

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE SOUTH CAROLINA
COURT OF APPEALS
CASE No. 2014-002630

RECEIVED

SEP 11 2015

STATE OF SOUTH CAROLINA
RESPONDENT

SC Court of Appeals

RE: MOTION IN
OPPOSITION

JEFFREY LYNN CHRONISTER
APPELLANT

THIS MATTER AROSE TO THE COURT BY WAY OF APPELLANT'S pro se MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE THAT WAS SERVED ON THE YORK COUNTY COURT OF GENERAL SESSIONS "UNDER RULE 29(b) SCR CRIM.P", AND PURSUANT TO RULE 60(b) SCRPC. THE MOTION WAS DATED NOVEMBER 12, 2014, AND ANSWERED WITH AN REDACTED ORDER, DATED NOVEMBER 21, 2014, FROM THE HONORABLE LEE S. ALFORD, RESIDENT JUDGE OF THE SIXTEENTH JUDICIAL CIRCUIT.

THE JUDGE STATING THAT THE MOTION WAS "UNTIMELY MADE," AND APPELLANT "MUST ALSO FILE AN POST-CONVICTION APPLICATION." APPELLANT APPEALING THE DECISION, SERVING HIS INITIAL BRIEF TO THIS COURT, AND NOW RESPECTFULLY COMES IN OPPOSITION TO THE RESPONDENT'S INITIAL BRIEF, DATED AUGUST 19, 2015.

ARGUMENT

(1) IN REGARDS TO "I. INTRODUCTION" ON (P. 3) OF THE RESPONDENT'S BRIEF THAT IN THE MOTION APPELLANT ASSERTED THAT HE WAS SEEKING A NEW TRIAL UNDER RULE 29(b) S.C. CRIM. P., AND CLAIMED THAT THERE WAS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE

A JUDGMENT DUE TO "FRAUD ON THE COURT" IN HIS GROUNDS FOR A NEW TRIAL. WHICH THIS WAS MISCONSTRUED BY THE RESPONDENT BY FAILING TO ADDRESS THAT THE MOTION WAS ALSO SUBMITTED PURSUANT TO RULE 60(b), AND APPELLANT HAD PRESENTED IN THE MOTION THE CASE OF ARTA v VILLAGE WEST OWNERS ASSN. INC. NOT REPORTED IN SE2d 2011, WL 1173500 (S.C. APP. 2011). FOR AS IN APPELLANT'S CASE IT WAS ARGUED THAT THEIR ACTION WAS TIMELY MADE BECAUSE OF THE AUTHORITY THATS GRANTED IN RULE 60 ALLOWS AN INDEPENDENT ACTION THATS NOT SUBJECT TO THE (1) YEAR TIME LIMITATION WHEN RAISING FRAUD ON THE COURT, AND IT ALSO ALLOWS THE AUTHORITY FOR AN INDEPENDENT ACTION TO HEAR EXCEPTIONAL CIRCUMSTANCES THAT ARE WARRANTING OF EQUITABLE RELIEF. WHICH THE FACTS OF APPELLANT'S CASE ALSO SHOWS THESE CIRCUMSTANCES, AND UNDER MR. T v MS. T 378 SC 127, 135, 662 SE2d 413, 417 (CT. APP. 2008) (STATING RULE 60 PERMITS THESE TWO POTENTIAL ATTACKS ON JUDGMENT). ALSO UNDER ARTA IS CHEWNING v FORD MOTOR CO. 354 SC AT 73, 80 AND BY COMPUTER READ-OUT, "OUR SUPREME COURT HAS EXPLAINED THAT WHILE IN MOST CIRCUMSTANCES THERE IS A TIME LIMITATION ON A PARTY SEEKING TO REOPEN A FINAL JUDGMENT, THERE IS NO STATUTE OF LIMITATION WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT," "RULES CIV. PROC. RULE 60(b)"

(2) REGARDING "I. ARGUMENT" (P. 12), THAT "THE JUDGE OF THE COURT OF GENERAL SESSIONS PROPERLY DENIED THE MOTION FOR NEW TRIAL AS UNTIMELY UNDER SOUTH CAROLINA 29 WHERE THE MOTION ITSELF REVEALS NO NEWLY DISCOVERED EVIDENCE, AND IT WAS MADE MORE THAN ONE YEAR AFTER THE TRIAL."

THE RESPONDENT BY MISCONSTRUING RULE 29 IS ASKING THE COURT TO DISMISS THE MOTION ON THE BASIS OF A TIME STANDARD THATS

(3)

BEEN IMPLEMENTED BY THE COURT SINCE 2011 (P.13). THOUGH PRIOR TO 2011 RULE 29(b) ALLOWED THAT "A MOTION FOR A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE" MUST BE MADE WITHIN (1) YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE EVIDENCE BY THE DEFENDANT OR AFTER THE DATE WHEN THE EVIDENCE COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE" WHICH SHOULD BE APPLICABLE TO APPELLANT'S MOTION. FOR THE TRIAL WAS IN 1992, AND UNDER STATE V NEEDS 508 SE2d AT 858 (S.C. 1998), NEW EVIDENCE RULES USUALLY APPLY TO TRIALS THAT OCCUR AFTER THOSE RULES TAKE EFFECT. "SEE STATE V BYRUM, 326 S.C. 107, 114 n.7, 485 SE2d 360, 363 n.7 (1997) (APPLYING CASE LAW IN EFFECT AT TIME OF DEFENDANT'S TRIAL, NOT NEW RULE 609 ON IMPEACHMENT THAT TOOK EFFECT LATER.) THUS THE JUDGE'S DECISION IS IN ERROR, AND THE RESPONDENT'S MOTION IS LEGALLY VOID IN THAT TO GRANT THE MOTION BASED UPON THIS NEW RULE WHICH WAS NOT IN EFFECT AT THE TIME APPELLANT WAS TRIED IT WOULD AMOUNT TO AN EX POST FACTO VIOLATION BY DISADVANTAGING APPELLANT BY FOREVER BARRING ACCESS TO THE COURT IN GRANTING THE RESPONDENT'S MOTION ON AN INCORRECT AND INAPPLICABLE LAW. SEE RESPONDENT'S LEGAL CONTENTION (P.15).

(P.15) THE RESPONDENT IS ARGUING THAT APPELLANT'S ISSUES ARE NOT APPROPRIATE UNDER RULE 29(b) AS AFTER DISCOVERED EVIDENCE AND CITES THE FIVE (5) PRONG STANDARD THAT IS NO LONGER THE CURRENT AND CORRECT LAW TO BE APPLIED TO THE ISSUE OF AFTER DISCOVERED EVIDENCE. IN JAMISON V STATE, OP. NO. 27454, OCTOBER 2014, THE COURT CONSIDERED THE QUESTION OF WHETHER PROPER TEST FOR GRANTING RELIEF BASED UPON THE TRADITIONAL FIVE PRONG AND FOUND THAT SUCH WAS NOT THE PROPER TEST FOR ANALYZING WHETHER

AN APPLICANT IS ENTITLED TO RELIEF BASED UPON AFTER DISCOVERED EVIDENCE. THEREFORE IN APPELLANT'S CASE THE USE OF THE FIVE PRO-NG TEST WOULD NOT ONLY AMOUNT TO ABUSE OF DISCRETION IT ALSO WOULD VIOLATE SOUTH CAROLINA CONSTITUTION ART. 5^S 21 BY NOT BEING THE CORRECT AND CURRENT LAW TO BE APPLIED.

APPELLANT RESPECTFULLY ASK OF THE COURT TO ACCEPT THE ENCLOSED AFFIDAVIT THAT STATES HIS DISCOVERY OF THE NEWLY DISCOVERED EVIDENCE IS SHOWING TO HAVE BEEN FOUND WITHIN THE (1) YEAR TIME LIMITATIONS IN FILING THE MOTION OF RULE 29, APPELLANT ALSO STATING THAT THE MOTIONS ARGUMENTS "HAVE NOT BEEN PREVIOUSLY PRESENTED IN AN COURT OF LAW" THAT ALSO APPLIES TO THE FOLLOWING;

(3)(P.1) SECT. III OF THE "APPELLANT'S QUESTIONS PRESENTED" UNDER "C. SUBJECT MATTER JURISDICTION IS TIME BARRED" OF (P.17) WHERE IT IS STATED THAT "AN ISSUE CONCERNING WHETHER THE INDICTMENT WAS DEFECTIVE IN PROR PROCEEDINGS IN THE STATE COURT OR THE SECOND AND THIRD PCR ACTIONS THROUGH 2006."⁴ THIS IS NOT AFTER DISCOVERED EVIDENCE. THE PETITIONER HAS CLAIMED THE INDICTMENT WAS DEFECTIVE SINCE 2003." THE ISSUE THAT WAS PREVIOUSLY RAISED BY APPELLANT WAS THAT THE INDICTMENT BEING DEFECTIVE FOR THE PRIMARY INVESTIGATOR / DETECTIVE BEING ITS SOLE WITNESS. ALSO ADDRESSING THE RESPONDENT STATING IN THE FOOTNOTES OF (P.17) THAT "⁵ FURTHER, HIS CLAIM THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION WOULD FALL UNDER STATE V GENJRY 363 S.C. 93, 610 SE2d 494 (2005). WHEN IN FACT A FAIR READING OF APPELLANT'S MOTION RAISES THAT GENJRY WOULD NOT BE A ISSUE.

APPELLANT PRESENTING THE CASE OF STATE V SCOTT, UNPUBLISHED OP. NO. 2003-UP-037 (S.C. APP. 2003) WITH ARGUMENT IN THE

MOTION. BECAUSE OF THE COURT'S REVIEWING SCOTT'S 1998 INDICTMENTS THAT ALSO REVELED NO INDICATION OF BEING STAMPED "TRUE BILLED," AND CITING BROWN v STATE, 343 SC 342, 346, 540 SE2d 846, 848-49 (2011) "BECAUSE OF ITS FUNDAMENTAL NATURE, THE ISSUE OF A DEFECT IN SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME INCLUDING WHEN RAISED FOR THE FIRST TIME ON APPEAL TO THIS COURT." WHEREAS IN THE APPELLANT'S CASE THERE WAS NO WAIVER(S) FOR ANY STATUTORY OR CONSTITUTIONAL RIGHTS OR PRESENTMENTS, AND A NOT GUILTY PLEA WAS ENTERED AT THE TRIAL BY COUNSEL.

THE COURT REMANDED SCOTT'S CASE BACK TO THE CIRCUIT COURT FOR AN EVIDENTIARY HEARING PURSUANT TO STATE v GRIM, 341 SC 63, 533 SE2d 329, 330 (2000), AND APPELLANT ALSO PRESENT IN THE MOTION ANDERSON v STATE, 529 SE2d 398, 338 SC 629, WHERE "A FACIAL IRREGULARITY DOES NOT RENDER AN INDICTMENT INVALID WHERE INDICTMENT IS IN WRITING AND PUBLISHED BY THE CLERK." THE APPELLANT'S INDICTMENT FAILS TO SHOW ANY INDICATION OF THESE LEGAL PROCEDURES DONE BY THE CLERK, AND APPELLANT'S TRIAL RECORD FAILS TO SHOW ANY EVIDENCE OR TESTIMONY TO SUPPORT "THAT THE INDICTMENT WAS IN FACT TRUE BILLED." Id. 533 SE2d 329, RELYING ON PRINGLE, 339 SE2d 127, 287 S.C. 409. THE INDICTMENT FOR MURDER SUBJECT OF ARGUMENTS. FOR THERE IS NO EVIDENCE OF PRESENTMENT FOR ITS FIREARMS CHARGE.

CONCLUSION

APPELLANT MOVES THAT THE COURT SET ASIDE THE RESPONDENT'S BRIEF AND ITS MOTION WITHIN THE INTEREST OF JUSTICE.

THIS 3RD DAY OF SEPTEMBER, 2015

RESPECTFULLY SUBMITTED:

Jeffrey Lynn Chronister

JEFFREY LYNN CHRONISTER

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

SEP 11 2015

SC Court of Appeals

IN THE SOUTH CAROLINA
COURT OF APPEALS

APPELLATE CS.No.002630

THE STATE RESPONDENT

v

AFFIDAVIT

JEFFREY LYNN CHRONISTER
APPELLANT

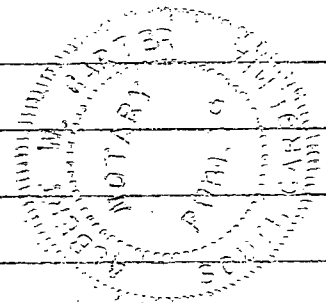
I, JEFFREY LYNN CHRONISTER, FIRST BEING DULY SWORN STATE THAT ON OR ABOUT THE 16TH OF SEPTEMBER, 2014, DISCOVERED THE SUPPORTING FACTS OF MY MOTION FOR NEWLY AFTER DISCOVERED EVIDENCE THAT I SERVED TO THE YORK COUNTY COURT OF GENERAL SESSIONS ON NOVEMBER 12, 2014, AND FURTHER STATE THAT SAME ARGUMENTS OF THE MOTION WERE RAISED IN MY INITIAL BRIEF TO THIS COURT OF APPEALS, AND THE ARGUMENTS HAVE NOT BEEN PREVIOUSLY PRESENTED IN AN COURT OF LAW.

THIS 3rd DAY OF SEPTEMBER, 2015

Jeffrey Lynn Chronister
JEFFREY LYNN CHRONISTER

SWORN TO AND SUBSCRIBED BEFORE ME
ON THIS 3rd DAY OF SEPTEMBER, 2015
Albert W. Carter

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES Sept 11, 2021



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SEP 11 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY

LEE S. ALFORD, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 002630

STATE OF SOUTH CAROLINA

RESPONDENT

v

JEFFEREY LYNN CHRONISTER

APPELLANT

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE ORIGINAL COPY OF MY MOTION IN OPPOSITION, AND OF THE AFFIDAVIT IN SUPPORT OF MY MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE ON JENNY A. KITCHINGS, CLERK OF THE SOUTH CAROLINA COURT OF APPEALS, POST OFFICE BOX 11629, COLUMBIA, S.C., 29211. I FURTHER CERTIFY THAT I HAVE SERVED COPIES OF THE SAME ON THE PARTY LISTED BELOW BY WAY OF SEPARATE ENVELOPES, AND DEPOSITING THEM IN THE UNITED STATES MAIL, POSTAGE PREPAID.

ALAN MC CRORY WILSON, ESQUIRE
POST OFFICE BOX 11549
COLUMBIA, S.C., 29211

Jeffrey Lynn Chronister #189827
JEFFEREY LYNN CHRONISTER

THIS 8TH DAY OF SEPTEMBER, 2015

JEFF CHRONISTER, #189827

KIRKLAND C.I., BII, #34

4344 BROAD RIVER RD.

COLUMBIA, S.C., 29210

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SC Court of Appeals

HONORABLE JENNY A. KITCHINGS

CLERK, SOUTH CAROLINA COURT OF APPEALS

POSTOFFICE BOX 11629

COLUMBIA, S.C., 29211

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