

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000921

RECEIVED

JUN 20 2017

SC Court of Appeals

The State,.....Respondent

v.

Mack Wells, .....Appellant

**MOTION TO SUSPEND APPEAL AND GRANT LEAVE TO MAKE A MOTION FOR A  
NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE**

J. Todd Rutherford, Esquire  
SC Bar #12097  
Attorney for Appellant  
2113 Park Street  
Columbia, South Carolina 29202  
(803) 256-3003 Telephone  
(803) 256-9698 Facsimile

## **MOTION**

Mack Wells moves the Court, pursuant to South Carolina Criminal Court Rule 29(b), to suspend his appeal and grant leave to file a motion for new trial based on after discovered evidence. Appellant submits that the exculpatory information contained in the affidavit of Erick Wilson, amounts to after discovered evidence under Rule 29(b) and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). Appellant has also submitted an affidavit in support of his claim of after discovered evidence.

## **PROCEDURAL HISTORY**

On June 10, 2016, Appellant was stopped for suspicion of Driving While Intoxicated. The Appellant was detained and after a search of his vehicle, the arresting officer discovered crack cocaine in the vehicle the Appellant was driving. The appellant was arrested for possession with intent to distribute (PWID) crack cocaine (Indictment No.:2017-GS-4001354) and PWID within the proximity of a school (0000-GS-40). On April 6, 2017, Appellant appeared in front of the Honorable Robert Hood and pled guilty to PWID crack cocaine, first offense. Appellant was represented by J. Todd Rutherford, Esquire, and the State was represented by Joe Berry, Assistant Solicitor. The Honorable Robert Hood sentenced Appellant to a term of ten years provided that upon the service of time served the balance is suspended with probation for three years for the PWID crack cocaine, first offense and the Proximity of a School charge was dismissed.

## **APPLICABLE LAW**

Appellant is alleging after discovered evidence that warrants a new trial. To prevail on this claim appellant "must show that the after discovered evidence: 1) is such

that would probably change the result if a new trial were granted; 2) has been discovered since the plea; 3) could not in the exercise of due diligence been discovered prior to pleading guilty; 4) is material; and 5) is not merely cumulative or impeaching.” Id at 619, 99. (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)).

**ARGUMENT**

Appellant submits that the information contained therein Erick Wilson’s affidavit was not known to him prior to and/or during the plea. Appellant further submits that the information has only been recently discovered due to Erick Wilson approaching Appellant’s mother at her house looking for Appellant with this previously unknown information and offering to provide an affidavit. The affidavit is material in that it exculpates Appellant and reveals that Erick Wilson is the owner of the crack cocaine found in the vehicle on June 10, 2016.

**CONCLUSION**

For the above stated reasons, Appellant would respectfully request that the Court suspend his appeal and grant leave to make a motion for a new trial.

I so move,



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J. Todd Rutherford, Esquire  
SC Bar #12097  
Attorney for Appellant  
2113 Park Street  
Columbia, South Carolina 29202  
(803) 256-3003 Telephone  
(803) 256-9698 Facsimile

June 16, 2017  
Columbia, South Carolina

**TABLE OF AUTHORITIES**

**CASES**

State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993).....3  
State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999).....2

**OTHER AUTHORITY**

Rule 29(b), South Carolina Criminal Court Rules.....2

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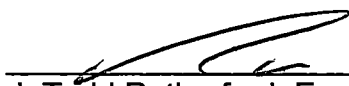
Mack Wells, .....Appellant

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**PROOF OF SERVICE**

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I, J. Todd Rutherford, certify that I served the within Motion to Suspend Appeal and Grant Leave to Make a Motion for a New Trial Based on After Discovered Evidence on the Respondent by depositing three copies in the United States mail, postage prepaid, on June 19, 2017, addressed to 1701 Main Street, Columbia, South Carolina 29201.

  
J. Todd Rutherford, Esquire  
SC Bar #12097  
Attorney for Appellant  
2113 Park Street  
Columbia, South Carolina 29202  
(803) 256-3003 Telephone  
(803) 256-9698 Facsimile