

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2016-001004

STATE OF SOUTH CAROLINA,

Appellant,

vs.

EDWARD DEAN,

Respondent.

**State's Return to Respondent's
Motion to Dismiss State's Appeal**

Respondent State now makes its return to Respondent Dean's motion to dismiss the State's appeal.

Dean makes his motion to dismiss with the representation to this Court that the State may never appeal the grant of a motion for a new trial. The motion should be denied because a trial court's grant of a motion for new trial **is reviewable** when, as in this case, there is an error of law. The test is set out by the Supreme Court in State v. Smith, 383 S.C. 159, 679 S.E.2d 176 (2009) as follows:

[W]e must resolve whether the State had the right to appeal the trial judge's order. The State may only appeal a new trial order if, in

determining whether an error of law exists, and therefore whether the State has the right to an appeal, it is necessary to consider the merits of the case.

Smith, 383 S.C. at 165-166, 679 S.E.2d at 180; *accord* State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); State v. Des Champs, 126 S.C. 416, 120 S.E. 491, 492 (1923) (“[W]here the grant of a new trial in a criminal cause is predicated wholly upon error of law, we think an appeal by the state will lie.”).

In State v. Benton, 85 S.C. 107, 67 S.E. 143 (1910), the trial court granted a new trial based on an irregularity, the absence of a seal for the writ of venire. The Supreme Court reversed noting that an irregularity in a writ of venire facias is insufficient to set aside a verdict absent injury to the party from the irregularity or objection made before the verdict. Id. Accordingly, the trial court in Benton was reversed because the reason provided for granting a new trial was not a sufficient one. In the instant case, Judge Addy, as discussed below, granted a new trial on an insufficient basis and therefore, made an error of law.

Dean errantly portrays the grant of the new trial based on a discovery violation: Dean’s counsel apparently believes the State made a secret deal for leniency with Dean’s co-defendant, Adrian Gaston. Dean’s counsel was not hindered by the lack of evidence to level these accusations. However, contrary to Dean’s motion, the new trial was not granted based on the allegation that the State made a secret deal with Gaston’s counsel. As will be discussed further below, Judge Addy did not grant the mistrial based on the alleged failure to disclose a plea bargain. In fact, Judge Addy found the exact opposite, noting: “And on the first question about a deal for any of the testifying co-defendants, Solicitor, I concur with you. I don’t see where the Court has any reason to doubt the representations that have been made by the attorneys for the State.” New Trial Motion (NT) Tr. p. 10, lines 20-24. Judge Addy later noted in explaining his concerns,

“what this Court is struggling with more than anything else is the integrity of the Court, not so much your integrity, Solicitor.” NT Tr. p. 12, lines 10-12.

In the instant case, Judge Addy granted Dean a new trial solely because he failed to retain jurisdiction over Dean’s codefendants, not because of a discovery violation. Judge Addy accepted responsibility for the failure to retain jurisdiction and also declined to find a discovery violation actually occurred. Thus, Dean’s rights were not violated – Dean did not have a right for his codefendants to go before the same judge. In the absence of an actual discovery violation, something Judge Addy declined to find, Dean was not entitled to a new trial because Dean did not have a legitimate stake in the disposition of his codefendants’ charges. Therefore, Judge Addy erred as a matter of law in granting a new trial as he did not have a basis to grant a new trial. Benton; State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) (“A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons.”); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (a trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support).

The State has attached several transcripts as exhibits, which it hopes provides context for this Court’s benefit. The State would offer this Court the following procedural background:

Evidence at trial

Dean was convicted of first degree burglary for his role in the burglary of a gun collector’s home. Several guns were stolen, along with other valuables. Law enforcement was unable to recover anyone’s latent prints and none of the physical evidence recovered at the scene could be linked to anyone.

Law enforcement received a tip that stolen guns were stored underneath the duplex where

Dean resided with his mother. The search under the duplex yield two weapons, a CETME .308 rifle and a rifle chambered for a 7.62. Trial Tr. pp. 135-37; p. 151, lines 5-7 (attached as Exhibit B). The serial numbers for the guns came back stolen from Greenwood County. Trial Tr. p. 151. Law enforcement searched the duplex, receiving consent from Dean's mother and the occupant of the other apartment. Law enforcement recovered .308 ammunition and .44 ammunition from Dean's residence. Trial Tr. pp. 150-51.

Subsequently, Adrian Gaston was arrested for a separate burglary. Gaston provided a statement to law enforcement admitting to several burglaries. Gaston was not even a suspect in the burglary of the gun collector's home, but he implicated himself in the burglary and also implicated Edward Dean and co-defendant Antwan Anderson. Trial Tr. pp. 108-09.

Gaston testified for the State against Dean. Gaston testified Anderson picked Gaston up and Dean was with them when they burglarized the residence. Gaston went in the residence and also acted as a look-out as they stole guns and other items. He also assisted in breaking into a shed to steal more firearms. Gaston kept one of the firearms, while Dean and Anderson split up the remaining firearms. Trial Tr. pp. 80-86.

On cross-examination, Gaston agreed he was facing two life sentences and an additional 93 years and 300 days for all his pending charges. Gaston agreed he had a lawyer and was trying to cooperate. Gaston agreed what he really wanted was his freedom. He testified he hoped **his lawyer** would help him with his freedom. Trial Tr. p. 101 (emphasis added).

Lead up to trial

On December 11, 2013, a hearing was held in which Dean's counsel was attempting to find the identity of what he termed a confidential informant. Shannon Odom noted the person

reporting the location of stolen weapons was a mere tipster and not a participant in the crime.¹ Captain Chip Davenport testified the call was made by a person asking to remain anonymous. Captain Davenport did not ask the person's name. The tipster explained that stolen property was underneath the house at Dean's address. The tipster did not disclose how the tipster obtained the information. Dec 11 hearing (H) Tr. pp. 6-7 (Exhibit A). Captain Davenport advised that he did not know the identity of the tipster. H. Tr. p. 8. On cross-examination, Captain Davenport testified the call came through dispatch and agreed it was possible the number could be retrieved from dispatch. Captain Davenport refrained from doing so since the caller asked to remain anonymous. The solicitor took upon it herself during examination to check for a phone number from dispatch. H. Tr. p. 15. Accordingly, Dean's accusations in his motion that Captain Davenport or the prosecution knew the identity of the informant and was hiding the identity is simply a false narrative to bookend the false narrative that the State committed a discovery violation.

During the hearing, Dean's counsel inquired if the prosecution made any deals or offers to co-defendant Gaston. Odom advised the State made no offers to Gaston. H.Tr. pp. 17-19.

Dean's counsel claimed to "have a hard time believing" Gaston's attorney, Stephen Geoly, "would allow him to testify without an assurance of some benefit." H.Tr. pp. 19-20. Dean's counsel alleged that after Dean's trial, if Dean were convicted, "it's going to be the Solicitor's office with arms around Mr. Geoly and Mr. Gaston asking . . . for him to get probation or some other kind of leniency." H.Tr. p. 20, lines 10-17. Then Dean's counsel threatened, "if that were to happen, I mean, we're going to get a transcript and we're going to be back in here and we're

¹ "[A]n informant's identity need not be disclosed where he possesses only a peripheral knowledge of the crime or is a mere 'tipster' who supplies a lead to law enforcement." State v. Humphries, 354 S.C. 87, 90, 579 S.E.2d 613, 615 (2003).

going to be saying that we were misled and that the Court was misled.” H.Tr. p. 20, lines 17-21.

Then Dean claimed, “I can see what’s happening, you know.” H. Tr. p. 20, lines 23-24.

Although Dean’s accusations that Odom was lying were made without proof, Judge Addy patiently suggested a “possible resolution” for whichever judge hears the case to hold sentencing and the motion for new trial in abeyance pending sentencing for Gaston. “And in that way, if what you’re describing comes to pass, your client could receive a new trial if the representations today should differ from what actually transpires subsequently. That might be a potential way to address the situation. Just thinking out loud.” H. Tr. p. 20, line 25 – p. 21, line 11. Judge Addy then moved directly into concerns about the size of the jury pool. H. Tr. p. 21.

Odom brought the point up that “I haven’t made an offer. I have not made any agreements with Mr. Geoly or Mr. Gaston.” H. Tr. p. 22, lines 16-18. She reiterated, “I mean, at this point, Mr. Geoly – I don’t know what he’s telling his client. But I have no[t] made any offer to them.” H. Tr. p. 22, lines 20-22. Dean’s counsel claimed to know: “He’s telling his client he knew that she’s going to get a sweetheart deal. I can almost guarantee you that, your Honor.” H. Tr. p. 22, lines 23-25. Odom explained the obvious, “Mr. Gaston, he maybe testifying in hopes that something will happen after it’s all said and done, but I have not offered him anything.” H. Tr. p. 23, lines 4-11. Again, Dean’s counsel claimed, without proof, that “something happened,” “through body language” or “the wink and the nod” or “something they’ve directly said.” H. Tr. p. 23, lines 12-20. In other words, Dean’s counsel was accusing the prosecution of lying to Judge Addy.

The hearing ended with Dean’s counsel accusing Judge Addy of leveling a “trial tax.” Judge Addy explained why that accusation was not true before promptly leaving the bench while Dean’s counsel was in mid-sentence. H. Tr. pp. 39-43.

Gaston's guilty plea

Gaston pled guilty to all his Eighth Circuit charges and a Saluda County (Eleventh Circuit) charge on May 14, 2015 in Saluda County before the Honorable Thomas A. Russo, Sr. It appears there was no actual plea agreement with the Eleventh Circuit, although Assistant Solicitor H. Franklin Young decided to dismiss a conspiracy charge accompanying the second degree burglary charge for which Gaston was pleading guilty. Assistant Solicitor Lance Sheek appeared in Saluda County on behalf of the Eighth Circuit. Sheek advised Judge Russo that the State agreed to reduce two first degree burglary charges to second degree burglary. Gaston was pleading guilty to eight second degree burglary charges from the Eighth Circuit while thirteen attendant charges such as larceny and conspiracy charges were dismissed. Gaston (G) Tr. p. 13, lines 13-20; p. 15, lines 8-11 (Exhibit F). So the agreement reduced Gaston's exposure from two life sentences and three hundred years imprisonment to eighty years imprisonment (plus ten more years of exposure for the Saluda County charge).

After Judge Russo went over the plea agreement with Gaston, Judge Russo inquired if anyone promised him anything else. Gaston indicated, "No, sir." G. Tr. p. 13, line 22 – p. 14, line 1:

During the rendition of the facts supporting the Saluda County charge, Young noted once Gaston, Antwan Anderson, and two juveniles were apprehended in the vicinity of the Saluda County burglary, Gaston cooperated: "And from that . . . point Mr. Gaston started telling what happened and revealed, I believe, the facts associated with the other cases that are essentially at bar here on Greenwood County and he has, I believe, since that time cooperated extensively." G. Tr. p. 19, lines 15-19. Sheek advised Judge Russo of the facts of each burglary charge, including the instant case. In reciting the factual basis for the instant case, Sheek actually failed to mention that

Gaston implicated himself in the burglary even though he was not a suspect. G. Tr. p. 21, line 11 – p. 22, line 5.

Sentencing considerations

Geoly proceeded with a compelling, if not concise, presentation to Judge Russo. Geoly identified Anderson as the “ringleader” and the older “mastermind,” with Gaston “along for the ride.” Geoly confided Gaston was “not the sharpest Crayon in the box” and had a sufficiently low I.Q. to gain government assistance. G. Tr. p. 25, lines 4-17. Geoly described Gaston as “one of the most kind individuals you’ll ever meet” even though “[t]hat’s really inconsistent with the charges you see before you, Judge.” G. Tr. p. 25, lines 20-24.

Geoly noted Gaston did not have a criminal history prior to the string of burglaries. G. Tr. p. 26, lines 6-8.² Geoly advised Judge Russo as follows:

[H]e immediately began cooperating with law enforcement. He is kind of the follower, the go-along. I mean, once law enforcement was up with him he was an open book to them. He then told me upon my retention by his grandmother to represent him that he wanted to cooperate with law enforcement. And he did, Judge. Going, I think, to the solicitor’s office no less than probably a half dozen times, sometimes with me, sometimes without me. Full cooperation.

G. Tr. p. 26, lines 8-16. Geoly surmised that none of the victims came to the plea hearing because they recognized the primary co-defendants were already convicted. G. Tr. p. 26, lines 17-20. Geoly credited Gaston as “instrumental” in recovering “a lot of” stolen items. G. Tr. p. 26, lines 24-25.

Geoly also pointed out to Judge Russo the following:

I think it is very definitely worth noting that his life was threatened.
I think the solicitor can back that up. During the trial, I think one of

² Both Young and Sheek agreed that Gaston had no prior record. G. Tr. p. 24, lines 1-6.

the assistant solicitors actually heard a threat. There were threats made to him in the parking lot while he was coming to and from the courthouse.

G. Tr. p. 27, lines 1-7. Sheek confirmed this occurred during Dean's trial. G. Tr. p. 27, line 8. Additionally, Gaston and his grandmother received threats at home on the eve of trial from Anderson's family. G. Tr. p. 27, lines 9-16. Geoly explained, "But my client stood fast and was doing the right thing." G. Tr. p. 27, lines 17-19.

Geoly advised Judge Russo the following:

He went into this, Your Honor, with no deal. **He had no deal.** But he counted on the fact that, I think he responded to questions from co-defendant's counsel that he was trusting me to vehemently represent him and try to get him the best result possible.

And that's the way these things are done, Judge.

My client was instrumental in securing the conviction of the primaries in these, Your Honor. Certainly has some responsibility under the hand-of-one-hand-of-all scenario but, Your Honor, he cooperated with law enforcement. He cooperated with the solicitor's office.

Judge, we would implore you to consider, based on his below-average intelligence quotia [sic] the fact that he's been so helpful and instrumental in securing these other convictions, and Your Honor, he has structure and probably a more disciplined lifestyle at this point in his life than he has ever before.

G. Tr. p. 27, line 20 – p. 28, line 12 (emphasis added).

Geoly and Gaston advised Judge Russo that Gaston worked at Carolina Pride for the last six months. Apparently, he was threatened by a co-worker who was a friend of Dean's. G. Tr. p. 28, lines 12-23.

Geoly pleaded to Judge Russo, "And we would hope you would take all of that into account, Judge, and realize that this is somebody that you are very unlikely to see before you again, Judge." G. Tr. p. 29, lines 16-19. Geoly made the pragmatic point that "[s]omebody of his level of education and the fact that he then has a criminal record, it's going to be almost impossible for

him to get back into the workforce. Right now he's got a job. He can provide for his two children. He can help his grandmother and that's what he's been doing, Your Honor, for the last couple of years. I think these charges are from 2012." G. Tr. p. 30, lines 2-8. Geoly implored, "This little stint, you know, three years ago when he was 20 years old was out of character for him." G. Tr. p. 31, lines 4-6.

Sheek noted Gaston's cooperation. G. Tr. p. 31, lines 9-17. Young noted "Mr. Geoly and I discussed this matter in depth. . . . We had absolutely no deal of any kind should he go forward with trial." G. Tr. p. 31, lines 22-25. Young noted Gaston was originally pleading with no recommendation to both burglary and conspiracy, but Young decided to recommend a concurrent sentence to the Eighth Circuit charges and to dismiss the conspiracy on the day of the plea. G. Tr. p. 32, lines 4-11.

Unfortunately, Sheek provided some misinformation, as discussed further, when he told Judge Russo, "Likewise, Judge, the understanding with Mr. Geoly was we would certainly convey to the Court if he cooperated in the trials but other than that there were no deals made beforehand." G. Tr. p. 32, lines 13-16. During the motion for new trial, discussed further below, Solicitor Stumbo noted Assistant Solicitor Odom was adamant she made no deal with Geoly or Gaston.

Before pronouncing his sentence, Judge Russo advised Gaston the following:

Typically someone with these kind of charges, I'd be sending to the penitentiary.

I'm going to give you a chance. There's a couple reasons. First off, it doesn't appear to me based on what I've heard and know of these matters that you were the lead guy on this. It sounds to me like you got caught up with a couple of fellows that had bad intentions and for whatever reason you decided to go with it.

G. Tr. p. 35, lines 1-8. Judge Russo noted Gaston's lack of a prior record.³ G. Tr. p. 35, lines 20-22. Judge Russo noted that Gaston's kids need him working a job and they do not need him in prison. He advised Gaston that if he screwed up, he was going to the penitentiary. He told Gaston to not "screw it up." G. Tr. pp. 36-37 (direct quote, p. 37, lines 12-13).

Hearing on motion for new trial, April 13, 2016.

At the hearing on Dean's motion for a new trial, Solicitor Stumbo explained as follows:

Judge, just a very simple response is that we maintain that no deals were ever offered to this co-defendant prior to the time that he testified back. Because of all the motions that have been filed and accusations against Ms. Odom that she was essentially lying about that, not being honest and forthright prior to and during the Dean trial. After the Dean trial was over I asked her to just give me the Gaston files. . . . I believe the Antwan Anderson case was still pending. . . . So Mr. Gaston was set, I believe, to testify in that trial as well. . . . Judge, no offer was made in this case to Mr. Gaston until – I can't tell you the exact date. It was a couple of months before he actually pled in 2015.

NT Tr. p. 6, line 20 – p. 7, line 9 (Exhibit G). Solicitor Stumbo advised Geoly he needed to check with the Eleventh Circuit, which also had charges against Dean before he could make an offer. The offer was to allow a straight up plea "to a bunch of burglary seconds." NT Tr. p. 7, lines 15-23.

Solicitor Stumbo denied Dean's allegation of some unspoken deal: "All three of us would deny that, Judge. Ms. White and Ms. Odom have never been dishonest with me before and have always been forthright. I don't expect them to make anything up in that regard to this case. Never

³ In contrast, per the Presentence Investigation submitted by DPPPS during Dean's sentencing, Dean's criminal record extends back to when he was a juvenile, in 1996, and includes sixteen convictions and two juvenile adjudications. These include two criminal domestic violence convictions, a resisting arrest conviction, and a common law robbery and assault and battery of a high and aggravated nature conviction. (Exhibit C). Judge Addy noted Dean's criminal record and his attempt to intimidate a witness in his decision to sentence Dean to twenty-five years imprisonment. Sentencing Tr. p. 21, lines 1-22 (Exhibit E).

at any time did they say they made any kind of offer to Mr. Gaston. He was cooperative from the beginning.” NT Tr. p. 8, lines 1-6. Solicitor Stumbo noted Gaston received the same offer Dean received prior to his trial, reducing the first degree burglary charge and allowing a straight up plea to second degree burglary. NT Tr. p. 8, lines 6-11. Solicitor Stumbo confided he was surprised Gaston did not receive prison time. He expected Gaston to get some prison time given the number of charges. NT Tr. p. 8. Solicitor Stumbo reiterated no promises were made and commented, “So it’s a fairly simple response, Judge. I don’t know what we could have done to be more forthright with the Court before and during Mr. Dean’s trial.” NT Tr. p. 9, lines 1-6.

Solicitor Stumbo noted if he had to do it over again, he would have notified Judge Addy that he intended to negotiate all of the charges together in Saluda. NT Tr. p. 9. As to Gaston’s sentence, Solicitor Stumbo advised Judge Addy, “We in no way suggested that probation was an appropriate sentence. We in no way negotiated that, nor recommend it.” NT Tr. p. 10, lines 8-10.

Judge Addy responded:

And on the first question about a deal for any of the testifying co-defendants, Solicitor, I concur with you. I don’t see where the Court has any reason to doubt the representations that have been made by the attorneys for the State. The problem the Court runs into, and, again, I know that we are all dealing with a very significant number of cases. We forget sometimes what is said. We forget sometimes, unless it’s written down and put in the clerk’s file, we forget what may have been ordered or may have been required of the parties. And I don’t believe that you were, -- you yourself were present. . . . [A]nd when the Court was informed that . . . Judge Russo, had dealt with the sentencing of Mr. Dean, I even replied back that my recollection was that I had simply requested to try and stay apprised of the situation. . . . My statement, my email statement, which Mr. Grose provided as part of his supplemental exhibits, my statement was flat out wrong.

NT Tr. p. 10, line 20 – p. 11, line 16.

Judge Addy noted, despite his memory lapse, he did request to retain jurisdiction over the codefendants at the time of trial. However, Judge Addy noted “this Court did not place that in the file. Honestly, Solicitor, the thing that the Court is struggling with more than anything else is, and I’ve said this before in front of everyone assembled here, I always try to be the man of my word. I promised that I would assume jurisdiction of the other two cases.” NT Tr. p. 11, line 22 – p. 12, line 3.

Judge Addy advised Solicitor Stumbo:

[W]hat this Court is struggling with more than anything else is the integrity of the Court, not so much your integrity, Solicitor. That’s not – that’s beyond question. But the Court is more concerned about the promises that I had made to Mr. Dean, or the Court had made to Mr. Dean, to retain jurisdiction over the other co-defendants. And it just doesn’t look right. For lack of a more artful explanation, it doesn’t look right that the Court has assured the defense that the Court would handle those other pleas so that the Court would be in a position to assess whether any kind of deal or “approached in chambers” kind of situation arose. Again, it’s the Court’s integrity and the integrity of this process that I’m more concerned about at this juncture.

NT Tr. p. 12, lines 10-23.

Dean’s counsel noted Sheek’s statement to Judge Russo that the State had promised to advise the Court about Gaston’s cooperation. Likewise, Solicitor Stumbo made a similar characterization in a subsequent e-mail between Judge Addy, Judge Russo, and the parties. NT Tr. p. 13, lines 15-21.

Before Solicitor Stumbo explained the discrepancies, Judge Addy advised Dean’s counsel the following:

Like I said a moment ago, when I got that email about Judge Russo hearing the plea for Gaston, my recollection was faulty. And that was, I think, you know, that plea took place a year after the fact. Clearly the transcripts do reflect that I retained jurisdiction. And I

did that for a very, very specific reason so that I, not the Court, but I individually as judge, this jurist, could be aware if there was any reduction in charge, recommendation made, whether I was approached discreetly in chambers, whatever the case may be, that way I could be aware of that. I firmly – it is being represented to me that the fact that I have retained jurisdiction was not communicated to the Solicitor. I believe the Solicitor when he says he didn't recall it. And that's very easy to believe because I – you know, this was a big case. I knew that we had had this hanging out here for some period of time. And even knowing it was a big case, even knowing that this motion for new trial was hanging out here or a downward departure in sentence was hanging out there, my recollection got cross wired.

NT Tr. p. 15, lines 5-23.

Judge Addy advised the attorneys he felt he needed to take responsibility because he felt it was his job to put something in the clerk's file assuming jurisdiction of the co-defendants' cases. Judge Addy noted he did not anticipate Ms. Odom leaving the Solicitor's Office and was uncertain he was aware of the various charges against Gaston in other counties, including Saluda County. Judge Addy noted he wanted to review the December 2013 transcript before he made a final decision but he was inclined to grant Dean a new trial. NT Tr. pp. 16.

Judge Addy further clarified his rationale for granting the new trial to Solicitor Stumbo as follows:

And quite honestly, the Court is basing this motion on the assurances which the Court gave to Mr. Dean as opposed to any assurances which your office may have made to anyone or may not have made to anyone else. So that's kind of the way the Court is viewing this. It's the Court's integrity again. Your integrity, I have no reason to doubt it. And I would ask Mr. Dean to respect the fact that I'm trying to be honest with him and that I'm trying to do what the Court has promised. I'm trying to get a remedy for Mr. Dean the only way that I know how to, in light of the fact that the Anderson plea and the Gaston plea, that's water under the bridge. I cannot change that.

NT Tr. p. 8-22.

Solicitor Stumbo clarified the following for the record:

In the email I indicated that she, referring to Ms. Odom, stated on the record as an officer of the Court that Mr. Gaston was told his cooperation would be considered and taken into account the charges were dealt with at a later date. After the email was sent, Ms. Odom actually corrected me because she looked at this said I didn't even say that. The reason I put that in the email, Judge, because typically if I had been dealing with this case before and just my practice had always been to relay that to a co-defendant that was going to testify and then I would indicate to the Court the same thing to the defense counsel. She indicated to me that she doesn't even go to that point. She doesn't even tell them they're – I guess there's an assumption that can be made that their testimony will be taken into consideration. But I just wanted to clarify that was probably in my email to Your Honor. Ms. Odom corrected me and said she didn't even go to that point. She just basically said you can testify and the Court will figure it out later. So I just wanted to correct that. That was not a representation Ms. Odom made. It was a false assumption by when I responded to Mr. Grose's email.

NT Tr. p. 19, lines 2-23.

Judge Addy erred as a matter of law in granting the motion for new trial because, absent an undisclosed agreement between his co-defendants and the prosecution, Dean's rights were not violated. There was not an undisclosed agreement, as Judge Addy found. Dean lacks a legitimate interest in the disposition of his co-defendants' charges, and therefore, has no remedy when his personal expectations for the disposition of his codefendants' charges were not met. See generally, Reed v. Becka, 333 S.C. 676, 683, 511 S.E.2d 396, 400 (Ct. App. 1999) (finding victim does not have the right to veto a proposed plea agreement).

Dean's motion to dismiss is based on the proposition the State committed a discovery violation. Dean claims, "The prosecution concealing its deal Gaston prejudiced Dean [sic]." Mot. to Dismiss p. 13. However, Judge Addy found the State did not conceal any deals. As shown above, Judge Addy declined to find a discovery violation and was satisfied with the

prosecution's earnest representations. Dean made his motion to this Court without the benefit of the transcript, and the transcript shows Dean's assertions in his motion to dismiss are incorrect. Dean also mischaracterizes the law and claims a blanket prohibition against the State appealing a grant of a motion for a new trial. However, as discussed above, an appeal from the motion for new trial is appropriate when the grant of the motion is controlled by an error of law. State v. Smith, 383 S.C. 159, 679 S.E.2d 176 (2009). In order to do so, this Court should consider the merits of the case. Id. This is best done through full briefing. Accordingly, this Court should deny Dean's motion to dismiss.

Dean accuses the State of being deceptive, however the record shows otherwise. Full briefing would allow Dean to correct the false assertions he put forward to this Court.

WHEREFORE, Appellant respectfully requests this Court deny Dean's motion to dismiss and order the parties to proceed with briefing the issues herein.

Respectfully submitted,

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