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RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF BARNWELL	SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	**ORDER DENYING MOTION FOR NEW TRIAL**
v.	
ALFRED T. WALKER, #00307941, Defendant.	2001-GS-06-00118, 2001-GS-06-00119, 2001-GS-06-00120, 2001-GS-06-00121, 2001-GS-06-00122, 2001-GS-06-00123, 2001-GS-06-00134

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SC Court of Appeals

This matter came before this court for a hearing on the Defendant's motion for a new trial based on after-discovered evidence or, in the alternative, to amend the sentences imposed on the above referenced indictments. The hearing was conducted on September 26, 2019 at the Jasper County courthouse. The Court Reporter for the hearing was Circuit Court Reporter Mona Manley. The Defendant was present for the hearing and represented by his attorney, Benjamin McClain of Greenville, South Carolina. The State was represented at the hearing by Second Circuit Deputy Solicitor David Miller. Prior to the hearing, a number of stipulations of counsel were placed on the record. First, counsel stipulated that the transcript of the trial proceedings in the underlying case was incomplete, but that all efforts had been made to obtain a complete transcript. Despite the failure to obtain a complete transcript, both parties agreed the missing transcript pages were not relevant to the pending motion. Second, the lawyers and the Defendant consented to the hearing of the motion in Jasper County instead of Barnwell County where the original trial took place or in the Judicial District where the trial was held. It was then noted that South Carolina Court Administration had assigned this Court General Sessions Non-jury jurisdiction for Barnwell County to hear this motion. Finally, the parties stipulated that the motion had been filed and would be heard pursuant to Rule 29 of the South Carolina Rules of

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STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.
Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
By: SR Date: 10-16-19

Criminal Procedure. This Court has considered the testimony and other evidence presented at the hearing, the arguments of counsel, and the applicable South Carolina Rules of Criminal Procedure and hereby denies the Defendant's motion for the reasons stated below.

PROCEDURAL HISTORY

The Defendant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Barnwell County Clerk of Court. He was indicted for two counts of murder (2001-GS-06-00118 and 2001-GS-06-00119), burglary in the second degree (2001-GS-06-00120), assault and battery with intent to kill (2001-GS-06-00121), criminal conspiracy (2001-GS-06-00122), armed robbery (2001-GS-06-00123) and possession of a weapon during the commission of a violent crime (2001-GS-06-00134). The State gave Notice of Intention to Seek the Death Penalty on March 26, 2001. The Defendant was initially represented by Thomas Sims and Carl Grant, both of Orangeburg County. Early on in the case, a potential conflict regarding Mr. Sims's representation was identified. In an abundance of caution, Mr. Glenn Walters of Orangeburg County was substituted as counsel for the Defendant to eliminate any potential conflict. Messrs. Grant and Walters represented the Defendant for the duration of the case in General Sessions.

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Before the third day of testimony in the jury trial, on March 8, 2005, the Defendant entered an Alford plea to both counts of murder and entered guilty pleas to the remaining charges. He was sentenced by this Court to consecutive life sentences for each murder and to concurrent maximum sentences on the remaining charges.

A notice of appeal was filed and perfected. Following submission of an Anders brief, the appeal was dismissed. State v. Walker, Op. No. 2008-UP-021 (S.C. Ct. App. filed Jan. 10, 2008). The remittitur was sent January 28, 2008.

The Defendant filed an application seeking post-conviction relief in Barnwell County (2006-CP-06-0277) on November 15, 2006, while his appeal was pending. The State made its Return on June 4, 2007. The PCR action was stayed pending the outcome of the appeal. The State Amended its Return on or about February 1, 2009. An evidentiary hearing on the PCR was convened on February 3, 2009. The Defendant was represented at the hearing by attorney Paige Tiffany of Aiken County. The Defendant testified at the PCR hearing as did his sister, Latasha Bradshaw, and his two previous lawyers, Glenn Walters and Carl Grant. At the hearing, the Defendant alleged ineffective assistance of trial counsel, that his guilty plea was involuntary, and due process violations. The Honorable Doyet A. Early, III denied the PCR by order dated March 5, 2009 and filed March 10, 2009.

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On June 1, 2010, Defendant filed a second PCR application seeking a belated appeal of his first PCR application pursuant to Austin v. State, 409 S.E.2d 395 (S.C. 1991). The court entered a consent order dismissing the Second PCR application and granting a belated appeal of Defendant's first PCR application.

On October 7, 2011, the Defendant filed a notice of appeal of the court's denial of his first PCR application. The South Carolina Supreme Court denied his appeal on November 2, 2011, and the Remittitur was sent to the Barnwell Clerk of Court on November 18, 2011.

On January 25, 2012, the Defendant filed a third PCR application (2012-CP-06-0034) which was still pending when Petitioner filed a Habeas Corpus Petition with the Federal District Court on June 5, 2012. The Habeas Corpus Petition was denied by order filed August 26, 2013.

The third PCR application was subsequently denied by order dated July 2, 2013 and filed July 11, 2013.

APPLICABLE LAW

Post-trial motions, including motions for new trial, are governed by Rule 29 of the South Carolina Rules of Criminal Procedure. Rule 29 provides, in relevant part, "[E]xcept for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP.

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To prevail on a motion for a new trial based on after discovered evidence, a defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (S.C. 1998). Only the trial court and not the appellate court has the power to weigh the new evidence offered in support of new trial motion; the trial court's judgment will not be disturbed except for error of law or abuse of discretion. State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (S.C. Ct. App. 2011).

THE CURRENT MOTION

The Defendant filed and served his current motion on June 3, 2019. In the motion, the Defendant makes four specific allegations of misconduct. They are:

1) There are discrepancies in the transcript of testimony at trial and the Transportation Sheets from the Barnwell County jail.

2) Law enforcement continued to question the Defendant in violation of his right to remain silent after he repeatedly informed the officers he did not wish to talk.

3) At the time the Defendant spoke to law enforcement, the Defendant was intoxicated, under the influence of drugs, and diagnosed with antisocial personality disorder, which could have or did effect any answers or statements made by him.

4) The State failed to document or record statements made by the Defendant and the failure of the State to do so constituted a violation of Brady v. Maryland, 373 U.S. 83 (1963).

Drawing from these allegations, the Defendant claims his convictions were the direct result of violations of his constitutional rights to remain silent and to due process. Additionally, the Defendant claims the State's failure to disclose the allegedly undocumented statement(s), particularly a statement Defendant claims to have made on October 20, 2000 at the Barnwell Police Department, may have fundamentally changed the outcome of the proceeding.

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During the hearing, the Defendant offered the testimony of a private investigator, James T. Burgess. Mr. Burgess testified he was contacted by a family member of the Defendant seeking his assistance on May 15, 2018. Mr. Burgess said the family member asked if he could obtain copies of the Transportation Sheets from the Barnwell County jail dated October 19, 2000 (the date of the Defendant's arrest) through October 30, 2000. Mr. Burgess testified he went to the Barnwell Jail on Monday, June 11, 2018 and obtained copies of the Transportation Sheets from four separate dates, October 19, 2000, October 20, 2000, October 21, 2000, and October 25, 2000. Mr. Burgess testified the jail staff had to get the file from the archives, but he was able to get the copies the same day he asked for them. Additionally, Mr. Burgess testified he obtained a statement from an individual who claimed to be a jail employee at the Barnwell Jail the night the Defendant was arrested. This individual, identified as Brice Johnson, claimed the Defendant appeared to be under

the influence of alcohol or drugs when he was brought into the jail in the early morning hours of October 19, 2000.

The Defendant then testified he had been questioned several times regarding the October 18, 2000 incident following his arrest. He stated he informed the Solicitor's Investigator, Wayne Martin, prior to and during each interview that he did not wish to talk and that he wanted to talk to a lawyer and his mother. He claimed each time he stated he did not want to talk, but he was told that he needed to talk about what happened or his family could be in danger. When asked to elaborate on that allegation by his attorney, Defendant stated the Barnwell County Sheriff had told him and other individuals initially detained near the scene of the crime "he wished they'd try to run so he could shoot them the way they shot those boys in there." This alleged threat was not captured on any recording device(s) and no other person alleged to have been present at the time was offered to corroborate the Defendant's claim. The Defendant claimed Investigator Martin repeatedly told him his mother's life was going to be in danger if he did not cooperate with the investigation.

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The Defendant claimed a Transportation Sheet[1] showing he was taken to the Barnwell Police Department on October 20, 2000 by Officer Glenn Rice was for a meeting set up by Investigator Martin where the Defendant was allowed to meet with his mother. Despite the fact that the Transportation Sheet shows the Defendant was transported at 2030 (8:30p.m.) the Defendant claims he was transported to the Police Department at 5:30p.m. There is no return time listed on the Transportation Sheet. He claimed after that meeting investigator Martin claimed he was "keeping his mother safe" and would continue to do so as long as he cooperated with the

[1] No documents were entered into evidence by the Defense at the hearing, but an Affidavit of James T. Burgess along with copies of the Transportation Sheets and a written statement from Bruce Johnson were attached as exhibits to the Defendant's filed motion.

investigation. There is no documentation of any statement being taken from the Defendant at the alleged meeting with his mother.

On cross examination, the Defendant testified that no information regarding the circumstances or the number of statements he had given was unknown to him at the time of his trial. He admitted he had been evaluated by Dr. Thomas Martin to determine if he was competent to stand trial in January of 2005. As part of that evaluation, Dr. Martin noted the Defendant "appeared to be a good historian and genuine in his presentation." Dr. Martin summarized each of the Defendant's statements to law enforcement as follows:

> In an initial interview in a police vehicle, Mr. Walker recalls denying direct knowledge of the shooting at the Sonic Drive-In. At an interview later on October 19, 2000, Mr. Walker admits to his presence at the Sonic Drive-In, but denies firing any weapon. On an October 20, 2000 statement, Mr. Walker admits to carrying a .25 cal automatic handgun and accidentally shooting Mr. Edwards in the leg. He also reports that Mr. Priester shot Mr. Edwards, Mr. Brewer and Mr. Still in the head. Mr. Walker reported that his automatic handgun jammed as evidenced by its inability to self-reload after firing the first and only time. Forensic ballistic reports substantiate that Mr. Walker's handgun fired the one shot into Mr. Edwards' leg, and Mr. Priester's .22 cal handgun fired the fatal shots into Mr. Brewer and Mr. Still, and seriously wounding Mr. Edwards. Mr. Walker reports remorse for his participation in the crime and empathy for the victims and their families. Mr. Walker reflected his remorse in a letter later written to Mr. Edwards.
> State's Ex. 1, pg. 11 (Forensic Psychiatric Evaluation of Alfred Walker by Dr. Thomas Martin).

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The Defendant admitted Dr. Martin's recitation of the summary of Defendant's statements to law enforcement was accurate and that he spoke to Dr. Martin about each of the statements.

Defendant claimed that he told all his lawyers, including Mr. Thomas Sims who was subsequently relieved, he had told Investigator Martin he did not want to talk to him before each statement was taken. He claimed he told all of his lawyers about Investigator Martin's threats and intimidation to convince him to give multiple statements. Despite this, the Defendant alleges his lawyers would not let him testify to any of the information during the Jackson v. Denno hearing

and would not make any arguments to keep the statements out of evidence. The Defendant admitted that he made no allegation regarding the alleged undocumented statements or his attorneys' failure to challenge the statements in his subsequent appeals, PCR actions, or in the federal habeas action because "he didn't think he could raise those claims". Finally, the Defendant admitted he did not tell his PCR attorney about any of these issues because "she didn't know what she was doing" and it would not have done him any good to raise the claims to her.

DISCUSSION

As a threshold matter, it is undisputed that any inconsistency or discrepancy between the actions of the investigating officers testified to during the Jackson v. Denno hearing, and later at the trial, and what the Defendant alleges actually happened was known by the Defendant at the time of the trial. Rule 29 requires that a motion for a new trial based on after discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. The Defendant admits he was fully aware of the information presented at his motion at the time of his trial in 2005. He rest his claim for relief on the "newly discovered evidence" of the copies of the Barnwell Jail Transportation Sheets. However, his Investigator testified he went to the Barnwell Jail after being retained, asked for copies of the Transportation Sheets, and received them *the same day he requested them.* If obtaining these documents had been pursued with *any* diligence, they could have been obtained in a matter of a day instead of more than fourteen years later.

Additionally, an examination of the requirements for the "evidence" offered to warrant a new trial pursuant to State v. Needs exposes its inadequacy. First, the Defendant must show the evidence is such as will probably change the result if a new trial is granted. If a new trial was

granted, there would be another Jackson v. Denno hearing where the Defendant and his attorneys would be making the same claims of intimidation and coercion made before this Court during this hearing. These claims lack credibility and it is improbable a subsequent Court, considering the totality of the circumstances, would rule the statements of the Defendant were not voluntarily made by the preponderance of the evidence. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). Furthermore, even without the Defendant's statements, or the recovery of the pistol that resulted therefrom, there remains overwhelming evidence to convict the Defendant of the offenses charged. Second, the Defendant must show the evidence has been discovered since the trial. It is undisputed that the Transportation Sheets were not discovered before the trial, however the Defendant is also required to show the evidence could not have been discovered prior to trial by the exercise of reasonable diligence. Here, as outlined above, the Defendant fails to meet his burden. Next, the Defendant must establish the evidence is material. The existence of the October 20, 2000 Transportation Sheet is not material to the Defendant's guilt or innocence. The State made no claim the Defendant gave a statement on the evening of October 20, 2000. According to the Defendant's Investigator the Transportation Sheets attached to his Affidavit were the only ones available, but there has been no testimony offered to establish Transportation Sheets were filled out *every* time a defendant is taken from the jail. Furthermore, it is clear from the face of the document that the forms are not meticulously maintained, considering there is no indication on the form of the time the Defendant was returned to the jail after allegedly meeting with his mother and the reason for the Defendant leaving the jail is listed as a question mark. Finally, the Defendant must establish the evidence is not merely cumulative or impeaching. The evidence could only be used to impeach Investigator Martin's testimony regarding the circumstances surrounding the Defendant's statements from October 19, 2000 until October 21, 2000.

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The State sought to use five statements given by the Defendant in the March 2005 trial. Accordingly, a Jackson v. Denno[2] hearing was conducted on March 5, 2005. Barnwell County Chief Deputy Thomas Gantt, Barnwell County Sheriff's Office Investigator Rodney Pruitt and Investigator Martin testified at the hearing.

The Defendant's first statement was taken while the Defendant was in a patrol vehicle after he and others were stopped by law enforcement near the scene of the crime. The Defendant was advised of his Miranda[3] rights, including the fact that he could stop answering questions at any time, by Investigator Rodney Pruitt. (Trial Tr. 2397). The interview occurred shortly after midnight on the morning of October 19, 2000. After talking with Investigator Pruitt for several minutes, the Defendant said he did not want to talk further. Despite that request, Investigator Pruitt continued to question the Defendant for several more minutes. At the Jackson v. Denno hearing, counsel for the Defendant successfully argued Defendant's request to end the interview rendered everything said to Investigator Pruitt after he continued questioning inadmissible.

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The remainder of the Defendant's statements addressed at the Denno hearing were given to Investigator Martin. Investigator Martin testified he advised Defendant verbally and in writing of his Miranda rights prior to each statement and provided a timeline of his interviews[4], which is summarized below:

1st Statement, October 19, 2000 at 04:43 a.m.at the Barnwell Solicitor's Office.

2nd Statement, October 20, 2000 at 10:22 a.m. at the Barnwell Solicitor's Office.

3rd Statement, October 21, 2000 at 1:54 p.m. at the Barnwell Jail.

4th Statement, October 21, 2000 at 4:45 p.m. at location of firearm recovery.

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[2] Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).
[3] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[4] Times noted are the time recorded on the Miranda advisement forms entered in evidence at the Denno hearing.

In the first statement to Investigator Martin, the Defendant admitted to being in the Sonic when his co-defendant, Wallace Priester, shot everyone there. This statement was given at the Barnwell Solicitor's Office. After providing the Defendant with his Miranda rights and speaking to the Defendant, a recorded statement was taken beginning at 5:32 a.m. and concluding at 5:49 a.m. (Trial Tr. 2441:4-6). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2440: 2-4).

After that statement was given in the early morning hours of October 19, 2000, Investigator Martin learned from the officers processing the crime scene that two calibers of shell casings were collected at the scene, leading them to believe at least two guns had been used in the crimes. (Trial Tr. 2445:5-9). He then returned to the jail and interviewed Priester and Shelton O'Berry, another one of the individuals stopped the previous night in the car with Priester and the Defendant. (Trial Tr.2446:10-11; 2447:4-13).

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Investigator Martin then interviewed the Defendant a second time, on October 20, 2000 at approximately 10:22 a.m. (Trial Tr. 2451:18- 2452:3). Investigator Martin testified he brought the Defendant back to the Solicitor's Office to speak to him. During this second interview, the Defendant admitted having a gun and "accidently" shooting victim Shawn Edwards in the leg before the co-defendant shot everyone. Additionally, the Defendant informed Investigator Martin he has thrown the gun "behind Litchfield", the apartment complex the Defendants had run toward after the robbery. (Trial Tr. 2453:12-15). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2452: 13-16). Investigator Martin relayed information on the location of the gun as reported by the Defendant to other officers, and took the Defendant to the location so he could point out the general area where he had thrown the pistol. (Trial Tr. 2453:21-25). Investigator Martin returned the

Defendant to the jail and returned to the Litchfield area to continue searching for the pistol. The officers searched the area until dark, but were not able to locate the pistol. Thereafter, Investigator Martin testified he assisted the Barnwell County Sheriff's Office with the execution of a search warrant at a location in the county. (Trial Tr. 2456:14-25).

In the third statement, Investigator Martin testified he was at the Barnwell County Jail to interview the fourth occupant of the vehicle that had been stopped on October 18, 2000, Lee Worthy. (Trial Tr. 2457:16). While at the jail to interview Worthy, Investigator Martin testified he was approached by the Defendant, who wanted to write a letter of apology to Mr. Edwards. Investigator Martin again advised the Defendant of his Miranda rights. (Trial Tr. 2458:4). After receiving the letter of apology to Mr. Edwards, Investigator Martin returned to the area where the Defendant said the pistol would be located but was still not able to find it.

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Investigator Martin testified as he returned home that afternoon, he was contacted by dispatch and informed the Defendant was willing to take law enforcement to the real location where he had hidden the pistol. (Trial Tr. 2461:25- 2462-4, 2464: 2-18). After advising the Defendant of his Miranda rights for a fourth time, Investigator Martin was led to the exact location by the Defendant and the pistol was recovered. (Trial Tr. 2465:11-18). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2464: 12-17).

Investigator Martin was vigorously cross examined by counsel for the Defendant at the Jackson v. Denno hearing, most notably because he heard the Defendant during Investigator Pruitt's audio recorded interview of the Defendant, which included Defendant saying he did not want to talk any further, prior to interviewing the Defendant the first time. Messrs. Walters and Grant strenuously argued the Defendant's decision to end the interview by Investigator Pruitt

should have prohibited Investigator Martin from attempting to speak to Defendant some four hours later. The Defendant now claims that his attorneys not only failed and refused to argue potentially meritorious grounds to suppress these statements, but also prohibited the Defendant from testifying during the in camera hearing about them. The Defendant's claims are not credible. It is inconceivable these experienced trial lawyers would not have put their client on the stand to testify if he had given them any indication he had also refused to speak to Investigator Martin, or if there were any other discrepancies they were aware of regarding the statements. Furthermore, during an in camera hearing after a change in the plea by Defendant before the third day of testimony in the jury trial, the Defendant testified that he was pleading guilty of his own free will. (Trial Tr. 3012: 10-12). The Defendant also testified that he did not have any complaints that he wished to make against representatives of the Court, or the Solicitor's Office, or any law enforcement officials in connection with this matter. (Trial Tr. 3012: 13-17). When asked by the Court "has anybody connected with this case mistreated you in any way?" the Defendant replied "No sir." (Trial Tr. 3012:18-20).

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Investigator Martin testified three of the four statements the Defendant made followed the Defendant requesting to speak to him; the first statement where the Defendant told him to come talk to him at the jail; the third statement where the Defendant approached Investigator Martin while he was interviewing another witness at the jail; and the fourth and final statement where Investigator Martin was contacted by dispatch because the Defendant was requesting to speak with him. Furthermore, the Defendant summarized his conversations with Investigator Martin to his own expert, Doctor Thomas Martin, less than two months before his trial and no significant discrepancies were noted between that recitation of the statements to Dr. Martin and the testimony of Investigator Martin.

CONCLUSION

Having considered the evidence presented at the hearing, together with the records of the Barnwell County Clerk of Court and the arguments of counsel, I hereby find and rule as follows:

1. The Defendant has failed to present any evidence to this Court that would qualify as after-discovered evidence within the meaning of Rule 29, SCRCrimP.; and,
2. Any evidence presented during the hearing could have been discovered by the exercise of reasonable due diligence at any time before or after the trial of these indictments, but was not presented to this court within one year of the date of sentencing, rendering the motion untimely; and,
3. The allegedly new evidence presented would not probably change the result if a new trial was granted; and
4. The evidence has been discovered since the trial; however,
5. The evidence could have been discovered prior to trial by the exercise of reasonable diligence; and
6. The evidence is not material to the Defendant's guilt or innocence in this matter; and,
7. The evidence is merely cumulative or impeaching.

Accordingly, the Defendant's motion for a new trial or in the alternative a modification of sentence based upon after discovered evidence should be, and hereby is DENIED.

IT IS SO ORDERED.

Perry M. Buckner, III,
Presiding Judge
Second Judicial Circuit

October 9, 2019
Walterboro, South Carolina

October 9, 2019

VIA U.S. MAIL
Rhonda Dale McElveen
Barnwell County Clerk of Court
PO Box 723
Barnwell, SC 29812-0723

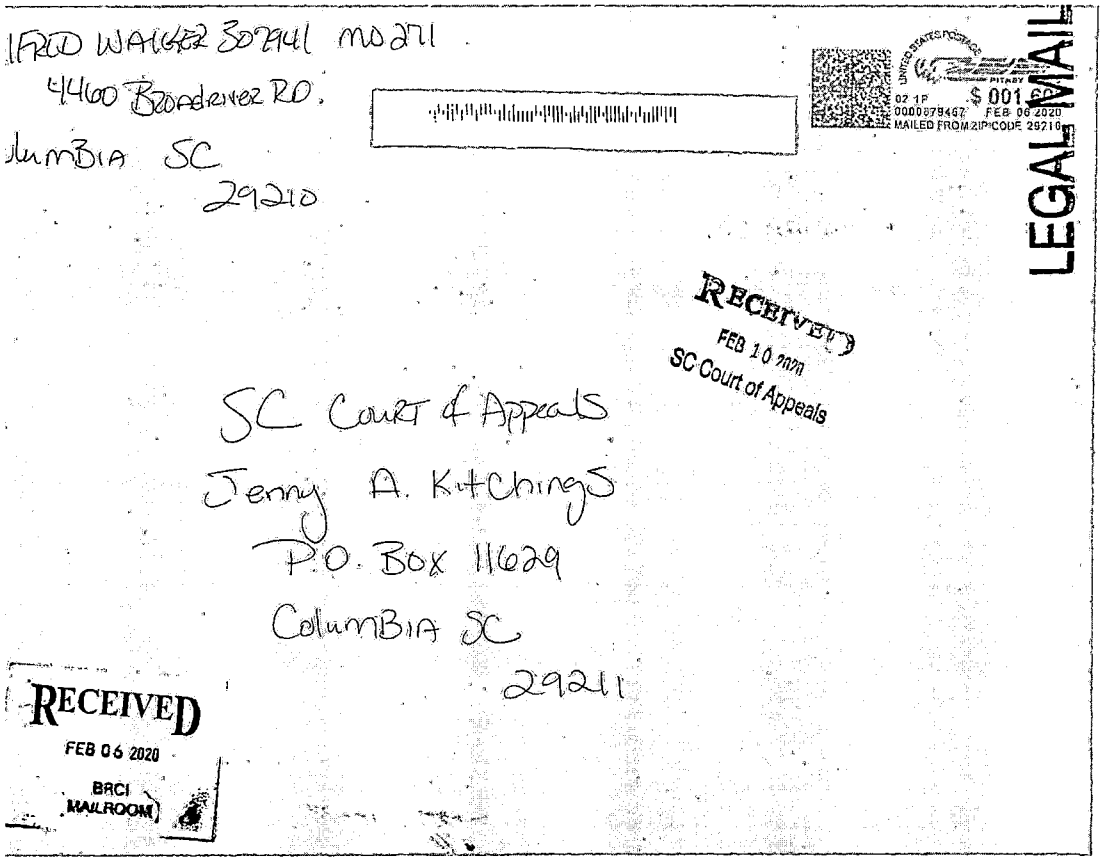
Re: State of South Carolina vs. Alfred Tyrone Walker;
Warrant Numbers: 2001GS0600118, 2001GS0600119, 2001GS0600120, 2001GS0600121, 2001GS0600123, 2001GS0600134

Dear Rhonda McElveen:

Enclosed herein, please find an Original Signed Order Denying Motion for New Trial in the Alfred Walker matter. Please file this Original Signed Order accordingly. Thank you for your assistance with this matter.

Respectfully submitted,

Austin McCoy
Law Clerk
To Judge P. M. Buckner
Post Office Drawer 470
Walterboro, SC 29488
843-549-7878



FRED WALKER 307941 MD 271
4460 Broadriver RD.
Columbia SC
29210

LEGAL MAIL

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0000079467 FEB 06 2020
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FEB 10 2020
SC Court of Appeals

SC Court of Appeals
Jenny A. Kitchings
P.O. Box 11629
Columbia SC
29211

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