

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM YORK COUNTY
GENERAL SESSIONS COURT
JOHN C. HAYES, III, JUDGE
APPELLATE CASE NO.: 2013-000975

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APR 20 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT.

V.

ANTONIO GORDON,

APPELLANT.

PETITION FOR REHEARING PURSUANT TO RULE 221(a), SCACR

Donald J. Zelenka
S.C. Attorney General Office
P.O. Box 11549
Columbia, S.C. 29211

ANTONIO GORDON, #259798
4348 GOLDMINE HWY
KERSHAW, S.C. 29067

The Appellant hereby Petition this Court for a Rehearing pursuant to Rule 221(a), SCACR.

This Court found the lower court decision should be affirmed because the lower court did not misapply the scope of review in determining Appellant's after-discovered evidence was not credible citing State v. Johnson, 654 S.E.2d 835, 836 (2007); State v. mercer, 672 S.E.2d 556, 565 (2009); State v. Porter, 239 S.E.2d 641, 643 (1977); State v. Mayfield, 109 S.E.2d 716, 729 (1959); State v. wright, 237 S.E.2d 764, 767-68 (1977); State v. Harris, 706 S.E.2d 526, 529 (Ct.App.2011) (finding the record supported the trial court's assessment that the circumstances surrounding the witness's recantation of his trial testimony and his testimony during the hearing caused it to find the recantation testimony unreliable and noting the issue came down to a matter of the credibility of the witness, which should be left to the trial court's discretion).

Appellant asserts this court has overlooked the fact in State v. mercer, 672 S.E.2d at 567 our Supreme Court amended the gatekeeping role of the trial judge in State v. Spann, 513 S.E.2d 99, Mayfield, supra, and many other cases in post-trial after-discovered evidence motions.

The South Carolina Supreme Court held "we are sensitive to the notion that a mere finding of a witness's lack of credibility **does not complete the analysis, because a witness may lack persuasive credibility and still create reasonable doubt**". The lower court found this language hard and confusion to fit into its analysis but nevertheless found all witness non credible without determining whether or not the testimony evidence created a reasonable doubt, therefore, the lower court erred. Mercer, supra.

However, this Court cite State v. Harris, supra, as supporting authority, Appellant argue to this court in Harris language/finding asserted in Mercer "we are sensitive to the notion that a mere finding of a witness's lack of credibility "does not complete the analysis", because a witness may lack persuasive credibility and still create reasonable doubt", was not before the court.

This court has over looked this finding addressed by our Supreme Court which is controlling authority in post-trial after-discovered evidence motions.

Conclusion

It is respectfully asked that this court grant the petition for rehearing and find that the lower court erred by not completing the Mercer reasonable doubt analysis.

Antonio Gordon, #259793
4343 Goldmine Hwy
Kershaw, S.C. 29067

Antonio Gordon

April 21, 2016

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM YORK COUNTY
GENERAL SESSIONS COURT

JOHN C. HAYES, III, JUDGE

APPELLATE CASE NO.: 2013-000975

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANTONIO GORDON,

APPELLANT.

CERTIFICATE OF SERVICE

I, Antonio Gordon certifies that I have served Appellant's Petition for Rehearing on Respondent at:

Donald J. Zelenka

S.C. Attorney General Office

P.O. Box 11549

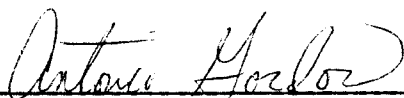
Columbia, S.C. 29211

by depositing in the mail with sufficient postage this 21st, day of April, 2016.

Antonio Gordon, #259798

4348 Goldmine Hwy

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SC Court of Appeals

ANTONIO GORDON, #259798
4843 GOLDMINE HWY
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APRIL 21, 2016

RE: State v. Gordon
Appellate case No.: 2013-000975

Dear Clerk:

Please find enclosed a Petition for rehearing I am filing with the court.

Also Clerk I filed a motion requesting a copy of the appendix. Could you please inform me the status of that motion?

Respectfully Submitted

Antonio Gordon, #259798
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APR 22 2016

Gordon 259798
LEGAL MAIL ROOM

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APR 26 2016

SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
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Columbia, South Carolina 29211