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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JODY LYNN WARD,

APPELLANT

APPELLATE CASE NO. 2025-002597

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant's motion for a new trial based on after discovered evidence?

STATEMENT OF THE CASE

In July 2003, Appellant was indicted by a Georgetown County grand jury for two counts of murder in the deaths of Wilfred Brown and Elton Rutledge, Jr. The deaths were alleged to have occurred on or about August 3, 2002. R. 827-830. On March 15, 2004, the state called the case to trial before the Honorable Paula H. Thomas and a jury. Appellant was represented by Margaret Ann Kneece and J. Wesley Locklair, III; J. Greogry Hembree and Robert B. Bryan represented the state. R. 1.

After a four-day trial, Appellant was found guilty as indicted. R. 651, ll. 1-19. Judge Thomas sentenced him to concurrent terms of life imprisonment. R. 659. Appellant's direct appeal was dismissed pursuant to Anders v. California.¹ State v. Ward, 2007-UP-048 (S.C. Ct. App. filed Jan. 26, 2007). Appellant timely pursued post-conviction relief, which was denied, as was the subsequent petition for writ of certiorari. On October 4, 2024, Appellant filed a motion for a new trial based on after discovered evidence. R. 726-753. The motion was supplemented by *pro se* amendments on October 9, 2024, October 18, 2024, and February 24, 2025. R. 754-781; 782-800; 801-809. The state filed a response on May 1, 2025. R. 810-818.

No hearing was held on Appellant's motion. An order denying the motion for a new trial was filed on July 15, 2025. The court found that none of the claims raised by Appellant satisfied the requirements for after discovered evidence under Rule 29(b), SCRCrimP, nor controlling case law. R. 819-826.

¹ 386 U.S. 738 (1967)

STATEMENT OF THE FACTS

At trial, the state alleged Appellant shot and killed the two men over \$1050 and a pound of marijuana. R. 179, l. 6 – 180, l. 4. In support of that theory, largely circumstantial evidence was presented at trial showing that Appellant, Brown, and Rutledge were all together in Appellant's Suzuki Sidekick the day Brown and Rutledge went missing, R. 196, ll. 13-15; R. 332, ll. 5-13; that Appellant was trying to purchase marijuana, had given Brown money for the drug deal, and Brown had purportedly stolen the money from him which angered Appellant, R. 195, ll. 15-21; 197, ll. 19-24; 199, ll. 7-15; that Appellant stated to a friend he would kill Brown if he did not get his money or his marijuana, R. 199, ll. 18-24; that Appellant stated to three individuals that he had taken care of/killed the two men, R. 204, ll. 15-24; 264, l. 21 – 265, l. 6; 424, ll. 4-23; that Appellant and his wife reported the Suzuki Sidekick as stolen by Brown and Rutledge the following day, R. 331, l. 11 – 333, l. 14; that the Sidekick was sunk in Lake Dawhoo by Appellant and subsequently recovered by police, R. 204, ll. 23-24; 359, l. 14 – 371, l. 21; that the recovered Sidekick had bullet holes in the frame and interior, a single projectile in the front passenger seat, and blood stains on the back seat, R. 379, l. 11 – 387, l. 14; that Appellant had owned a TEC-9 handgun which matched the caliber of bullet used to commit the murders, R. 205, ll. 7-10; 488, l. 23 – 489, l. 6; 494, l. 8 – 495, l. 3; and that Appellant had gathered the skeletal remains of the two men in a burlap bag and moved them to a second location a little over a month after their deaths, R. 410, l. 12 – 422, l. 24.

No DNA evidence was used during the trial. R. 94, ll. 10-11. The state was able to definitively identify Wilfred Brown through dental records. His cause of death was a gunshot wound to the left back of the head, behind the ear. R. 478, l. 1 – 479, l. 19. The state was unable to definitively identify Elton Rutledge, Jr. from dental records or DNA. R. 479, l. 20 – 480, l. 6.

At trial, Steve Lambert with South Carolina Law Enforcement Division (SLED), testified that the mandible bone sent for DNA testing was too decayed for a sample to be obtained. He also testified that the blood stain from the backseat of the Suzuki could not be confirmed as human blood or further tested because it was “very diffuse, very dilute” as if it had been dissolved in water. R. 485, ll. 14 – 485, l. 10. The state ultimately identified the second set of remains as Rutledge by having Rutledge’s family members identify the tennis shoes that were recovered with the bones as belonging to him. R. 520, l. 8 – 522, l. 4.

After his arrest, Appellant spoke with then-Assistant Sherriff Carter Weaver about the incident. R. 530, l. 1 – 531, l. 16. Appellant placed blame on Brian Elliot for the shootings. He stated that Wilford was selling crack cocaine to Elliot, and things were going fine. Everyone was using drugs when Wilford pulled out a gun and was demanding money. Appellant stated Wilford demanded money from him and Elliot then fired his gun. Elliot and Wilford then wrestled over the gun. Elliot got control of the gun and shot back killing both men. He continued that he helped Elliot move the bodies into the woods and that the only reason he had not come forward was because Elliot had threatened him and his family. At trial, the state entered Appellants taped statement into evidence and the transcript was made a court’s exhibit. R. 661-719 (Court’s Exhibit No. 7 – Transcript of Statement of Defendant).

In opening statements, the state attacked the notion that Brian Elliot was involved with the murders. However, the state argued that even if Elliot was somehow involved, that did not mean Appellant was not guilty because the state was proceeding under the hand of one is the hand of all theory. R. 186-187. The state called Brian Elliot’s wife, Melissa Elliot, who testified that Brian was at home recovering from a severe hangover during the time the murders were alleged to have taken place. R. 544-763

STANDARD OF REVIEW

“A motion for a new trial based on after discovered evidence is addressed to the sound discretion of the trial judge.” State v. Harris, 391 S.C. 539, 544-45, 706 S.E.2d 526, 529 (Ct. App. 2011) (*quoting* State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978)) (internal quotation marks omitted). “The credibility of newly discovered evidence is for the trial court to determine.” Harris, 391 S.C. at 545, 706 S.E.2d at 529 (*citing* State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977)). “Only the trial court and not the appellate court has the power to weigh the evidence; the trial court’s judgment will not be disturbed except for error of law or abuse of discretion.” Id. (*citing* Porter, 269 S.C. at 621, 239 S.E.2d at 643). On review, the appellate court may not make its own findings of fact. The deferential standard of review constrains the appellate court to affirm the trial court if reasonably supported by the evidence. Id. (*citing* State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009)).

ARGUMENT

The circuit court erred in denying Appellant's motion for a new trial based on after discovered evidence.

Relevant Facts

In the motion for a new trial and amendments thereto, Appellant raised numerous grounds as after discovered evidence. One ground was that the state had in its possession exculpatory evidence in the form of a statement by Rhonda Haithcock. Appellant alleged that a private investigator had gotten the statement from Haithcock wherein she heard Brian Elliot tell Denise Cox, "Y'all know who the real trigger man is." R. 749. The state confirmed that in 2022, Haithcock provided a statement to the state and to Appellant's attorney that Brian Elliot had implied to her that he was responsible for the killings. However, the state argued the uncorroborated statement by Haithcock would not change the outcome of the trial. R. 810-818. The lower court agreed with the state that the statement was not sufficient to grant a new trial. The court noted the statement was unsigned and not notarized. Further, the court found that Elliot's involvement with the murders had been presented to the jury during the trial and that there was overwhelming evidence of Appellant's guilt. The court ruled that the uncorroborated statement did not meet the test for after discovered evidence. R. 819-826.

Discussion

The standard to obtain a new trial based on newly discovered evidence is well established. "To obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Clark v. State, 315 S.C. 385,

387-88, 434 S.E.2d 266, 267 (1993) (*citing* Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

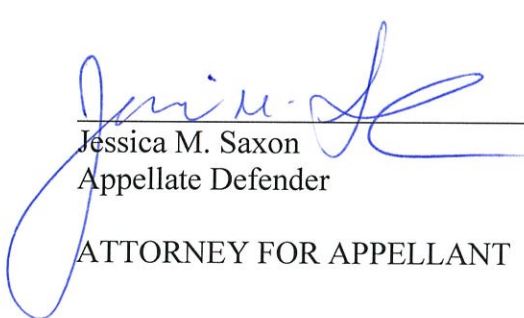
First, the Haithcock statement was discovered after trial and could not have been discovered prior to trial. In fact, if Appellant's allegations were to be taken on their face, it appears the state had knowledge of Haithcock's statement prior to the trial and withheld that information. Further evidence that Appellant could not have discovered the statement through the exercise of due diligence.

The statement is material to the issue of guilt and is not merely cumulative or impeaching. Appellant has maintained he did not commit the murders in this case. His statement to Weaver indicated he was present when the shooting occurred but that he did not participate in the murders. While Appellant asserted Elliot was the responsible party, there was no corroborative evidence presented to the jury on this contention. The statement of Haithcock that Elliot himself purported to be the shooter would have been corroborative evidence of Appellant's story and further bolstered his contention that he was merely present when the murders occurred. Because this statement would corroborate Appellant's theory of the case, it would probably change the results if a new trial was granted, considering the highly circumstantial nature of the state's case against Appellant.

Appellant has met the five part test for after discovered evidence. The lower court erred in denying the motion for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse the lower court and hold he has met the test for after discovered evidence and a new trial.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2026.

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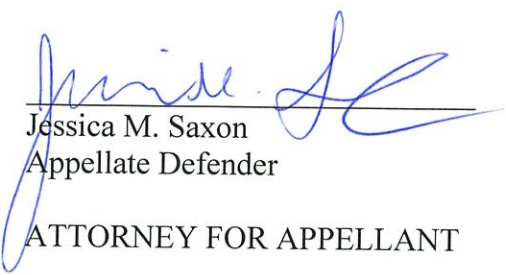
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jody Lynn Ward states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's motion for a new trial which decided without a hearing by Judge Roger M. Young, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the motion for a new trial.

Wherefore, she asks the Court to relieve her as counsel for Jody Lynn Ward.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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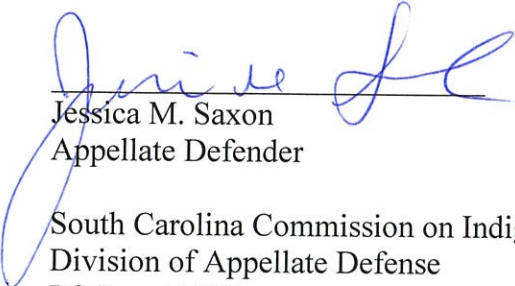
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): 2003-GS-22-1030 and 1031;
- (2) Trial Transcript dated Marh 15-18, 2004;
- (3) Court's Seven – Transcript of Defendant's Statement to Police;
- (4) Appellant's Motion to Compel release of Haithcock Statement date May 12, 2023;
- (5) Pro Se Motion for New Trial filed Oct. 4, 2024;
- (6) Pro Se Amendments to Motion for New Trial filed Oct. 9, 2024, Oct. 18, 2024, and Feb. 24, 2025;
- (7) State's Return to Motion for New Trial dated May 1, 2025;
- (8) Order Denying Motion for New Trial filed July 15, 2025.

I certify that this designation contains no matter which is irrelevant to this appeal.


Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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This 8th day of September, 2026.

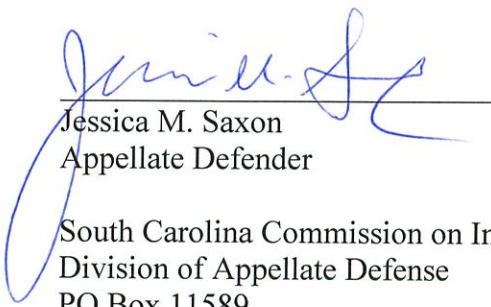
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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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Appellate Defender

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Division of Appellate Defense
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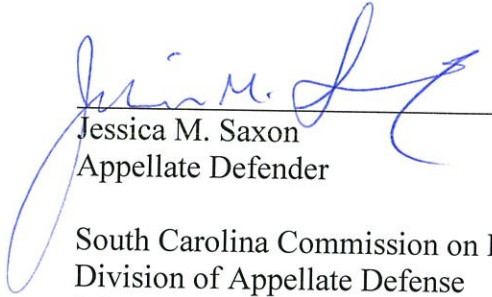
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jody Lynn Ward, #300644, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 8th day of September, 2026.



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Appellate Defender

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Division of Appellate Defense
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