

STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 06 2014

SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

2012-213222

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

v.

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

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

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel for Appellant, Jody Lynn Ward, files this Reply to the Return on 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 appeal pending in this Court, Ward has discovered new evidence regarding juror bias and concealment. While the State has argued against the Motion For a New Trial Based on After-Discovered Evidence, that Motion has not yet been filed. The Appellant is moving before this Court for a Stay of the Pending Appeal and for leave to file the Motion For New Trial Based on After-Discovered Evidence in the Circuit Court pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure.

In this case, Ward discovered new evidence of juror concealment since the trial. 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, 395, 581 S.E.2d 157, 160 (2003).

The State claims that Appellant has provided no basis for the allegations regarding the grand juror's bias. It is the Appellant's position that the merits of the Motion should be heard by the Circuit Court once the Motion is filed. However, the Appellant attached the Affidavit of Scott McKenzie to the original Motion in which Mr. McKenzie admits that he participated in pulling the vehicle that was evidence in the case out of a lake. He also admits to being on the Grand Jury. At the time of the indictment, Ward was unaware of Mr. McKenzie's involvement in the case. The Appellant is moving for leave from this Court to file the Motion so that the Appellant may have the opportunity to have a hearing and prove this impartiality of Mr. McKenzie and the other jurors who failed to disclose relationships with the parties and/or witnesses at the time of trial.

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.

[SIGNATURE LINE ON NEXT PAGE]

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

Natasha Hanna

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October 3, 2014
Myrtle Beach, SC

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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 **Reply to Return on 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 3 day of October, 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 3rd day
of October, 2014


Notary Public for South Carolina
My Commission Expires: 9-5-24

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THE LAW OFFICE OF
Natasha M. Hanna, P.C. SC Court of Appeals

4717 Jenn Drive, Suite 102 | Myrtle Beach, SC 29577 | OFFICE: (843) 839-8002 | FAX: (843) 839-8011

October 3, 2014

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

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

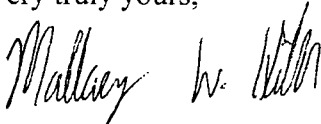
Dear Sir or Madam:

Enclosed please find an original and six(6) copies of a Reply to Return on Motion to Suspend Appeal and For Leave to File Motion for New Trial Based on After Discovered Evidence for filing.

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

With warm regards, I am

Very truly yours,



Mallery W. Hitchcock

Enclosures

cc: Office of the Attorney General, State of South Carolina