

IN THE STATE OF SOUTH CAROLINA

South Carolina Court of Appeals

---

RECEIVED

AUG 28 2017

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Honorable Kristi Lea Harrington, Circuit Court Judge

KING CHEVAIS COMYERS,

Appellant,

VS.

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE NUMBER: 2015-002405

PLEASE TAKE NOTICE that appellant files this motion in good faith, and that such circumstances as presented warrant granting this motion.

On October 4, 2016, my co-defendant Jeremiah Belton counsel spoke with Marin Caldwell (See: attachment) at which time Mr. Caldwell told Ms. Hackett counsel for Mr. Belton he wanted to recand his testimony; thus subsequently thereafter I filed a motion for new trial on the 12th day of July, 2017 which is now pending in Court of General Sessions.

Accordingly it is my contention that counsel is aware and has been informed about motion in lower court. As such a stay is warranted where this motion challenges the sufficiency of

evidence as well as raises a novel question of law which has not been addressed by this court.

Hence since this is evidence unknown to counsel, it would preclude a claim of ineffective assistance of trial and appellate counsel. Moreover a sufficiency of evidence claim is not cognizable under South Carolina Code Ann. §17-27-20 (cum.supp.16); SIMMONS vs STATE, 264 S.C. 417 (1974).

This court denial of stay would preclude any avenue for appellant to address denial of motion and would bar consideration of claim in another tribunal if necessary. The rare circumstances under which this motion is made, requires court to consider constitutional rights involved should court decline to do so.

WHEREFORE it is prayed court grant motion.

Respectfully submitted

  
King Conyers, Pro Se.

DATE: 08/24/2017

PLEASE TAKE NOTICE that appellant files this motion in good faith, and that such circumstances as presented warrant granting this motion.

On October 4, 2016, my co-defendant Jeremiah Belton counsel spoke with Marin Caldwell (See: attachment) at which time Mr. Caldwell told Ms. Hackett counsel for Mr. Belton he wanted to recand his testimony; thus subsequently thereafter I filed a motion for new trial on the 12th day of July, 2017 which is now pending in Court of General Sessions.

Accordingly it is my contention that counsel is aware and has been informed about motion in lower court. As such a stay is warranted where this motion challenges the sufficiency of evidence as well as raises a novel question of law which has not been addressed by this court.

Hence since this is evidence unknown to counsel, it would preclude a claim of ineffective assistance of trial and appellate counsel. Moreover a sufficiency of evidence claim is not cognizable under South Carolina Code Ann. §17-27-20 (cum.supp.16); SIMMONS vs STATE, 264 S.C. 417 (1974).

This court denial of stay would preclude any avenue for appellant to address denial of motion and would bar consideration of claim in another tribunal if necessary. The rare circumstances under which this motion is made, requires court to consider constitutional rights involved should court decline to do so.

WHEREFORE it is prayed court grant motion.



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

October 11, 2016

Mr. Jeremiah Fitzgerald Belton, #261628  
Lieber Correctional Institution  
PO Box 205  
Ridgeville, SC 29472

Dear Mr. Belton:

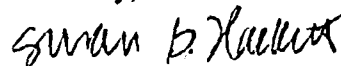
I went to see Mario Caldwell regarding the document you provided. Mr. Caldwell told me that he wrote the document. I asked him how he knew that you were not involved. He responded that he, Mario Caldwell, was not involved in the crime either. He said he was not present at all. I explained to him that if he, Mario Caldwell, were not present, then he would have no way to tell me who was present and who was not present. He agreed with my assessment. He stated that he wanted to recant his testimony. I explained to him that although I do not represent him that I was obligated to tell about him possible perjury charges and the possibility that the state would move to vacate his guilty plea. As you might imagine, this worried Mr. Caldwell greatly. He advised me he wanted to seek independent legal advice before committing to anything.

Even if Mr. Caldwell recants his testimony, this would not meet the standard to obtain a new trial based on after-discovered evidence. A motion for a new trial based on after-discovered evidence may be granted if the evidence "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009)(citing State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999)); see also, State v. Caskey, 273 S.C. 325, 329, 256 S.E.2d 737, 738-739 (1979). Mr. Caldwell states now simply that he was not present at the crime scene. As such, he cannot say whether you were present at the crime scene. Further, he does not provide you with an alibi. Additionally, the South Carolina appellate courts have been very reluctant to grant new trials based on recanted testimony. See State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977)("Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.")(quoting State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959)).

As of this writing, I have found nothing that would warrant the filing of a motion to hold your appeal in abeyance in order to pursue a motion for new trial. Mr. Caldwell mentioned the possibility of Troy Mason recanting as well. We would face the same obstacles in that situation – potential perjury charges, vacation of guilty plea, and the Court's unfavorable view of recanted testimony. Nevertheless, I will write to Mr. Caldwell and copy you on the correspondence so that Mr. Caldwell may contact me if he wishes regarding any statement Mr. Mason may choose to make.

I trust I have addressed your concerns from previous letters regarding the document you obtained from Mr. Caldwell.

Sincerely,

A handwritten signature in cursive script that reads "Susan B. Hackett".

Susan B. Hackett  
Appellate Defender

King Conyers # 317737  
F-4 1240  
Lee Correctional Inst.  
190 W. Sackly Hwy  
Bishopville SC, 29010



South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
Post Office Box 11629

RECEIVED

AUG 28 2017

SC Court of Appeals

MAILED FROM ZIP CODE 29010  
0000880020 AUG 25 2017  
02 1P  
\$ 000.210  
PITNEY BOWES  
UNITED STATES POSTAGE

A postage meter logo featuring a stylized eagle head and the text "UNITED STATES POSTAGE".

COLUMBIA  
SC 290  
25 AUG '17  
PM 3 L

**RECEIVED**

AUG 25 2017

LEE CI MAIL ROOM

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED  
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT  
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS  
LEE CORRECTIONAL INSTITUTE  
SC DEPARTMENT OF CORRECTIONS

