

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 12 2014

SC Court of Appeals

Appeal from Beaufort County
The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No: 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS

Appellant.

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

Respondent, by and through undersigned counsel, making Return to Appellant's Motion to Suspend Appeal and Grant Leave to File a Rule 29(b) Motion for New Trial, would respectfully show this Court:

I.

It appears Appellant was indicted in Beaufort County for murder, attempted murder and possession of a weapon during the commission of a violent crime. It also appears that he was convicted of voluntary manslaughter, assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime after a jury trial with the Honorable R. Markley Dennis presiding. He further appears he was sentenced to fifteen years, fifteen years and five years. Appellant filed and served notice of appeal and the appeal is

currently pending before this Court. Appellant now moves this Court to suspend the appeal and remand the matter to the court of general sessions so that he can pursue a Rule 29(b), SCRCrimP, motion for new trial based upon newly discovered evidence.

II.

Appellant states in his motion that the primary evidence against him at trial was “an ambiguous recorded call from the defendant to his girlfriend made during pre-trial incarceration” confessing that he fired the shots at issue at trial. In support of his argument that the call was not clear, Appellant offers the jury’s inquiry about the contents of the recording, the fact that he was convicted of the lesser-included charge of manslaughter, and a moderate sentence. He contends that his family was contacted after trial by a family friend who obtained a “surreptitious recording of a third party confessing to the crimes for which (he) was convicted.” Appellant’s attorney indicates that he has the recording in his possession.

III.

To prevail on his request to suspend the appeal and have the matter remanded to the circuit court to proceed on a motion for a new trial based on after-discovered evidence, Appellant must show (1) the evidence in question is such as will probably change the results if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise due diligence; (4) the evidence is material to the issue of guilt or innocence; and (5) the evidence is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983); State v DeAngelis, 256 S.C. 364, 182 S.E.2d 732 (1971). A *prima facie* showing of these factors is necessary before a remand to the circuit court can be granted. State v. Butler, 261 S.C. 355, 200 S.E.2d 70 (1973); State v DeAngelis, 256 S.C.

364, 182 S.E.2d 732 (1971); State v. Farris, 51 S.C. 176, 28 S.E. 370 (1897); State v. Green, 46 S.C. 566, 27 S.E.2d 663 (1896).

IV.

Respondent does not yet have a copy of the trial transcript and is, therefore, unable to respond to the specific factors this Court must address. Also, Respondent is unable at this time to provide the transcript to this Court so that it may conduct the appropriate analysis to determine whether the factors set forth in Hayden have been met. Respondent further submits that the information that Appellant provides in support of the newly-discovered evidence claim lacks sufficient specificity to enable Respondent to make a proper response or to enable this Court to assess the merits of the motion. Neither the family friend nor the third party who purportedly confessed to a shooting has been identified. The content of the purported confession by the third party has not been provided. The date the “third party confession” was made has not been identified. It is not known whether it was available for trial or could have been discovered with the exercise of due diligence. “As a rule the courts do not look with favor upon motions of this character, as there must be an end to litigation in any case.” State v. Clamp, 225 S.C. 89, 95, 80 S.E.2d 918, 921 (1954). Granting a motion on after-discovered evidence is not favored. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998). Respondent submits that an appropriate *prima facie* showing has not been made to satisfy the factors required for establishing newly-discovered evidence as set forth in Hayden, 278 S.C. 610, 299 S.E.2d 854 (1983), and that a remand is not warranted at this time.

V.

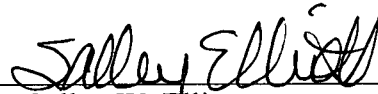
In conclusion, Respondent submits Appellant's motion for a remand to the circuit court must be denied because the after-discovered evidence offered by Appellant fails to meet the criteria for granting a new trial and for remand by this Court.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ISSAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No. 1871

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ATTORNEYS FOR RESPONDENT

December 12, 2014

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Suspend Appeal and Grant Leave to File a Rule 29(b) Motion for New Trial on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, James A. Brown, Jr., Esquire, P.O. Box 592, Beaufort, SC 29901.

I further certify that all parties required by Rule to be served have been served.

This 12th day of December, 2014.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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DEC 12 2014

SC Court of Appeals

December 12, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Joseph Bowers
Appellate Case No: 2014-002176

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Suspend Appeal and Grant Leave to File a Rule 29(b) Motion for New Trial along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: James A. Brown, Jr., Esquire
Assistant Solicitor Hunter Swanson
Ms. Trisha Allen