RECEIVED

Mar 16 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Anderson County
Court of Common Pleas
The Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

Respondent,

v.

ADAM DON LAWLESS,

Petitioner.

Appellate Case No. 2026-000106

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTIONS PRESENTED

1.

Petitioner's father confessed to defense counsel that he murdered the victim on the evening after petitioner was convicted. Did the trial court err in denying petitioner'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 petitioner's motion for a new trial based on after-discovered evidence where the jurors admitted discussing petitioner's failure to testify during deliberations, in flagrant disregard of the judge's charge and due process?

(Pet. 2).

RESPONDENT'S RESTATEMENT OF QUESTIONS PRESENTED

1.

Whether the Court of Appeals properly affirmed the lower court for denying petitioner's motion for new trial based on the trial judge's determination that an after-trial alleged confession by James Lawless, Petitioner's father, given only to defense counsel and not law enforcement, lacked credibility and appeared to be a contrived basis for a new trial motion?

2.

Whether the Court of Appeals properly affirmed the lower for denying petitioner's motion for new trial based on juror misconduct related to the failure to testify when the juror's affidavit presented merely commented on petitioner's trial strategy rather than his failure to testify?

STATEMENT OF THE CASE

On October 23, 2018, an Anderson County Grand Jury indicted Petitioner Adam Lawless, for the March 2018 murder of Tabatha Duncan. (R. 973). A jury trial on the charge was held April 10-14, 2023, before the Honorable R. Scott Sprouse. William Norman Epps, III, Esq., represented petitioner. The jury found Petitioner guilty as charged, and Judge Sprouse sentenced him to 30 years imprisonment. (R. 893-904).

On the same day of sentencing, Petitioner's father, James Lawless, told defense counsel that he committed the murder. (R. 995). On April 18, 2023, given this information, defense counsel filed a new trial motion based on after discovered evidence with counsel's affidavit recounting the father's statement. (R. 957). On May 12, 2023, defense counsel amended the new trial motion to include allegations of juror misconduct. (R. 983).

On May 15, 2023, a hearing on the new trial motion was held before Judge Sprouse. (R. 906). Nancy Jo Thomason Esq., appeared for petitioner due to defense counsel's conflict. (R. 909). 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.

(R. 994). In denying the motion, Judge Sprouse found that the father's confession was not credible and that no improper burden shifting took place upon consideration of the juror's affidavit. (R. 997 and 999). Petitioner timely appealed.

After briefing, but without oral argument, the Court of Appeals issued an unpublished opinion on November 5, 2025, that affirmed the lower court. (App. 57-59). Petitioner filed a timely petition for rehearing on November 20, 2025, (App. 60-63), that the Court of Appeals denied on December 18, 2025, (App. 65).

Petitioner then filed a petition for writ of certiorari in this Court on January 30, 2026. This return follows.

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

Child Custody Litigation

At the time of Tabatha's murder, Tabatha and Petitioner were in the midst of child custody agreement litigation. Tabatha and petitioner 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. 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. 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 Petitioner agreed to supervision until a series of drug tests had been administered, and in addition, the parties were planning to co-parent. (R. 229-230).

In November of 2017, the temporary order was modified due to concerns with Tabatha's housing situation. Petitioner 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, Petitioner's parents – Donna and James – would receive custody to avoid the child being placed with DSS. (R. 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 Petitioner's parents would receive custody in the event of DSS intervention. (R. 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. 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. 235-236). Notably, Attorney Raffini testified that the final order that had been previously prepared, indicated Petitioner and Tabatha were to alternate claiming their child as a dependent on their tax returns. (R. 236). Tabatha was entitled to claim their child in 2017. (R. 236).

Friday, March 9, 2023

At trial, attention was brought to an incident between Donna, Petitioner's mother, and Tabatha approximately two days prior to the murder. 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. 50-51).

On March 9, 2018, Tabatha went to Liberty Tax to get a copy of her tax return. (R. 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. 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. 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. 216-217 and 223). Ms. Inman testified that after Donna was fired, she received a call from James, Petitioner's father, inquiring about the situation in a "matter of fact or business matter of fact lawyery type tone." (R. 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 (Petitioner's sister), and James Lawless present at the home. (R. 59-60). Tabatha was there with her and Petitioner's child and was visibly upset. (R. 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. 61). Tealisa testified that she heard Tabatha speaking to Petitioner on the phone while at their mother's and that Petitioner sounded "Loud. Cuss words." (R. 61).

Text messages on March 9, 2018, from Petitioner's phone show that Donna was encouraging Petitioner to take the child away from Tabatha. (R. 589-590 and 621). At 12:35 PM

[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. 51-58).

Donna texted Petitioner "Tabatha is pissing me off." (R. 706; State's Exhibit 36, R. 953). She later texted Petitioner at 1:56 PM regarding the aforementioned situation in which the police were called to the home, that Petitioner is the one that "got the money" and that he needs to "be a man and stand up because she is the one that agreed to it." (R. 709; State's Exhibit 36, R. 953). At 2:54 PM Petitioner sent text messages to Tabatha instructing her to call him and asked why she kept hanging up on him. (R. 709; State's Exhibit 36, R. 953). Donna again texted Petitioner 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. 709; State's Exhibit 36, R. 953). She again texted Petitioner, "You are the one that has to make her leave." (R. 709; State's Exhibit 36, R. 953). Petitioner 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. 710; State's Exhibit 36, R. 953). Donna then texted Petitioner 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. 710; State's Exhibit 36, R. 953).

Instead of staying the night at her mother's, Tabatha returned to Broad Street. (R. 61). At 6:44 PM, Tabatha texted Petitioner, "I'm headed back there." (R. 710; State's Exhibit 36, R. 953). At 7:26 PM Donna texted Petitioner, "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. 712-713; State's Exhibit 36, R. 953). Donna repeatedly texted her son about her job until the next morning. (R. 713-714; State's Exhibit 36, R. 953).

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

Petitioner's phone records show Tabatha and Petitioner texting back and forth regarding the status of their relationship. While Petitioner was at work, Tabatha texted Petitioner complaining

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

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

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

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

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

On Monday morning at 7:02 AM, Petitioner 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. 720; State's Exhibit 36, R. 953). Kenyon testified that he and Petitioner left for Petitioner's job at

Meineke at "6:00, 6:30" that morning. (R. 163). Video from a Mexican restaurant in Iva near the house captured Petitioner driving to work at 6:50 AM. (R. 603-604). Petitioner's boss at Meineke testified that Meineke's cameras showed Petitioner 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. 309-310; Defendant's Exhibit 7). Petitioner acted normal, laughed, and joked with everyone. (R. 311). The lead investigator confirmed he watched the Meineke video and it showed Petitioner arrive in the parking lot at 7:21 AM. (R. 672-673). The investigator confirmed Petitioner stayed at Meineke all day. (R. 673-674).

Tabatha's sister, Tealisa, testified that Tabatha usually woke up between 6:00 and 8:00 AM. (R. 66). When Tealisa woke up at 10:00 AM, she called her mother to see if she had heard from Tabatha. (R. 66). Tealisa and Tabatha's mother called Tabatha multiple times that morning with no answer. (R. 67-68). Around noon, Tealisa went to the house to check on Tabatha. (R. 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. 68-69). Concerned, Tealisa went to the police in Iva and asked them to do a wellness check. (R. 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. 94). Neither Tealisa nor Lieutenant Vaughn checked the back of the house. (R. 69 and 94). Tealisa said she would go check Tabatha's daughter daycare, and Lieutenant Vaughn left the scene. (R. 96).

Tabatha's mother ("Mama Petty Bettys" in the cell records) and Petitioner exchanged text messages beginning at 12:03 PM on Monday. (R. 725; State's Exhibit 36, R. 953). Tabatha's mother texted Petitioner, "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. 725;

State's Exhibit 36, R. 953). Petitioner 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. 725-726; State's Exhibit 36, R. 953). Tabatha's mother wrote back that she was not trying to be smart, she just wanted to talk to her daughter. (R. 726; State's Exhibit 36, R. 953). Petitioner then replied that he hadn't spoken to Tabatha since yesterday. (R. 726; State's Exhibit 36, R. 953). Tabatha's mother reminded Petitioner that he spoke to Tabatha after he sent her to the store and had Kenyon over. (R. 726; State's Ex. 36, R. 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. 726; State's Exhibit 36, R. 953). Two minutes later, Donna texted Petitioner, "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. 726; State's Exhibit 36, R. 953).

Tealisa returned to the Broad Street house at about 1:50 PM. (R. 77). She saw Donna in the yard holding Tabatha's (and Petitioner's) daughter and James sitting on the porch. (R. 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. 77-78).

Lieutenant Vaughn was again dispatched to the house. (R. 96). He described James as leaning on a post on the porch with his eyes open but completely unresponsive. (R. 98). He then contacted dispatch and Paramedic Shanon Robinson was called to the scene. (R. 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. 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. 279). She was then called to assist with the scene inside and determined that

Tabatha was deceased. (R. 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. 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. 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. 283). Ultimately, James was not taken to the hospital and eventually answered all of their questions. (R. 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. 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. 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. 101). Lieutenant Vaughn called Robinson to assist, and Tabatha was determined to be deceased. (R. 279-282).

The Investigation

Dr. Brett Woodard performed the autopsy on March 13, 2018. (R. 557). Dr. Woodard was deemed an expert in forensic pathology without objection from the defense. (R. 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. 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. 567).

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

investigated Tabatha's murder. (R. 581). Agent Ledbetter testified he arrived at the scene around 3-3:15 PM on March 12, 2018. (R. 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. 587). He detected what he thought could be Clorox, saw a mop bucket with water, and blood on the kitchen floor. (R. 587). He saw a knife at the entrance of the door that was bent and bloody. (R. 587). Agent Ledbetter testified that there were Rubbermaid containers around the house and the items in the boxes looked like someone was packing. (R. 587). He testified that four phones were collected from the residence. (R. 589). One was recovered by a fireplace with a cracked screen, one was recovered from Petitioner, one was recovered from the master bedroom, and a house phone with the base was also recovered. (R. 589-590).

Over the course of the investigation, Agent Ledbetter spoke to members of Tabatha's family and Petitioner's family. After speaking with members of Tabatha's family, he decided to interview Ms. Inman at Liberty Tax. (R. 595). After doing so, he followed up with Iva Police Department in regard to the March 9th confrontation. (R. 596). He also spoke with Tabatha's attorney, Mr. Raffini. (R. 596). In speaking with Petitioner's family – Donna, James, and Angela – he received a Walmart receipt from Donna dated 12:52 PM on March 12, 2018. (R. 599). Only James Lawless could be seen on the footage from Walmart. (R. 600). He testified that after speaking with Donna, James and Angela, he found there to be inconsistencies within the statements. (R. 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. 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. 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. 602). Ownership of the red Chevy Cavalier was determined to be that of James Lawless, and Donna Lawless drove a black Toyota Sequoia. (R. 602).

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

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

When presented with further questions, Kenyon stated, "Pretty sure if it's in the statement, it's there." (R. 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. 154). He didn't see Tabatha, but it looked like she was laying in the bed in her daughter's room sleeping. (R. 154). He went to bed and woke up in the middle night, checked on the children again, and went back to sleep. (R. 155). Kenyon and Petitioner 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. 155). He confirmed that in his statement he stated that Petitioner 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. 155-156). He saw Petitioner holding a knife with a silver handle in the kitchen. (R. 156). He acknowledged giving other statements protecting Petitioner because he was scared, and Petitioner is his best friend. (R. 158). Kenyon said his "heart" changed from his initial statements. (R. 158).

The defense presented Kenyon with a letter he had written Petitioner. 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. 195; Defendant's Exhibit 6, R. 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. 199; Defendant's Exhibit 6, R. 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. 199 and 205).

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

STANDARD OF REVIEW

Certiorari Review

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR.

New Trial Motion

"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. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing *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. There is no "special or important" reason to grant certiorari review of the Court of Appeals opinion affirming the lower court when the trial judge acted within his discretion finding the father's after-conviction confession was not credible after considering the vague description of the murder in the confession, the motivation for the confession, and the father's behavior after confessing to the crime.

The Trial Court Order:

After noting that the State considered Petitioner's father, James, to have been "heavily involved in what was essentially a cover-up and obfuscation of evidence in the aftermath of the murder," the trial judge reasoned, "It is very possible that his 'confession' could have been seen as just another act in the efforts of" Petitioner's parents, "to protect" Petitioner. (R. 996). Moreover, both parents "assisted their son during the pendency of the case," and "were on a first name basis" with defense counsel. (R. 996). The trial judge also observed that the mother "allegedly had some kind of overdose of some kind that required hospitalization," but "sent a personal email to" defense counsel that she had known about her husband's guilt "for some time[.]" (R. 996-997).

The trial judge further considered the circumstances of the statement. For instance, he considered that while James had spoken to defense counsel, he did not contact law enforcement or give concrete evidence, such as a written statement, "video recording, or any other evidence of his confession." (R. 997). Simply, the judge considered that James "actions … do not appear to be the actions of someone who is attempting to correct the record for a wrongfully-convicted person and take responsibility for a crime that he himself actually committed." (R. 997). Again, the statement appeared "contrived" to assist the son's new trial motion and made "in a manner which could easily be denied by James Lawless should law enforcement attempt to prosecute him or if" defense counsel "were called as a witness in a retrial[.]" (R. 997). Moreover, James' "statement also appears to be carefully crafted to avoid details that could be investigated for corroboration."

(R. 997). The judge concluded: "The Court does not find the statement credible and accordingly, the Defendant's Motion for New Trial on the grounds of newly discovered evidence is "DENIED." (R. 997).

Treatment in the Court of Appeals:

In briefing, Petitioner argued that the trial court used the incorrect "no doubt as to the credibility of the evidence" standard to assess credibility, which is, indeed in the order at one point. (App. 22; *see also* R. 996). The Court of Appeals, acknowledging that brief phrasing, set out in the opinion that "case law does not require there to 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." (App. 58). In the unpublished opinion, the Court of Appeals cited to, and was guided by this Court's precedent: "*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."). (App. 58).

Discussion:

"In order to prevail in [a] 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." *State v. Spann*, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999). "[O]ur jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment" of the evidence presented in support of

the motion. *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). *See also Johnson, supra.*

Petitioner argues the Court of Appeals erred in its analysis only to the lack of credibility of the father's late confession and in not crediting enough the judge's singular statement of too high a level of credibility. (Pet. 19). However, that credibility was determined on the facts, thus, entitled to deference as the Court of Appeals properly found. Factually, his argument fares no better.

Petitioner's argument rests on the fact that the father did not testify, refused to cooperate, and retained counsel. (Pet. 19). That does not mean the trial judge could not pass on the credibility of the assertions in the affidavit, especially as they stack up to the evidence at trial. *See generally State v. Wakefiel*d, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024) ("the circuit court is limited to reviewing the transcript of, and evidence presented at, the defendant's trial and any other evidence the party moving for a new trial presents as after-discovered evidence"); *State v. Tucker*, 423 S.C. 403, 414, 815 S.E.2d 467, 473 (Ct. App. 2018) ("[a]ssessing credibility often works best with live testimony, but a trial judge's senses still function when reviewing affidavits").

As the judge noted, details that could be investigated over and above what was presented at trial where solely lacking. (App. 997). Further, Petitioner meshes, incorrectly, counsel's report of the confession with the confession. (Pet. 19). Here, the trial court found that Epps accurately relayed James' confession to the court, however remained doubtful as to the credibility of the confessor. (R. 996). That is precisely the type of weighing of the evidence our case law dictates. *See Mercer*, 381 S.C. at 166, 672 S.E.2d at 565

Moreover, the evidence at trial supported the trial judge's observations on the parents' involvement "in what was essentially a cover-up and obfuscation of evidence in the aftermath of the murder." (R. 996). The State presented evidence that there was a dispute between Donna and

Tabatha over Tabatha's tax returns resulting in arguments between Tabatha and Petitioner. 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. 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 Petitioner and Tabatha's home. (R. 508-509).

Then, there is the statement and James's action limited to talking to defense counsel. (R. 997). Together, that undermines credibility, just as the trial judge found. Thus, regardless of a passing reference in the order as to a "level" of credibility, the well-reasoned credibility determination is supported by the facts of record and the Court of Appeals appropriate deferred to the trial court's determination. *Mercer, supra. See also 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.").

Considering the State's theory suggested Donna and James attempted to meddle in the facts of the murder to protect Petitioner, the trial court doubted the reliability of the confession. (R. 996). Moreover, because the parents were heavily involved in Petitioner's case and on a first name basis with Epps, a confession from a family member the day of Petitioner's conviction naturally raises reliability concerns and would not be a surprising motive under the circumstances of this case. Additionally, the sincerity of the confession was at issue. There was no independent statement from James Lawless, no video recording, or any other evidence of his confession presented to the court. The "confession" itself was vague with little exonerating detail that could be investigated:

> 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.

(R. 995). The details that are included are not new from those already presented at trial, for example the cleanup effort and the knife placement and DNA. And, considering James was not present at the motion hearing and had retained counsel by that point, it is likely that the confession would be presented at a subsequent trial, if at all, through Epps, setting up a contest between James and his vague statement and defense counsel's recollection. The trial judge was well-within the reasonable provenance of fact-finder to conclude the statement was contrived for purpose of the new trial motion.

The above facts and circumstances were properly considered by the trial judge and amply support his conclusion that Petitioner 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. Petitioner has shown no error of fact or law in the Court of Appeals opinion, and certiorari review is not warranted.

II. There is no "special or important" reason to grant certiorari review of the Court of Appeals' opinion affirming the lower court when the trial judge's factfinding that the juror's affidavit presented did not reflect on petitioner's exercise of his right to not testify but on consideration of the strategy and arguments presented at trial.

The Trial Court Order:

The trial court considered the affidavit offered by one of the jurors in support of Petitioner's new trial motion. That juror complimented the attorneys' opening statements and stated that Aaron Kenyon's testimony was credible and a factor in his verdict. (R. 999). He stated he considered Kenyon's changes and attempted retraction of his statement but considered the assertion about the victim's scream while she fought with Petitioner to be credible. (R. 999). He stated that he did not believe the child was in the residence within the timeframe of Petitioner leaving for work and

when the body was found because the child would have been crying and screaming in the house. (R. 999). He also stated that the evidence presented showed that Donna and James had been in the house before the body was found. (R. 999).

The trial court noted that facts the juror referenced were "evidentiary issues … discussed in closing arguments." (R. 999). Moreover, it appeared to the trial judge that the juror's comments "he 'would have liked' for Adam and other witnesses to be 'called to the stand'" actually were "focus[ed]… on what witnesses the defense attorney did not call rather than on the Defendant exercising his Fifth Amendment right to remain silent." (R. 999). Moreover, the trial judge reasoned, "These statements are concerning, but do not rise to the level of the Court finding misconduct when considered in light of the statements in the next paragraph, where" the juror "explains how the prosecutor did a good job and the defense attorney did not." (R. 999). The trial judge also noted the juror averred his understanding that at trial, '"the defendant is innocent and [it] was the prosecution[']s job to prove guilt.'" (R. 999). Finally, the trial judge noted the juror's conclusion that, "With the evidence and testimony given during the trial I believe the prosecution was able to put together a good case giv[ing] us the ability to find the defendant guilty of murder," all of which, in turn, led the trial judge "to conclude that no improper burden shifting took place." (R. 999). In further support of the conclusion, the trial judge added that, "There was no evidence of juror misconduct in the two returned post-trial juror surveys that the State provided to the Court." (R. 999).

Treatment in the Court of Appeals:

In its summary opinion, the Court of Appeals found no abuse of discretion. (App. 58). The Court reasoned that "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." (App. 58). The Court cited in parentheticals the limits of only '"ensur[ing] due process, i.e. fundamental fairness"' and not intruding on the deliberations otherwise. (App. 58-59, quoting *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995)).

Discussion:

"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 judge reviewed the juror affidavit provided to the defense after the trial, which detailed the juror's thoughts on the trial generally and the evidence presented. The judge determined that fundamental fairness could be at issue, then considered the affidavit, along with copies of returned juror surveys the Solicitor issued post-trial. (R. 943, 999). Because the affidavit 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. The question then became whether Petitioner was denied due process because jurors disregarded the trial court's instruction that Petitioner's exercise of his right to remain silent should not be considered. When reviewed as a while, the trial judge reasonably concluded the affidavit statement where not indicative of considering the fact Petitioner did not testify as part of the deliberations, but an afterward reflection on strategy. As such, the judge reasonably concluded the affidavit did not support improper burden shifting. Petitioner has failed to show any error in the Court of Appeals' opinion affirming that decision and certiorari review is not warranted.

CONCLUSION

Based on the foregoing, the petition should be denied.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

s/ Melody J. Brown
By:_____

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

March 16, 2026.

ATTORNEYS FOR RESPONDENT