

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
L. Casey Manning, Circuit Court Judge

RECEIVED

AUG 18 2014

S.C. Supreme Court

FRED R. RUTLAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000381

SUPPLEMENTAL APPENDIX

SUSAN B. HACKETT
Appellate Defender

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Attorney General

South Carolina Commission on Indigent
Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
JUN 21 8 31 AM '93

THOMAS K. GONERFORD
CLERK OF COURT
LEXINGTON SC

The State of South Carolina

vs.

Fred R. Rutland,

Defendant.

**MOTION FOR A NEW TRIAL
ON AFTER-DISCOVERED EVIDENCE
AND TO STAY THE TIME FOR
PERFECTING AN APPEAL
RULES OF CRIMINAL PROCEDURE, RULE 29**

Defendant, following the jury verdict of murder rendered against him in the above-captioned action at trial on May 28, 1993, now comes before the Court through his undersigned counsel to move for a new trial and stay the time for perfecting an appeal pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure on the following grounds:

That according to the attached article by Bob Stuart, published in *The State* newspaper, on 09/05/92, p. 2B, and affidavits of Wesley Bruce Vowell, Belinda Joyce Smith, and Cindy Lou Wise; the witness for the prosecution, Kimberly Kestner, perjured herself when she testified under oath to the following:

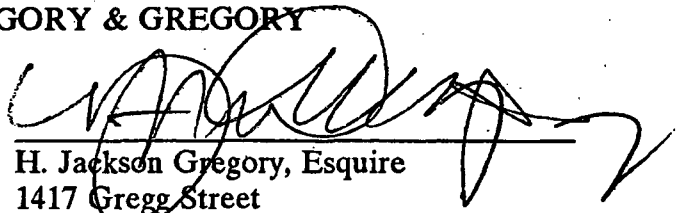
1. that she did not see Jimmy Peele enter the Bow Wow Boutique on September 4, 1992, with a 9mm pistol;
2. that at she did not see Jimmy Peele point said pistol at Defendant Fred R. Rutland;
3. that she did not hear Defendant Fred R. Rutland say, "Don't Jimmy, don't," in an effort to warn Jimmy Peele not to shoot said pistol.

When, according to the afore-mentioned documents Kimberly Kestner has related to many people on various occasions that:

1. Jimmy Peele entered the Bow Wow Boutique with a weapon;
2. Jimmy Peele aimed his weapon at both Sally Peele and Fred Rutland;
3. Fred Rutland attempted to warn Jimmy Peele not to shoot his weapon by presenting his own weapon and by saying "Don't Jimmy, don't";
4. if it had not been for the fact that his weapon's safety catch was on, Jimmy Peele would have fired his weapon;
5. she (Kimberly Kestner) believed her own life to be endangered by the presence of Jimmy Peele armed with a weapon on the aforesaid date; and
6. she believed that Fred Rutland acted not only in self-defense, but in the defense of all others present, including herself, when he shot Jimmy Peele.

GREGORY & GREGORY

By:



H. Jackson Gregory, Esquire
 1417 Gregg Street
 Post Office Box 2351
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 (803) 765-1112

Attorneys for Defendant

Columbia, South Carolina

June 15, 1993.


Wade's son charged with making calls

ry Weathers, 34, of 21 Fox was charged with making phone calls on Aug. 1 and 2, says R. Metts said. of the calls, according to caller warned Hendrix to office and get out of the e're going to finish you off. is done, at least for this e ran third in the primary, ighman and Caldwell in a

runoff next Tuesday. Hendrix also had problems with the law, facing six charges of making harassing telephone calls to a former boyfriend, Tom Anderson, and also with damaging his house and taking his keys and checkbook from a van. Those charges are pending, and no court dates have been set. The night she lost the primary, Hendrix blamed the "slander and smut" from the Caldwell campaign

for her defeat. Hendrix is completing her second four-year term as Lexington auditor. Caldwell said her son is innocent, and she accused her political opponents of being behind the arrest. "He said he didn't make those calls. I believe he didn't make those calls," Caldwell said. "It's a political thing." Caldwell also has denied any part in helping bring the charges against

Hendrix or using the charges for political purposes. According to the sheriff, the calls by Weathers were made from his residence. Weathers turned himself in Friday afternoon and was released on bond later, the sheriff said. The charge of unlawful use of a telephone is a misdemeanor, subject to punishment of up to \$100 or 30 days in jail.



Budget-cut winners

Here are the agencies that benefited the most when the Budget and Control Board decided against a straight 4 percent cut in agency spending. Instead, the board used a formula that cut more from those agencies that received the largest increases in the fiscal year that began July 1.

Agency	Proposed 4% Cut	Actual Cut	Difference
Health	\$6,863,228	\$613,136	\$6,250,092
	\$3,836,328	\$1,022,660	\$2,813,668
	\$3,098,153	\$380,304	\$2,717,849
Control	\$1,622,706	\$299,057	\$1,323,649
	\$4,846,429	\$3,566,059	\$1,280,370
re (all)	\$973,172	\$145,065	\$828,107
	\$894,562	\$72,659	\$821,903
	\$709,269	\$38,819	\$670,450
College	\$745,000	\$155,545	\$589,455
Education: Tuition	\$655,321	\$122,044	\$533,277
mission	\$1,394,628	\$869,672	\$524,956
Public Service	\$1,735,313	\$1,223,803	\$511,510
Parish	\$758,850	\$243,483	\$515,367
State office (ED)	\$310,979	\$95,908	\$215,071
er-General	\$171,355	\$73,393	\$97,962
	\$141,183	\$57,797	\$83,386

by benefits and budget reserve fund

Tim Goehern/The State

Shooting at shop leaves man dead

By BOB STUART
Staff Writer

Friends of his wife, Salley, say Jimmy Lee Peele hadn't been himself in recent days.

Thursday, the Pelion resident, a master electrician, suddenly had taken his 9-year-old daughter from school and had pounded away on the engine of his wife's Chevrolet with a board.

But Friday, he drew a gun and was shot and killed as his wife watched.

About 1:30 p.m. Friday, Peele entered the Bow-Wow Pet Boutique, a dog and cat grooming shop three miles south of Lexington. His wife, who is a carpenter, and a former co-worker, Fred Rutland of Summerville, were visiting the boutique.

Shop employee Kim Kestner said Peele, 33, drew a TEC-9, a large automatic pistol. "Jimmy said nothing. He pulled his gun out and was fixing to shoot," he said. "It scared me to death. I couldn't understand why he was doing this."

Rutland then drew a .25-caliber pistol, according to the Lexington County Sheriff's Department.

Four shots rang out in the shop. When the shooting stopped, Peele lay wounded. Kestner said Salley Peele and Rutland attempted cardiopulmonary resuscitation, but Peele died at 3 p.m. at Lexington Medical Center.

Sheriff James Metts said Peele never fired his weapon. Rutland, 42, was charged with murder and taken to the Lexington County jail.

Robin Hunt, owner of the shop and a friend of Sally Peele's, said the couple had been having marital problems for nearly two months. Salley Peele decided Thursday morning to separate.

"They were having problems she couldn't deal with," Hunt said. "She wanted a few days to look at the situation."

And Hunt saw Peele "knock out the top part of the (Chevrolet) engine with a 4x4" after she and Salley Peele returned to Pelion to pick up clothes Thursday morning.

Hunt said Salley Peele spent much of Thursday and early Friday questioning police and lawyers about how she could get her daughter back. She also wondered about her husband's emotional health.

"This morning, Salley was trying to figure out how to get Jimmy some help," Hunt said.

Salley Peele came to the Bow-Wow Boutique between 1:15 and 1:30 p.m. to look at a car Kestner was willing to sell. She needed transportation to look for her daughter, who later was found at Peele's sister's.

"Fred Rutland just happened to be with her. He was looking for construction work in the area, as she was," said Hunt, who said the two had worked previously on a construction project near Charleston.

Kestner said Rutland and Salley Peele hadn't been at the shop 10 minutes when Peele came in.

She noticed a different look in the man she had known for 15 years. "His eyes didn't look like Jimmy's," she said.


EL CHICO
SINCE 1939
SPECIALS OF THE WEEK

al Control and the Medi-ity of South Carolina additional cuts of more illion. ersity of South Carolina lose an additional \$1.3 across-the-board cuts. gencies, such as Educa-vision, would suffer. ould reap from 200 200

cluded in the budget. The court will hear arguments in the case Wednesday. But no matter who wins the legal battle, someone is going to lose. "This, regardless, is a zero-sum game," said Mike Shealy of the state Budget Division. "If the court has to reverse it, instead of having prob-lem of the Health and Human Ser-

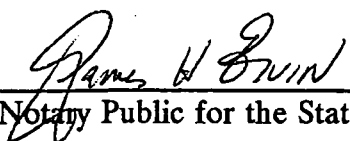
I also heard Kim Kestner state that she heard Fred Rutland warning Jimmy Peele to put down his 9mm pistol by saying, "Don't Jimmy, don't." She also stated that when she saw Jimmy Peele falling after being shot that she saw his (Jimmy's) 9mm pistol fall from his hand. She further stated that she saw both Fred Rutland and Sally Peele go to Jimmy Peele's body immediately after he had been shot and give him C.P.R.

FURTHER AFFIANT SAITH NOT.



Wesley Bruce Vowell

SWORN TO before me
this 12th day of June, 1993.



Notary Public for the State of South Carolina

My Commission Expires: 6/4/95

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

The State of South Carolina)
)
vs.)
)
Fred R. Rutland,)
)
Defendant.)

AFFIDAVIT OF BELINDA JOYCE SMITH

PERSONALLY APPEARS BEFORE ME Belinda Joyce Smith who, being sworn,
deposes and states the following:

I reside at 222 ²⁸ Shelton Road, West Columbia, South Carolina. My birth date is
November 12, 1960. I desire to make a statement at this time regarding the above-captioned
matter because I believe an injustice was done when the Defendant, Fred R., Rutland was
found guilty of murder. That I would have come forward sooner and with the foregoing
information and given it at trial had I realized it would be of importance and had I known
that Kimberly Kestner's testimony would not accurately reflect what I heard her relate
regarding the events of Fred R. Rutland's shooting of Jimmy Peele on September 4, 1992.
I make this statement under no duress whatsoever and only in the interest of justice.

That on the day of the shooting, September 4, 1992, I spent the night with Kimberly
and Danny Kestner in their quarters at the Bow Wow Boutique. While Danny was asleep,
Kim and I were in the main room in which the shooting occurred and she proceeded to act
out for me her recollection of exactly how the shooting occurred.

She said that when Jimmy came through the door of the Bow Wow Boutique and got
to a place in the hallway near the gate separating him from where she was, she could see
the cold look in his eye and saw him pull the 9mm pistol from behind his back and aim it

at Sally Peele. Kim stated to me that when she heard Fred Rutland warning Jimmy Peele to put down his 9mm pistol by saying, "Don't do it, Jimmy," Jimmy then pointed his gun at Fred and then Fred, after warning Jimmy again, then fired his gun.

Kim also said that when she saw Jimmy with the big 9mm machine gun-type pistol, she was afraid that everyone in the room was going to die, including herself and she said words to the effect that Fred had saved her life by shooting Jimmy.

FURTHER AFFIANT SAITH NOT.

Belinda Joyce Smith
Belinda Joyce Smith

SWORN TO before me

this 15th day of June, 1993.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires: 1-11-2000

After the trial of Fred Rutland, I was in the Crossroads Animal Clinic with my mother, my boyfriend, and Kim Kestner. At that time Kim said that Jimmy entered the Bow Wow Boutique with a strange look in his eyes and a gun in his hand.

FURTHER AFFIANT SAITH NOT.

Cindy Lou Wise
Cindy Lou Wise

SWORN TO before me

this 15th day of June, 1993.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires: 1-11-2000

CERTIFICATE OF MAILING

RE: State vs. Rutland

I, H. JACKSON GREGORY, Esquire, certify that I have this date mailed a ^{Original} ~~copy~~ of the following pleadings in the following manner to the Eleventh Circuit Solicitor's Office in franked envelope addressed as follows:

The Honorable Thomas Commerford
Clerk of Court for Lexington County
Lexington County Courthouse
E. Main Street
Lexington, S.C. 29072

Pleadings:

- a. Defendant's Motion For a New Trial On After-Discovered Evidence And To Stay the Time For Perfecting an Appeal.



H. Jackson Gregory, Esquire

GREGORY & GREGORY
Post Office Box 2351
1417 Gregg Street
Columbia, South Carolina 29202-2351
(803) 765-1112

Attorneys for Defendant

Columbia, South Carolina

June 16, 1993.

CERTIFICATE OF MAILING

RE: State vs. Rutland

I, H. JACKSON GREGORY, Esquire, certify that I have this date mailed a copy of the following pleadings in the following manner to the Honorable Frank Eppes, Special Circuit Court Judge for the Eleventh Judicial Circuit, in a franked envelope addressed as follows:

The Honorable Frank Eppes
Special Circuit Court Judge
For the Eleventh Judicial Circuit
Pickens County Courthouse
Pickens, S.C. 29671

Pleadings:

- a. Defendant's Motion For a New Trial On After-Discovered Evidence And To Stay the Time For Perfecting an Appeal.


H. Jackson Gregory, Esquire

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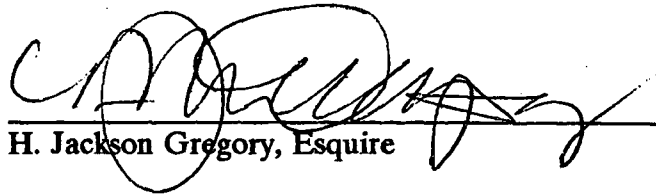
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The Honorable Frank Eppes
Special Circuit Court Judge
For the Eleventh Judicial Circuit
Greenville County Courthouse
Greenville, S.C.

Pleadings:

- a. Defendant's Motion For a New Trial On After-Discovered Evidence And To Stay the Time For Perfecting an Appeal.



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The Honorable Donald Myers
Solicitor For the Eleventh Judicial Circuit
Lexington County Courthouse Annex
E. Main Street
Lexington, S.C. 29072

Pleadings:

- a. **Defendant's Motion For a New Trial On After-Discovered Evidence And To Stay the Time For Perfecting an Appeal.**


H. Jackson Gregory, Esquire

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Attorneys for Defendant

Columbia, South Carolina

June 16, 1993.