

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ARDON PERCIVAL CATO, II

Applicant,

VS.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF GENERAL SESSIONS

Warrant: H893922, 926, 927

Indictment: 2005GS2603409, 3410, 3412

Case: 77066-1

ORDER DISPOSING OF ORAL ARGUMENTS

&

DENYING APPLICANT'S MOTION FOR A

NEW TRIAL BASED ON

AFTER-DISCOVERED EVIDENCE

FILED
CLERK OF COURT
Horry County

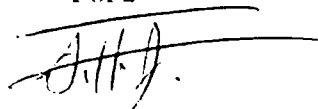
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Horry County

Applicant Cato moved this Court for a New Trial based on after-discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure in a motion dated March 8, 2016 and filed March 14, 2016. This Court received Respondent's response to Applicant's motion filed with the Clerk of Court's Office on April 6, 2016. After considering the file, Applicant's motion, and the Respondent's response to the motion, this Court finds that a hearing on the motion would be neither helpful nor necessary and hereby decides the issue on the filings.

Applicant pled guilty as indicted, without recommendation or negotiation, on July 17, 2006, to one count of Murder and two counts of Assault and Battery with Intent to Kill. At his guilty plea, this Court ensured that the Defendant was aware of his rights and knowingly, freely, and voluntarily waived those rights in order to enter a guilty plea. Subsequent to the acceptance of the guilty plea and the imposition of his sentence, Applicant requested a new trial pursuant to Rule 29(b) based on after-discovered evidence. SCRCrimP. The newly-discovered evidence advanced by the Applicant is a pair of affidavits included as Exhibits A and B attached to Applicant's motion. To succeed on a Motion for New Trial based on Rule 29(b), an applicant must show, in accordance with *Spann*, that the evidence would change the result if a new trial were granted, has been discovered since the trial, could not have been discovered with due diligence before trial, is material, and is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999).

This Court finds that Applicant's after-discovered evidence does not meet the requirements set forth by *Spann*. Even assuming, *arguendo*, that statements of individuals who claim to have been present

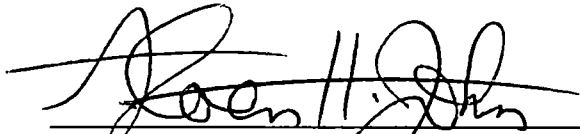


at the scene of the crime could not have been discovered prior to the guilty plea, the substance of their affidavits is wholly cumulative. Moreover, at his guilty plea, Applicant admitted to murdering one victim and shooting at two others with the intent to kill them; no statement in either affidavit offered by the Applicant is so material that it could possibly change the result of Applicant's admission to the crime.

Because the affidavits offered by Applicant in support of his motion do not meet the requirements set by *Spann* to entitle him to a new trial based on after-discovered evidence as allowed by Rule 29(b) of the South Carolina Rules of Criminal Procedure,

Applicant's Motion for a New Trial is hereby **DENIED**.

AND IT IS SO ORDERED.

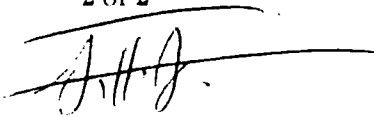


THE HONORABLE STEVEN H. JOHN
RESIDENT CIRCUIT COURT JUDGE
FIFTEENTH JUDICIAL CIRCUIT OF SOUTH CAROLINA

Conway, South Carolina

July 18, 2016

FILED
Horry County
2016 JUL 19 AM 9:14
MELANIE BRIDGEMAN
CLERK OF COURT



Ardon P. Cato II #316535
Evans C.I. Cheraw A 271
610 Highway 90 West
Bennettsville, SC 29512

October 31, 2016

SC Court of Appeals
Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

RECEIVED
NOV 01 2016
SC Court of Appeals

Re: Appellate Case No.2016-002081

Attachment of orders to Notice of Appeals

Dear Clerk,

Enclosed is copy of orders to be challenged on appeal, to accompany notice of appeal. This is in response to the letter notifying me of needed correction, dated October 20, 2016. I received letter at Evans C.I. Mailroom on October 26, 2016. Corrections have been made in a timely manner.

Respectfully,

Ardon P. Cato II #316535
Ardon P. Cato, II