

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

COURT OF GENERAL SESSIONS

2015-GS-23-1563

Edward W. Miller, Circuit Court Judge

RECEIVED

SEP 29 2017

SC Court of Appeals

Appellate Case No: 2017-000635

The State.....Respondent/Appellant

Polly McAbee Hindman.....Appellant/Respondent

REPLY TO RESPONDENT'S RETURN TO APPELLANT TO MAKE A MOTION FOR A
NEW TRIAL

The Attorney General's Return to Appellant's Motion to Grant Leave to Appellant to make a Motion for a New Trial asserts in paragraph 5 that the Appellant's request must fail because Appellant cannot possibly show all five of the factors necessary for a new trial.

We address the five factors listed in Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (S.C. 2014) (Cited in the Return as decided in 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...."

Appellant Hindman asserts that the newly discovered evidence in the form of the pre-burial expenses and funeral expenses being paid in June 2017 (described in detail in Appellant's Motion) would change the result of both the verdict and the amount of restitution.

As pointed out in the Motion, Assistant Solicitor Sylvia Harrison contended throughout the trial that Hindman wrongfully obtained \$12,832.86 from the assets of Bette Riddle, a vulnerable adult.

The newly discovered evidence in the form of records of Woodlawn Funeral Home substantiates that Hindman received \$12,832.86 from Bette Riddle in December 2012 constituting a reimbursement to Hindman of her personal money given to Woodlawn Funeral Home.

If the question is raised, How do you know the jury verdict would be changed? Of course, no one except the jury can say with 100 percent accuracy that the jury would have decided differently. We do know that the jury would have heard undisputable evidence that Hindman did not wrongfully obtain \$12,832.86 as asserted by Assistant Solicitor Sylvia Harrison.

Without belaboring details which are set forth in Hindman's Motion the \$12,832.86 was included in the amount of restitution of \$88,000.00 that Judge Edward W. Miller directed her to pay. Therefore, if \$12,832.86 was not wrongfully taken, Hindman should not be required to pay back \$12,832.86 which was included in the restitution amount of \$88,000.00

Requirement (2) is that "evidence has been discovered since trial."

Bette Riddle died on June 22, 2017. The evidence could not be discovered until Woodlawn Funeral Home used the pre-paid burial and funeral expenses received after the death of Bette Riddle. The evidence did not exist until June 2017. Therefore, this requirement was met.

Requirement (3) is that evidence "could not have been discovered before trial." For the same reasons as give above for requirement (2), the evidence could not have been discovered before trial.

Requirement (4) is that the evidence "is material to the issue of guilt or innocence."

For the reasons stated under requirement (1) the newly discovered evidence is material to the issue of guilt or innocence.


Requirement (5) is that the evidence is "not merely cumulative or impeaching."

The newly discovered evidence are the records of Woodlawn Funeral Home concerning payment of pre-burial expenses and funeral expenses created in June 2017. The newly discovered evidence conflicts with the evidence produced by the State during the trial that Hindman wrongfully obtained \$12,832.86 from the assets of Bette Riddle.

For the reasons expressed above Appellant Hindman's Motion to Grant Leave to Appellant to Make a Motion for a New Trial should be granted.

September 27, 2017

Respectfully submitted,



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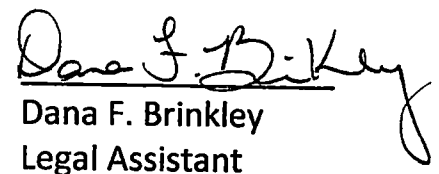
vs

Polly McAbee Hindman.....Appellant

CERTIFICATE OF SERVICE

I, Dana F. Brinkley, hereby certify that on September 27, 2017 I served J. Benjamin Aplin, Esquire, attorney for Respondent State of South Carolina by placing a copy of Appellant's Reply to Respondent's Return to Appellant to Make a Motion for a New Trial in an envelope and depositing the same in the United States Postal Service addressed as follows:

J. Benjamin Aplin, Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Dana F. Brinkley
Legal Assistant

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

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SEP 29 2017

SC Court of Appeals

September 27, 2017

Re: *State vs. Polly McAbee Hindman*
Appellate Case No.: 2017-00635
Reply to Respondent's Return to Appellant to Make a Motion for a New
Trial

Dear Ms. Kitchings:

As attorney for Appellant Polly M. Hindman we enclose the following:

- 1) Reply to Respondent's Return to Appellant to Make a Motion for a New Trial (Original and 7 copies);
- 2) Certificate of Service;
- 3) Self-addressed, stamped envelope.

Please file the Reply and return a copy to us in the self-addressed stamped envelope.

Sincerely,



Clifford F. Gaddy, Jr.

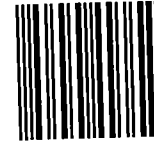
Enclosures

cc: J. Benjamin Aplin, Esquire

[Redacted return address]



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40 years of experience on your side.

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