

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Michael Nettles, Circuit Court Judge

Appellate Case No. 2016-001779

The State,

Respondent,

v.

Shameen Coker,

Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE LOWER COURT COMMITTED AN ABUSE OF DISCRETION IN FINDING THE TESTIMONY OFFERED LACKED CREDIBILITY AND IN FAILING TO ADDRESS THE MERITS OF THE CLAIM OF NEWLY DISCOVERED EVIDENCE.

STATEMENT OF THE CASE

During the February 2001 term of the Beaufort County Grand Jury, Appellant was indicted for murder (Indictment No.: 2001-GS-07-171), kidnapping (2001-GS-07-174) and armed robbery (2001-GS-07-175). R. p. 359. On March 10, 2003, Appellant appeared in front of the Honorable Jackson V. Gregory and a jury at the Beaufort County Courthouse for trial. R. p. 1. Appellant was represented by Gene Hood, Esquire, and the State was represented by Randolph Murdaugh, Assistant Solicitor. On March 12, 2003, Appellant was found guilty as indicted on all charges. The Honorable Jackson V. Gregory sentenced Appellant to a term of thirty (30) years for murder, which encompassed the kidnapping conviction, and a consecutive term of fifteen (15) years for armed robbery. R. p. 262.

A timely direct appeal was filed and perfected by Aileen P. Claire, Office of Appellate Defense. On October 20, 2004, the South Carolina Court of Appeals issued a dismissal. State v. Coker, Op. No. 2004-UP-528 (S.C. Ct. App. filed October 20, 2004). R. p. 346. The Remittitur was issued on November 22, 2004.

On July 1, 2005, Appellant filed a timely Application for Post Conviction Relief, which was supplemented on March 14, 2006. R. pp. 281, 308. The State filed a Return on September 22, 2005. R. p. 302. On April 17, 2008, an evidentiary hearing was held in front of the Honorable Michael G. Nettles at the Beaufort County Courthouse. R. p. 310.

On May 13, 2008, an Order of Dismissal was issued. R. p. 338. An appeal was filed and perfected by M. Celia Robinson, Office of Appellate Defense, which was dismissed. R. p. 393.

On March 2, 2016, Appellant, through counsel, filed a Motion pursuant to Rule 29(b), SCRCrimP, with supporting affidavits. R. p. 394. On July 11, 2016, a motion hearing was conducted at the Beaufort County Courthouse in front of the Honorable Michael G. Nettles. R. p. 405. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Brian Hollen, Assistant Solicitor for the Fourteenth Judicial Circuit. The court was provided a copy of the Appendix previously filed in the South Carolina Supreme Court and testimony was elicited from Appellant, Otis Harris, and Arjanal C. Roach. At the close of the hearing, the court requested proposed Orders. On August 12, 2016, an Order Denying Defendant's Motion for a New Trial Pursuant to Rule 29(b) was signed by the Honorable Michael G. Nettles and filed. R. p. 496. This appeal timely follows.

STATEMENT OF THE FACTS

At trial, the State alleged and offered testimony that Appellant and Ajanae Roach approached the victim on May 19, 2000 at a gas station and asked for a ride. During that ride, a gun was brandished, victim was placed in the trunk and forced away from the vehicle and shot to death. The victim's body was found on May 24, 2000 by Kent Young while working as caretaker on Buckfield Plantation. R. p. 142. The vehicle was found submerged at a Public Landing in Colleton county on May 20, 2000. R. pp. 138-9.

It was established from the autopsy that victim was killed by .38 caliber handgun. A handgun was recovered but it did not have prints of Mr. Roach nor Appellant. R. p. 154.

Mr. Roach entered a guilty plea to voluntary manslaughter, kidnapping and armed robbery. R. p. 52. He was sentenced to a term of twenty-five years. He testified for the State at Appellant's trial. R. p. 51.

ARGUMENT

I. THE LOWER COURT COMMITTED AN ABUSE OF DISCRETION IN FINDING THE TESTIMONY OFFERED LACKED CREDIBILITY AND IN FAILING TO ADDRESS THE MERITS OF THE CLAIM OF NEWLY DISCOVERED EVIDENCE.

A. Summary of the Testimony

1. Ajanae Roach

When Ajanae Roach took the stand, he affirmed his Affidavit attached to the filed Motion, which read as follows:

My name is Ajanae Roach and I am currently serving twenty-five years for voluntary manslaughter, kidnapping and armed robbery. This is a statement conceived of, and written by me, under no duress or pressure of any kind. I was promised nothing, nor do I wish anything but forgiveness from the wronged parties. Twelve years ago I perjured myself in the trial of Shameen Coker when I implicated him in activities that he neither wanted to nor took an active role in.

On May 19, 2000, me and Shameen Coker did cross paths and agree to hang out that night. In hindsight, that may have been the worst decision he ever made. He didn't know it at that time, but I was concealing a pistol on my person and was anxious to brandish it, if nothing else. After leaving Shameen's trailer, where we went so that he could change clothes, we then went to a gas station down the road from his trailer, a Chevron, if I am not mistaken. At this point we had no destination, nor means of reaching one if we did. We just stood around talking until this red Grand Am pulled up and exceptionally tall man, whom I later came to know as James Dillard, stepped out and nodded at Shameen with familiarity before going into the gas station, and returning moments later. To this day, I don't know what

made me do it, but upon his return I asked him if he could give Shameen and I a ride. After assuring him that we didn't intend on taking him out of his way, a surprised Shameen and I got inside the car.

As we were riding, I asked Mr. Dillard to let me drive. Jokingly, at first. He took it lightly because he laughed a little himself. It was at this point when I brandished the weapon. I had no idea why I did it then, and I still haven't a clue now, but I remember thinking that there was not backing out at that point, even though everything that had transpired was spur of the moment. Still holding the pistol, I made Mr. Dillard pull over, pop the trunk, and get inside it. Shameen was still in the back seat, stunned into silence. I got behind the wheel, making Shameen get in the front passenger seat. I drove to this dirt road that I knew of that had little traffic. I had no clue what I was going to do.

I pulled over just off the side of the dirt road and went to get Mr. Dillard out of the trunk, still at gun point, and lead him to the edge of a wooded area. I then shot and killed Mr. Dillard, and ran back to the car in a near panic. After I sped away, neither Shameen nor I said a word. He did tell me to take him to his son's mother's house, which I did. That was the end of Shameen Coker's night with me.

Contrary to my testimony, Shameen Coker did not take part in any felonious activity while in my company on the night of May 19, 2000. At the time, I was consumed with anger and feelings of betrayal, so I erroneously took it out on Shameen Coker. I regret that I waited twelve years before I emerged with the truth but, again, I ask forgiveness from Shameen Coker, his family, and the entire judicial system for misleading them.

R. pp. 431-434. After affirming his Affidavit, Mr. Roach testified that he was told that Appellant had implicated him in the crime at issue when he was interviewed by law enforcement. R. p. 435. Specifically, he stated that the he was told that Appellant had implicated him as the shooter before he told law enforcement that Appellant was the shooter. R. p. 436. When asked whether law enforcement providing him Appellant's statement during his interview weighed in on his decision to give the statements he did to law enforcement, he responded: "It did, heavily." R. p. 443.

When asked about his trial testimony he stated that the following testimony was not the truth:

1. It was not the truth that that Appellant got a gun and had a gun on their walk to the Chevron gas station. R. pp. 54, ln. 8, 437.
2. It was not the truth that they talked about a plan to rob a person, to get a ride and take a car. R. pp. 55, 437.
3. It was not the truth that Appellant was part of the decision to brandish the weapon at victim. R. pp. 59, 438.
4. It was not the truth that Appellant was the one telling him where to drive and that Appellant was one that put and shut victim in the trunk. R. pp. 61, 438.
5. It was not the truth that Appellant told him where to stop, made him pop the trunk prior to Appellant taking victim away and shooting him. R. pp. 62, 438.
6. It was not the truth that Appellant told him where to drive after the shooting. R. pp. 63, 439.
7. It was not the truth that Appellant was involved in the decision to dispose of victim's car. R. pp. 68, 439.
8. It was not the truth that Appellant got rid of the gun by giving it to "Herbie." R. pp. 100, 439.

When asked about the twelve year wait in coming forward with the recantation of his trial testimony, he explained that he was dealing with personal issues, which resulted in a decision that he wanted to "right my wrongs." R. pp. 441, 446. He then explained how he contacted a relative of Appellant's and spoke with a private investigator. R. pp. 441-2, 444-45.

On cross-examination, Mr. Roach testified that he had the gun, and he had bought it from somebody. R. p. 447. He again testified that Appellant never had the gun that killed victim. R. p. 448. He further testified that Appellant did not get out of the car when he shot victim. R. p. 451. He then provided a description of what occurred when he shot

victim. R. pp. 451-53. He recalled the handle of the gun being black and disposing of it two days after the shooting. R. pp. 455-56.

2. Shameen Coker (Appellant)

When Shameen Coker to the stand, he affirmed his Affidavit attached to the Motion, which stated as follows:

1. I am the Defendant in the above captioned case.
2. I affirm that evidence contained in the Affidavit of Ajanae Roach and Otis Harris was not known to me at the time of my trial or any post conviction filings.
3. I affirm that I have exercised all possible due diligence to obtain this evidence via Affidavit and that this evidence has been discovered within the last year.
4. I submit that I would have wanted Otis Harris called as a witness at my trial and the information contained in the Affidavit of Ajanae Roach would have changed the outcome of my trial.

R. p. 459. Appellant explained how he hired a private investigator to obtain the Affidavits attached to the Motion. R. p. 460-1. He further explained his interaction with Mr. Roach and how he found out from their mutual family member that Mr. Roach had information he wanted to provide. R. pp. 462-3.

He recalled the outcome of his first trial being a "hung jury" and that Mr. Roach was not called as a witness. R. p. 467. He explained that at his Post Conviction Relief hearing he raised an allegation regarding the State's bolstering of Mr. Roach's testimony in his second trial that resulted in his conviction. R. p. 468. He said the State kept telling the jury that Mr. Roach's testimony was the "truth." R. p. 468. Appellant testified that he did not shoot and kill victim and that Mr. Roach did. R. p. 469.

On cross-examination, Appellant was questioned regarding his multiple statements. He explained that he was outside of the car at the conclusion of the shooting, but he was in location where Mr. Roach would not have seen him. R. pp. 474-5.

B. Argument

By way of the Motion at issue, Appellant alleged after discovered evidence and requested a new trial. To prevail on this claim a defendant “must show that the after-discovered 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 been discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching.” State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

In State v. DeAngelis, 256 S.C. 364, 371, 182 S.E.2d 732, 735 (1971), the South Carolina Supreme Court upheld the denial of a motion for a new trial. The Court reasoned:

As is heretofore stated, the appellant did not file his own affidavit setting forth the after-discovered evidence and the facts to which the witnesses will testify. It is essential to the consideration of a motion for a new trial based on after-discovered evidence that such motion shall be supported by an affidavit of the accused himself. Unless a valid and sufficient reason for the omission to file such an affidavit is shown, the affidavit of the accused must show that he did not know of the existence of such evidence at the time of the trial and that he used due diligence to discover such evidence, or that he could not have discovered it by the exercise of due diligence. An affidavit of the appellant's counsel showing these matters is not sufficient. 24 C.J.S. Criminal Law § 1484c, page 286. Chilton v. Commonwealth, 170 Ky. 491, 186 S.W. 191 (Ky. Ct. App. 1916). Nothaf v. State, 91 Tex. Cr. R. 378, 239 S.W. 215, 23 A.L.R. 1374 (Tex. Crim. App. 1922).

Here, the lower court failed to find that Appellant complied with the requirements set forth above. The lower court also failed to address the Affidavits from Appellant and Mr. Roach, as well as the testimony of Appellant, in the brief Order denying relief based solely upon the lower court's credibility assessment of Mr. Roach.

It is well established that the decision whether to grant a new trial rests within the sound discretion of the trial court, and the appellate court will not disturb the trial court's decision absent an abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983). In State v. Mercer, 381 S.C. 149, 166-67, 672 S.E.2d 556, 565 (2009), the South Carolina Supreme Court has held:

In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (noting that the determination of whether new evidence is credible for purposes of a new trial motion rests with the trial court); State v. Deese, 266 S.C. 534, 538, 225 S.E.2d 175, 176 (1976) (noting that the trial court is tasked with assessing the new evidence in a motion for a new trial); State v. Pierce, 263 S.C. 23, 33, 207 S.E.2d 414, 419 (1974) (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)) ("The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him, not this court, resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion."). On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.

Therefore, Appellant contends that the lower court committed an abuse of discretion when the recantation of Mr. Roach was found to be lacking in credibility and the court prematurely ended his analysis of Appellant's claim. The lower court erred in his credibility finding and erred in failing to fully analyze Appellant's motion under the five

prong test applicable to claims of newly discovered evidence. See State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99; Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

Turning to the record before the lower court, it was undisputed that Mr. Roach provided an eyewitness account of the kidnapping and murder in question at the trial of Appellant. It is also clear from the record that the credibility of Mr. Roach was highly important to the State as counsel's failure to object to bolstering of his testimony during closing argument was raised during the PCR hearing. R. pp. 318-19. It appears from the record that Mr. Roach's testimony played a pivotal role for the jury in the conviction of Appellant as the jury requested and listened to the testimony of Mr. Roach during their deliberations. R. pp. 248-51. At trial, the jury essentially heard a confession by Mr. Roach that implicated Appellant in the crimes committed against and murder of victim. At the motion hearing, the lower court heard a complete recantation of all testimony implicating Appellant. Regarding confessions, the Supreme Court of the United States has held:

A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Arizona v. Fulminante, 499 U.S. 279, 296, 111 S.Ct. 1246, 1257 (1991) (Internal citations and punctuation omitted). See Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Pleicones, J., dissenting).

In finding the recantation and confession given at the motion hearing lacking in credibility, the lower court failed to consider the motive of Mr. Roach in previously

implicating Appellant. As was testified to by Mr. Roach and Appellant, Mr. Roach gave several statements following his arrest implicating Appellant and testified for the State only after being informed that Appellant had implicated him in the crimes at issue. Clearly, Mr. Roach had a motive to lie against Appellant at the time of trial and explained his reasoning for finally telling the truth regarding Appellant's involvement. Additionally, the lower court honed in on his gatekeeper function addressed in State v. Mercer, 381 S.C. 149, 170, 672 S.E.2d 556, 567 (2009), but failed to consider the Court's reasoning that newly discovered evidence in the form of an admission by an inmate may lack persuasive credibility and still create a reasonable doubt. Here, Appellant submits that the lower court failed to consider the reasonable doubt that existed when Mr. Roach did not testify at Appellant's first trial and would result from his testimony at the motion hearing if a new trial were granted. Upon a full review of the record, Appellant urges this Court to find that the lower court committed an abuse of discretion in finding that testimony of Mr. Roach lacking in credibility and failing to assess the testimony under the five prongs set forth in Hayden and Spann. See State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993), Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

Turning first to the discovery prongs, the record before the lower court made it abundantly clear that the testimony offered by Mr. Roach was not known at the time of trial and in the exercise of due diligence could not have been discovered prior to trial. At trial, defense counsel extensively cross-examined Mr. Roach regarding his inconsistent statements and his motive to implicate Appellant, and Mr. Roach did not offer the information he testified to at the motion hearing. Furthermore, Mr. Roach explained that

he only recently came forward with this information due to his own decision to tell the truth regarding Appellant's involvement.¹ Appellant urges this Court to find that the discovery prongs are met since the recantation and exculpatory information Mr. Roach testified to regarding Appellant did not come out during the thorough cross-examination at trial.

Turning to the remaining prongs, the lower court failed to specifically address whether the affidavit and testimony offered 1) is such that it would probably change the result if a new trial were granted; 2) is material; and 3) is not merely cumulative or impeaching. Appellant urges this Court to find that the affidavit and testimony of Mr. Roach amounts to a recantation of the State's leading witness and supports the defense theory advanced at trial that Mr. Roach was lying about Appellants' involvement. The evidence is material and is not merely cumulative or impeaching due to the role Mr. Roach's testimony played in Appellant's conviction. Without the testimony of Mr. Roach implicating Appellant, the outcome of Appellant's trial would have been different. The importance of Mr. Roach's trial testimony against Appellant was demonstrated when counsel went through Mr. Roach's trial testimony while he was on the stand at the motion hearing, and he recanted all testimony that was necessary to prove the elements of the crimes at issue. Additionally, the materiality and outcome determinative prongs are further satisfied by considering the following: 1) Mr. Roach was the sole witness that provided a full narrative of the events leading up to the victim's death and placed

¹ Pursuant to Rule 29(b), SCRCrimP, a motion for a new trial based upon after discovered evidence must be made within one year after the date of actual discovery of the evidence by defendant or after the date the evidence could have been discovered by the exercise of reasonable diligence. Based upon the Affidavits and testimony offered, Appellant submits that the instant motion is timely as it is filed within one year of the discovery of the recantation of Roach and both Appellant and Mr. Roach provided sufficient explanation as to why Mr. Roach's recantation was not discovered prior to the date at issue.

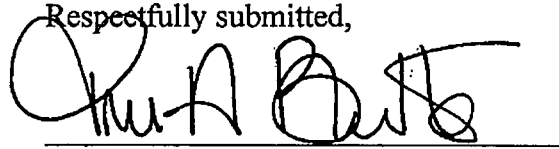
Appellant as the person that both knew the victim, directed him where to take the victim and killed the victim; 2) The jury asked to have Mr. Roach's testimony replayed before reaching a guilty verdict; and 3) Mr. Roach did not testify in the first trial that resulted in a hung jury.

"Every practicable precaution should be taken to insure that a verdict really speaks the truth, for if it does not an innocent man may be imprisoned for years." Newsom v. United States, 311 F.2d 74, 79 (5th Cir. 1962) (Reversing the denial of a motion for a new trial based upon testimony of a witness stating that defendant was merely present during a sale of drugs and not involved as alleged at trial). By way of the standing Order, the lower court held: "If taken at face value, Mr. Roach's testimony may meet the factors as enumerated in Spann and necessitate the grant of a new trial." R. p. 499. Yet, the lower court failed to even address the factors "as enumerated in Spann." Appellant urges this Court to find that the Affidavits and testimony offered as newly discovered evidence meets the factors of newly discovered evidence and requires a new trial.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the above-mentioned findings of the lower court and remand the case for a new trial.

Respectfully submitted,



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Michael Nettles, Circuit Court Judge

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The State,

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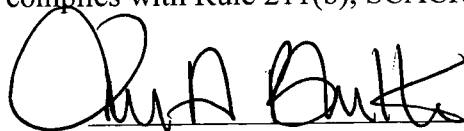
v.

Shameen Coker,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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