The State of South Carolina
In the Court of Appeals

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SC Court of Appeals

Appeal From Spartanburg County
Court of General Sessions

J. Mark Hayes, II, Circuit Court Judge

Gary Lamont Petty . . . . . Appellant

v.

State of South Carolina . . . . . Respondent

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# Appeal

This 19th day of March, 2025

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# STATEMENT of ISSUE ON APPEAL

- Did the trial Court Abuse its discretion by not granting A hearing on Rule 29(b) (dna) motion for A new trial, Failed to Fully Consider the Evidence.

- Did the trial Court err by Failing to hold an Evidentiary hearing As to Juror #137 And 144's Failure to disclose being A relative And having prior knowledge of defendant And witnesses.

## STATEMENT of CASE

On May 9th 2024 Movant Refiled A Juror Misconduct Motion that he had attempted to Amend to A PCR Application (04184) March 9th 2022, At the time of the attempted Amendment the PCR Application had Already been dismissed (over A year And 3 month, status request stated it was still pending) without Applicant being served with the Final Order (until inquiry had been made to the S.C. Supreme Court)

This Motion was based on A phone Conversation Appellant had with his Relative Juror #137, Affidavit of Personal Knowledge was Attached with Transcript pages Cited and Content of Juror list stated. Request for Subpoena(s) to be issued And Request for hearing.

On June 3rd, 2025 Motion was Amended pursuant to the New Standard Set Forth in <u>Rowell</u>,

The trial Court ruled on this motion by letter on June 6th, 2025, Appellant Appealed the letter but this Court ruled the letter was not A Final Order on 7/29/25.

Appellant had received A File Stamped Copy of the letter on 2/19/26 After inquiry was made about A Filed Stamped Copy.

On Aug. 9th, 2021 Movant made A <u>Rule 29(b)</u> Motion for A new trial based upon New/After discovered And Ascertained DNA Submission Form information.

The Judges letter stated that it would not hold hearings on the Motions, And this Appeal Follows:

Argument

Did the trial Court Abuse its discretion by not granting a hearing on Rule 29(b) screening dna motion for a new trial.

Claim was raised once the evidence had been discovered and ascertained on 4/21/21, and a prima facie showing was made to warrant an evidentiary hearing on motion dated Aug. 9, 2021. (Attachment #1) Amendment (Attachment #2)

The basis of the motion for a new trial was Appellant, years after receiving the Bodes Result Report, receiving the states dna evidence item Submission Form (pg. 14) for the dna retest.

This Submission Form shows that the state did not submit its trial stated item (Suspected Semen) for the dna retest. With suspected semen being the states main source of conviction, with it not being submitted this is proof that the trial stated testimony and evidence was false, as Appellants dna had not been collected from the Alleged Case Victim.

The Judges letter states only a portion of what the Complete Bodes Result Report states, "The major component dna profile matches Appellants' dna profile."

This statement was referring to a vaginal swab (not source of conviction)

The Complete Bodes Result Report states: 2) CCC-1666-0364-E01 is consistent with a female contributor and will be used as victim reference sample CCC-1666-0364-E01 is consistent with a mixture of two individuals including a male major contributor, see pg. 17.

Although the sled result report stated that the vaginal swab had also matched (pg 20), initially, there could not have been a vaginal swab as a case collected dna evidence item, as the alleged victims' testimony and medical documentation indicates that there was no penetration nor signs of force penile penetration to the vagina, see pgs. 21 and 22.

The Bodes retest result report stating that there sample was consistent with a female contributor and would be used as the victim reference sample, indicates that the female contributor was not the victim; a mixture of two individuals indicates penile penetration to the vagina; being a vagina swab there should have been a major female contributor.

However, stated on the submission form there is a vaginal swab [without serology screening to determine the substance]; no suspected semen submitted (source of conviction) and a false panty item. These items submitted were not from the actual case.

The same dna analyst (Nancy Skraba) whom presented the false dna evidence during trial, deceptively misrepresented herself to appellant in 2016 after coming in to the prison to collect appellants' cheek swab for the dna retest, appellant made a personal affidavit of the facts at that time.

The dna evidence items submitted for the Bodes dna retesting were not from the case and had been illegally collected in 2016 or mislabled swabs.

The testing that the Judge stated had been accomplished in 2017, produced results based upon false case items substituted and submitted, as appellant asserts that a hearing and additional testing will prove:

> Alleged vaginal swab is a mislabled saliva swab, or contaminated by random female dna such as sled agent or SCDC employee.

There was no dna evidence to corroborate coerced statement and convict appellant during trial. At a hearing appellant can prove facts are not speculative or false.

<u>Argument</u>

■ <u>Did the trial Court err by failing to hold an evidentiary hearing as to Juror #137 and 144's failure to disclose being a relative and having prior knowledge of defendant and witnesses</u>

The trial Court abused its discretion by stating the following reasons for not holding an evidentiary hearing:

- No prima facie showing had been made,
- Motions did not meet the standard for conducting a <u>Rule 29(b)</u> review,
- Claims could not have been previously raised due to the nature and existence of the jury information being available at time of trial or atleast within 12 months afterwards.

Appellant asserts that a prima facie showing had been made to warrant a hearing on the initial motion filed May 9th, 2021, with an evidentiary hearing requested on the facts stated in the affidavit, the time and date that appellant had spoken with his cousin (Juror #137) over the phone, whom confirmed her identity as name on juror list and identity of Juror #144.

Appellant had proven jurors were disqualified and that the information would have supported a challenge for cause or the use of peremptory strike, as the trial court should have engaged in further inquiry; case law and due process illistrate that on a timely raised claim of juror misconduct a hearing is almost always preferred, see Woods, Powell and Quattlebaum.

Appellant would have only been obligated to notify counsel of a relative and neighbour being in the jury pool had appellant seen them or was made aware of them; Appellant was not obligated to look for them or to have seen them, which distinguished appellant's case from, State v. Elmore. (Where in the defendant was aware of biased juror)

In appellant's case, stated facts proved that appellant was not aware of the biased jurors prior to, during trial or within 12 months afterwards.

It was the solemn duty of the Court to screen the Jurors, to ensure every Juror was unbiased, fair and impartial, see (State v. Gulledge) which the trial Court had failed to do so, transcript pgs. were stated in the motion.

Jurors had also failed to truthfully answer the Judges voir dire questions.

Due to these two procedures being conducted appellant was deprived of being made aware of the biased Jurors, to support challenge for cause or premptory challenge.

Due to the facts stated in appellant's affidavit a prima facie showing had been made.

Clearly, appellant would not have waited 11 years in prison before raising a Juror issue had he been aware of the biased Jurors in the Jury pool or on the Jury during trial; and appellant being aware of the disqualified Jurors and assuming that there would have been a favorable verdict, immediately after the guilty verdict the biased Jurors would have been brought to the attention of Counsel or the Court.

Due to the Content of the appellants affidavit attachment (#4) [which can be supported by subpoena of Jurors or phone records] Juror had stated to appellant (when asked why she did not say anything to the Judge during voir dire) "That woman told us (her and Juror #144) to not say anything or we would be charged with contempt of Court.

This information indicates that the biased Jurors #180 had an incentive to help the State and due to Jurors being instructed by the Clerk or solicitor to not say anything, indicates that the Clerk or solicitor already knew (for some reason) that the defendant would not be able to recognize or have knowledge of the Jurors being in the Jury pool or serving on Jury.

The Clerk or Solicitor knew that the Jurors disclosing their disqualifications would have been the only way the disqualifications could have been disclosed.

Furthermore, The transcript shows that there had been –
- No Jury list provided to the State or defense, TR. pg 12
- There was no Jury list or voir dire form inside the Transcript, pg. 25 +
- The trial Court had stated that it would be calling out Juror's names and numbers for them to come stand in front of the Court TR. pg 12, which never happened.
- Jurors #137 and 144 had failed to disclose disqualification by not responding truthfully to the Judges questions during voir dire TR (pg 12-26)

* Motion was amended pursuant to the new standard set forth in Powell, on 6/3/2025; PCR Application (04899).
Attachment #

STANDARD OF REVIEW

The motion meets the standard of review based upon Juror voir dire misconduct and not the Rule 29(b), 5-prong standard for a new trial.

Due to being a post trial motion, the new/after discovered ascertained evidence was raised within 1yr. Appellant is not attempting to raise an objection as is Gray v. Bryant, which has to be done during trial nor was appellant's motion made pursuant to Rule 29(A), made with in 12 months after trial.

The trial Court applied the wrong standard for review, as a Juror voir dire misconduct claim is governed by its own standard and not the 5-prong standard as a Juror misconduct claim has nothing to do with guilt or innocence, see McCoy.

As Woods states that such a claim must be timely raised as appellant had immediately raised claim after finally being able to contact his relative Juror #137, exercised his due diligence, see Rowell, [I] states how trial Court should resolve allegations that a Juror concealed information during voir dire, a hearing is required to ascertain the facts.

Appellant's claim could not have been raised previously based upon the Juror list alone, as Appellant confirmed Jurors identity with the phone call to his cousin, see Ruttle.

The Court has no evidence to support its speculation that Appellant was aware of Jurors, or that the information was previously available.

The trial Courts procedural reasons for not Conducting an hearing, have no evidentiary support and are errors of law.

The trial Court made no observation of the voir dire proceedings to see if Appellant's Affidavit had any support from the record, denying Appellant Fundamental Fairness of due process.

## Conclusion

Due to the trial Courts abuse of discretion shown, Appellant Respectfully Request that this information Requires this honorable Court to Reverse and Remand his Case back to the honorable trial Court for hearing (Subpoena and other evidence presented) to be held.

**Gary Lamont Petty**
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Perry Correctional Institution
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Pelzer, SC 29669

The State of South Carolina
In the Court of Appeals

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Appeal from Spartanburg County
General Sessions Court

Honorable J. Mark Hayes, Circuit Court Judge

Appellate Case No.

Gary Lamont Petty . . . . . Appellant

V.

State of South Carolina . . . . . Respondent

## Certificate of Service

I, Gary Lamont Petty, Certify that I have filed and served the appeal (1 of 26; 23, 24, 25, 26 are attachments) with the honorable Clerk and upon each party, by depositing copies of the appeal in the U.S. mail, prepaid postage, addressed:

CC: Mark Farthing
Ast. Attorney General
P.O. Box 11549
Columbia, S.C.

Barry Joe Barnette
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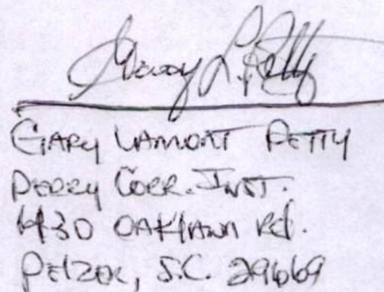

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Amy W. Cox
Clerk of Court
P.O. Box 3483
Sptbg., S.C. 29304

This 19th day of March, 2026

# The South Carolina Court of Appeals

The State, Respondent,

v.

Gary Lamont Petty, Appellant.

Appellate Case No. 2025-001306

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ORDER

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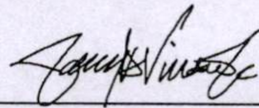
Appellant filed a *pro se* notice of appeal. From our review of the public index, there is not a final order reviewable on appeal. Accordingly, this appeal is dismissed. *See* S.C. Code Ann. § 14-3-330 (2007). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



_______________________________, J.
FOR THE COURT

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Gary L. Petty, 264235

FILED
**Jul 16 2025**

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MAR 24 2026

SC Court of Appeals

ATTN: Honorable Clerk of Court of Appeals

When time permits will you please Return me a File stamped Copy of the Enclosed Appeal and exhibits (Attachments)

Thank You,

Gary Lamont Petty, #264285
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This 19th day of March, 2026

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