

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CALHOUN ) FIRST JUDICIAL CIRCUIT

Indictment No.s 97-GS-09-162 and 163

STATE OF SOUTH CAROLINA )  
2020 FEB 23 P 12:55

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v.

ORDER DENYING MOTION

FRANKLIN A. BENJAMIN )  
Defendant. )

This matter comes before the court on Defendant's Motion for New Trial Based on After Discovered Evidence under S.C. Rule Crim. Pro. 29, filed as a hybrid motion in 2014, and recently adopted by his counsel, Ms. Clarissa Joyner.

At a hearing on this matter held before the court on December 2, 2019, Defendant argued that he discovered evidence in 2007 that there was an undisclosed confidential informant in his case, and that this informant was the sole basis of his original arrest. He further argued that the existence and identity of the informant should have been disclosed to him so that he could have attacked the validity of the arrest at trial. Finally, he argues that had this information been disclosed to him, he would not have confessed to this murder after having been initially detained.

Defendant argues that all these factors, taken individually, and together, warrant a new trial under Rule 29(B).

Based on the transcript of defendant's trial, as well as the re-constructed State's file, this court was able to make the following findings of fact: On May 7, 1997 Defendant and others robbed a convenience store in Calhoun County. During that robbery a co-defendant, Tyrone Aiken, shot and killed the clerk. Approximately four hours later Defendant and Mr. Aiken robbed another store in Orangeburg County. During that second robbery, one of the witnesses saw Defendant prior to him putting on his mask and robbing the store. The witness was able to

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identify Defendant based on that observation. Video linked this Defendant to the Calhoun robbery and murder as well. Specifically, while Defendant cannot be identified on the Calhoun video, it is clear that it is the same person the witness identified in the Orangeburg robbery. In addition, police obtained a statement from an acquaintance linking Defendant to the murder. Once Defendant was arrested, he confessed after advice of rights prior to the warrants being issued in this case, and the murder weapon was recovered as part of Defendant's arrest. Shortly thereafter, the co-defendants were arrested, and each gave a confession implicating not only themselves, but Defendant as well. These co-defendants testified against Defendant at trial.

Based on the facts and law, Defendant is not entitled to relief in this case.

Initially, the State argues that this motion is untimely. The information Defendant relies upon to allege that there was an undisclosed informant comes from the Affidavit of former Sheriff "Bing" Jones that Defendant obtained as part of a federal *Habeas Corpus* petition in 2007. Defendant did not file this action until seven years later, well outside the one year time limit imposed by Rule 29(B). Defendant claims this delay is excused because he was mistakenly pursuing redress in federal court, rather than in the proper venue of the South Carolina Circuit Court. However, Defendant has not provided any evidence of this assertion. Because Defendant bears the burden of proving that his delay should be excused, this failure requires dismissal.

Even if the motion had been timely filed, this court finds that the Affidavit does not warrant a new trial.

First, it is unclear who the Affidavit is referring to as the unnamed informant. Review of the investigation file provided by the Calhoun County Sheriff's Department included a statement from an acquaintance, Timothy Haygood, that implicated Defendant; it did not have any other information indicating any other person who could be considered an informant. The record



makes it likely that the person described as an informant in the Affidavit was Mr. Haygood, and that the statement was disclosed. Based on that, Defendant has not met his burden to prove that Mr. Haygood wasn't the "informant" mentioned. Based on this failure, this court must deny Defendant's motion.

Second, even if Defendant had met his burden of proof on this point, the Affidavit goes on to say that other evidence was reviewed, including interviewing witnesses to the offenses prior to arresting Defendant. Thus, on its face, the Affidavit does not support the claim that the arrest was not made solely upon the information provided by the person the former sheriff refers to as an informant.

As this court found above, during Defendant's second robbery, a witness saw Defendant without his mask prior to him donning the mask and committing that robbery. It was clear from the videos that the same person committing that second robbery had committed the first. That information was obtained prior to defendant's arrest, and was more than sufficient to justify the arrest without reference to the informant. Therefore, the Affidavit does not support the contention that Defendant's arrest was based solely upon the "informant's" statement. Nor could this information have reasonably been used to attack the validity of Defendant's arrest at trial. As noted above, the evidence shows that it was not the sole basis for Defendant's arrest. At most, it provided an *additional* basis to arrest defendant. Further, while this statement provides compelling evidence of Defendant's guilt, it was not used at trial. Therefore, this court finds that the Affidavit does not warrant a new trial, and denies Defendant's motion.

Third, Defendant's final argument – that the State's alleged failure to disclose the existence of an informant, and the substance of that person's statement, as part of discovery caused resulted in his confession being involuntary – is completely without merit. Defendant's

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confession came during his initial detention, prior to even a formal arrest warrant being obtained, and was thus made well before any discovery rights attached. Even if Defendant's discovery rights had been violated after his confession, that violation could not have impacted the confession itself, and would not invalidate the confession, and does not support the granting of a new trial.

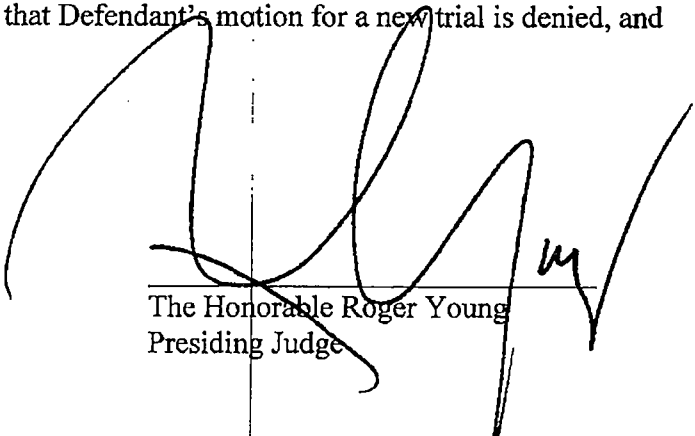
Finally, the court finds that the evidence of guilt in this case is overwhelming. At trial, the State presented an eyewitness who identified Defendant from a related robbery, and that identification was linked, via video evidence, to these charges. Additionally, the State presented Defendant's voluntary confession, the murder weapon linked to Defendant, and testimony from three co-defendants, all implicating Defendant. In short, there is no basis for this court finding that the identity and statement of the "informant" mentioned in the Affidavit, even if not previously disclosed and therefore qualifying as after discovered, and even if not protected from disclosure under State v. Diamond, 280 S.C. 296 (1984)(confidential informants must be disclosed if a material witness, but not if a "mere tipster") would have changed the outcome of the trial. For this reason, the court must deny this motion.

For all these reasons, Defendant's motion for a new trial is hereby denied, and the motion is dismissed.

IT IS THEREFORE ORDERED that Defendant's motion for a new trial is denied, and the motion dismissed.

IT IS SO ORDERED.

February 20, 2020



The Honorable Roger Young  
Presiding Judge