

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Edgefield County  
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No: 2015-000179

---

**RECEIVED**

NOV 19 2015

SC Court of Appeals

THE STATE,

Respondent,

vs.

LEON LILLY,

Appellant.

---

**RETURN TO MOTION TO SUSPEND APPEAL AND FOR LEAVE TO FILE A  
MOTION FOR NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE IN  
THE COURT BELOW**

---

Respondent, by and through undersigned counsel, making Return to Appellant's Motion to Suspend Appeal and for Leave to File a Motion for New Trial Based on After-Discovered Evidence in the Court Below, would respectfully show this Court:

I.

Appellant was indicted in Edgefield County for distribution of methamphetamine. Appellant proceeded to a jury trial and was convicted as charged. He was sentenced on January 21, 2015 to imprisonment for a period of eight (8) 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 the pro se motion his appellate counsel forwarded to this Court that he is being held in custody unlawfully because his grand jury was unlawfully impaneled outside the terms of court set forth in S.C. Code Ann. § 14-5-760(1) (1976) and that the solicitor thereafter “printed and publish (sic) false and misleading information in its indictment in order to deep (sic) secrets its violations of Statutory law.” He also contends that the solicitor’s violated “Article I § 8 Separation of Power Doctrine” by implementing new law in that the solicitor altered the terms of the grand jury. See p. 1-2 of Motion for After-Discovered Evidence.

## III.

To prevail in 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 submits that Appellant fails to make a prima facie showing to warrant the request for remand. Appellant's motion is completely without merit.

First, the issue is not such that would alter the result of the trial. A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Court Administration has no jurisdiction over when county Grand Juries meet, only when Circuit Court matters (either Common Pleas terms or General Sessions terms) are scheduled. Grand Jury meetings are scheduled within the county. Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). Furthermore, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Appellant's indictment need only to state all the necessary elements of the crime, the date of the offense, and the name of the accused to be valid on its face. Id. at 75, 472 S.E.2d at 40. Likewise, the indictment need only to be stamped "True Billed" and signed by the Grand Jury foreperson. See Pringle, 287 S.C. at 410, 339 S.E.2d at 128.

Second, Appellant wholly fails to show that the information he advances as newly discovered could not have been discovered before trial with the exercise of due diligence or that he has only discovered it since trial. The indictment, including the term of court for the grand

jury, were available to Appellant prior to trial and the arguments he makes now could have been advanced at that time. Appellant simply failed to do so and now attempts to use the information to make an improper request for a new trial.

Moreover, as set forth above, the information upon which Appellant relies is seeking the remand from this Court is not material to guilt or innocence and does not constitute "evidence." Appellant offers an unmeritorious allegation with no basis for relief.

"[T]he 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). A remand is not warranted.

V.

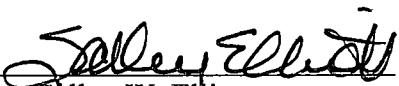
In conclusion, Respondent submits Appellant's motion for a remand to the circuit court must be denied because the after-discovered evidence offered by Appellant fails to meet the criteria for granting a new trial and for remand by this Court.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DONALD V. MYERS  
Solicitor, Eleventh Judicial Circuit

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

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

ATTORNEYS FOR RESPONDENT

November 19, 2015

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

NOV 19 2015

Appeal from Edgefield County  
The Honorable R. Knox McMahon, Circuit Court Judge

SC Court of Appeals

Appellate Case No: 2015-000179

THE STATE,

Respondent,

vs.

LEON LILLY,


Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial Based on After-Discovered Evidence in the Court Below on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Benjamin J. Tripp, Esquire, South Carolina Office of Indigent Defense, Division of Appellate Defense, P.O. Box 11589,, Columbia, SC 29211.

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

This 19<sup>th</sup> day of November, 2015.

  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

November 19, 2015

**RECEIVED**

NOV 19 2015

**SC Court of Appeals**

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

Re: The State v. Leon Lilly  
Appellate Case No: 2015-000179

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial Based on After-Discovered Evidence in the Court Below 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: Benjamin T. Tripp, Esquire  
Ms. Trisha Allen