

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Case No. 2018-000402

The State,

Respondent,

v.

Jody Lynn Ward,

Appellant.

RECEIVED

DEC 09 2019

SC Court of Appeals

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

Motion for A New Trial Based on After Discovered Evidence filed October 30, 2014 (with attached exhibits)	1
Defendant's Memorandum In Opposition to the State's Motion to Dismiss Defendant's Motion for a New Trial Pursuant to Rule 29(b), SCRE (with attached exhibits)	21
Certificate of Appellant.....	69

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

State of South Carolina,)

Plaintiff,)

vs)

Jody Lynn Ward,)

Respondent.)

IN THE COURT OF GENERAL SESSIONS

FIFTEENTH JUDICIAL CIRCUIT

Case No. 2003-GS-22-1030; -1031

MOTION AND ORDER INFORMATION AND COVER SHEET

(Check box indicating submitting party)

Name, SC Bar # and Address of Applicant's Counsel

Natasha M. Hanna, Esq.

LAW OFFICE OF NATASHA M. HANNA, P.C.

4717 Jenn Dr., Ste. 102

Myrtle Beach, SC 29577

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Name, SC Bar # and Address of Defendant's Counsel

Georgetown County Solicitor's Office

P.O. Box 1688

Georgetown, SC 29442

(843)546-3751 office 843-545-3268 fax

email: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II AND III)

SECTION I: Hearing Information

☒ Nature of Motion: Motion for a New Trial Based on After-Discovered Evidence

Estimated Time Needed: Court Reported Needed:

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion:

I hereby move for relief or action by the court as set forth in the attached proposed order.

Natasha Hanna
 Signature of Attorney for Plaintiff/Defendant

10-28-14
 Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: _____☒ EXEMPT☐ Rule to Show Cause in Child or Spousal Support.(Check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,

Reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

SECTION IV: JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

JUDGE _____

☐ Other _____

CODE: _____

DATE: _____

SECTION V: CLERK'S VERIFICATION

Collected by: _____

DATE FILED: _____

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

FILED
 GEORGETOWN COUNTY, SC
 2014 OCT 30 PM 2:15
 ALMA Y. WHITE
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,)
 Plaintiff,)
 VS.)
JODY LYNN WARD,)
 Defendant.)

NOTICE OF MOTION AND MOTION
 FOR A NEW TRIAL BASED ON
 AFTER DISCOVERED EVIDENCE

FILED
 GEORGETOWN COUNTY, S.C.
 2014 OCT 30 PM 2:15
 CALMA Y. WHITE
 CLERK OF COURT

COMES NOW THE DEFENDANT, by and through the undersigned counsel, moving this

Court for an Order granting the Defendant a new trial in the above-caption matter. The Defendant moves for a new trial pursuant to South Carolina Rule of Criminal Procedure 29(b). The grounds for this motion are that Defendant has discovered the following evidence related to juror bias that was not discovered and could not have been discovered through the exercise of due diligence at the time of trial:

- 1) Juror Number 19, Marissa Cooper, was, at the time of trial, related by marriage to one of the state's witnesses, Kevin Cooper, and failed to disclose this relationship to the Court during voir dire.
- 2) Juror Number 39, an alternate, Bernadette Gardner, knew the Defendant prior to trial as she went to school with his brother and failed to disclose this relationship to the Court during voir dire.
- 3) The foreman of the grand jury that indicted the Defendant, Scott McKenzie, had knowledge of the incident before the grand jury proceedings. Mr. McKenzie was the tow truck driver that pulled the vehicle, that was alleged to be at the scene of the shooting, out of Dawhoo Lake.

A. DEFENDANT SHOULD BE GRANTED A NEW TRIAL AS TWO JURORS FAILED TO DISCLOSE RELATIONSHIPS TO A WITNESS AND/OR THE DEFENDANT.

A defendant has the right to a trial by a competent and impartial jury. Smith v. State, 375 S.C. 507, 518, 654 S.E.2d 523, 529 (2007). In order to fully safeguard this protection, a jury must render a verdict free of outside influences of any kind. Id. When a juror conceals information inquired into during voir dire, a new trial is required when the juror intentionally concealed the information and that information would have supported a challenge for cause or would have been a material fact in the use of the party's peremptory challenges. Id.

When a juror fails to disclose a relationship without justification, it may be inferred that the juror is not impartial. Id. Determining whether a juror's failure to respond to voir dire is intentional is a fact intensive determination to be made on a case-by-case basis. Id. Intentional concealment occurs when the question on voir dire is reasonable comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Id. In cases where a juror's partiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual juror bias. State v. Bryant, 354 S.C. 390 (2003).

In this case, two jurors failed to disclose a relationship to the Defendant or to a witness. Marissa Cooper failed to disclose a relationship with a State witness. The Solicitor, during voir dire, listed Kevin Cooper as a potential witness. Cooper was asked, along with the other jurors, whether she was related by blood or marriage to any of the potential witnesses. Transcript p. 254. At no point did she respond to this question. Kevin Cooper testified for the State against the Defendant. Transcript p. 452. Marissa Cooper was, at the time, related by marriage to Kevin Cooper.

The juror, Marissa Cooper, was married to James D. Cooper. James D. Cooper's grandfather was Walter Cooper. Kevin Cooper, the witness, and Marissa Cooper's husband's grandfathers were brothers. Therefore, Marissa Cooper and Kevin Cooper were second cousins by marriage. Marissa Cooper did not

disclose this relationship. The question on voir dire was reasonably comprehensible but Ms. Cooper failed to respond and disclose her relationship to the witness. This relationship would have supported a challenge for cause. Marissa Cooper was called and served as a juror at the trial of Jody Ward. Transcript p. 262.

Juror Number thirty nine (39), Bernadette Gardner, went to school with the Defendant's brother. Ms. Gardner had prior knowledge of the Defendant and his family as a result of this connection to the Defendant's brother. The Court asked on voir dire whether any juror was friends or business acquaintances with Mr. Ward. Transcript p. 224. There was no response from any member of the jury. Transcript p. 224. The question was reasonably comprehensive and the answer would have supported a challenge for cause. Therefore, Ms. Gardner concealed this relationship from the Court. Ms. Gardner was called and served as an alternate juror in the trial of Mr. Ward. Transcript p. 265-66.

B. DEFENDANT SHOULD BE GRANTED A NEW TRIAL AS THE GRAND JUROR FOREMAN HAD PRIOR KNOWLEDGE AND PARTICIPATED IN THE INVESTIGATION.

Further, an indictment returned by an unbiased grand jury is not enough to call a trial on the merits of the case. See, Costello v. United States, 350 U.S. 359, 76 S.Ct. 406 (1956). Without a valid indictment, the trial court does not have subject matter jurisdiction to hold a trial against a defendant. S.C. Const. art. I, sec. 11.

In this case, the Grand Jury Foreman, Scott McKenzie, had prior knowledge of and participation in the investigation of the incident for which Mr. Ward was indicted. McKenzie worked for Winston Wrecker Service in 2002. Affidavit of Scott McKenzie. Winston Wrecker Services was called by the Georgetown County Sheriff's office in 2002 to assist in pulling a vehicle out of a lake that was alleged to be at the scene of the shooting for which Ward was indicted. Affidavit of Scott McKenzie. After pulling the vehicle from the lake, McKenzie was informed that the car belonged to Jody Ward. Affidavit

of Scott McKenzie. SLED investigators testified at the trial that the vehicle contained various pieces of physical evidence related to the alleged crime. See transcript, 568-600.

McKenzie also knew Mr. Ward from growing up in the same community. Affidavit of Scott McKenzie. Later in 2003, McKenzie served on the Grand Jury in Georgetown County. Affidavit of Scott McKenzie. Both investigating officers, Ernest Hampton and Gary Todd, knew of McKenzie's involvement in the investigation but did not disclose that he pulled the vehicle from the lake. Affidavit of Ernest A. Hampton; Affidavit of Gary Todd. Ernest Hampton testified in front of the Grand Jury. Affidavit of Ernest Hampton. Scott McKenzie, the Grand Jury foreman, signed and marked as true-billed the indictment on July 8, 2003.

McKenzie was not an unbiased grand juror. Not only did he have prior knowledge of the Defendant and the crime, but was a part of the investigation that led to the arrest of the Defendant. He pulled the vehicle out of the lake. A vehicle he was later informed belong to Jody Ward and alleged to be at the scene of the shootings. McKenzie was a biased grand juror and, as such, the indictment against Mr. Ward was not a valid indictment.

Therefore, Mr. Ward respectfully requests that this Court convene a hearing regarding the non-disclosure of information by members of the jury and grand jury and grant Mr. Ward a new trial.

Respectfully Submitted,



Natasha M. Hanna, Esq., Attorney for the Defendant
Law Office of Natasha M. Hanna, P.C.
4717 Jenn Drive, Ste. 102
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Phone: [843] 839-8002
Fax: [843] 839-8011

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA,)
 Plaintiff,)

CERTIFICATE OF SERVICE

VS.)

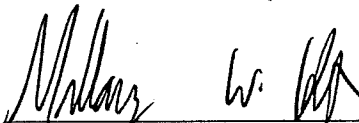
JODY LYNN WARD,)
 Defendant.)
)
)
)
)

PERSONALLY APPEARED before me, the undersigned Mallary W. Hitchcock who duly states that she is an employee in the Law Office of Natasha M. Hanna, P.C. and that she deposited in the United States Mail, with adequate postage affixed thereto, a copy of the **Notice of Motion and Motion for a New Trial Based on After Discovered Evidence** in the above-captioned matter addressed to the following on this 28th day of October, 2014.

Addressee:

Georgetown County Solicitor's Office
 PO Box 1688
 Georgetown, SC 29442

FILED
 GEORGETOWN COUNTY, SC
 2014 OCT 30 PM 2:16
 ALMA Y. WHITE
 CLERK OF COURT


 Mallary W. Hitchcock

SWORN to before me this 28th day
 of October, 2014


 Notary Public for South Carolina
 My Commission Expires: 2/6/17

THE LAW OFFICE OF

Natasha M. Hanna, PC

Natasha M. Hanna

natasha@nhanna.com

Mallory W. Hittcock

mally@nhanna.com

October 28, 2014

Georgetown County Clerk Of Court

PO Box 479

Georgetown, SC 29442

Re: State of South Carolina v. Jody Lynn Ward
Case No.: 2003-GS-22-1030; -1031

Dear Sir or Madame:

Please be advised that I have been retained to represent Jody Lynn Ward in the above referenced matter. Enclosed please find an original and one copy of a Notice of Motion and Motion for a New Trial Based on After Discovered Evidence for filing in the above referenced case. Please return a clocked copy of each to me in the self-addressed stamped envelope that I have provided. By copy of this letter I am serving the Solicitor's Office.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

With warm regards, I am

Natasha

Natasha M. Hanna

NMH/mwh

Enclosures

cc: Georgetown County Solicitor's Office

Exhibit A

SOUTH CAROLINA

AFFIDAVIT

COUNTY OF GEORGETOWN

SCOTT MCKENZIE

RE: JODY WARD (Trial 3/2004)

PERSONALLY appeared before me, the undersigned Notary Public, the Affiant,

NICOLE WARD who being duly sworn stated as follows:

1. My name is Scott McKenzie. And I am over the age of eighteen years.
2. I am a resident of Georgetown County, South Carolina.
3. That this affidavit is true and correct and it is based on my own personal knowledge and information provided to me by those persons named.
4. I currently reside at 45 Daffodil Rd, Georgetown, and I currently am self-employed in the trucking business. hauling logs. I was previously worked with my father for a number of years involved in the Towing business known as Winston Wrecker Service
5. Some time ago, possibly August 2002 while I was still working with Winston Wrecker Service our company received a call from the Georgetown Sheriff's Office for wrecker service at a lake near Andrews.
6. I was told that another wrecker service had been called but was unable to do the job and the Sheriff's Office needed a larger wrecker. They indicated at the time that a vehicle needed to be pulled out of the lake.
7. Upon receiving the call I took one of our wreckers known as "Big Bertha" and proceeded to the lake. When I arrived there were a number of law enforcement personnel there. One of the officers informed me that there was a vehicle in the lake and due to the steep embankment another service was unable to do the job.
8. With the assistance of divers and law enforcement personnel I was able to pull a jeep from the lake along with another vehicle. At the time I did not realize who belonged to the vehicles but after towing the Jeep to the impound lot at the County Jail I learned the Jeep belonged to Jody Ward, whom I knew for many years having grown up in Georgetown. I knew him and his family. Our company was paid for the Wrecker service.

- 9 Sometime later possibly in 2002 or 2003 I had been called upon to serve on the Grand Jury For General Session s court. Somehow I was called upon to serve a second year. During one of the terms I was either elected or appointed to be the foreman.
10. I have been shown a portion of the indictment of Jody Ward on charges of murder and dated 7/8/2003. The signature appears to be my signature as "Foreman of Grand Jury."
(See attached)
11. I do not specifically recall hearing the testimony presented. Many time the indictments are signed at the end of the day or at the end of the session.
- 12 That I make these true and accurate statements of my own free will and that I am not under the influence of any drugs either prescribe, over the counter, or illegal, or alcohol or duress of any type.

FUTHERMORE THE AFFIANT SAYETH NOT.

Scott McKenzie
Scott McKenzie

12:20
pm 5/21/14

SWORN TO AND SUBSCRIBED

Before me this 21 day of May 2014

[Signature]
NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires: _____

Exhibit B

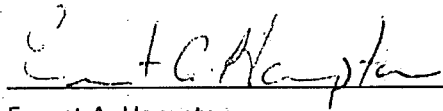
AFFIDAVIT OF ERNEST A. HAMPTON

RE: JODY WARD (TRIAL 3/2004)

PERSONALLY APPEARED BEFORE ME:

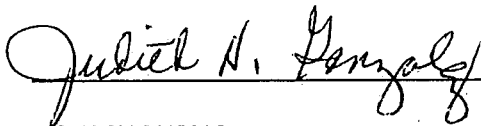
1. My name is Ernest A. Hampton. I am over 18 years of age.
2. I am a resident of Georgetown County, S. C.
3. That this affidavit is true and correct and is based on my own personal knowledge and information provided to me by those persons named.
4. I am currently employed with the Georgetown County Sheriff's office. I was formerly with the South Carolina Highway Patrol for over 9 years. I have served in the sheriff's office as the lead criminal investigator since leaving the patrol.
5. Sometime ago, possibly in 2002 or 2003 while I was working as the lead criminal investigator I received information that two persons had been reported missing in Georgetown County, S. C. At the same time a Jeep had been reported stolen from a local convenience store. Information had been developed by me that the stolen Jeep had possibility been located in Lake Dawhoo near Andrews S. C.
6. Myself along with investigator Gary Todd and other law enforcement officials from SLED and several divers went to the lake and determined that indeed a jeep was in the lake. A call was made to the dispatcher and asked for the next wrecker service on rotation to respond to this attempt to recover the jeep from Lake Dawhoo.
7. I recall that when this wrecker arrived on the scene it was unable to pull the jeep out of the water due to the steep embankment, and at that time we called for another wrecker owned by Winston's Wrecker service. That was a larger wrecker service which would be able to handle this particular job. A short time later Scott McKenzie driver of his father's wrecker which was known locally as, "big berth" arrived on the scene at Lake Dawhoo, and was assisted by law enforcement personnel on the scene. It was determined that this Jeep was registered to Jody Ward.
8. My investigation continued along with Gary Todd and subsequently information was developed that Jody Ward may have been responsible for the disappearance of the two reported missing persons.

9. At a later point in time this matter was presented to the grand jury by me and Gary Todd. We make all the presentations to the grand jury on behalf of the Georgetown County Sheriff's office. I have known Scott McKenzie for a short period of time and did recall that he was on the grand jury for about two years some time. I do not recall whether or not that it was at this point in time nor do I recall whether he was just on the grand jury or the foreman when I presented the Jody Ward case in 2003.
10. I have known Jody Ward since he was 15 years of age. I do recall that he was indicted by the grand jury on charges of murder.
11. I do not recall whether the name of Scott McKenzie as the driver of the wrecker service was ever reported to the Georgetown County solicitor's office, or Greg Hembree or Bo Bryant. That information would be in the report that I made to the solicitor's office.
12. Over the years, having made presentations to the grand jury, I have known several members of the grand jury, however, that has never precluded my testimony or altered information that was presented to the grand jury by me. I presented the facts as they were known to me at the time I made the presentation.


Ernest A. Hampton

SWORN TO AND SUBSCRIBED

Before me this 11th day of June 2014


NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires on 4/06/14

Exhibit C

SOUTH CAROLINA COUNTY OF GEORGETOWN

AFFIDAVIT: GARY TODD

RE: JODY WARD (TRIAL 3/2004)

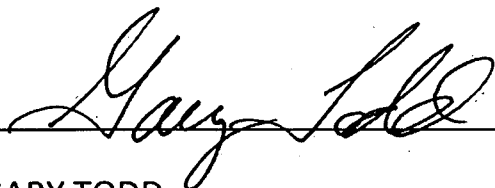
PERSONALLY APPEARED BEFORE ME, the undersigned Notary Public, the affiant, Gary Todd who being duly sworn stated as follows;

1. My name is Gary Todd and I am over 18 years of age. I am a resident of Georgetown County, S. C.
2. That this affidavit is true and correct and is based on my own personal knowledge and information provided to me by those persons named.
3. I am currently employed with the Georgetown County Sheriff's office as a training officer and have been so employed with this office as a training officer for the last two years. I have been in law enforcement for the past 20 years. I previously served with the Georgetown City Police for two years.
4. In 2002 or 2003 I was an investigator with the Georgetown County Sheriff's office and was called upon to work a homicide case with another investigator, Ernest Alexander Hampton. Information had been developed regarding two persons who were missing and reports filed with the Sheriff's Office. About the same time a Firebird had also been reported missing or stolen from a local convenience store. The owner, Jody Ward or his wife was the owner of the vehicle and was also a suspect in the homicide case. Ward's other vehicle a Suzuki Sidekick had been observed with the two missing persons in the vehicle about the same point in time the persons were reported missing.

5. Information had been obtained that the Sidekick maybe located at Lake Dawhoo near Andrews, SC and was registered to our suspect Ward. I along with deputy sheriff Earnest Hampton and other personnel from SLED and several divers went to that location and confirmed that a Sidekick had been in fact located in the water.
6. I recall that we contacted the dispatcher who sent a local wrecker service on rotation who was unable to pull the vehicle out of the lake due to other vehicles in the same water. Therefore, another wrecker service known to me as, Winston's Wrecker service. Sometime later a larger wrecker knows as "Big Bertha" arrived on the scene and was operated by Scott McKenzie who was the owner's son. Within a short period of time McKenzie who was assisted by others at the scene was able to pull the Sidekick from the lake and then it was taken to the Georgetown County Sheriff's office. It was determined that this Sidekick and the Firebird belonged to Jody Ward, who was the last individual known to be in contact with the two missing persons who had been reported to the Georgetown County sheriff's office.
7. I along with Earnest Hampton completed the investigation and then made a presentation to the Grand Jury sometime in 2003. I was not present at the time that grand jury presentation was made. Investigator Hampton usually made all the presentations to the grand jury on behalf of the Georgetown County sheriff's office on most criminal cases.

8. I am not personally acquainted with Scott McKenzie; however I did know that he did work for his father in the wrecker service business known as Winston's Wreckers in Georgetown, S. C. I do not know whether Scott McKenzie served on a grand jury at any point in time especially in 2003 or 2004. I am not aware whether the wrecker driver Scott McKenzie was ever in the sheriff's office report that was given to the solicitor's office in regard to the Sidekick recovery at Lake Dawhoo.
9. That I make these true and accurate statements on my own freewill and that I am not under the influence of any drug either prescribed or over the counter or illegal, or alcohol or under duress of any kind.

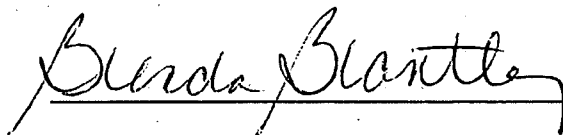
AFFIANT SAYETH NOT:



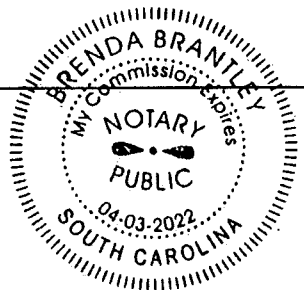
GARY TODD

SWORN TO AND SUBSCRIBED

Before me this 12th day of June 2014



NOTARY PUBLIC



STATE OF SOUTH CAROLINA

My commission expires on

Exhibit D

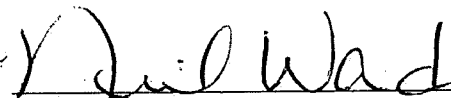
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AFFIDAVIT OF NICOLE WARD

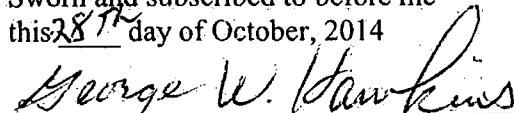
PERSONALLY APPEARED BEFORE ME, Nicole ward, who being first duly sworn,
deposes and states as follows:

1. I am Nicole Ward. I am a resident of Georgetown County. I am over 18 and fully competent to make this affidavit. I swear these statements are true and correct to the best of my information and belief.
2. I currently reside at 341 Kensington Boulevard, Georgetown, South Carolina with my husband, Rocky Ward.
3. My father is James (Jimmy) A. Cooper.
4. James A. Cooper's brother is Tommy Cooper.
5. Tommy Cooper's son is Kevin Cooper.
6. My grandfather and Tommy Cooper's father was Walter Cooper's brother.
7. Walter Cooper's grandson is James David Cooper.
8. James David Cooper was married to Marisa Cooper for many years, including the time of the trial of Jody Ward.
9. This relationship makes Marisa M. Cooper and Kevin Cooper second cousins by marriage.
10. I make these statements of my own free will and I am not under the influence of any drugs or alcohol or under duress of any type.

FURTHER AFFIANT SAYETH NOT.

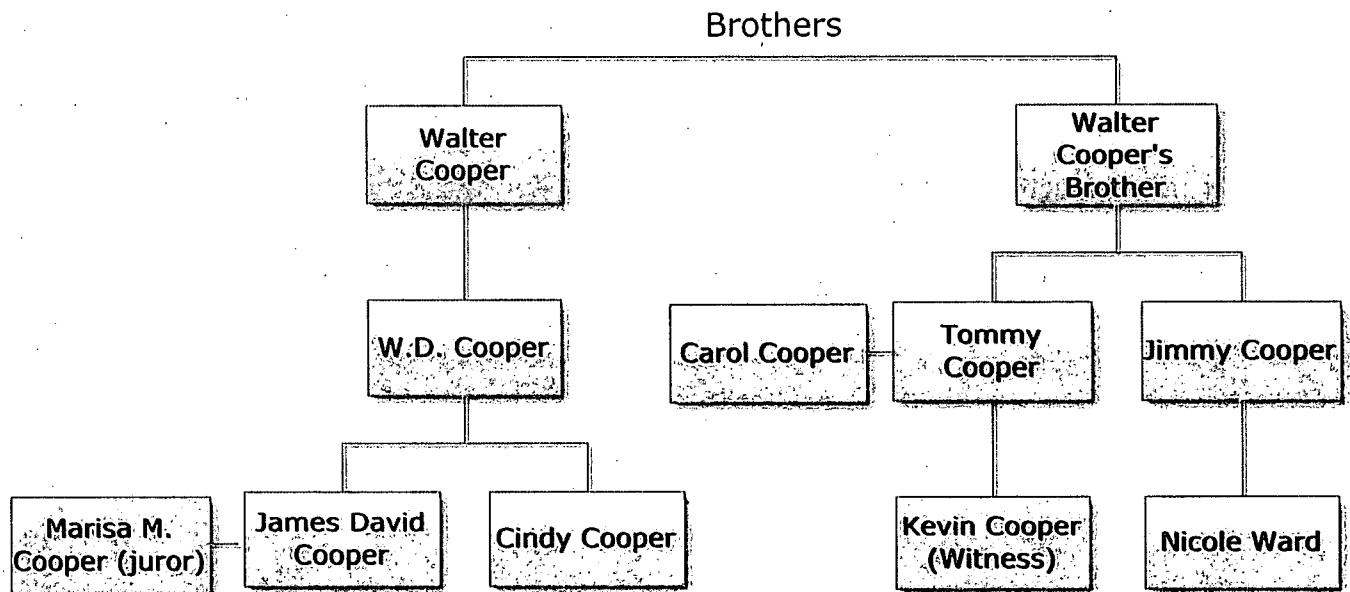

Nicole Ward

Sworn and subscribed to before me
this 28th day of October, 2014



NOTARY PUBLIC

My commission expires: 7/27/2019



STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

The State of South Carolina,

Plaintiff,

V.

Jody Lynn Ward,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2003-GS-22-1030; 2003-GS-22-1031

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO THE STATE'S MOTION
TO DISMISS DEFENDANT'S MOTION
FOR A NEW TRIAL PURSUANT TO
RULE 29(b), SCR CRIM**

NOV - 6 4:10:11

On September 8, 2017, The State moved to summarily dismiss the Defendant's motion for a new trial based on after discovered evidence. In addition to those arguments previously raised by Defendant, Defendant respectfully request that the Court deny the State's motion and grant Defendant a hearing on the merits.

BACKGROUND

On October 30, 2014, Defendant, through his then attorney Natasha Hanna, filed a motion for a new trial based on after discovered evidence.¹ Initially, the State did not file a responsive

¹ It appears that when this motion was filed, Defendant had an appeal pending from a previous motion for a new trial based on after discovered evidence. (Appellate Case 2012-213222). From the initial brief or Appellant, it appears that this appeal concerns allegations of newly discovered evidence involving allegations that an individual named Michael Abner hired the two decedents to kill Defendant. (See Exhibit A). Although Defendant's motion to suspend the appeal was denied by the Court of Appeal, the order denying the motion to suspended the appeal indicated "Nothing in this order shall prohibit the lower court...from proceeding with matters not affected by this appeal." Since the subject matter of the current motion does not deal with the matters alleged in Appellate Case 2012-213222, Defendant's October 30, 2014 motion did not violate the Court of Appeals order dated October 8, 2014.

pleading to Defendant's October 30, 2017 motion.

Defendant's October 30, 2017 motion, was initially reviewed by the Honorable Benjamin Culbertson. While it appears Judge Culbertson initially planned to summarily deny Defendant's Motion, Judge Culbertson rescinded his order of dismissal and ordered a hearing on the merits. (See Exhibit B). Judge Culbertson later recused himself. (See Exhibit C) The record does not show where the state objected to a hearing on the merits at that time.

This matter was scheduled for a hearing before the Honorable Steven John in December of 2015. Prior to that hearing, Defendant moved to relieve Counsel Hanna and to proceed *pro se*. Prior to the hearing, Defendant hired Counsel Shaffer to assist him. However, even after hiring Counsel Shaffer Defendant indicated that he still wished to proceed *pro se*.

At the hearing in December of 2015, Judge John relieved Counsel Hanna, but refused to consider whether Defendant had the right to proceed *pro se* until Defendant had been evaluated. However, Judge John did state that he intended for a hearing on the merits to be heard a later date.

Defendant was evaluated on April 10, 2017. Defendant was found to be competent.

On September 8, 2017, the State filed a motion to summarily dismiss, Defendant's motion for a new trial based on after discovered evidence.

On October 2, 2017 hearing was convened before this court on the following matters:

- a) Defendant's motion to proceed *pro se*.
- b) The State's motion to dismiss.
- c) Defendant's request to compel discovery.

Prior to the hearing Defendant submitted to the Court a Memorandum in Support of Defendant's Motion for A New Trial Based on After Discovered Evidence. (See Exhibit D).

DISCUSSION

I. Defendant's current motion for a new trial based on after discovered evidence was properly filed.

The State argues that Defendant, through Counsel Hanna, improperly filed the motion for a new trial based on after discovered evidence because at the time the motion was filed there was a pending appeal of a previously filed motion for a new trial based on after discovered evidence.

At the time defendant's current motion was filed, Defendant had an appeal pending from a previous motion for a new trial based on after discovered evidence. (Appellate Case 2012-213222).

This appeal concerns allegations of newly discovered evidence involving allegations that an individual named Michael Abner hired the two decedents to kill Defendant. (See Exhibit A). Although Defendant's motion to suspend the appeal was denied by the Court of Appeal, the order denying the motion to suspended the appeal indicated "Nothing in this order shall prohibit the lower court...from proceeding with matters not affected by this appeal." (See Exhibit E).

Since the subject matter of the current motion does not deal with the matters alleged in Appellate Case 2012-213222, Defendant's October 30, 2014 motion did not violate the Court of Appeals order dated October 8, 2014. Therefore, Defendant's current motion was not improperly filed.

II. The State's motion for summary dismissal should be denied when Defendant has alleged Juror Misconduct.

"[A] new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 627, (2013). "[E]valuating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing." *Id.*, 401 S.C. at 371, 737 S.E.2d at 628. Juror Misconduct issues may

properly be brought in a motion for a new trial. *See e.g., State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001).

Defendant has alleged that he recently learned that the following jurors refused to disclose a relationship with witnesses:

Juror 19-Marissa Cooper

Marissa Cooper failed to disclose a relationship the a State witness. Kevin Cooper was listed as a potential witness. Juror Number Nineteen, Marissa Cooper, was asked along with the other jurors, whether she was related by blood or marriage to any of the potential witnesses. At no point did she respond to this question. Kevin Cooper testified for the State against the Defendant. Marissa Cooper was in fact; at the time, related by marriage to Kevin Cooper. The juror, Marissa Cooper, was married to James D. Cooper. James D. Cooper's grandfather was Walter Cooper. The witness, Kevin Cooper's, grandfather was Walter Cooper's brother. Therefore, Marissa Cooper and Kevin Cooper were second cousins by marriage. Marissa Cooper intentionally concealed this relationship.

Juror 48- Judy Harper

Judy Harper was related by marriage to a witness listed by the Defense, Tony Harper. She failed to disclose this relationship. She, along with the other jurors, were asked in voir dire whether they were related by blood or marriage to any of the potential witnesses. Tony Harper was listed and read as a potential witness for the defense. There was no response from the jury. Ms. Harper was called and served as a juror in the trial against Mr. Ward.

Juror 39-Bernadette Gardner

Bernadette Gardner went to school with the Defendant's brother. Ms. Gardner had prior knowledge of the Defendant and his family as a result of this connection to the Defendant's brother. The Court asked on voir dire whether any juror was friends or business acquaintances with Mr. Ward. There was no response from any member of the jury. The question was reasonably comprehensive and the answer would have supported a challenge for cause. Therefore, Ms. Gardner intentionally concealed this relationship from the Court. Ms. Gardner was called and served as an alternate juror in the trial of Mr. Ward.

(Exhibit D).

Based on these allegations, it is inappropriate to dismiss Defendant's motion without an evidentiary hearing. *See McCoy*, 401 S.C. at 371, 737 S.E.2d at 628 ("[E]valuating the merits of a

juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing”).

III. Defendant is not time barred from alleging the issue involving the grand jury foreman. Therefore this ground for a new trial should not be summarily dismissed.

During the pendency of his direct appeal, Defendant became suspicious that the foreman of his grand jury, Scott McKenzie, also assisted law enforcement in pulling the vehicle out of Dawhoo lake. Although he had no proof or record of this suspicion he raised this in a *pro se Anders* brief.

Sometime between 2005 and 2006, Defendant requested that his uncle question McKenzie. (See Exhibit D—Affidavit of Rondie Ward). At that time, Mr. McKenzie informed Rondie Ward that he did not assist in pulling out the Suzuki. (See Exhibit D—Affidavit of Rondie Ward). Although Defendant continued to expect that Mr. McKenzie was lying, Defendant was limited on pursuing this matter without proof.

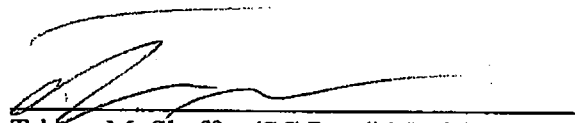
On June 12, 2014, Defendant obtained an affidavit from Deputy Gary Todd of the Georgetown. County Sheriff's Department. Mr. Todd indicated that he worked on Defendant's investigation with Investigator Ernest Hampton. Mr. Todd indicated that he was present when the Suzuki was pulled out of the lake. Mr. Todd further indicated that Scott McKenzie was the tow truck driver that pulled the Suzuki out of the lake. (See Exhibit D—Affidavit of Gary Todd). Ernest Hampton indicated that he presented Ward's case to the grand jury. (See Exhibit D—Affidavit of Ernest Hampton). However, Mr. Hampton was uncertain whether that information was provided to the Solicitor's office.

The record clearly indicates that Scott McKenzie was the foreman of the grand jury that indicted Defendant on the above referenced charges. If Ernest Hampton and Gary Todd were present during when the sidekick was pulled from the lake by Scott McKenzie, and then presented

the case to a grand jury including Scott McKenzie, this information should have been disclosed to Defendant. Failure to do so was misconduct on behalf of the State.

Scott McKenzie's involvement in the investigation is not barred by the one-year statute of limitations listed in Rule 29(b), SCRCrimP. "[E]quitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 621 (Ct. App. 2008) (citing 51 Am. Jur. 2d Limitation of Actions § 174 (2007)). In the present case, the State failed to disclose Scott McKenzie's relationship to the investigation. Moreover, Defendant's frustration of this fact was frustrated by representations by Mr. McKenzie. Therefore, Defendant should not be time barred from raising these allegations.

Respectfully Submitted,



Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
(o) 803-941-7514
tristan@shafferlawsc.com

ATTORNEY FOR DEFENDANT

Date: 10/24/17

EXHIBIT A

(2012-213222 Appeal)

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2003-GS-22-1030&1031

The State Of South Carolina, ... Respondent.

V.

Jody Lynn Ward, #300644, ... Appellant.

[INITIAL] BRIEF OF APPELLANT

Jody Lynn Ward, #300644
Lieber Corr. Inst. E-B-29
P.O. BOX 205
Ridgeville, S.C. 29472
Appellant Pro Se

Other Counsel Of Record:
Attorney General Of South Carolina
Mr. Allan Wilson, Attorney General
P.O. BOX 11549
Columbia, S.C. 29211-1549

RECEIVED
OCT 11 2012
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3-4
STATEMENT OF THE CASE.....	5-7
ARGUMENT.....	8-10
CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES :

<u>Abate V. Abate</u> , 660 S.E. 2d 515, 377 S.C. 548 (App.2008).....	10
<u>Bettis V. Busbee</u> , 283 S.C. 502, 323 S.E. 2d 536 (ct.App. 1984)..	9
<u>Burroughs V. Worsham</u> , 574 S.E. 2d 215, 352 S.C. 382.....	10
<u>Clark V. Cantrell</u> , 529 S.E. 2d 528, 339 S.C. 369.....	10
<u>Dearybury V. Dearybury</u> , 569 S.E. 2d 367, 351 S.C. 278.....	10
<u>Eubank V. Eubank</u> , 555 S.E. 2d 413, 347 S.C. 367.....	10
<u>Fontaine V. Peitz</u> , 354 S.E. 2d 565, 291 S.C. 536.....	10
<u>Hill V. Dotts</u> , 547 S.E. 2d 894, 345 S.C. 304.....	10
<u>State V. Commander</u> , 396 S.C. 254, 721 S.E. 2d 413 (2011).....	10
<u>State V. Jennings</u> , 394 S.C. 473, 477-78, 716 S.E. 2d 91, 93 (2011).	10
<u>Stewart V. Floyd</u> , 265 S.E. 2d 254, 274 S.C. 437.....	10

Criminal Law Key:

APPEAL AND ERROR ~~Can~~ 946.....	10
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STATEMENT OF ISSUE ON APPEAL

1.) Whether the court erred by denying appellant's Motion For New Trial based on After Discovered Evidence S.C.Crim.R 29(b), Motion For Appointment Of Counsel, And Motion For Private Investigative, And expert Funds/Expenses, Under Due Process And Equal Protection Of Law, U.S. Const. Amend. XIV §1, And Ake v. Oklahoma, 470 U.S. 68 (1985)?

2.) Whether the court erred by denying appellant's Motion For Reconsideration, And Motion To Arrest of Judgment Of Order denying Motion For New Trial, In a violation of Due Process And Equal Protection of Law, U.S. Const. Amend. XIV §1, And in a violation of Ake v. Oklahoma, 470 U.S. 68 (1985) Since appellant Is a Mental Health Patient, And IT being a Conflict of Interest Within the Clerk of Court's Office, and since the Lieber Mailroom held the Affidavit Of Rondie J. Ward that Clearly supported the Motion For New Trial?

3.) Whether the court erred by denying Motion For New Trial, based on After Discovered Evidence S.C.R.Crim.P Rule 29(b); Motion For Appointment Of Counsel; Motion For Private Investigative and expert Funds/Expenses; Motion For Reconsideration And Motion To Arrest of Judgment that resulted in an abuse of discretion amounting to an error of Law? ;as the abuse of discretion is both error of the rulings and resulting prejudice as well as denial of access of courts just because Appellant is an indigent status and pro se litigant for clerk to misabuse there authority ,and correctional mailroom to hold affidavit?

STATEMENT OF ISSUES ON APPEAL

4.) WHETHER THE COURT ABUSED ITS DISCRETION AMOUNTING TO AN ERROR OF LAW: BY FAILING TO GRANT AN EVIDENTIARY HEARING WHICH AMOUNTED TO A DEPRIVATION OF LEGAL RIGHTS OF APPELLANT, BY DENYING HIM FULL ACCESS TO THE COURTS JUST BECAUSE HE IS AN INDIGENT PRO SE LITIGANT, AND MENTAL HEALTH PATIENT, THE RULING WAS AN ERROR AND APPELLANT WAS/DID RESULT IN PREJUDICE TO DENYING MOTION FOR NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.Crim.P. 29 (b), MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR INVESTIGATIVE, AND EXPERT FUNDS/EXPENSES, UNDER DUE PROCESS AND EQUAL PROTECTION OF LAW, U.S. CONST. AMEND. XIV §1, is for all?

5.) WHETHER APPELLANTS DUE PROCESS AND EQUAL PROTECTION WAS VIOLATED BY COURT DENYING APPELLANTS MOTION FOR NEW TRIAL, MOTION FOR APPOINTMENT OF COUNSEL, AND MOTION FOR PRIVATE INVESTIGATIVE, AND EXPERT EXPENSES, WHICH RESULTED IN AN ABUSE OF DISCRETION AND APPELLANT WAS THEREBY PREJUDICE BECAUSE IT WAS CLEAR AND CONVINCING EVIDENCE THAT WAS SUBMITTED TO SUPPORT AN EVIDENTIARY HEARING, AND MOTION FOR NEW TRIAL BECAUSE THE AFFIDAVITS OF APPELLANT, LETTER MICHAEL ABNER, AND SWORN AFFIDAVIT OF RONDIE J. WARD, AND AFFIDAVIT OF ASHTON WARD SUPPORTED NEW TRIAL MOTION U.S CONST. AMEND. XIV §1, IS FOR ALL?

6.) WHETHER THE COURT ABUSED ITS DISCRETION BY DENYING APPELLANT MOTION FOR RECONSIDERATION, AND ARREST OF JUDGMENT, DUE TO CONFLICT OF INTEREST WITHIN CLERK OF COURT AND A DENIAL OF ACCESS OF COURT DUE TO INDIGENT MENTAL HEALTH PATIENT WHO CANNOT AFFORD LEGAL COUNSEL AND AFFIDAVIT OF RONDIE J. WARD BEING DENIED TO FILE THAT SAYS "MICHAEL ABNER DID TELL ME THAT HE PAID THEM BOYS TO KILL JODY,"?

STATEMENT OF THE CASE

Appellant (Jody Lynn Ward) was indicted in July 2003 in Georgetown County for the alleged murders of Wilford Brown and Elton Rutledge, Jr.

Appellant proceeded to trial by a jury and Judge on March 15-18, 2004. The Jury ultimately convicted Appellant as indicted and the Honorable Paula H. Thomas sentenced Appellant to two-2 concurrent life sentences. A timely notice of appeal was filed and the appeal was reviewed pursuant to Anders v. California in which the Court of Appeals affirmed the sentences and convictions January 26, 2007 (2007-UP-048). A timely rehearing was filed and rehearing was denied March 22, 2007. Subsequently thereafter Appellant filed a Petition For Writ Of Certiorari. The Petition for certiorari was withdrawn by Appellant June 29, 2007 and the remittitur was thereafter handed down to the circuit court. Appellant filed his first application for post conviction relief ("PCR") July 11, 2007. An evidentiary hearing was convened May 1, 2008. By way of Written Order the Honorable Judge Steven John denied the application.

On May 27, 2008, Appellant submitted a timely Rule 59 (e), SCRCP, Motion to alter/amend judgment. August 6, 2008, Judge John denied the rule 59 (e) motion. A timely notice of appeal was filed and appellant filed for writ of certiorari August 20, 2009, and the remittitur was handed down September 8, 2009.

Appellant filed his second pcr application July 13, 2009 based on "New Rule" of Law, while his first pcr was currently being reviewed on certiorari. Respondent made a Return and Motion to dismiss. A conditional Order Of Dismissal was issued and appellant

made his timely opposition to the dispositive pleading. January 13, 2010 a Final Order was issued granting the respondents motion to dismiss. A timely notice of appeal was filed in the lower court that was ultimately denied and dismissed. The remittitur was handed down about April 1, 2010.

Appellant filed a third pcr application May 4, 2010 based on a New Rule of law. The respondent filed a return and motion to dismiss June 1, 2010. Appellant lodged a timely opposition to the respondent's dispositive pleading June 14, 2010. A conditional order was issued and Appellant lodged a timely opposition to the conditional order. A final order was issued granting the respondents motion on July 20, 2010. A timely notice of appeal was filed, accompanied with a pro-se petition August 18, 2010. Appellant filed a reply brief, certiorari was ultimately denied August 18, 2011.

Appellant filed a notice of petition for original jurisdiction petition for writ of habeas corpus in South Carolina Supreme court on October 31, 2011. It was ultimately denied on November 16, 2011; to fully exhaust all state remedies. Appellant files a motion for a new trial based on after-discovered evidence on May, 7, 2012. On July 23, 2012 Rondie J. Ward, Appellants uncle went to the Georgetown County Clerk Of Court To file an affidavit that clearly supported the motion for new trial and paid .50¢ and Clerk Ms. Jennifer M. Lawrence Notarized the affidavit but failed to file it. My uncle Rondie J. ward went and mailed me a copy of the affidavit and the Lieber correctional Institution mailroom held the affidavit due to the contents had to be reviewed and Appellant filed an EMERGENCY STEP 1 GRIEVANCE to get the affidavit,

and while Appellant was waited to get the affidavit approved to be released the Court issued an Order Denying Motion For New Trial, motion for appointment of counsel, and motion for expenses on July 31, 2012. Appellant filed a timely notice of appeal dated August 6, 2012. And on August 7, 2012 the appellant filed a motion for reconsideration and/or motion to reconsider order/judgment denying motion for new trial; motion for appointment of counsel and motion for investigative & expert expenses, and while this motion was pending On August 30, 2012 Appellant filed Motion to Arrest of judgment/order denying motion for new trial, motion for appointment of counsel and motion for expenses for expert witness after the discovery of Ms. Jennifer M. Lawrence Georgetown County Clerk of court employee had signed a petition to have Appellants Third Bond hearing denied dated back to September 22, 2002. On September 25, 2012 the Honorable Benjamin H. Culbertson issued an Order Denying motion to arrest judgment. On September 28, 2012 Appellant wrote to the Georgetown County Clerk's office for the disposition of the motion for reconsideration that was still pending and the Clerk mailed to me On October 3, 2012 order denying arrest of judgment. On October 4, 2012 Appellant files his timely Notice of Appeal with attached orders. This appeal Follows:

ARGUMENT

The Appellant presented After-Discovered Evidence that clearly supported a Motion for New Trial based on After-Discovered Evidence. Appellant submitted a Sworn Affidavit, Sworn Affidavit of Rondie J. Ward, Sworn Affidavit of Ashton J. Ward, and a letter written to his mother from serial killer Michael Abner. Appellant was convicted by jury for two (2) alleged murders that the newly Evidence clearly refute, and since Appellants first jury never heard this Evidence he should have atleast been granted an Evidentiary Hearing for oral arguments because he meets the five (5) criteria for after-discovered Evidence that was set by the South Carolina Supreme Court. Therefore the Judge abused his discretion that amounted to resulting prejudice to Appellant the moving party.

INTRODUCTION

The Appellant herein would show the court Record on appeal pages 1 -50 Motion for New Trial based on After - Discovered Evidence, with attached Fortior Exhibits A - F , and Motion for Expenditure of Funds for investigative and expert services, and Motion for Appointment of counsel/indigent funds pursuant to §17-3-10. Appellant filed the motions after a convicted Serial killer wrote a letter to Appellants mother, and after his uncle Rondie J. Ward informed him that Michael Abner did call him on the phone at his residence and did in fact tell him that he being Abner did in fact pay Appellants alleged victims that a jury convicted Of 2-alleged murders. see record on appeal pg. 70-71, and pg. 97-103. The Appellant's uncle went to the clerk of court in Georgetown a total of (5) five times in an effort to file his Sworn Affidavit in my behalf since Im an indigent pro se inmate and also mental Health patient Due to a Conflict of interest the Clerk Ms. Jennifer M. Lawrence, and also Mr. Keith Moore they refused to file the affidavit. see: record on appeal pages 63-120. of all the Rigmarole that Appellant has experienced the mailroom staff at Lieber Corr. Inst. also withheld Appellants Affidavit see: record on Appeal: see pages: 74-76 Sworn Affidavit of

Appellant. It is clear that Appellants Constitutional Rights to Access of the Courts has been violated in a number of ways and the Judge abused his discretion in denying Motion for New Trial, Motion for Appointment of Counsel, Motion for expenditure of funds for Private Investigative & Expert Funds/witnesses, and Arrest of Judgment Motion, And finally the court failed to even Rule on the Motion for Reconsideration of Denial of Motion for New Trial. Its Clear by the record See: Pgs. 1 through 125 as a whole before it will be fully clear how Appellant has been denied Equal Protection and Due Process Under the United States Constitution Amend. XIV §1 The Constitution was made for all persons regardless of whether Im a mental health, indigent inmate with no funds to hire an Attorney or a Private Investigator thats why the Constitution was made to protect all persons Equal. The Record really speaks for itself I Should be Granted an Evidentiary Hearing In the Court of General Sessions for oral Argument after I have been Granted Compotent Legal Counsel to be Appointed to represent me for the Hearing, thats how I have been Prejudice to the extent that abuse of discretion, ammounting to an error of law, as the courts rulings was prejudicial and a denial of Appellants Access of the Courts and A denial of Due Process and Equal Protection of law that should be afforded to all.

DISCUSSION

A motion made on the ground of after discovered evidence is addressed to the sound discretion of the trial court, and a denial of the motion will not be overturned on appeal unless an abuse of discretion amounting to an error of law is sworn. SEE: Bettis V. Busbee, 283 S.C. 502, 323 S.E.2d 536 (Ct. App. 1984).

AFTER DISCOVERED EVIDENCE: In order to be entitled to a new trial on the ground of after discovered evidence, the movant is required to demonstrate that the evidence:

- 1.) is such that it will probably change the result if a new trial is granted;
- 2.) was discovered after trial;
- 3.) could not have been discovered before trial by exercise of due diligence;
- 4.) is material to the issue; and
- 5.) is not impeaching or merely cumulative.

Now Appellant has covered all 5 prongs because Michael Abner never started admitted to crimes that he committed until after he was arrested for the Murder of Jack Roerink 79, in the state of Kentucky See: Record on appeal pg. 22-24.

Appellant submits that the letter he wrote to his mother and the admitting that he paid Appellants 2 alleged victims to kill Appellant See: Sworn Affidavit of Rondie J. Ward record on appeal pg. 70-71; and 97-103 It is clear that an Evidentiary hearing should have been granted as a matter of law.

Abate v. Abate, 377 S.C. 548 (App. 2008), 660 S.E.2d 515

APEAL AND ERROR C.A. 946

The term "abuse of discretion" does not reflect negatively on the trial court: rather, it merely indicates the appellate court believes an error of law occurred in the circumstances at hand.

Burroughs v. Worsham, 574 S.E. 2d 215, 352 S.C. 382
Dearybury v. Dearybury, 569 S.E. 2d 367, 351 S.C. 278
Clark v. Cantrell, 529 S.E. 2d 528, 339 S.C. 369
Fontaine v. Peitz, 354 S.E. 2d 565, 291 S.C. 536
Stewart v. Floyd, 265 S.E. 2d 254, 274 S.C. 437
Eubank v. Eubank, 555 S.E. 2d 413, 347 S.C. 367
Hill v. Dotts, 547 S.E. 2d 894, 345 S.C. 304
State v. Commander, 396 S.C. 254, 721 S.E. 2d 413 (2011)
State v. Jennings, 394 S.C. 473, 477-78, 716 S.E. 2d 91, 93 (2011)
 (citation omitted)

CONCLUSION

WHEREFORE, based on the foregoing this Court should Grant Appellants Motion For New Trial based on after Discovered evidence Motion For Appointment of counsel, Motion For expenses, and/or Remand the case back to General Sessions Court for Evidentiary Hearing for Oral Arguments. Or Grant a New Trial this this matter.

Respectfully Submitted,

/s/ Jody Lynn Ward, #300644

Jody Lynn Ward, #300644
Appellant Pro-Se

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Case No. 2003-GS-22-1030&1031

The State of South Carolina, ... Respondent.

V.

Jody Lynn Ward, #300644, ... Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Initial Brief of Appellant,
and a copy of record on appeal, On This 8th Day Of October, 2012
on the Attorney General, Allan Wilson P.O. BOX 11549 Columbia, S.C.
29211-1549. By depositing a copy of it in the United States Mail
Postage Prepaid.

RECEIVED
OCT 11 2012
SC Court of Appeals

Respectfully Submitted,

/s/ Jody Lynn Ward #300644

Jody Lynn Ward, #300644
Appellant Pro Se

EXHIBIT B

(Email From Natasha Hanna)

Tristan Shaffer

From: natasha hanna <natasha@nhannalaw.com>
Sent: Wednesday, October 19, 2016 12:11 PM
To: Tristan Shaffer
Subject: RE: Jody ward
Attachments: Letter to Judge Culbertson.pdf; Form 4 Denied Motion.pdf

Yes, sort of. . . . I never really understood what happened but the judge agreed to hear our Motion at oral argument and that is when you got retained. See attached. All of these documents were included in the large file box that I gave to Jody. Good luck!!

Natasha M. Hanna
Law Office of Natasha M. Hanna, P.C.
4712 Jenn Drive, Suite A
Myrtle Beach, SC 29577
Phone: (843) 839-8002
Fax: (843) 839-8011
natasha@nhannalaw.com
www.nhannalaw.com

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-----Original Message-----

From: Tristan Shaffer [mailto:tristan@shafferlawsc.com]
Sent: Wednesday, October 19, 2016 8:34 AM
To: natasha@nhannalaw.com
Subject: Jody ward

Natasha,
Jody Ward keeps telling me that Judge Culbertson issued an order for a hearing on the 29b. But I can't find the order is that correct?

Thanks

Tristan

Sent from my iPhone

THE LAW OFFICE OF

Natasha M. Hanna, P.C.

Natasha M. Hanna
natasha@nhannalaw.com

Mallary W. Hitchcock
mallary@nhannalaw.com

VIA ELECTRONIC MAIL ONLY (BCulbertsonj@secourts.org)

September 22, 2015

The Honorable Benjamin H. Culbertson
P.O. Box 479
401 Cleland Street
Georgetown, South Carolina 29442

Re: State of South Carolina v. Jody Lynn Ward
2003-GS-22-1030; -1031

Dear Judge Culbertson:

I believe there is some confusion surrounding the Motion for a New Trial that I filed on October 30, 2014 for my client Jody Ward. Mr. Ward did not file this action *pro se* but retained our firm to represent him last year. I submitted a four page Motion citing supporting case law and Affidavits. Additionally, my associate, Mallary Hitchcock, submitted Affidavits to the Court on October 31, 2014 in support of this Motion. I am attaching the Motion, Affidavits, and correspondence with the Court to this letter.

Unfortunately, I am in quite a predicament because I am not aware of a Motion to Reconsider on a criminal motion and, instead, must appeal within ten (10) days of receipt of the Order. I was not provided a copy of the denial of the Motion until my client sent it to me and I later requested it from the Clerk of Court. The ten (10) days to appeal may expire on Thursday, September 24, 2015 as my client received the Denial on September 14, 2015. To further compound the matter, I only received a Form 4 Order which does not provide the basis for your denial from which I can appeal.

I would greatly appreciate it if you would reconsider this matter and allow me to present an oral argument or, in the alternative, provide me with an Order that sets forth the basis of your denial.

Thank you for your attention to this matter.

With kind regards, I am

Natasha M. Hanna

NMH/mwh

Enclosures

cc: Alicia Richardson, Jimmy Richardson

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE

WARRANT(S):

INDICTMENT(S):

2003-GS-22-1030

2003-GS-22-1031

State of South Carolina

Jody Lynn Ward, #300644

DEFENDANT(S)

This form order submitted by: Benjamin H. Culbertson
Administrative Judge, General Sessions

Attorney for : ☐ State ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE

- ☐ **DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.
- ☐ **DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.
- ☒ **MOTION: Defendant's Motion for New Trial**
- ☐ GRANTED ☒ DENIED ☐ CONTINUED ☐ WITHDRAWN
- ☐ WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party
- ☒ **OTHER: This motion is decided on the defendant's brief and affidavits in support of the motion without oral arguments.**

IT IS ORDERED AND ADJUDGED: ☐ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other: _____

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

	FILED GEORGETOWN COUNTY, S.C. 2015 SEP 11 AM 8:48 ALMA Y. WHITE CLERK OF COURT

Benjamin H. Culbertson
Circuit Court Judge

2148
Judge Code

Sept. 4, 2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 11th day of Sept., 2015 and a copy ^{emailed} mailed first class or placed in the appropriate attorney's box on this 11th day of Sept., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Alicia RichardsonJimmy Richardson**ATTORNEY(S) FOR THE STATE**Pro Se**ATTORNEY(S) FOR THE DEFENDANT(S)***Janice M. Smith*, Deputy
CLERK OF COURT**Court Reporter:** None

EXHIBIT C

(Email From Judge Culbertson)

Tristan Shaffer

From: Culbertson, Benjamin H. <bculbertsonj@sccourts.org>
Sent: Thursday, November 10, 2016 2:41 PM
To: Culbertson, Benjamin H. Law Clerk (Deidra Byrd)
Cc: Tristan Shaffer; Hyman, Larry B.; Hyman, Larry B. Law Clerk (Liz Smith); Butler, Tammie
Subject: RE: State v. Jody Ward (2003-GS-22-1030)

Let him know that I never received anything from Judge Hyman assigning this case to me. As I now have a conflict in this case and Judge Hyman being the Administrative Judge for General Sessions, he needs to have Judge Hyman schedule the hearing before another judge.

Benjamin H. Culbertson
Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, SC
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

-----Original Message-----

From: Culbertson, Benjamin H. Law Clerk (Deidra Byrd)
Sent: Thursday, November 10, 2016 2:06 PM
To: Culbertson, Benjamin H.
Subject: FW: State v. Jody Ward (2003-GS-22-1030)

Judge Culbertson,

I received the below schedule request for a hearing on Jody Ward's Motion for a New Trial Based on After Discovered Evidence.

Thank you,

Deidra

-----Original Message-----

From: Tristan Shaffer [mailto:tristan@shafferlawsc.com]
Sent: Wednesday, November 09, 2016 7:09 PM
To: Culbertson, Benjamin H. Law Clerk (Deidra Byrd) <BCulbertsonlc@sccourts.org>
Cc: Hixson, Scott <HixsonS@HorryCounty.org>
Subject: State v. Jody Ward (2003-GS-22-1030)

Deira,
I am writing you to find out if I could get a hearing scheduled for Jody Ward's Motion for a New Trial Based on After Discovered Evidence.

This motion was originally filed by Natasha Hanna. It appears the court initially did a form 4, but later agreed to order a hearing in December of last year. That hearing was continued when Natasha was relieved.

In August, we had a status conference before Judge Hyman and he indicated that he was going to assign the matter to Judge Culbertson to hear.

Please let us know when the Court would like this matter heard. Thank you.

Tristan Shaffer

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**EXHIBIT D**

**(Memorandum in  
Support of Defendant's  
Motion for a New Trial  
Based on After  
Discovered Evidence)**



In keeping with trial counsel's statement, Defendant was convicted. Appellate Counsel, Robert Dudek, filed a direct appeal pursuant to *Anders v. California*. App. 931-943. This appeal was dismissed.

Defendant then filed a PCR. For the PCR Defendant was represented by Bobby Frederick. An evidentiary hearing was convened on May 1, 2008 before the Honorable Steven John. The PCR court denied the PCR in an order dated May 15, 2008. Defendant's PCR appeal was also dismissed.

On October 30, 2014, Defendant, through his then attorney Natasha Hanna, filed a motion for a new trial based on after discovered evidence.

### **Summary of Allegations**

At trial, the state's theory was that Defendant shot and killed Wilford Brown and Elton Rutledge. The State argued that on August 2, 2002, Defendant borrowed his wife's Suzuki and meet up with Brown and Rutledge. The State alleged that Defendant then killed Brown and Rutledge and buried their body in the woods, and then dumped the Suzuki in Dawhoo Lake.

### **DISCUSSION**

- I. The foreman of the grand jury in Defendant's case, Scott McKenzie, assisted the investigation by pulling the vehicle, that was alleged to be at the scene of the shooting, out of Dawhoo Lake.

### **Relevant Facts**

During the pendency of his direct appeal, Defendant became suspicious that the foreman of his grand jury, Scott McKenzie, also assisted law enforcement in pulling the vehicle out of Dawhoo lake. Although he had no proof or record of this suspicion he raised this in a *pro se Anders* brief.

Sometime between 2005 and 2006, Defendant requested that his uncle question McKenzie. (See Exhibit A—Affidavit of Rondie Ward). At that time, Mr. McKenzie informed Rondie Ward

that he did not assist in pulling out the Suzuki. (See Exhibit A—Affidavit of Rondie Ward). Although Defendant continued to expect that Mr. McKenzie was lying, Defendant was limited on pursuing this matter without proof.

On June 12, 2014, Defendant obtained an affidavit from Deputy Gary Todd of the Georgetown. County Sheriff's Department. Mr. Todd indicated that he worked on Defendant's investigation with Investigator Ernest Hampton. Mr. Todd indicated that he was present when the Suzuki was pulled out of the lake. Mr. Todd further indicated that Scott McKenzie was the tow truck driver that pulled the Suzuki out of the lake. (See Exhibit B—Affidavit of Gary Todd). Ernest Hampton indicated that he presented Ward's case to the grand jury. (See Exhibit C—Affidavit of Ernest Hampton). However, Mr. Hampton was uncertain whether that information was provided to the Solicitor's office.

**Defendant's Fourteenth Amendment Right to Due Process was violated when the Grand Jury Foreman was involved in assisting law enforcement in recovering evidence.**

An indictment returned by an unbiased grand jury is insufficient to call the trial on the merits of the case. *See Costello v. United States*, 350 U.S. 359, 76 S.Ct. 406 (1956) (holding that an indictment returned by a legally constituted and unbiased grand jury, if valid on its face, is enough to call for trial the charge on the merits). State law gives criminal defendants the right to have their cases presented in a fair grand jury system prior to facing trial. *See S.C. Const. art. I, sec. 11.*

In this case, Scott McKenzie swore witnesses over the grand jury proceedings in this case. *See S.C. Code § 14-7-1550.* Since, Scott McKenzie, was actively involved in the gathering of evidence in this case he should not have been allowed to sit on the grand jury in this case.

**Defendant is entitled to a new trial based on the State's failure to disclose that the Grand Jury Foreman's connection to the investigation.**

The State engages in misconduct when they fail to disclose potential juror is not impartial. *Cf. Williams v. Taylor*, 529 U.S. 420, 441, 120 S. Ct. 1479, 1493, 146 L.Ed.2d 435, 454 (2000) (remanded a case for further hearings on prosecutorial misconduct claims when the prosecutor failed to disclose information of potential juror bias). Additionally, the knowledge that the Grand Jury foreman assisted in pulling the car out of the lake is imputed to the prosecutor even if the officers did not advise them of it. *See Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 1567, 131 L.Ed.2d 490, 508 (1995) ("This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

The record clearly indicates that Scott McKenzie was the foreman of the grand jury that indicted Defendant on the above referenced charges. If Ernest Hampton and Gary Todd were present during when the sidekick was pulled from the lake by Scott McKenzie, and then presented the case to a grand jury including Scott McKenzie, this information should have been disclosed to Defendant. Failure to do so was prosecutorial misconduct.

## **II. Petit Juror Misconduct**

"[A] new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 627, (2013).

**Juror 19-Marissa Cooper**

Marissa Cooper failed to disclose a relationship the a State witness. Kevin Cooper was listed as a potential witness. Juror Number Nineteen, Marissa Cooper, was asked along with the other jurors, whether she was related by blood or marriage to any of the potential witnesses. At no point did she respond to this question. Kevin Cooper testified for the State against the Defendant. Marissa Cooper was in fact; at the time, related by marriage to Kevin Cooper. The juror, Marissa Cooper, was married to James D. Cooper. James D. Cooper's grandfather was Walter Cooper. The witness, Kevin Cooper's, grandfather was Walter Cooper's brother. (See Exhibit D—Affidavit of Nicole Ward). Therefore, Marissa Cooper and Kevin Cooper were second cousins by marriage. Marissa Cooper intentionally concealed this relationship.

**Juror 48- Judy Harper**

Judy Harper was related by marriage to a witness listed by the Defense, Tony Harper. She failed to disclose this relationship. She, along with the other jurors, were asked in voir dire whether they were related by blood or marriage to any of the potential witnesses. Tony Harper was listed and read as a potential witness for the defense. There was no response from the jury. Ms. Harper was called and served as a juror in the trial against Mr. Ward.

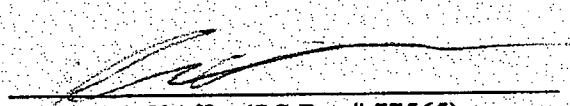
**Juror 39-Bernadette Gardner**

Bernadette Gardner went to school with the Defendant's brother. Ms. Gardner had prior knowledge of the Defendant and his family as a result of this connection to the Defendant's brother. The Court asked on voir dire whether any juror was friends or business acquaintances with Mr. Ward. There was no response from any member of the jury. The question was reasonably comprehensive and the answer would have supported a challenge for cause. Therefore, Ms. Gardner intentionally concealed this relationship from the Court. Ms. Gardner was called and served as an alternate juror in the trial of Mr. Ward.

### III. Testimony Concerning Elton Rutledge's Shoes

During the trial, the state introduced two white Adidas shoes that were found in the autopsy. The State re-called Latrese Rutledge and Elton Rutledge, Sr. to identify the shoes as belonging to Elton Rutledge Jr. Defendant asserts that this testimony was False. Defendant will present evidence that the shoes did not belong to Rutledge.

Respectfully Submitted,

  
Tristan M. Shaffer (SC Bar # 77565)  
225 Columbia Ave.  
Chapin, SC 29036  
(o) 803-941-7514  
tristan@shafferlawsc.com

ATTORNEY FOR DEFENDANT

Date: 3/14/17

**State of South Carolina  
County of Georgetown**

**Affidavit of Rondie James Ward**

---

Personally appeared before me, the undersigned Notary Public, the affiant, Rondie James Ward, who being duly sworn states as follows:

- 1.) My name is Rondie James Ward and I am over 18 years of age.
- 2.) I reside at 152 Bear Loop, Georgetown, SC.
- 3.) This affidavit is true and correct and it is based on my own personal knowledge, information, and belief.
- 4.) I am fully competent to make this affidavit. I am not under the influence of drugs, alcohol, or inducement of any kind or nature.
- 5.) Jody Lynn Ward is my nephew as his dad is my brother.
- 6.) On or about 2005-2006, I went to Scott McKenzie's residence at the request of Jody Lynn Ward. I think this was during the time Ward was on Direct Appeal in the SC Court of Appeals from his guilt trial verdict on two alleged murders. Ward requested me to ask Scott McKenzie several questions.
- 7.) I asked Mckenzie if he pulled out my nephew Jody Ward's red Firebird and/or his Suzuki Sidekick out of Dawhoo Lake. McKenzie stated he did not tow the Suzuki Sidekick out, but he did tow the Red Firebird out of Dawhoo Lake on or about August-September 2002.
- 8.) I believe Scott McKenzie was untruthful when he told me he did not pull out Ward's Suzuki Sidekick because I saw an affidavit from McKenzie where he stated that he did pull out and tow the Sidekick.
- 9.) On a separate instance, on or about 2002-2003, I received a phone call from my cousin Michael Andrew Abner. My wife, Carol S. Ward initially answered the phone and Abner told her he wanted to talk to me. My wife remained on the other line after I picked up the phone and Abner told me that he paid two black males to kill Jody Ward. My wife can corroborate that Abner told me this information. These are the same two males that Ward was charged with murdering. I told this information to Ward's trial attorneys, Margaret Ann Kneece and Wesley Locklair.

10.) I think that Michael Abner was charged in 2010 for three murders in Kentucky. Some of these murders dated back before Jody Ward went to trial in 2004.

12.) I do not have any further information about the Jody Ward case.

Sworn to before me this

4<sup>th</sup> Day of March 2015

George W. Hawkins

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 7/27/2019

Rondie J. Ward

Rondie James Ward, Affiant

SOUTH CAROLINA COUNTY OF GEORGETOWN

AFFIDAVIT: GARY TODD

RE: JODY WARD (TRIAL 3/2004)

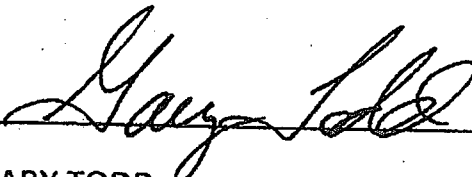
PERSONALLY APPEARED BEFORE ME, the undersigned Notary Public, the affiant, Gary Todd who being duly sworn stated as follows;

1. My name is Gary Todd and I am over 18 years of age. I am a resident of Georgetown County, S. C.
2. That this affidavit is true and correct and is based on my own personal knowledge and information provided to me by those persons named.
3. I am currently employed with the Georgetown County Sheriff's office as a training officer and have been so employed with this office as a training officer for the last two years. I have been in law enforcement for the past 20 years. I previously served with the Georgetown City Police for two years.
4. In 2002 or 2003 I was an investigator with the Georgetown County Sheriff's office and was called upon to work a homicide case with another investigator, Ernest Alexander Hampton. Information had been developed regarding two persons who were missing and reports filed with the Sheriff's Office. About the same time a Firebird had also been reported missing or stolen from a local convenience store. The owner, Jody Ward or his wife was the owner of the vehicle and was also a suspect in the homicide case. Ward's other vehicle a Suzuki Sidekick had been observed with the two missing persons in the vehicle about the same point in time the persons were reported missing.

5. Information had been obtained that the Sidekick maybe located at Lake Dawhoo near Andrews, SC and was registered to our suspect Ward. I along with deputy sheriff Earnest Hampton and other personnel from SLED and several divers went to that location and confirmed that a Sidekick had been in fact located in the water.
6. I recall that we contacted the dispatcher who sent a local wrecker service on rotation who was unable to pull the vehicle out of the lake due to other vehicles in the same water. Therefore, another wrecker service known to me as, Winston's Wrecker service. Sometime later a larger wrecker knows as "Big Bertha" arrived on the scene and was operated by Scott McKenzie who was the owner's son. Within a short period of time McKenzie who was assisted by others at the scene was able to pull the Sidekick from the lake and then it was taken to the Georgetown County Sheriff's office. It was determined that this Sidekick and the Firebird belonged to Jody Ward, who was the last individual known to be in contact with the two missing persons who had been reported to the Georgetown County sheriff's office.
7. I along with Earnest Hampton completed the investigation and then made a presentation to the Grand Jury sometime in 2003. I was not present at the time that grand jury presentation was made. Investigator Hampton usually made all the presentations to the grand jury on behalf of the Georgetown County sheriff's office on most criminal cases.

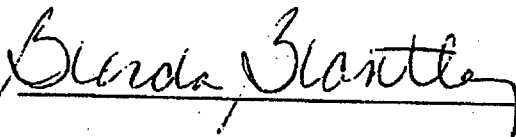
8. I am not personally acquainted with Scott McKenzie; however I did know that he did work for his father in the wrecker service business known as Winston's Wreckers in Georgetown, S. C. I do not know whether Scott McKenzie served on a grand jury at any point in time especially in 2003 or 2004. I am not aware whether the wrecker driver Scott McKenzie was ever in the sheriff's office report that was given to the solicitor's office in regard to the Sidekick recovery at Lake Dawhoo.
9. That I make these true and accurate statements on my own freewill and that I am not under the influence of any drug either prescribed or over the counter or illegal, or alcohol or under duress of any kind.

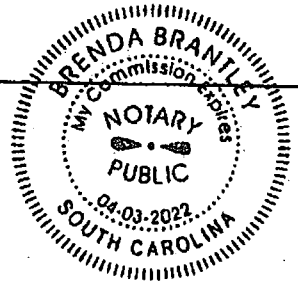
AFFIANT SAYETH NOT:

  
\_\_\_\_\_  
GARY TODD

SWORN TO AND SUBSCRIBED

Before me this 12<sup>th</sup> day of June 2014

  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF SOUTH CAROLINA

My commission expires on

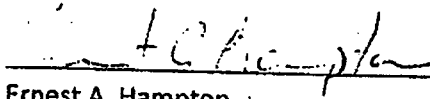
## AFFIDAVIT OF ERNEST A. HAMPTON

RE: JODY WARD (TRIAL 3/2004)

## PERSONALLY APPEARED BEFORE ME:

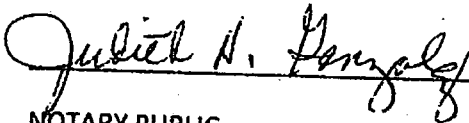
1. My name is Ernest A. Hampton. I am over 18 years of age.
2. I am a resident of Georgetown County, S. C.
3. That this affidavit is true and correct and is based on my own personal knowledge and information provided to me by those persons named.
4. I am currently employed with the Georgetown County Sheriff's office. I was formerly with the South Carolina Highway Patrol for over 9 years. I have served in the sheriff's office as the lead criminal investigator since leaving the patrol.
5. Sometime ago, possibly in 2002 or 2003 while I was working as the lead criminal investigator I received information that two persons had been reported missing in Georgetown County, S. C. At the same time a Jeep had been reported stolen from a local convenience store. Information had been developed by me that the stolen Jeep had possibility been located in Lake Dawhoo near Andrews S. C.
6. Myself along with investigator Gary Todd and other law enforcement officials from SLED and several divers went to the lake and determined that indeed a jeep was in the lake. A call was made to the dispatcher and asked for the next wrecker service on rotation to respond to this attempt to recover the jeep from Lake Dawhoo.
7. I recall that when this wrecker arrived on the scene it was unable to pull the jeep out of the water due to the steep embankment, and at that time we called for another wrecker owned by Winston's Wrecker service. That was a larger wrecker service which would be able to handle this particular job. A short time later Scott McKenzie driver of his father's wrecker which was known locally as, "big bertha" arrived on the scene at Lake Dawhoo, and was assisted by law enforcement personnel on the scene. It was determined that this Jeep was registered to Jody Ward.
8. My investigation continued along with Gary Todd and subsequently information was developed that Jody Ward may have been responsible for the disappearance of the two reported missing persons.

9. At a later point in time this matter was presented to the grand jury by me and Gary Todd. We make all the presentations to the grand jury on behalf of the Georgetown County Sheriff's office. I have known Scott McKenzie for a short period of time and did recall that he was on the grand jury for about two years some time. I do not recall whether or not that it was at this point in time nor do I recall whether he was just on the grand jury or the foreman when I presented the Jody Ward case in 2003.
10. I have known Jody Ward since he was 15 years of age. I do recall that he was indicted by the grand jury on charges of murder.
11. I do not recall whether the name of Scott McKenzie as the driver of the wrecker service was ever reported to the Georgetown County solicitor's office, or Greg Hembree or Bo Bryant. That information would be in the report that I made to the solicitor's office.
12. Over the years, having made presentations to the grand jury, I have known several members of the grand jury, however, that has never precluded my testimony or altered information that was presented to the grand jury by me. I presented the facts as they were known to me at the time I made the presentation.

  
Ernest A. Hampton

SWORN TO AND SUBSCRIBED

Before me this 11<sup>th</sup> day of June 2014

  
NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires on 7/06/14

SOUTH CAROLINA

AFFIDAVIT

COUNTY OF GEORGETOWN

NICOLE WARD

RE: JODY WARD (Trial 3/2004)

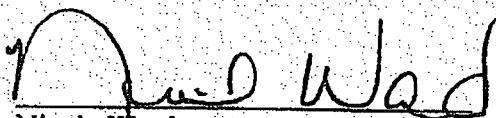
PERSONALLY appeared before me, the undersigned Notary Public, the Affiant,

NICOLE WARD who being duly sworn stated as follows:

1. My name is Nicole Ward. And I am over the age of eighteen years.
2. I am a resident of Georgetown County, South Carolina.
3. That this affidavit is true and correct and it is based on my own personal knowledge and information provided to me by those persons named.
4. I currently reside at 341 Kensington Blvd, Georgetown, SC with my husband Rocky Ward. My father is James A. Cooper (Jimmy).
5. Jimmy Cooper is a cousin to (James) David Cooper. (James) David Cooper was married to Marisa Cooper for many years but they divorced about 3 years ago and David has remarried. Marisa is a single Mom and has not remarried. Cindy Cooper is David's sister and I and have known her many years having grown up with her in Georgetown.
6. I recall a telephone conversation I had with Jody Ward sometime in October of last year at which time we discussed the relationship of Marisa Cooper who was a juror in Jody's case some years ago, at which time Kevin Cooper testified as a witness. I told him at the time that Kevin was related to Marisa and that they were cousins by marriage.
7. Kevin's father was Tommy Cooper, now deceased and his mother is Carol Cooper. Based on this relationship Tommy and David are 2<sup>nd</sup> cousins. Tommy and David's father are 1<sup>st</sup> cousins.
8. Kevin has two brothers Bryan and Randall and one sister, Angel.
9. David Cooper father is W. D. Cooper age 70.
10. Based on the foregoing that would make David a 3<sup>rd</sup> cousin to Kevin and since Marisa, the juror was married to David during Jody's trial, Kevin was her third cousin by marriage.

- 11 That I make these true and accurate statements of my own free will and that I am not under the influence of any drugs either prescribe, over the counter, or illegal, or alcohol or duress of any type.

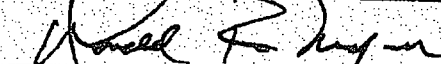
FUTHERMORE THE AFFIANT SAYETH NOT.



Nicole Ward.

SWORN TO AND SUBSCRIBED

Before me this 22 day of March 2014



NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires: 3/24/2024

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN ) AFFIDAVIT OF NICOLE WARD

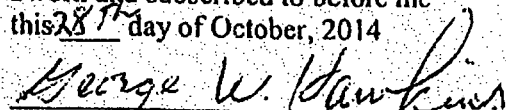
PERSONALLY APPEARED BEFORE ME, Nicole ward, who being first duly sworn,  
deposes and states as follows:

1. I am Nicole Ward. I am a resident of Georgetown County. I am over 18 and fully competent to make this affidavit. I swear these statements are true and correct to the best of my information and belief.
2. I currently reside at 341 Kensington Boulevard, Georgetown, South Carolina with my husband, Rocky Ward.
3. My father is James (Jimmy) A. Cooper.
4. James A. Cooper's brother is Tommy Cooper.
5. Tommy Cooper's son is Kevin Cooper.
6. My grandfather and Tommy Cooper's father was Walter Cooper's brother.
7. Walter Cooper's grandson is James David Cooper.
8. James David Cooper was married to Marisa Cooper for many years, including the time of the trial of Jody Ward.
9. This relationship makes Marisa M. Cooper and Kevin Cooper second cousins by marriage.
10. I make these statements of my own free will and I am not under the influence of any drugs or alcohol or under duress of any type.

FURTHER AFFIANT SAYETH NOT.

  
Nicole Ward

Sworn and subscribed to before me  
this 28<sup>th</sup> day of October, 2014

  
NOTARY PUBLIC

My commission expires: 7/27/2019

**EXHIBIT E**  
**(2012-213222 Order on**  
**Request to Remand)**

# The South Carolina Court of Appeals

The State, Respondent,

v.

Jody Lynn Ward, Appellant.

Appellate Case No. 2012-213222

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## ORDER

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Appellant's Motion to Suspend Appeal and For Leave to File Motion for a New Trial Based on After Discovered Evidence is denied. We note that pursuant to Rule 205, SCACR, "Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal."

H. B. W. J.

John D. Deathers J.

Stephanie L. McDonald J.

Columbia, South Carolina

cc:

Jody Ward, 300644

W. Edgar Salter, III, Esquire

Alan McCrory Wilson, Esquire

FILED

Oct. 8, 2014

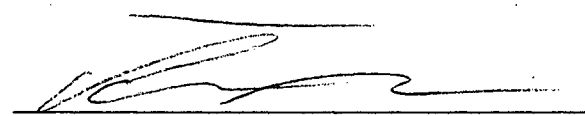
John W. McIntosh, Esquire  
Donald J. Zelenka, Esquire  
Jimmy A. Richardson, II, Esquire  
Natasha M. Hanna, Esquire

Certificate of Counsel

---

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material agreed upon by the parties and not any other material.

November 17, 2019



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Tristan M. Shaffer  
P.O. Box 1027  
Chapin, SC 29036  
(803) 941-7514  
Attorney for Appellant

**RECEIVED**  
DEC 09 2019  
SC Court of Appeals