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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-000367

THE STATE,RESPONDENT

v.

ZACHARY DAVID HUGHES,APPELLANT.

RESPONDENT'S (SECOND) STATUS REPORT

On July 21, 2026, this Court granted Appellant's Motion to Stay the Appeal and Remand to Circuit Court for Appellant to file a motion for a new trial based on after-discovered evidence. In the Order, this Court mandated that counsel for Appellant provide a status report every thirty days throughout the pendency of the remand proceedings. On September 21, 2026, Appellant provided his third status report to the undersigned counsel and to this Court. As with Appellant's previous status report filed August 21, 2026, Respondent believes it is necessary to address some contentions raised therein:

1. At the in-chambers August 26, 2026 status conference, Judge McIntosh instructed counsel for Appellant to file their motion for a new trial within two weeks or to otherwise provide a status update following said two weeks. The new trial motion has not been filed. However, counsel did provide chambers with a status update.

2. Also at the in-chambers August 26, 2026 status conference, Judge McIntosh declined to rule on Appellant's motion to disqualify the solicitor's office, finding the motion could only be premature since the motion for new trial had not even been filed.

3. Following said two weeks, Appellant informed Judge McIntosh by email regarding the status of their investigation and reasserted a request for Judge McIntosh to rule on their motion to disqualify the solicitor's office. No action has been taken, and, Respondent submits, none is necessary. The undersigned has indicated that the Attorney General's Office would be state counsel, specifically for the purposes of directly countering Appellant's forthcoming motion for a new trial with a motion to dismiss on the disclosed, intended basis for the motion¹—a basis, like the similar appeal issue, that would be materially deficient as a matter of law.²

4. Regarding Appellant's FOIA request to the 13th Circuit Solicitor's Office, Respondent notes that counsel has been provided with a FOIA response yesterday afternoon indicating that three responsive emails were found (and attached), and that further review of paper files would require a deposit. Regardless, this should not be an acceptable basis for failing to file the motion. Appellant has yet to allege additional, legally probative evidence going to guilt or innocence could be discovered. "To prevail on a motion for a new trial based on after-discovered evidence, the moving party must show the 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

¹ Appellant has staked out the basis as stemming from the victim's boyfriend's guilty plea. The boyfriend was a witness in the trial primarily because he found the victim's body.

² Appellant mistakenly contends that the undersigned have conceded that the Attorney General's Office is the proper litigant on behalf of the State, and by extension, conceded that the 13th Circuit Solicitor's Office should be disqualified. Respectfully, this is a stretched reading of the State's position. As Appellant does correctly note, it has been our position since the initial consultation regarding the motion to disqualify that not only would it be inappropriate on the merits, but it was/is also procedurally deficient as there was and still remains no pending motion for a new trial before the circuit court. As such, any disqualification would be premature. It still is.

exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching.” *State v. Wakefield*, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024) (citing *State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999)).³

5. Respondent also respectfully contends that if there is further material delay in the current remand proceedings as a result of Appellant’s failure to file a motion for a new trial, Respondent may move to lift the stay. Should Appellant become prepared to actually file a motion for a new trial, he may again seek permission from this court, if the appeal is still pending.

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³ Again, Respondent emphasizes that formal discovery is not authorized in the context of seeking a new trial on after-discovered evidence. *See Wakefield*, 443 S.C. at 127, 903 S.E.2d at 491 (“There is no provision of law or decision of this Court allowing for additional discovery . . . after a hearing on the new trial motion has been ordered. We hold discovery cannot be ordered on a motion for a new trial based on after-discovered evidence.”).

Respectfully submitted,

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