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STATE OF SOUTH CAROLINA )  
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COUNTY OF LEXINGTON )  
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STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS  
ELEVENTH JUDICIAL CIRCUIT

Indictment Nos.: 2012-GS-32-2249, 2250, 2251 &  
2015-GS-32-1421

FILED  
APR 21 P 12:53  
BETH A. CAMPBELL  
CLERK OF COURT  
LEXINGTON, SC

ORDER DENYING DEFENDANT'S MOTION  
FOR A NEW TRIAL AND MOTION FOR A NEW  
TRIAL BASED ON AFTER DISCOVERED  
EVIDENCE

vs.

JEREMY SELDON BRADY )  
 )  
Defendant )

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APR 29 2016

SC Court of Appeals

PROCEDURAL HISTORY

On June 19, 2015, Jeremy Seldon Brady was convicted at trial for Murder, Burglary 1<sup>st</sup>, Armed Robbery and Criminal Conspiracy. Brady was sentenced to life in prison for Murder and Burglary 1<sup>st</sup>; Thirty years for Armed Robbery; and five years for the Criminal Conspiracy. All sentences to be run concurrent.

On June 29, 2015, Defendant filed a timely Motion for a New Trial under Rule 29(a), asserting that the Defendant was denied his Sixth Amendment and Fourteenth Amendment right to present a defense when he was not permitted to introduce evidence of the guilt of other potential suspects who were not thoroughly investigated. On July 1, 2015, the State filed its Motion Opposing Defense's Motion for a New Trial.

Additionally, shortly after the trial, the State learned that Archie Goodwin, an inmate at South Carolina Department of Corrections, claimed that Nick Williams confessed to killing the victim. This information was timely turned over to the Defendant's attorney. Subsequently, on July 13, 2015, the Defendant filed a Motion for a New Trial Based on After-Discovered Evidence, and in reply, on August 12, 2015, State filed its Motion Opposing the Granting of a New Trial Based on After Discovered Evidence.

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As such, on February 4, 2016, the above captioned matter came before The Honorable Thomas A. Russo regarding both of the Defendant's motions for a new trial and the State's opposition to such motions. Testimony as well as oral arguments were heard by the Court during this matter, and a partial transcript of the testimony at trial was also provided to the Court for the following individuals: Nick Williams; Jeremy Brady; Vanessa Dinkins; William White; Amanda Anderson; and Michelle Webb.

### **COURT'S ANALYSIS AND ORDER**

The determination of whether new evidence is credible for purposes of a new trial motion rests in the sound discretion of the trial court. *State v. Mercer*, 672 S.E.2d 556, 565 (2009) (quoting *State v. Porter*, 239 S.E.2d 641, 643 (1977)). "The granting of a new trial because of after-discovered evidence is not favored," and an appellate court will affirm the trial court's denial of such motion unless the trial court abused its discretion. *State v. Irvin* 243 S.E.2d 195, 197-198 (SC 1978). "The issue comes down to the matter of the credibility of the witnesses, which we leave to the trial court's discretion." *State v. Harris*, 706 S.E.2d 526, 545 (SC Court App. 2011).

In order for Brady to prevail in his new trial motion based on after discovered evidence, he must show that the after discovered evidence: (1) is such that it would probably change the result if a new trial was granted; (2) has been discovered since trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. *State v. Spann*, 513 S.E.2d 98, 99 (SC 1999).

After considering the testimony during the hearing and reviewing the trial transcript provided and refreshing the Court's recollection, of the five things the Spann Court set forth that the after discovered evidence must show, this Court has come to the conclusion that the defense



has shown prongs two (2), three (3), and four (4); however, prongs one (1) and five (5) have not been shown to this Court's satisfaction.

The State's case charged both Brady and co-defendant, Williams, with Murder, Burglary 1<sup>st</sup> Degree, Armed Robbery and Criminal Conspiracy, all under the legal theories of Felony Murder and Accomplice Liability under the Hand of One is the Hand of All. All of the uncontroverted evidence in the case, showed, that the two co-defendants, Nick Williams and Jeremy Brady, planned to go to the victim's house to take drugs, went and secured a sawed-off shotgun before going to the victim's home, drove to the victim's home together at the time of the shooting, and that the Victim was shot and killed with a sawed-off shotgun during the time both co-defendant's were at the house securing the drugs. Throughout the trial, both co-defendants pointed the finger at the other as the one who actually pulled the trigger killing the victim. The only thing the after discovered evidence purported to expose was that co-defendant Williams admitted to an inmate snitch that he, Williams, was the one who killed the victim.

Under the State's theory of the case, the Court charged the law of Felony Murder without any objection from the defense. Under that theory of law, when the Court charged the jury on Murder it charged in pertinent part, "When two or more people combine together to commit a criminal act and during the criminal act, a homicide is committed as a natural and probable consequence, all present and participating in the criminal act are as guilty of the killing as the one committing the homicide." All the after discovered evidence consisted of was that co-defendant, Williams, allegedly admitted to another inmate that he was the one who killed the victim. There was no other evidence tending to show that either he did it alone or that Brady was not there. The only thing the after discovered evidence purported to reveal was that Williams admitted he was the shooter.

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This evidence, when looking at the first prong of the Spann Court's showings, would not likely change the result of the jury's verdict. During the trial, the co-defendants pointed the finger at one another as to who fired the shots that killed the victim. Other than the "swearing contest" between the co-defendants, there was little to no evidence presented which would assist the jury in determining who fired the shots. All the evidence pointed to the fact that both co-defendants were there to get illegal drugs and that during the encounter the victim was shot and killed. With nothing more than each co-defendant pointing the finger at the other, the jury reached a verdict of guilty after being charged the law on accomplice liability. Were the jury to even believe the after discovered evidence, which is questionable due to the credibility issues of the inmate snitch, all it would do is address the question of who fired the shotgun killing the victim. It made no mention of any other evidence nor did it call into question any other facts such as who was present and participating, what they were doing there and why or what the plans of the two co-defendants were. Answering the question of who the trigger man was does not relieve the other co-defendant of liability. Taking the after discovered evidence in a light most favorable to Mr. Brady, the jury would still most likely have found him guilty under the Felony Murder and Hand of One theories. The identity of the trigger man would most likely not have mattered under the law charged, as both men would have been liable regardless of who fired the gun. The after discovered evidence does not exonerate Mr. Brady and likely would have had no effect on the jury's verdict.

As to the fifth prong in the Spann Court's opinion, i.e. that, (5) the evidence is not merely cumulative or impeaching, this Court finds that the newly discovered evidence only seeks to call into question the co-defendant Williams' testimony that Brady shot the victim, which is merely impeaching. There is no other use of the after discovered evidence other than to impeach Williams' testimony where he testified Brady shot the victim and then later said to someone else

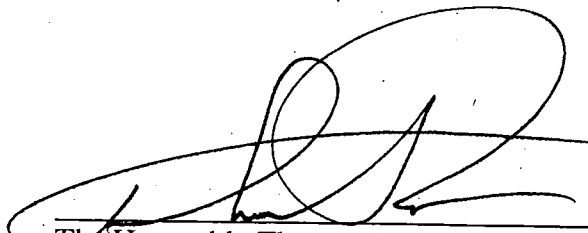
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that he, Williams, shot the victim. This is directly on point with the fifth prong of the Spann Court's test in deciding if a defendant is entitled to a new trial based on after discovered evidence. Since the only use the defense would have for the after discovered evidence would be to impeach the co-defendant's trial testimony, it fails in the eyes of this Court, to meet the fifth prong of the Spann Court's test.

In the view of this Court, even though the defense was able to show that the after discovered evidence met prongs two (2), three (3) and four (4) of the Spann Court's test for after discovered evidence, it failed as to prongs one (1) and five (5). The first prong, that it would probably change the verdict if a new trial were granted, was not met, in that this Court's evaluation of the after discovered evidence is that it would have no effect on the verdict in light of the Court's charge on the legal theories of Felony Murder and Accomplice Liability under the Hand of One is the Hand of All. As to the fifth prong, that the after discovered evidence would have to be more than merely impeaching or cumulative, this Court finds that the after discovered evidence would serve no other purpose other than to be merely impeaching.

**THEREFORE, IT IS THE ORDER OF THIS COURT** that the Defendant's Motion for a New Trial as well as the Defendant's Motion for a New Trial Based on After-Discovered Evidence are both hereby denied.

**IT IS SO ORDERED.**



The Honorable Thomas A. Russo  
Presiding Judge, Eleventh Judicial Circuit

Lexington, South Carolina

April 13<sup>th</sup>, 2016

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

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