. 1. Kristen W. Reeves represented the State. R. 1. William Norman Epps, III, represented appellant. R. 1. The jury convicted appellant on April 14, 2023. R. 893-94. Judge Sprouse sentenced appellant to the statutory minimum of thirty years' imprisonment. R. 904. Judge Sprouse also exercised his discretion to award appellant full credit for the time he spent on house arrest. R. 903-04.

On the evening appellant's trial ended, appellant's father, James Lawless, told trial counsel Epps that he killed Tabatha. R. 995. On April 18, 2023, Epps filed a Motion for New Trial on After Discovered Evidence along with his affidavit regarding the father's confession. R. 975. On May 12, 2023, appellant filed an amended Motion for New Trial on After Discovered Evidence that included an allegation of juror misconduct. R. 983. On May 15, 2023, Judge Sprouse held a hearing on the motion. R. 906. Nancy Jo Thomason represented appellant at the hearing. R. 909. Judge Sprouse took the matter under advisement. R. 947-48. On May 19, 2023, Judge Sprouse entered a written Order denying appellant's motion. R. 994. This appeal follows.

STANDARD OF REVIEW

The trial court's denial of the motion for a new trial is reviewed for abuse of discretion. State v. Adams, 430 S.C. 420, 845 S.E.2d 217 (Ct. App. 2020).

ARGUMENT

1.

Appellant's father confessed to this murder to appellant's lawyer on the evening appellant was convicted. The trial court erred 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.

Introduction

A jury needs to hear the confession of James Lawless. Appellant Adam Lawless is the son of James Lawless, but they are not biologically related. R. 499. Adam had an alibi for the murder of Tabatha Duncan, his girlfriend. Tabatha was murdered in their home in Iva. It was undisputed that Tabatha's cell phone, which was never found, was in the home and active until 8:55 AM on the day her body was found. R. 665. It was undisputed that Adam was on-camera at work in Anderson, nineteen miles away at 7:21 AM, until he left after learning of Tabatha's death at approximately 2:00 PM. R. 672-73. A car resembling James and his wife's black SUV was seen in Adam and Tabatha's driveway in Iva by a disinterested witness at approximately 8:15-8:30 AM. R. 425-26. James' red Chevy Cavalier was seen by a disinterested witness across the street from the house at approximately 9:40 AM. R. 434.

After Adam's conviction, James confessed to trial counsel Norman Epps that he murdered Tabatha. R. 975, 978. James, while his wife, Donna, listened, told Epps details of the murder. R. 975, 978-80. As counsel argued at the hearing on the motion for a new trial, James despicably tried to game the legal system, waiting five years to see if Adam might be acquitted before admitting his crime. R. 937-39. Counsel also argued that James might still be lying to protect not Adam, but his wife. R. 946.

The trial court found Epps accurately relayed what James told him. R. 996. The correct legal standard is that the new evidence "is such that it would probably change the result if a new trial were granted," but Judge Sprouse held that before he "could conclude that the evidence would have changed the outcome, there must be **no doubt** as to the credibility of the evidence" and denied the motion. R. 996-97 (emphasis added). See State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999). The court noted that after James retained counsel he gave no statements to law enforcement and did not appear at the hearing. R. 996-97. The court also cited the State's theory that James and Donna were involved in covering up the murder. R. 996. But this was a very close case. When she tried to explain the concept of reasonable doubt in her closing, the solicitor admitted, "There are gaps." R. 849. A jury hearing James' confession, even if only through the testimony of a member of the Bar, would have found reasonable doubt existed and acquitted Adam.

Friday: Tabatha Gets Adam's Mother Fired

Adam's mother, Donna Lawless, worked at Liberty Tax. R. 211. Donna's boss at Liberty Tax described her as "very, very smart," but said "she loved drama."[1] R. 211. On Friday, March 9, 2018, Tabatha went to Liberty Tax and spoke to the manager, Rebecca Inman. R. 210-13. Tabatha asked for a copy of her tax return. R. 214. The manager could not find a return in their system for Tabatha, so she called Donna. R. 214-15.

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[1] As this Court reviews the trial record and routine objections made by the defense, it should keep in mind that with knowledge of James' confession, the defense strategy would have been significantly different. For example, the defense made several objections to the manager's testimony based on relevance and hearsay. R. 211-20. An excellent example is the defense objected when the State asked the manager how James appeared on the phone. R. 218-19. In a new trial, the defense would want evidence of the tax return conflict between Donna, James, and Tabatha before the jury. But at this trial, the defense objections made it look like the defense was trying to hide this evidence from the jury.

The manager learned that Donna had not filed Tabatha's return through Liberty Tax. R. 214-16. The manager saw that Tabatha was "Worried. Scared," that Donna would be mad at her. R. 215-16. Tabatha had good reason to worry because Liberty Tax immediately fired Donna for doing a return outside of Liberty Tax. R. 216-17. The manager testified that after learning about Tabatha's murder, she asked herself, "If she'll die over this, what'll happen to me?" R. 219-20. The trial court struck this comment after the defense objection to this comment as "absolutely rank speculation." R. 220. In a new trial focusing on James (and possibly Donna), the defense would not have objected and had this evidence stricken.

On cross-examination, defense counsel focused on the fact that Adam never contacted Liberty Tax. R. 220-21. Liberty Tax requested an investigation by SLED and the manager said that Donna had potentially lost her freedom as well as her job. R. 225. Defense counsel tried to discredit the manager on this point. R. 225-26. Again, with knowledge of James' confession, the defense strategy here would have been very different. The defense would have wanted to show that Donna knew she was in trouble with the police which increases James' motive for the murder.

Tabatha's sister Tealisa Evans, was the State's first witness. R. 43. She identified the people in Tabatha's family, including her two children, B (boy, five years old at the time of the murder) and F (girl, two years old at the time of the murder). B, a child by Tabatha's ex-husband, lived with Tabatha's parents. R. 44-45. F, Adam and Tabatha's child, lived with them in Iva. R. 45. Adam's son W (who was six or seven at the time of the murder), by a woman named Kayla Riggins, lived with Adam and Tabatha in their small, three bedroom, one bath house in Iva. R. 45-46. State's Ex. 1 (photo of house).

Evans described the relationship between her family and Adam's family as non-existent because Adam's family was "controlling" and they tried to "brainwash my sister." R. 47. This testimony drew an objection from the defense that likely would not be made at a new trial. R. 47. When the solicitor asked Evans whether "something specific was going on between [Tabatha] and Donna" a few days before the murder, the defense again objected. R. 48. Evans testified that Tabatha received a letter from the IRS stating that Donna had filed her taxes and Tabatha received the wrong amount as a refund. R. 48-49. The defense objected twice during this testimony. R. 48-49. Donna had written Tabatha a check for her refund. R. 51.

The solicitor asked whether the police were called and the defense objected. R. 51-52. Judge Sprouse excused the jury and required a proffer. R. 52. During the proffer, Evans testified that Adam's sister, Angelica Lawless, and James went to see Tabatha that afternoon after Donna was fired. R. 52-58. Angelica choked Tabatha and tried to take F away from her. R. 52-58. The police were called to the scene. R. 52-58. Evans got to the scene after the police and Tabatha was upset. R. 52-58. After the proffer, the defense objected to the details of the what happened before Evans arrived based on hearsay and Judge Sprouse sustained this part of the objection. R. 56-58. The judge allowed Evans to testify that the police were there because of an incident, but the details were not admissible. R. 58.

Tabatha planned to stay at her mother's that night, but ended up staying at her house. R. 61. Evans heard Tabatha and Adam arguing and cursing over the phone. R. 61. Evans gave Tabatha some Rubbermaid containers to pack her stuff so she could move out of Adam's house. R. 62. The defense objected when Evans testified that Tabatha planned to go to the bank on Monday about the check Donna wrote for her tax refund. R. 65.

The State called Tabatha's family court attorney, Joshua Raffini, to testify about the ramifications of Donna's actions. R. 227-36. Before Friday, Adam and Tabatha reached a tentative agreement about the custody of F. R. 227-36. If neither Adam or Tabatha were able to parent F, then they agreed James and Donna should take custody of F. R. 231. Late Friday afternoon, Tabatha called her lawyer and the tentative agreement was no longer going to work. R. 234-235. In her closing argument discussing the lawyer's testimony about James and Donna getting custody of F, the solicitor said, "That was going to be part of the new agreement up until that week right before March 9th. Mr. Raffini told you that Tabatha in no way wanted that clause to be in that agreement going forward." R. 823-24.

The State admitted text messages retrieved from Adam's phone that he willingly surrendered to the police on the day of the murder. R. 589-590. R. 580. R. 703-704. (State's Ex. 34, R. 950-69). Multiple text messages between Adam and "Mama's old Cell" are in State's Ex. 36. At 1:56 PM, Donna wrote Adam, "She had her Mom calling over here yelling and hollering at your dad you know that he cannot take that. Yes you are in it because you are the one that got the money. So I guess you be a man and stand up because she is the one that agreed to it." R. 969. At 4:20 PM, Donna wrote, "The police let them in your house your dad fought for you but he [sic] told him only you can stop them. Your dad has been cussed at collared at and all not doing it you have to go get [F] and bring her to us. He told dad to leave." R. 969.

Friday evening, Donna continued to text Adam about the tax situation. R. 968. Defense counsel objected based on relevance when the State read these messages to the jury, but the defense already assented when the State entered the text messages into evidence. R. 752-53. At 7:26 PM, Donna texted, "She needs to fix my job or I will call IRS on her and claiming [B] will win. She was not living there. She was living with you. Two can play that backstabbing game."

R. 968. Donna's texts about her tax job and Tabatha continued that night and started again Saturday morning. R. 754-55.

Saturday and Sunday: Adam and Tabatha's Relationship(s)

As Adam and Tabatha's relationship deteriorated over the weekend, their relationships with other paramours improved. On Saturday, Adam and Tabatha exchanged some texts that were angry and some that were not. R. 962-967. They argued about whether Adam wanted Tabatha to leave the house. R. 966. But that afternoon Tabatha texted Adam that she was cooking pork chops, rice, mashed potatoes, and corn for his dinner. R. 965.

Donna continued to text Adam on Saturday about the tax situation. R. 962-963. She forwarded Adam texts she sent to Liberty Tax trying to explain she did nothing wrong. R. 962. Adam texted Donna at 10:21, "She still hasn't shut up." R. 963. Donna tried to persuade Adam to spend the night at their house or at Adam's sister's, but Adam said he was going to stay at his house. R. 963. Donna's texts to Adam began again at 9:55 AM on Sunday morning. R. 962.

On Sunday afternoon, Adam picked up his friend, Aaron Kenyon, to hang out. R. 142-43. Kenyon was nineteen and worked at Denny's. R. 142. When Adam picked up Kenyon, they drove to Kayla Riggins' house so Adam could pick up his son, W. R. 144. Kenyon waited in the car for 30-45 minutes while Adam had sex with Riggins in the house. R. 144. Adam told Kenyon not to tell Tabatha. R. 144. Adam and Kenyon went back to Adam's house and played video games with W. R. 160-61. Adam and Riggins continued to text each other until nearly 11:30 PM on Sunday night. R. 956. Many of these texts are sexual and appear to be accompanied by explicit photographs. R. 956.

Meanwhile, in another part of the small house, Tabatha was exchanging sexual messages with a man named Jeremy Gunnels. R. 251-53. They made plans to see each other on Monday.

R. 252. Tabatha and Gunnells communicated via text, Snapchat, and Facebook Messenger. R. 249. The messages late Sunday night and early Monday morning were detailed and included plans to "Suck on each other." R. 257-58. Gunnells testified they texted each other until "Midnight, 1:00 a.m. Somewhere in there." R. 253.

Defense counsel cross-examined Gunnells aggressively about his activities on Monday. R. 257-62. Gunnells sold a truck to a man on Facebook Monday morning. R. 257-62. SLED did not come to speak with Gunnells until a month after Tabatha's murder. R. 257-62. Gunnells drove a black Nissan Titan truck. R. 257-62. Defense counsel asked Gunnells what SLED did to verify his sale of another vehicle on Monday and he replied SLED talked to his grandmother. R. 257-62. Defense counsel's theory in closing was that an unidentified man killed Tabatha—a theory bolstered by SLED's discovery of unidentified male DNA under Tabatha's fingernails. R. 850-76. R. 549-50. Defense counsel specifically alluded to Tabatha's planned meeting with Gunnells in closing. R. 852-53. Gunnells testified he voluntarily gave a DNA sample to the police and let them download his phone. R. 254-55. Had defense counsel known that James murdered Tabatha, his closing argument and strategy during his cross-examination of Gunnells would have been completely different.

The State's theory during its closing argument was that Adam caught Tabatha sexting with Gunnells in F's bedroom. R. 825. The police found blood, Tabatha's fingernail, and Tabatha's nose ring on a cot in F's bedroom. R. 825. R. 348. (State's Ex. 1). The solicitor speculated that Tabatha suffered these injuries when Adam ripped the phone from her hand, and then killed her later that night after continued argument. R. 825-26. The State's theory of jealousy rests on dubious ground given that Adam had sex with Riggins that afternoon and was

sexting Riggins that night. The text messages indicate that both Adam and Tabatha were both well into their post-relationship romantic planning.

Monday: James Finds Tabatha's Body and Adam's Alibi

On Monday morning at 7:02 AM, Adam texted Donna that he guessed his parents did not have his daughter that day because Tabatha was not going to work. R. 955.' He told Donna he believed Tabatha was "going and doing shit behind our back today and she might be going to start trouble." R. 955. At 7:39 AM, he texted Riggins, "Morning beautiful." R. 955.

Kenyon testified that he and Adam left for Adam's job at Meineke at "6:00, 6:30" that morning. R. 163. Video from a Mexican restaurant in Iva near the house captured Adam driving to work at 6:50 AM. R. 603-604. Adam's boss at Meineke testified that Meineke's cameras showed Adam opening the store at 7:30 AM and remaining there all day with Kenyon until he was called back to Iva when Tabatha's body was found. R. 309-310, Def. Ex. 7. Adam acted normal, laughed, and joked with everyone. R. 311. The lead investigator confirmed he watched the Meineke video and it showed Adam arrive in the parking lot at 7:21 AM. R. 672-73. The investigator confirmed Adam stayed at Meineke all day. R. 673-74.

Tabatha's sister, Evans, testified that Tabatha usually woke up between 6:00 and 8:00 AM. R. 66. When Evans woke up at 10:00, she called her mother to see if she had heard from Tabatha. R. 66. Evans and Tabatha's mother called Tabatha multiple times that morning with no answer. R. 67-68.

Around noon, Evans went to the house to check on Tabatha. R. 68, 94. She knocked on the front door and on F's window with no answer. R. 68. Tabatha's car was in the driveway. R. 69. She did not go to the back door. R. 70. Evans went to the police in Iva and asked them to do a wellness check. R. 69-70. An officer went to the house and knocked loudly on the door at

approximately 12:30 PM. R. 94. He heard nothing inside the house. R. 94. He did not go to the back of the house. R. 95. The officer left when Evans said she would check F's daycare. R. 96.

Tabatha's mother ("Mama Petty Bettys" in the cell records) and Adam exchanged text messages beginning at 12:03 PM on Monday. R. 954. Tabatha's mother wrote Adam, "I don't know why tab is not answering her phone & you took house phone off the hook but if I don't hear from her in 5 minutes I'm calling cops." R. 954. Adam wrote back: "Im at work", "Call the cops i dont give a shit", and "I dont take house phones to work and she was with her daughter lastnight sleeping so i don't have a ckue why she aint answering." R. 954. Tabatha's mother wrote back that she was not trying to be smart, she just wanted to talk to her daughter. R. 954. Adam replied, "I haven't spoke to her since yesterday." R. 954. Tabatha's mother reminded Adam that he spoke to Tabatha after she went to the store and Adam replied that Tabatha went to sleep in F's room and he did not speak to her after that. R. 954. Two minutes after Adam sent that text, Donna texted Adam, "We are at Wal-Mart in GA I will go over there and tell her to call her mom soon as I get home." R. 954.

Tabatha's sister returned to the house in Iva about 1:50 PM. R. 77. She saw Donna in the yard holding F and James sitting on the porch. R. 77. Donna said she did not know what was going on, put F in a car, and left. R. 77-78. The front door had broken glass. R. 77-78. James looked like "he was having a seizure." R. 78.

The same police officer who performed the earlier well check was dispatched to the house. R. 96. He described James as leaning on a post on the porch with his eyes open, but was completely unresponsive. R. 98. The State put up an EMT who testified that she thought James was faking a seizure. R. 282-83. She described James as "not being cooperative" because he was not answering questions, but responded to the painful physical stimulus of a sternum rub. R.

283-84. A true seizure patient would not respond to a sternum rub. R. 283. The EMT did not take James to the hospital. R. 283-84. James "eventually answered" all of the EMT's questions. R. 284.

The police officer went into the house and found Tabatha's dead body on the floor of the laundry room. R. 100. He saw lots of blood and a steak knife at the entrance to the laundry room. R. 100-101. The EMT confirmed Tabatha was dead, describing her skin as "gray and cold." R. 280. The weather that day was cold and rainy. R. 122-23. The State's pathologist would not even entertain estimating Tabatha's time of death. R. 567-68.

The Iva police called Anderson County's forensics, but SLED ended up taking over the investigation. R. 121-22. The Iva officer stayed at the house until SLED released the crime scene at 10:00 PM that night. R. 119-120. The officer described Adam as upset and crying when he got to the house. R. 123-24.

Tabatha's murder was violent. R. 560-70. State's Ex. 1. She had a severe blow to the head that likely rendered her temporarily unconscious. R. 565. She had multiple injuries to her face and hands and her neck was cut, although that wound was not fatal. R. 560-68. State's Ex. 1. She died from at least seven stab wounds to her back that damaged her lungs. R. 560-68. The pathologist said the stab wounds were consistent with a steak knife. R. 567. He agreed Tabatha was "dressed as she was about to start her day." R. 570.

The wounds on Tabatha's hands and arms were defensive wounds. R. 572. The pathologist said she fought her attacker. R. 572. The doctor said the police should be looking for a suspect with injuries. R. 574. The steak knives found at the scene had no guard on them. State's Ex. 1.

Adam had no injuries. R. 407-08. The police photographed Adam that day. R. 407-08. Defendant's Ex. 1. The took close-up photographs of Adam's hands. Defendant's Ex. 1. Adam's hands—the hands of an auto mechanic—were pristine. Defendant's Ex. 1.

Adam cooperated with the police. R. 620-21. He voluntary gave a recorded statement to the police. R. 620-21. The State did not seek to introduce Adam's statement at trial. Judge Sprouse sustained the State's objection when defense counsel asked the lead investigator whether Adam "adamantly denied any involvement in the murder of Tabatha Duncan." R. 621.

Aaron Kenyon Recants a Statement Obtained through Divine Intervention

The State likely does not survive directed verdict in this case without a statement Aaron Kenyon gave the lead investigator, SLED Agent Drew Ledbetter. The police talked to the nineteen-year old Kenyon on the day of the murder and Kenyon denied that he or Adam had anything to do with Tabatha's murder. R. 639, R. 142. Two days after the murder, on March 14, Ledbetter talked to Kenyon and he denied any involvement. R. 629-30. The next day, Ledbetter obtained a statement from Kenyon implicating Adam in Tabatha's murder during a four-hour interrogation. R. 639-49.

Agent Ledbetter told Kenyon that God sent him to Kenyon. R. 641. After admitting he told Kenyon he was sent by God, later in his cross-examination, Ledbetter returned to this subject. R. 649. He said, "I was not trying to use that. You can look at many other cases I've done. And, you know, I've talked to people on witness and offender side of things. And, you know, right or wrong, that's—that's me." R. 649.

Agent Ledbetter had background information from Kenyon's mother about Kenyon's father. R. 641-42. Defense counsel asked Ledbetter if he had information that Kenyon's father beat his mother and Ledbetter hedged in his answer. R. 642. Ledbetter admitted telling Kenyon,

"Because I look at you, I see a guy who got the shaft from his daddy." R. 642. He told Kenyon he was being manipulated and coerced. R. 642. He continuously told Kenyon he "was not a monster." R. 642. This murder investigation was Ledbetter's first violent crime assignment after he came to SLED from the Highway Patrol. R. 614-15.

Kenyon's testimony was bizarre. On direct, Kenyon said Adam "was my best friend." R. 141. On Sunday, he and Adam smoked pot and played video games. R. 145. Adam and Tabatha had "little altercations," but she went to the store to get bread. R. 145-146. She threw the money in Adam's lap when she got back from the store. R. 186. Adam and Tabatha's six year old son, W, went to bed around 8:00 or 9:00 PM. R. 148. W and F had their own rooms, but Tabatha had a cot in F's room. State's Ex. 1. After W went to bed, Adam was on his phone and Kenyon continued playing video games. R. 148.

Kenyon told the solicitor Tabatha and Adam argued after the children went to bed. R. 148-149. He went outside because he did could not stand it when they argued. R. 149. He said he heard Tabatha scream in a way that made his stomach drop. R. 150. He did not hear anything else. R. 150. He guessed he was outside "from five minutes to an hour." R. 150.

The solicitor asked what Kenyon saw when he came back inside and he replied, "I don't recall." R. 151. Adam looked normal. R. 151. Kenyon denied being able to see in the laundry room. R. 151.

The solicitor then confronted Kenyon with the statement he gave Agent Ledbetter on March 15. R. 152-159. The solicitor asked if, in the statement, Kenyon said that he saw "Tabatha's feet and blood." R. 153. Kenyon replied, "Pretty sure if it's in the statement, it's there." R. 154. He heard the scream. R. 154. He went inside to check on the kids. R. 154. He

did not see Tabatha. R. 154. His answer to the very next question of whether it looked like Tabatha was laying on the cot in F's room was, "Yep." R. 154-55. He went to bed. R. 154-55.

He got up the next morning and saw Tabatha's feet and blood. R. 155. He said he took "the kids" (plural) to the car. R. 155. Then he said Adam said to leave F because Tabatha was going to take care of F. R. 155. He saw Adam holding a knife with a silver handle in the kitchen. R. 156. He acknowledged giving other statements protecting Adam and said his "heart" changed. R. 158. Kenyon was charged with accessory after the fact. R. 159.

On cross-examination, Kenyon initially tentatively stood by his statement to Agent Ledbetter. R. 160-193. He said he was "not a hundred percent sure" whether Tabatha was still in F's bedroom when he and Adam left for Meineke. R. 164. He admitted repeatedly denying to SLED that Adam had anything to do with the murder. R. 171-175.

Kenyon claimed the stomach-dropping scream did not wake up the children. R. 181. When asked if he saw anything when he went into the kitchen in the middle of the night, he said no. R. 189. The kitchen had a large blood spot and a knife on the floor when it was photographed by the police. State's Ex. 1. Kenyon admitted he told his mother that he told the police what they wanted to hear so he could get out on bond. R. 192.

In a bizarre twist, Kenyon's testimony completely changed when defense counsel confronted him with a letter he wrote Adam. R. 193, R. 970. Kenyon first said he was not a hundred percent sure he had written Adam a letter. R. 193. The solicitor objected and said she had never seen the letter. R. 193. The judge sent the jury out while defense counsel made a copy for the solicitor. R. 193-94.

When the jury returned, Kenyon admitted writing Adam the letter. R. 194. Defense counsel handed the letter to Kenyon and asked him to read it. R. 194. Kenyon said, "The

handwriting is kind of scribbled. I don't think I can read it." R. 193. As the Court will see when it reads this letter, the handwriting is very legible. R. 970. Defense counsel confirmed the letter was in Kenyon's handwriting. R. 193. Kenyon said he could not read it. R. 195. Kenyon said he would not even try to read it. R. 195. Defense counsel read the letter to Kenyon and he confirmed every part of it. R. 195-200.

The letter begins, "They kept saying that they weren't gonna stop unless I wrote what they wanted to." R. 970. He plaintively apologizes to Adam, says he'd "never had to go without seeing you" and that "I can't even smile anymore." R. 970. "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. 970.

After having to sit through defense counsel read this letter, Kenyon admitted that, through his attorney, he recanted the statement he gave Agent Ledbetter. R. 201. Defense counsel told Kenyon that if he was going to implicate Adam to the jury, that meant he left the two-year old F in the house. R. 202. Defense counsel pressed and said, "That didn't happen, did it?" R. 202. Kenyon replied, "No." R. 202.

He then admitted telling his mother that even though Adam and Tabatha fought, that Adam did not have "the goddamn balls to put his hands on Tabatha." R. 203. Kenyon told the jury he had no doubt Tabatha could beat up Adam. R. 204. Defense counsel's last questions to Kenyon were:

Q. Court grant me a minute. The truth is, you got no idea what happened to Tabatha?

A. No.

Q. Is that right?

A. That's right.

R. 205.

James' Confession

Defense counsel Norman Epps' Affidavit attached to the motion for a new trial is the best description of James' confession to Tabatha's murder. R. 978. The jury found Adam guilty about 2:40 PM. R. 978. When Epps got back to his office at 3:50 PM, James and Donna were in his parking lot. R. 978. They came into Epps' office and Donna said, "Are you going to tell him?" R. 978. James then told Epps how he murdered Tabatha. R. 978-979.

James said he went to the house that morning to check on F. R. 978. Tabatha's keys were in the door and he let himself in. R. 979. He and Tabatha began arguing in F's bedroom and had an altercation. R. 979. The fight moved into the kitchen and Tabatha grabbed a knife. R. 979.

James said after they struggled over the knife, he believed he "blacked out." R. 979. He saw Tabatha's body covered in blood on the laundry room floor. R. 979. He tried to clean the scene, gave F a sippy cup, and went home. R. 979. He cleaned himself outside in his hot tub. R. 979. He stashed the bloody clothes and Tabatha's cell phone in his boat. R. 979. He eventually threw the cell phone in Lake Russell. R. 979.

Donna said that James made disturbing comments in his sleep. R. 980. She confronted him and he admitted his crime. R. 980. They both thought Adam would not be convicted because he was innocent. R. 980. James said he was willing to talk to an attorney and confess to the authorities. R. 980.

That never happened. After retaining a lawyer, James never went to the police and did not come to the hearing on Adam's motion for a new trial. R. 994. Judge Sprouse also noted that no officers ever went to speak to James. R. 997.

Donna sent Epps a disturbing email the night James confessed asking him to "take care of Adam." R. 984. Epps "received notification at 7:27 pm on Saturday, April 15, 2023, that Donna Lawless had been hospitalized and intubated, from a possible overdose. She is currently in ICU at an Anderson Area hospital and undergoing tests." R 982.

The Trial Court Erred in Denying the Motion for a New Trial

The trial court not only used the wrong standard to evaluate Adam's new trial motion, it used a standard that would almost impossible for any defendant to meet. The court cited the correct test in deciding a motion for a new trial based on after-discovered evidence from State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). The 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.

Spann at 619-20, 513 S.E.2d at 99. Only the first element of this test is at issue in this appeal. R. 995. Judge Sprouse found the evidence was material "if credible." R. 996.

Despite quoting the test from Spann that the evidence must "probably change the result if a new trial were granted," the trial court used as its legal test, "In any event, 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." R. 996. The trial judge superimposed an impossible-to-meet credibility standard on top of prong one of the Spann test. While a trial court does make credibility findings when dealing with after-discovered evidence based on witness testimony,

there is no requirement that the credibility of the witness be beyond all doubt. See State v. Parker, 249 S.C. 139, 141-42, 153 S.E.2d 183, 184 (1967). It must be sufficiently credible that it would "probably change the result of the trial."

Given this shaky case, James' confession meets that standard. The State argued that its theory of the case was that James and Donna were involved in covering up Adam's crime and James' confession did not change anything. Judge Sprouse discredited James because he did not talk to the police after retaining counsel. No competent defense attorney would encourage his client to confess.

Judge Sprouse then properly noted that in a new trial, it would be James "word against that of Epps." The court found Epps accurately relayed what James told him. A jury hearing Epps' testimony about James confession would have found reasonable doubt and acquitted Adam. Like Judge Sprouse, a jury would believe Epps about James' confession.

This case does not involve the usual recantation of a witness after the trial ended.[2] See Parker at 141-42, 153 S.E.2d at 184 (noting that recanted testimony is unfavored). James did not testify. With the typical witness recantation, the jury has already assessed the credibility of the witness. No jury has ever heard James' confession or Epps' account of the confession.

The evidence at the trial corroborates James' confession. James' DNA was found on the steak knife. R. 509. James' DNA was found on the bedsheet on F's room where Tabatha's fingernail and nose ring were ripped out. R. 516-517. The botched cleaning of the crime scene matches a theory of James trying to conceal the crime from Adam and Donna. A car resembling James and his wife's black SUV was seen in Adam and Tabatha's driveway in Iva by a disinterested witness at approximately 8:15-8:30 AM. R. 425-26. James' red Chevy Cavalier

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[2] The State's star witness, Kenyon, recanted during the trial, not after.

was seen by a disinterested witness across the street from the house at approximately 9:40 AM. R. 434. The State's cell phone expert admitted that activity on Tabatha's phone after Adam left and before the Lawless's car was seen in the driveway could have been initiated by Tabatha. R. 794-95. A geofence the State obtained from Google confirmed Tabatha's phone was in the Iva house after Adam left for work. R. 663-664. While the State will argue this evidence only supports a cover-up theory, this case is so close and so messy that a jury needs to hear James' confession and sort out this evidence.

The court rightly points out that James' confession could be an attempt to manipulate the system. The court is correct on this point, but it does not mean that Adam is complicit in manipulating the system. James' despicable conduct offends everyone involved in our justice system. But Adam cannot be punished for this manipulation until a jury decides whether he is complicit.

And as pointed out in the factual recitation, the defense strategy would be completely different in a new trial. Epps was forced to point the finger at unknown assailants and impeach the investigation by the police. In a new trial, Adam would be free to point to James as the killer. The fight between Donna, James, and Tabatha gives James more of a motive to kill Tabatha than Adam, who had already resumed a sexual relationship with Kayla Riggins. James' wife was facing a potential criminal investigation because of the tax filing. Donna's texts with Adam show their primary concern was her job. Adam's concern that evening seemed to be sexting with Riggins, smoking pot, and playing video games. In this highly unusual case replete with reasonable doubt, the trial court erred in denying the motion for a new trial and denying Adam the ability to have a jury fairly assess his guilt in light of James' confession. This Court must reverse.

2.

<u>The trial court erred 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.</u>

The second ground in Adam's new trial motion was based on a jury foreman's affidavit admitting they discussed Adam's failure to testify. The foreman wrote, "After the prosecution and the defense settled, it really shocked me and the other jurors that the defense did not call any one to the stand for questions. I as a juror would have like to have seen Adam, the Coroner and Adam's parents called to the stand which could have provided a time of death as well more questions asked about the parent's involvement in the case. **During deliberations this was something every juror would have like to have seen and, in my opinion, could have affected the way the verdict could have gone.**" R. 985 (emphasis added).

Judge Sprouse said the statements were "concerning," but did not amount to rise to the level of juror misconduct. R. 999. The court also construed the juror's statements as critical of the defense strategy instead of faulting Adam for not testifying. R. 999.

First, the judge's point about the criticism of defense strategy bolsters Issue One on appeal. As argued above, the defense strategy was completely handicapped by the lack of the ability to present James' confession. Second, the foreman's statement that every juror wanted to hear Adam's testimony cannot be construed in any way but that the jury ignored the court's instruction not to hold Adam's exercise of constitutional right not to testify against him.

In <u>Shumpert v. State</u>, 378 S.C. 62, 661 S.E.2d 369 (2008), the Court discussed a similar issue. In PCR, the defendant attempted to admit the affidavit of a juror. The juror's affidavit

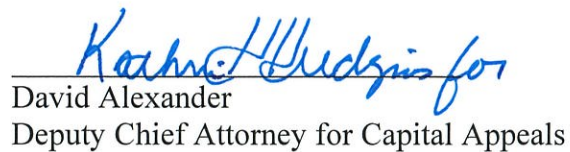
stated jurors said during deliberations that if the defendant was not guilty, he would have testified. Id. The PCR judge refused to admit the affidavit into evidence.

The precise legal issue before the Court in Shumpert was whether the PCR judge erred in refusing to admit the affidavit. Id. Here, the judge considered the affidavit, but made the wrong legal conclusion. The Shumpert Court noted that admitting evidence concerning juror deliberations was highly restricted, but left the door open to admit evidence when required by fundamental fairness. Id. The Court said its decision to uphold the PCR court's refusal to admit the affidavit should not be interpreted as suggesting that all evidence about jurors improperly considering a defendant's right to testify does not implicate fundamental fairness.

Unlike Shumpert, the trial judge agreed to consider the foreman's affidavit. The fundamental fairness question is therefore squarely before this Court that was not present in Shumpert. The foreman's affidavit said **every** juror wanted to see Adam testify. The foreman's affidavit said if Adam had testified, it could have changed the verdict. The trial judge did not find the foreman's statement not credible. The court misconstrued the affidavit and improperly held the parts of the affidavit that did not show misconduct outweighed the portion that did. The jurors flagrantly disobeyed the instruction not to consider Adam's failure to testify. This case meets the narrow window described in Shumpert and shows that Adam's right to fundamental fairness was violated. The unusual facts and closeness of this case also weigh heavily in favor of appellant receiving a new trial untainted by juror misconduct. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.



David Alexander
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ATTORNEY FOR APPELLANT

This 24th day of January, 2025.

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Jan 24 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final 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."

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This 24th day of January, 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

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

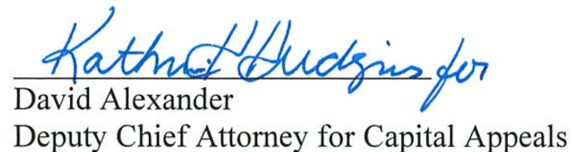
ADAM D. LAWLESS,

APPELLANT

APPELLATE CASE NO. 2023-000636

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Kaylee Christine Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of January, 2025.



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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

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

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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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

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Adam Don Lawless, Appellant.

Appellate Case No. 2023-000636

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2025-UP-371
Submitted October 23, 2025 – Filed November 5, 2025

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, and Assistant Attorney General Kaylee Christene Kemp, all of Columbia, for Respondent.

PER CURIAM: Adam Don Lawless appeals his conviction for murder and his sentence of thirty years' imprisonment. On appeal, Lawless argues the trial court

erred in (1) denying his motion for a new trial based on after-discovered evidence of his father's confession to the murder and (2) denying his motion for a new trial based on juror misconduct based on the jury's discussion of Lawless's failure to testify during deliberations. We affirm pursuant to Rule 220(b), SCACR.

1. We hold the trial court did not abuse its discretion in denying the motion for a new trial. We acknowledge case law does not require there be no doubt as to the credibility of the after-discovered evidence as the trial court stated. However, the trial court made a credibility finding as to James Lawless's confession, which it found not credible, and we defer to that finding. Based on the foregoing, a review of the record supports that the confession would not likely change the result if a new trial were granted—the first prong of the after-discovered evidence test. *See State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("The decision whether to grant a new trial rests within the sound discretion of the trial court, and this [c]ourt will not disturb the trial court's decision absent an abuse of discretion."); *State v. Spann*, 334 S.C. 618, 619-20, 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."); *Mercer*, 381 S.C. at 166, 672 S.E.2d at 565 ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); *State v. Johnson*, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) ("Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court's factual findings are supported by any evidence in the record."); *id.* ("[I]t is well-established under South Carolina law that credibility determinations are entitled to great deference.").

2. We hold the trial court did not abuse its discretion in denying Lawless's motion for a new trial based on juror misconduct. *See Mercer*, 381 S.C. at 166, 672 S.E.2d at 565 ("The decision whether to grant a new trial rests within the sound discretion of the trial court, and this [c]ourt will not disturb the trial court's decision absent an abuse of discretion."). We find the comments in the foreman's affidavit did not concern due process because they were a comment on Lawless's trial strategy and not a comment on Lawless's decision not to testify. *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995) ("Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); *id.* ("[J]uror testimony involving internal misconduct is competent only when necessary to ensure due process, i.e. fundamental fairness."); *State v. Aldret*, 333

S.C. 307, 314, 509 S.E.2d 811, 814 (1999) ("[A] defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial.").

AFFIRMED.[1]

WILLIAMS, C.J., and VINSON and CURTIS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

Opinion No. 2025-UP-371

THE STATE,

RESPONDENT,

V.

ADAM D. LAWLESS,

APPELLANT

APPELLATE CASE NO. 2023-000636

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Adam D. Lawless requests that this Court grant rehearing on both issues on appeal.

Issue One

This Court erred in ending its analysis after crediting the trial judge with a proper credibility finding regarding James Lawless's confession. This Court correctly ruled that the trial judge used the wrong standard, but failed to see how the wrong credibility finding undermined the lower court's decision.

The trial court never observed James testify. James did not testify at trial. After confessing to appellant's attorney, he retained counsel. James then did not testify at the hearing on the motion for new trial. Any credibility finding by the trial judge is not based on observing

James' demeanor or any other kind of observation that gives rise to an appellate court's deference to a finding below. The trial court's credibility finding is only based on the situation presented at the hearing and the trial record. Judge Sprouse was in no better position to assess the credibility of James' confession than this Court. This Court erred in resting its entire decision on the standard of review related to credibility findings and in not conducting its own review of the evidence.

Furthermore, the trial judge made a positive credibility as to trial counsel. Judge Sprouse found that Epps accurately relayed what James told him. Epps would be a powerful witness before a jury.

Second, this Court failed to evaluate James' confession in light of the closeness of this case. The evidence at the trial corroborated James' confession. James' DNA was found on the steak knife. R. 509. James' DNA was found on the bedsheet on F's room where Tabatha's fingernail and nose ring were ripped out. R. 516-517. The botched cleaning of the crime scene matches a theory of James trying to conceal the crime from Adam and Donna. A car resembling James and his wife's black SUV was seen in Adam and Tabatha's driveway in Iva by a disinterested witness at approximately 8:15-8:30 AM. R. 425-26. James' red Chevy Cavalier was seen by a disinterested witness across the street from the house at approximately 9:40 AM. R. 434. The State's cell phone expert admitted that activity on Tabatha's phone after Adam left and before the Lawless's car was seen in the driveway could have been initiated by Tabatha. R. 794-95. A geofence the State obtained from Google confirmed Tabatha's phone was in the Iva house after Adam left for work. R. 663-664.

This Court also failed to consider the impact James' confession would have on the defense trial strategy. The defense strategy would be completely different in a new trial. Epps was forced to point the finger at unknown assailants and impeach the investigation by the police. In a new trial, Adam would point to James as the killer. The fight between Donna, James, and

Tabatha gives James more of a motive to kill Tabatha than Adam, who had already resumed a sexual relationship with Kayla Riggins. The State's star witness, Kenyon, recanted his testimony implicating Adam during cross-examination. R. 205.

James' wife was facing a potential criminal investigation because of the tax filing. Donna's texts with Adam show their primary concern was her job. Adam's concern that evening seemed to be sexting with Riggins, smoking pot, and playing video games. In this highly unusual case replete with reasonable doubt, the trial court erred in denying the motion for a new trial and denying Adam the ability to have a jury fairly assess his guilt in light of James' confession. This Court should grant rehearing and reverse.

Issue Two

This Court erred in finding the juror comments were about trial strategy instead of Adam's decision not to testify. Respectfully, the jurors' comments can be interpreted no other way than discussing Adam's failure to testify. The foreman wrote, "After the prosecution and the defense settled, it really shocked me and the other jurors that the defense did not call any one to the stand for questions. I as a juror would have like to have seen Adam, the Coroner and Adam's parents called to the stand which could have provided a time of death as well more questions asked about the parent's involvement in the case. During deliberations this was something every juror would have like to have seen and, in my opinion, could have affected the way the verdict could have gone." R. 985.

The foreman's affidavit said **every** juror wanted to see Adam testify. The foreman's affidavit said if Adam had testified, it could have changed the verdict. The trial judge did not find the foreman's statement not credible. The court misconstrued the affidavit and improperly held the parts of the affidavit that did not show misconduct outweighed the portion that did. The jurors flagrantly disobeyed the instruction not to consider Adam's failure to testify. The unusual

facts and closeness of this case also weigh heavily in favor of appellant receiving a new trial untainted by juror misconduct. This Court should grant rehearing and reverse.

David Alexander
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ATTORNEY FOR APPELLANT

This 20th day of November, 2025.

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Nov 20 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

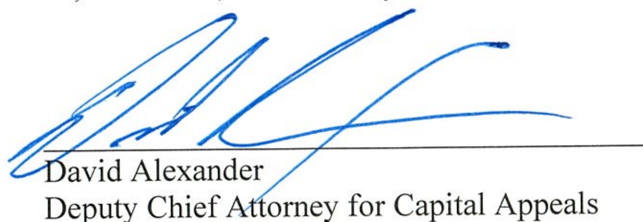
ADAM D. LAWLESS,

APPELLANT

APPELLATE CASE NO. 2023-000636

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Kaylee Christene Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Adam D. Lawless, #391107, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 20th day of November, 2025.



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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

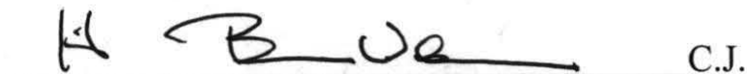
v.

Adam Don Lawless, Appellant.

Appellate Case No. 2023-000636

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.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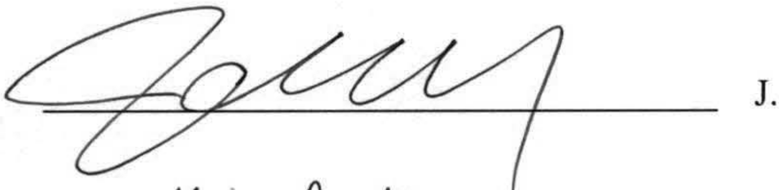
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J.

Columbia, South Carolina

FILED
Dec 18 2025

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
The Honorable R. Scott Sprouse