

THE LAW OFFICE OF  
*Natasha M. Hanna, P.C.*

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September 19, 2014

Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: State of South Carolina v. Jody Lynn Ward  
Case No. 2012-213222

Dear Sir or Madam:

Enclosed please find a Notice of Appearance and Motion to Suspend Appeal and For Leave to File Motion for New Trial Based on After Discovered Evidence for filing. I am representing Mr. Ward in the Trial Court for this new motion and, as I understand it, must receive leave from the South Carolina Court of Appeals before filing it.

If you have any questions, you may call me at the office at any time.

With warm regards, I am

Very truly yours,



Natasha M. Hanna

NMH/mwh

Enclosures

**RECEIVED**

SEP 22 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of General Sessions

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2012-213222

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The State of South Carolina,.....Respondent,

v.

Jody Lynn Ward. #300644,.....Appellant.

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**NOTICE OF MOTION AND MOTION TO SUSPEND APPEAL AND FOR LEAVE  
TO FILE MOTION FOR A NEW TRIAL BASED ON AFTER DISCOVERED  
EVIDENCE**

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules and Rule 29(b) of the South Carolina Rules of Criminal Procedure, the undersigned attorney, counsel for Appellant, Jody Lynn Ward, files this motion to stay or suspend the appeal currently pending in the South Carolina Court of Appeals and for leave to file a new Motion For a New Trial Based on After-Discovered Evidence. Since filing the pending appeal, new evidence regarding juror bias and concealment was discovered. Any motion based on this after-discovered evidence must be filed within one (1) year of discovery. S.C. R. Crim. P. 29(b). The Appellant received information regarding one of the juror's concealment in October of 2013. Appellant has attached a copy of the Proposed new Motion as "Exhibit A".

Therefore, Appellant respectfully requests that this Court stay the current appeal and

request leave from this Court to file the new Motion for a New Trial Based on After  
Discovered Evidence.

LAW OFFICE OF NATASHA M. HANNA, P.C.



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9-19, 2014  
Myrtle Beach, SC

# Exhibit A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 )

IN THE COURT OF GENERAL SESSIONS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

**THE STATE OF SOUTH CAROLINA,** )  
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 )  
 VS. )  
 )  
**JODY LYNN WARD,** )  
 Defendant )  
 )  
 )  
 )  
 )  
 )

NOTICE OF MOTION AND MOTION  
 FOR A NEW TRIAL BASED ON  
 AFTER DISCOVERED EVIDENCE

**COMES NOW THE DEFENDANT**, by and through the undersigned counsel, moving this Court for an Order granting the Defendant a new trial in the above-caption matter. The Defendant moves for a new trial pursuant to South Carolina Rule of Criminal Procedure 29(b). The grounds for this motion are that Defendant has discovered the following evidence related to juror bias that was not discovered and could not have been discovered through the exercise of due diligence at the time of trial:

- 1) Juror Number 19, Marissa Cooper, was, at the time of trial, related by marriage to one of the state’s witnesses, Kevin Cooper and failed to disclose this relationship to the Court during voir dire.
- 2) Juror Number 39, an alternate, Bernadette Gardner, knew the Defendant prior ro trial as she went to school with his brother and failed to disclose this relationship to the Court during voir dire.
- 3) Juror Number 48, Judy Harper, was related by marriage to Tony Harper, a witness listed by the Defense, and failed to disclose this relationship to the Court during voir dire.
- 4) The foreman of the grand jury that indicted the Defendant, Scott McKenzie, had knowledge of the incident before the grand jury proceedings. Mr. McKenzie was the tow truck driver that pulled the vehicle that was alleged to be the scene of the shooting out of Dawhoo Lake.

A defendant has the right to a trial by a competent and impartial jury. Smith v. State, 375 S.C. 507, 518, 654 S.E.2d 523, 529 (2007). In order to fully safeguard this protection, a jury must render a verdict free of outside influences of any kind. Id. When a juror conceals information inquired into during voir dire, a new trial is required when the juror intentionally concealed the information and that information would have supported a challenge for cause or would have been a material fact in the use of the party's peremptory challenges. Id.

When a juror fails to disclose a relationship without justification, it may be inferred that the juror is not impartial. Id. Determining whether a juror's failure to respond to voir dire is intentional is a fact intensive determination to be made on a case-by-case basis. Id. Intentional concealment occurs when the question on voir dire is reasonable comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Id. In cases where a juror's partiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual juror bias. State v. Bryant, 354 S.C. 390 (2003).

In this case, three jurors intentionally failed to disclose a relationship to the Defendant or witness. Marissa Cooper failed to disclose a relationship to a State witness. The Solicitor, during voir dire, listed Kevin Cooper as a potential witness. Juror Number Nineteen (19), Marissa Cooper, was asked along with the other jurors, whether she was related by blood or marriage to any of the potential witnesses. Transcript p. 254. At no point did she respond to this question. Kevin Cooper testified for the State against the Defendant. Transcript p. 452. Marissa Cooper was in fact, at the time, related by marriage to Kevin Cooper. The juror, Marissa Cooper, was married to James D. Cooper. James D. Cooper's grandfather was Walter Cooper. The witness, Kevin Cooper's, grandfather was Walter Cooper's brother. Therefore, Marissa Cooper and Kevin Cooper were second cousins by marriage. Marissa Cooper intentionally concealed this relationship. The question on voir dire was reasonably comprehensible but Ms. Cooper failed to respond and disclose her relationship to the witness. This

relationship would have supported a challenge for cause. Marissa Cooper was called and served as a juror at the trial of Jody Ward. Transcript p. 262.

Juror Number thirty nine (39), Bernadette Gardner, went to school with the Defendant's brother. Ms. Gardner had prior knowledge of the Defendant and his family as a result of this connection to the Defendant's brother. The Court asked on voir dire whether any juror was friends or business acquaintances with Mr. Ward. Transcript p. 224. There was no response from any member of the jury. Transcript p. 224. The question was reasonably comprehensive and the answer would have supported a challenge for cause. Therefore, Ms. Gardner intentionally concealed this relationship from the Court. Ms. Gardner was called and served as an alternate juror in the trial of Mr. Ward. Transcript p. 265-66.

Juror Number forty eight (48), Judy Harper, was related by marriage to a witness listed by the Defense, Tony Harper. She failed to disclose this relationship. She, along with the other jurors, were asked in voir dire whether they were related by blood or marriage to any of the potential witnesses. Transcript 255. Tony Harper was listed and read as a potential witness for the defense. Transcript 255. There was no response from the jury. Transcript p. 255. Ms. Harper was called and served as a juror in the trial against Mr. Ward. Transcript p. 258.

Further, an indictment returned by an unbiased grand jury is not be enough to call a trial on the merits of the case. See, Costello v. United States, 350 U.S. 359, 76 S.Ct. 406 (1956). Without a valid indictment, the trial court does not have subject matter jurisdiction to hold a trial against a defendant. S.C. Const. art. I, sec. 11.

In this case, the Grand Jury Foreman had prior knowledge of and participation in the investigation of the incident for which Mr. Ward was indicted. Scott McKenzie worked for Winston Wrecker Service in 2002. Affidavit of Scott McKenzie. Winston Wrecker Services was called by the Georgetown County Sheriff's office in 2002 to assist in pulling a vehicle out of a lake. Affidavit of Scott McKenzie. After pulling the vehicle from the lake, Mr. McKenzie was informed that the car belong to

Jody Ward. This vehicle was testified to at the trial as containing various pieces of physical evidence related to the alleged crime. See transcript, 568-600. Mr. McKenzie also knew Mr. Ward from growing up in the same community. Affidavit of Scott McKenzie. In 2003, Mr. McKenzie served on the Grand Jury in Georgetown County. Affidavit of Scott McKenzie. Both investigating officers, Ernest Hampton and Gary Todd, knew of Mr. McKenzie's involvement in the investigation. Affidavit of Ernest A. Hampton; Affidavit of Gary Todd. Ernest Hampton testified in front of the Grand Jury. Affidavit of Ernest Hampton. Scott McKenzie, the Grand Jury foreman, signed and marked as true-billed the indictment on July 8, 2003.

Mr. McKenzie was not an unbiased grand juror. Not only did he have prior knowledge of the Defendant, he had prior knowledge of the investigation that led to the arrest of the Defendant. He pulled the vehicle out of the lake; A vehicle he was later informed belong to Jody Ward and alleged to be the scene of the shootings. Mr. McKenzie was a biased grand juror and as such the indictment against Mr. Ward was not a valid indictment.

Therefore, Mr. Ward respectfully requests that this Court convene a hearing regarding the concealment of information by members of the jury and grand jury and grant Mr. Ward a new trial.

Respectfully Submitted,



Natasha M. Hanna, Esq., Attorney for the Defendant  
**Law Office of Natasha M. Hanna, P.C.**

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Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 22 2014

APPEAL FROM GEORGETOWN COUNTY  
Court of General Sessions

**SC Court of Appeals**

2012-213222

The State of South Carolina,.....Respondent,

v.

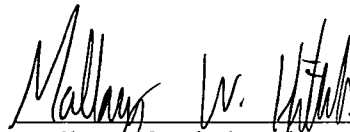
Jody Lynn Ward. #300644,.....Appellant.

**AFFIDAVIT OF SERVICE**

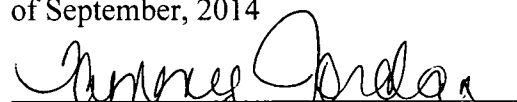
Mallary W. Hitchcock certifies that she is an employee of the Law Office of Natasha M. Hanna, P.C., attorneys for the Appellant, and that she deposited in the United States Mail, with adequate postage affixed thereto, a copy of the **Notice of Appearance and Notice of Motion and Motion to Suspend Appeal and For Leave to File Motion for a New Trial Based on After Discovered Evidence** in the above-captioned matter, addressed to the following on this 19<sup>th</sup> day of September, 2014.

Addressee:

Office of the South Carolina Attorney General  
Salley W. Elliot, Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
Mallary W. Hitchcock

SWORN to before me this 19<sup>th</sup> day  
of September, 2014

  
Notary Public for South Carolina  
My Commission Expires: 2/6/17