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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Milton Kimpson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN AARON DAVIS,

APPELLANT

APPELLATE CASE NO. 2025-002397

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The circuit court judge erred in denying appellant's motion for a new trial based on after-discovered evidence on the ground that the statement dated September 26, 2017, submitted by the accuser at age seventeen therein denying the sexual misconduct allegations did not constitute after discovered evidence since the accuser authored an identical statement dated April 4, 2007, at age six-and-one-half denying said allegations, which in turn led to the conclusion that the statement from the year 2017 was not newly discovered, because to the contrary, however, the 2007 statement issued by the minor was erroneously misconstrued as a legally sound document that should have been disqualified and disregarded rather than used to deny appellant's claim.

STATEMENT OF THE CASE

Appellant Jonathan Aaron Davis entered an Alford¹ plea to assault and battery of a high and aggravated nature² during the January 2009 term of the Richland County General Sessions Court before Judge L. Casey Manning and was sentenced to ten years imprisonment, suspended upon five years probation. Appellant did not enjoy the benefit of a direct appeal in the case. However, appellant was denied relief on post-conviction relief.

On September 18, 2018, appellant filed a motion for a new trial based on after discovered evidence under Rule 29(b), SCRCrimP. A hearing was convened on September 22, 2025, at the Richland County Courthouse before Judge Milton G. Kimpson. On November 20, 2025, Judge Kimpson issued an Order denying relief.

Appellant appealed. This brief follows.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

² Appellant was originally charged with first degree criminal sexual conduct with a minor.

STANDARD OF REVIEW

The trial court's ruling on a motion for new based on after-discovered evidence "will not be disturbed except for an error of law or abuse of discretion." State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 529 (Ct. App. 2011). Where the trial judge's ruling is controlled by an error of law, this Court will reverse. State v. Spann, 334 S.C. 618, 622, 513 S.E.2d 98, 100 (1999), (holding trial judge committed an error of law in finding the newly discovered evidence could have been discovered by due diligence). The trial judge should specify the grounds upon which the denial of a motion for a new trial is based. State v. Pierce, 263 S.C. 23, 32-33, 207 S.E.2d 141, 410 (1974).

ARGUMENT

The circuit court judge erred in denying appellant's motion for a new trial based on after-discovered evidence on the ground that the statement dated September 26, 2017, submitted by the accuser at age seventeen therein denying the sexual misconduct allegations did not constitute after discovered evidence since the accuser authored an identical statement dated April 4, 2007, at age six-and-one-half denying said allegations, which in turn led to the conclusion that the statement from the year 2017 was not newly discovered, because to the contrary, however, the 2007 statement issued by the minor was erroneously misconstrued as a legally sound document that should have been disqualified and disregarded rather than used to deny appellant's claim.

Appellant was accused of sexual misconduct perpetrated upon his six-year-old nephew, (hereinafter referred to as "the accuser"), during the year 2006. Tr. 62, l. 24-p. 64, l.24. Appellant was apparently seventeen years old in 2006, and pled guilty to ABHAN in 2009. The accuser wrote a handwritten letter dated April 7, 2007, during which time the accuser was approximately six-and-one-half years of age denying the allegations made in the case. Subsequently, the accuser submitted a letter dated September 26, 2017, at the age of seventeen therein denying the allegations made in the case, and an affidavit dated October 10, 2018, reflecting the same.

During the hearing held in the case, appellant testified that he never touched the accuser inappropriately, and that he did not have anal or oral sex with the accuser, and that he did not view pornographic materials with the accuser. Tr. 12, lines 15-p. 13, l.19. Also, appellant gave a statement dated March 22, 2027, wherein he denied guilt also. Tr. ____.

The accuser testified during the hearing and stated that he was coached to lie about sex events involving appellant that allegedly happened in 2006, and that the alleged inappropriate touching never happened. Tr. 64, l.19-p. 67, l.4. The accuser stated that he submitted an affidavit

on October 10, 2018 (See Defense Exhibit #4), and a letter dated September 26, 2017 (See Defense Exhibit No. 4) both swearing that appellant “didn’t commit a crime against [him]” and that he (the accuser) lied and submitted false accusations regarding the alleged sex acts in question. Tr. 67, 1.10-p. 68, 1.25. The accuser stated that his father’s girlfriend told [him] to say [appellant touched him]. Tr. 68, 1.21-25. Tr. 82, 1.16-23; Tr. 84, 1.13-17. Also, the accuser admitted that he wrote a handwritten letter on April 7, 2007, stating that the sex accusations and allegations were untrue. Tr. 71, 1.1-18. See Defense Exhibit #3 where the accuser wrote “I know you didn’t touch me...Tonya told me to say it.” Tr. _____. The accuser added that no one pressured him to recant and produce the letter and affidavit, and that the words written therein were his words. Tr. 75, 1.1-p. 76, 1.23.

In the Order denying relief to appellant, the primary reason for the rejection of the new trial motion based on after discovered evidence was because the newly discovered evidence presented (2017 and 2018 statements) did not constitute newly discovered evidence that was discovered after the plea” or “unable to [have been] discovered beforehand. The conclusion from the Order was that the accuser’s 2017 statement was available to appellant previously, and thus the accuser’s subsequent 2017 letter and 2018 affidavit did not constitute after discovered evidence.

S.C. Rule 29(b) SCRCF reads as follows:

(b) New Trials Based on After-Discovered Evidence. A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is

not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.

In Clark v. State 315 SC 385, 434 S.E.2d 260 (1993), the Court listed the following factors to be proved in order to establish a claim of after discovered evidence:

Traditionally, in South Carolina, “[t]o 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 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.” McCoy v. State, 401 S.C. 363, 368 n.1 737 S.E.2d 623, 625 n.1 (2013).

Moreover, in Jamison v. State, 410 S.C. 456, 765 S.C. 123 (2014), the Court held that in **guilty plea** cases the following factors must be proved in order to establish an after discovered evidence claim:

Guided by the language of section 17-27-20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated.

Clearly, the circuit court judge erroneously relied on the 2007 statement from a six-and-one-half-year old as legally qualifying and constituting evidence known beforehand in ruling that the 2017 and 2018 statements submitted by the accuser did not constitute newly discovered evidence. This ruling was error because a statement from a six-and-one-half-year old, who was clearly a minor at the time, and who had no agency over himself at the time, and who was in DSS protective custody at the time, and whom appellant could not contact or interview at the time, would not qualify as a lawful document that was legally sound and applicable for use in this case. Note that minors are not competent to testify at trial save certain conditions are met

that qualify them to testify. For example, a child of tender years must be qualified to give evidence and proof of competency before such a child can give testimony at trial.³ State v. Givens, 267 S.C. 47, 225 S.E.2d 867 (1976). Also, note the Court's holding regarding the issue of evidence presented by a child in S.C. Dept. of Social Services v. Doe, 292SC211 355 S.E.2d 543 (1987) as follows:

Child protective services proceeding was initiated by the Department of Social Services on basis of alleged sexual abuse. The Family Court, Greenville County, R. Kinard Johnson, Jr., J., entered a protective order after creating a child abuse exception to rule against hearsay, and appeal was taken. The Court of Appeals, Bell, J., held that statements made by child out of court were not admissible as substantive evidence under "child abuse" exception to rule against hearsay notwithstanding allegations as to child's tender years, harm to child, inability of child to testify in presence of parties, and lack of proof without child's statements.

Reversed.

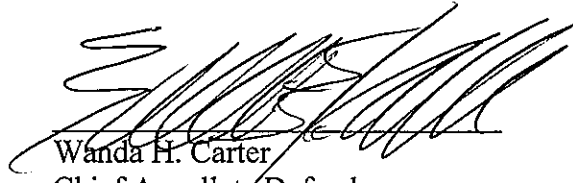
Moreover, there is a very detailed outline for out-of-court statements given by children where trustworthiness and veracity must be tested (see S.C. Code Ann. §19-1-80(2005), particularly with respect to the age and maturity of the child.

Therefore, the circuit court judge erred in ruling that the accuser's statement made at age six-and-one-half was legally sound and lawful as legitimate beforehand evidence that served to nullify statements made by the accuser as an adult and submitted in 2017 and 2018, and in denying appellant's motion for a new trial based on after-discovered evidence thereafter in the case.

³ A child's competency to testify depends on showing to the satisfaction of the trial judge that the child is substantially rational and responsive to the questions asked and is sufficiently aware of the moral duty to tell the truth and the probability of punishment if he lies. State v. Givens, 267 S.C. 47, 225 S.E.2d 867 (1976). If the child is mature enough (1) to understand questions and narrate answers, (2) to perceive facts accurately through the medium of the senses, (3) to recall them correctly, (4) to relate a true version of the facts perceived, (5) to know the difference between right and wrong, good and bad, (6) to understand it is right or good to tell the truth and wrong or bad to lie, (7) to be willing to tell the truth, and (8) to fear punishment if he lies, then he is competent to testify.

CONCLUSION

Based on the foregoing argument, the circuit court judge's Order should be vacated and a new trial granted to appellant.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2026.

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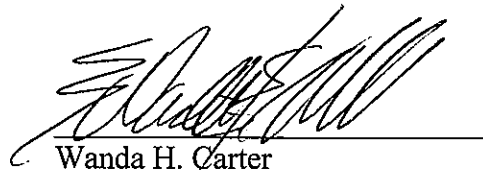
JONATHAN AARON DAVIS,

APPELLANT

APPELLATE CASE NO. 2025-002397

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 4th day of September, 2026.


Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT