

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Post Conviction Relief

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2021-000040

Courtney Sease #328318, Appellant,

vs.

State of South Carolina, Respondent.

EXPLANATION PURUSANT TO RULE 243 (c)

Appellant, in explanation pursuant to Rule 243 (c) would respectfully respond as follows:

Appellant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Hampton County. Appellant was indicted at the April 2008 term of the Oconee County Grand Jury for murder (2008-GS-25-0191) and possession of a weapon during the commission of a violent crime (2008-GS-25-0190). Appellant proceeded with a jury trial on May 5, 2008 before the Honorable Perry M. Buckner, III where he was convicted as indicted. Judge Buckner sentenced Appellant to thirty-five years for murder and five years for possession of a weapon during the commission of a violent crime, to be served concurrently. He was represented at trial

by Robert M. Hughes, Esquire, and the State was represented by Randolph Murdaugh and Tameaka Legette, Esquires. Appellant filed a timely notice of appeal, but it was dismissed based on his failure to follow through with necessary filings. Appellant also had two unsuccessful post-conviction relief applications, both of which were also appealed and unsuccessful at the Supreme Court (See Case Numbers 2009-CP-25-00394 and 2013-CP-25-00322).

Appellant's current post-conviction relief application is substantially different from his first two applications, both of which dealt with ineffective assistance of counsel. This application, however, is substantially and materially different in that it deals solely with after-discovered evidence as allowed in S.C. Code Ann. § 17-27-45(c). The statutory language has been interpreted to mean that a defendant requesting a new trial based on after-discovered evidence must prove to the court that:

1. Is such as would probably change the result if a new trial was held;
2. Has been discovered since the trial;
3. Could not, by the exercise of due diligence, have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and
5. Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 611-12, 299 S.E.2d 854, 855 (1983); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Here, the evidence is that two jurors at Appellant's trial gave a thumbs up sign to the victim's family after they left the deliberation room, having found Appellant guilty of both charges. Though Appellant's mother and sister saw this happen at the time of trial, they did not reveal this information to Appellant until March 2019 as they did not believe it was important. Despite the State's argument to the contrary, Appellant had no reason or

opportunity to discuss the minutiae of his trial with his mother or sister. This gesture that they saw, without the benefit of legal education or information, was insignificant to the outcome of a trial in their view. Additionally, because this was not brought to the attention of Appellant's trial lawyer, there can be no allegation of ineffective assistance of counsel in relation to this evidence.

Regardless, it satisfies the above-stated elements to warrant a new trial under the Post-Conviction Relief Act and related case law. This evidence has clearly been discovered since the trial, could not have been discovered before trial as it had not happened, and is not merely cumulative or impeaching. The other two elements – whether the evidence would change the result at trial and whether it is material to guilt or innocence – must be viewed slightly differently due to the nature of this evidence. A thumbs up sign from jurors does not directly relate to Appellant's guilt or innocence in a global sense, in that it is not the type of evidence that could be presented during trial, but it does relate to the jury's thoughts on Appellant's guilt or innocence and their potential influence by the State or the victim's family. Similarly, had Appellant and his attorney known this information contemporaneously with the event, it would have absolutely changed the outcome of the trial. Trial counsel could have objected and received an appropriate remedy, perhaps in the form of a mistrial.

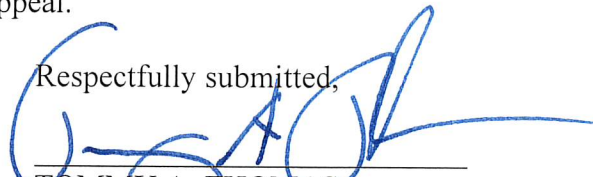
Respondent argued that these facts are more appropriate for a motion for a new trial under McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). The holding in McCoy states that issues relating to jury misconduct discovered post-trial are not post-conviction relief issues but, more properly, are resolved through a motion for new trial. However, the examples given and remedies discussed could not apply to the case at bar. The Court

considers whether jurors intentionally concealed information during juror selection and whether such information “would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges.” Id., 401 S.C. at 371, 737 S.E.2d at 627 (citing State v. Woods, 345 S.C 583, 587-89, 550 S.E.2d 282, 284 (2001)). The analysis in Woods deals only with juror concealment claims and cannot be applied to these facts of this case as it is not an issue of screening or information concealment pre-trial, but rather a matter of juror conduct during trial. The analysis and remedies outlined cannot be applied to this case and, therefore, the after-discovered evidence analysis in from Hayden and Clark should apply.

Appellant agrees with the court’s assertion in McCoy, however, that this is a fact-intensive inquiry that should be had during a hearing so that “the factual circumstances [may] be more developed.” McCoy, 401 S.C. at 372, 737 S.E.2d at 628. By presenting testimony from Appellant, his mother, and his sister, as well as allowing the State to question these witnesses and present their own, a full inquiry and analysis can be done by the court, thus ensuring that Appellant’s right to a constitutionally fair proceeding are protected. As such, Appellant is informed and believes that he was entitled to an evidentiary hearing in the matter and the Court erred in dismissing this action.

THEREFORE, the Appellant is informed and believes that he is entitled under Rule 243 (c) for this case to proceed on Appeal.

Respectfully submitted,



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