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SEP 22 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2017-000635

THE STATE,

Respondent,

v.

POLLY McABEE HINDMAN,

Appellant.

**RETURN TO MOTION TO GRANT LEAVE TO
APPELLANT TO MAKE A MOTION FOR A NEW TRIAL**

Respondent (the State), by and through undersigned counsel and making Return to the Motion to Grant Leave to Appellant to Move for a New Trial, would respectfully show unto this Court:

1. Appellant Polly M. Hindman was indicted at the October, 2016 term of the grand jury of Greenville County for one count of exploitation of a vulnerable adult. (Amended Indictment No. 2015-GS-23-001563). She was represented at trial by James P. O'Connell, Esquire, and the State was represented by Assistant Solicitors Sylvia P. Harrison and Julia V. Hendricks of the Thirteenth Circuit Solicitor's Office. On December 14, 2016, Appellant proceeded to a trial by jury before the Honorable Edward W. Miller pursuant to which she was found guilty as indicted. The trial court deferred sentencing and scheduled a restitution hearing to determine the amount of restitution Appellant would be required to pay as condition of her sentence. On February 17, 2017, the court convened a restitution hearing at which Appellant was represented by Clifford F. Gaddy, Jr., Esquire, and the State was represented by Assistant Solicitor Harrison. After hearing from

several witnesses, including Appellant, Judge Miller sentenced Appellant to five (5) years' imprisonment suspended upon the service of ninety (90) days imprisonment to be served in the Home Incarceration Program and five (5) years' probation. Judge Miller also issued a Restitution Order finding Appellant must pay eighty-eight thousand dollars (\$88,000) restitution to the victim's estate as a condition of her sentence.

2. Appellant timely filed and served notice of appeal and continues to be represented by Mr. Gaddy on her direct appeal. On June 22, 2017, Appellant served and filed an Initial Brief of Appellant. Although significant work has been completed in preparation of the Initial Brief of Respondent, no such brief has yet been submitted by the State.

3. On September 19, 2017, Appellant filed the "Motion to Grant Leave to Appellant to Move for a New Trial" which is the subject of this return now filed on behalf of the State. She asks this Court to grant leave for her to move in the Court of General Sessions for a new trial on the grounds of newly discovered evidence pursuant to Rule 29(b), SCRCrimP.

4. Appellant has attached several documents obtained from Woodlawn Funeral Home to her motion, as well as a copy of excerpts from a transcript of the August 16, 2017, deposition Mr. Gaddy took of the manager of Woodlawn Funeral Home, Wesley Matthew James, during the pendency of this appeal. Appellant submits this information "means that the State of South Carolina is wrong and that the testimony of Hindman was truthful" and that it "constitutes evidence not available either in the trial or Hindman . . . nor the Restitution Hearing" (Motion p.4-p.5). She contends this information amounts to after discovered evidence under Rule 29(b), SCRCrimP.

5. Initially, the State notes Appellant's request for leave to move for a new trial pursuant to Rule 29(b), SCRCrimP, must fail on the merits of the underlying request because Appellant cannot possibly show all five of the factors necessary to obtain a new trial. See Jamison v. State, 410 S.C.

456, 467, 765 S.E.2d 123, 128 (2017) (“Traditionally, in South Carolina, “[t]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.””). Nevertheless, the State acknowledges a ruling on the merits of a Rule 29(b) motion may best be decided by the lower court and therefore takes no position on Appellant’s motion, instead leaving it in the sound discretion of this Court.

6. To the extent this Court grants Appellant’s motion and thereby grants leave to Appellant to file a motion for a new trial in the lower court, the State requests that the Court suspend this appeal and hold all time limits in abeyance pending final resolution of that motion in the Court of General Sessions. The State further requests that the Court hold all time limits in this appeal in abeyance pending its ruling on Appellant’s current motion.

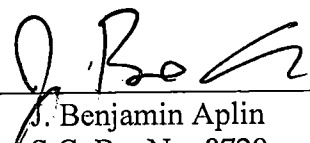
Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY:



J. Benjamin Aplin
S.C. Bar No: 8729

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ATTORNEYS FOR RESPONDENT

September 22, 2017

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2017-000635

THE STATE,

Respondent,

v.

POLLY McABEE HINDMAN,


Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Grant Leave to Appellant to Move for a New Trial on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to: Clifford F. Gaddy, Jr., Esquire, 408 N. Church Street, Ste. B, Greenville, SC 29601.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of September, 2017.



ANGELA BENNETT
Administrative Coordinator
Office of Attorney General
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Columbia, SC 29211
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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

September 22, 2017

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Polly McAbee Hindman:
Appellate Case No. 2017-000635

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's Return to Motion to Grant Leave to Appellant to Move for a New Trial in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: Clifford F. Gaddy, Jr., Esquire
Sylvia P. Harrison, Esquire
Victim Advocacy Division