

Mr. Kevin L. Choice, # 257223
Lee Correctional Inst.
[Darlington - North - 2132]
Bishopville, SC 29010

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Dec. 30, 2013,

JAN 06 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals

SC Court of Appeals

P.O. Box 11629

Columbia, SC 29211

RE: State of South Carolina v. Kevin Choice; 1999-65-43-0756

Dear Ms. Kitchings:

An appeal was filed with your Court on my behalf, by attorney Jeremy A. Thompson, on Dec. 20, 2013. The appeal of the order denying my Motion for a New Trial Based on After-Discovered Evidence filed pursuant to Rule 29(b), SCRCrimP, filed Dec. 6, 2013. Ma'am I was informed by attorney Jeremy A. Thompson, that I won't be appointed Counsel to represent me on appeal. However, Ma'am there are exceptional circumstances that warrant the appointment of Counsel to properly brief this appeal.:

Reason for Counsel

1. The first reason is the Appellant, is currently housed at the Lee Corr. Inst. (Darlington Unit), which is on lockdown status at this time, and has been since Dec. 25, 2013.

a) Under this lockdown status, Appellant is not allowed to visit the Law Library, where Appellant don't have access to the rules of Court to properly prepare his appeal in a timely manner.

b) There is no reasonable way for Appellant to determine when this lockdown status will be lifted. Due to the fact that such status comes from a major breach in security, consisting of a hole in the ceiling, possible escape route, or route to get contraband into the institution, and two prisoner on staff assaults.

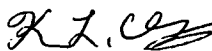
c) Appellant has not participated in any of the actions that lead to the lockdown status of this unit. However, he will not be allowed to properly prepare or perfect an appeal in your honorable Court under this status. Therefore, Appellant begs you to appoint him counsel to represent him on appeal.

2. By copy of the written Order of Judge James, Page 2. it is quite clear that Appellant has an Actual Innocents Claim, and he needs the professional hand of an attorney to properly present such a claim before your honorable Court. Therefore, Appellant begs you to appoint counsel to represent him on Appeal.

I openly thank you in advance Ma'am, for your time and consideration.

Sincerely!

Kevin C. Choice



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COORDINATOR

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STATE OF SOUTH CAROLINA) 2013 DEC -6 PH 12: 53 IN THE COURT OF COMMON PLEAS

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COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
SUMTER COUNTY, S.C. 1999-GS-43-756

JAN 06 2014

State of South Carolina,)

Plaintiff,)

vs)

Kevin Choice,)

Defendant,)

ORDER

SC Court of Appeals
CERTIFIED TRUE COPY
OF ORIGINAL FILED
Sharon H. Susan
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter was before the court on motion of defendant Kevin Choice for a new trial. Jeremy A. Thompson, Esquire, represents the defendant. Third Circuit Solicitor Ernest A. Finney, III, represents the State.

The defendant was found guilty of murder by a Sumter County jury on March 7, 2001. He was convicted of shooting and killing one Tony Rhodes in a nightclub. Louis Charles Jenkins, Jr. gave eyewitness testimony that the defendant was the shooter, stating that he saw the defendant holding a gun and shooting the victim.

The defendant moves for a new trial on the basis of newly discovered evidence. Along with his motion and his own affidavit, the defendant presented the affidavit of Mr. Jenkins dated March 24, 2006 and filed June 26, 2006 in which Mr. Jenkins states that he was actually in the restroom at the time of the shooting and that he did not see the incident. Mr. Jenkins further stated in his affidavit that he was married to the victim's sister and that their family members pressured and coerced him into giving false trial testimony. He further stated in his affidavit that he was facing charges for trafficking in

crack cocaine and possession with intent to distribute crack cocaine at the time of the trial and that William Croft, the assistant solicitor prosecuting the defendant, pressured him into giving false testimony in exchange for more lenient treatment on those charges. He also claimed in the affidavit that Mr. Croft made comments that made him fear for his safety if he went to prison on those drug charges.

On August 31, 2012, Mr. Jenkins signed another affidavit in which he stated that the statements he made in the above-referenced 2006 affidavit were false and that his trial testimony was true. He said he made the statements in the 2006 affidavit because he felt sorry for the defendant and the defendant "may have more on what took place."

A hearing on the defendant's new trial motion was held on November 21, 2013. Mr. Jenkins testified and stated that his trial testimony was the truth. He stated that he was incarcerated at the same facility as the defendant in 2006 and that he encountered the defendant and the defendant convinced him that he had gathered evidence to prove he was not guilty of shooting the victim. Jenkins testified that he gave the defendant the benefit of the doubt when he signed the 2006 affidavit because he thought the defendant really had information that would prove the defendant was not the shooter.

It should be noted that at the 2001 trial, the defendant testified that he was present when the victim was shot but that he did not shoot the victim. The defendant testified at trial that someone handed him the gun after the shooting and that he ran out of the nightclub door with the gun.

To prevail on a motion for a new trial based upon after discovered evidence, the defendant must show (1) the evidence is such that it would probably change the result of the trial if a new trial is granted; (2) the evidence has been discovered since the trial; (3)

the evidence could not have been discovered prior to trial by the exercise of diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v Needs, 333 S.C. 134, 508 S.E. 2d 857 (1999).

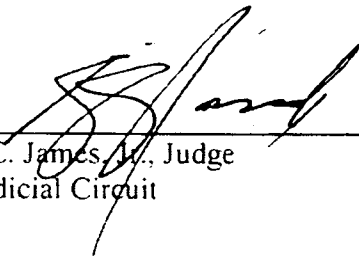
In my view, there is a substantial questions as to whether there is now any "evidence" that has been discovered since the defendant's trial. It is true that the sole eyewitness recanted his testimony in his 2006 affidavit. However, he has now recanted his recantation two times, once in his 2012 affidavit and again in his testimony at the hearing. Neither side presented any case law on the issue of whether a recantation that itself has been recanted rises to the level of after discovered evidence.

Even if the 2006 recantation is "after discovered evidence", this court concludes that the motion must be denied. While the information imparted in the 2006 affidavit is material and has been discovered since the trial, and while it is arguable the evidence could not have been discovered prior to trial by the exercise of due diligence, the motion must still be denied. The evidence imparted in the 2006 affidavit would likely not change the result of the trial, primarily because Mr. Jenkins' 2006 recantation has been drastically tainted by his own 2012 affidavit and by his hearing testimony, i.e., there have been two recantations of his recantation.

The court also heard testimony from self-professed "jail-house lawyer" Ronald D. Skipper, who was the author of Mr. Jenkins' 2006 affidavit. His testimony was, in my view, inconsequential, as Mr. Jenkins did not deny that he made the statements in his 2006 affidavit. Instead, Mr. Jenkins now says those 2006 statements were simply not true.

For the foregoing reasons, the defendant's motion for new trial is denied.

AND IT IS SO ORDERED.



George C. James, IV, Judge
Third Judicial Circuit

Sumter, South Carolina

December 6, 2013



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Bishopville, SC 29010

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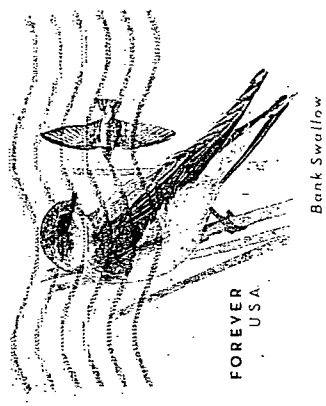
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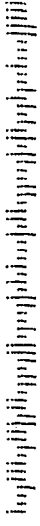
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