



ALAN WILSON
ATTORNEY GENERAL

January 9, 2019

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

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SC Court of Appeals

RE: Joseph Sun v. State of South Carolina
Appellate Case No: 2018-002225

Dear Ms. Kitchings:

Respondent is in receipt of this Court's December 27, 2018, letter acknowledging receipt of Appellant's "Motion for Order to Allow Magistrate Court to Hear Pending Motion for New Trial" and requesting that Respondent file a return to the motion. It appears the underlying motion was served on the Beaufort County Solicitor's Office but not on the Office of the Attorney General; however, I have now obtained a copy of the motion and am responding on behalf of the State. Please accept this letter in lieu of a formal response.

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 is 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.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Benjamin Aplin". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No: 8729

cc: Joseph C. Sun, *pro se*
The Honorable Isaac McDuffie Stone, III, Solicitor
Sarah Fowler, Assistant Solicitor
Victim Advocacy Division