

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Indictment Numbers: 2012-GS-07-01419 & 01548; 2013-GS-07-0906

The State, Appellee

v.

Joseph Bowers, Appellant

**MOTION TO SUSPEND APPEAL AND GRANT
LEAVE TO FILE A RULE 29(B) MOTION FOR A NEW TRIAL**

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SC Court of Appeals

THE APPELLANT BRINGS THIS MATTER TO THE ATTENTION of this Court seeking an order suspending the appeal in the above-referenced matter and granting leave to file a Motion for a New Trial based upon Newly Discovered Evidence, pursuant to SCRCrimP Rule 29 (b). This Motion is based upon the facts and law presented below.

As a matter of procedural context, the Appellant was indicted in 2012 and 2013 for the charges of Murder, Attempted Murder, and Possession of a Weapon during the Commission of a Violent Crime. This matter was tried during the September 29, 2014 term of General Sessions in Beaufort with the Honorable R Dennis Markley presiding. The jury convicted the Appellant of Voluntary Manslaughter, Assault and Battery of a High and Aggravated Nature (ABHAN), and the Possession of the Weapon during the Commission of a Violent Crime (PWCVC) and he was sentenced to concurrent terms of 15 years, 15 years, and 5 yrs, respectively.

As a general legal context, Rule 29(b) allows a defendant to move for a new trial if evidence was discovered after the verdict. Such a motion may be filed up to one year after either the date of discovery or the date the evidence was available for discovery through reasonable diligence. Although such a motion is not proper during the pendency of a direct appeal, an exception is proper if the appellate court suspends the appeal and grants leave allowing such a challenge.

To prevail in a Rule 29(b) context, a defendant bears the burden of production and persuasion. In order to prevail on such a motion, the defendant must show: 1) that the new evidence will probably change the result if the new trial is granted; 2) the evidence has been discovered since the trial; 3) this evidence could not have been discovered before the trial with the exercise of due diligence; 4) this evidence is material to the issue; and 5) this evidence is not merely cumulative or impeaching. See St v Harris, 706 SE2d 526 (SC Ct App 2011). A trial

judge's ruling on such a motion is given substantial deference by a reviewing court.

In the case at bar, the primary evidence establishing the guilt of the Appellant was an ambiguous recorded call from the Defendant to his girlfriend made during pre-trial incarceration. The State argued that this call contained a confession by the Appellant that he fired the shots at issue. The Defense argued that the conversation did not contain such an admission.

Supporting the fact that the discussion on the call was not clear is the jury's inquiry during trial concerning the existence of a transcript of this call. As no such transcript existed, the jury was left to divine the contents based upon this ambiguous recording. The fact the Appellant was only convicted on lesser charges and received a moderate sentence supports the fact that this evidence was less than conclusive.

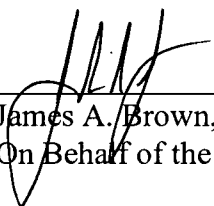
Following the conviction, the Appellant's family was contacted by a friend in North Carolina. This lady told the family that she had learned of the Appellant's conviction and felt compelled to reveal a surreptitious recording of a third party confessing to the crimes for which the Appellant was convicted. These original recordings and the device upon which they were recorded is now in the possession of undersigned counsel.

Should the Court agree with the Appellant's portrayal of this evidence, then the Appellant would not only meet his burden but, in fact, would be innocent of the charges for which he was convicted.

Therefore, Appellant respectfully requests that this Court suspend the appeal and grant leave for the Appellant to file and argue his Motion for a New Trial in the circuit court.

Signature Page to Follow

AND I SO MOVE



James A. Brown, Jr.
On Behalf of the Appellant

December 2, 2014

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

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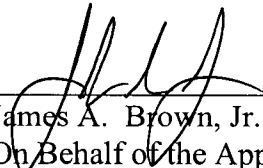
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The State, Appellee
v.
Joseph Bowers, Appellant

PROOF OF SERVICE

I certify that I have served a copy of this Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial on the State of South Carolina, by depositing a copy of this Motion in the United States Mail, postage prepaid, on December 2, 2014, addressed to its attorney of record, Salley W. Elliott, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.



James A. Brown, Jr.
On Behalf of the Appellant

December 2, 2014

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Beaufort, SC 29901-0592
(843) 470-0003

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Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

December 2, 2014

The Honorable Jenny Abbott Kitchings

Court of Appeals

PO Box 11629

Columbia, South Carolina 29211

RE: State of South Carolina v. Joseph Bowers

Indictment Numbers: 2012-GS-07-01419 & 01548; 2013-GS-07-0906

Ms. Kitchings:

Under cover of this letter, find enclosed a copy of the Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial and the Proof of Service with regard to the same. Thank you for your assistance with this matter.

Sincerely,


Jim Brown

with enclosures as indicated above.

cc: Salley W. Elliott, Sr. Asst. Deputy Attorney General, w/enclosures
Joseph Bowers, w/enclosures

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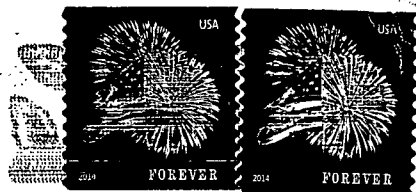
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Beaufort, SC 29901

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