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**Dec 29 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

H. STEVEN DEBERRY, IV, CIRCUIT COURT JUDGE

Case No. 2021-CP-26-04199

State of South Carolina on the  
relation of Jimmy A. Richardson, II,  
the Solicitor of the Fifteenth  
Judicial Circuit, Respondent,

v.

Vishu Bhambhani and  
Harkishin Bhambhani, d/b/a  
the Coral Sands Motel and  
Four Nice Brothers, LLC, Appellants.

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**APPELLANTS' MOTION FOR LEAVE TO FILE A RULE 60, SCRPC MOTION**

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Appellants move this Court for leave to file a Rule 60, SCRPC motion with the lower court. This motion is based on recently discovered evidence that demonstrates a witness did not testify truthfully about his arrangement with the solicitor. The evidence should have been presented to the presiding judge and establishes grounds for the motion requested herein.

**THE NEWLY DISCOVERED FACTS**

This appeal arises directly from an Order of the lower court finding that Appellants' business was a nuisance that largely depended on the testimony of a

methamphetamine dealer. The Solicitor presented Clarence Howard Schultz, III to testify at the nuisance hearing. During that hearing, Mr. Schultz testified as follows:

Q: Were you promised anything in exchange for your testimony?

A: No. They told me they couldn't promise me anything and probably couldn't do nothing for me.

Q: Do you still have pending charges?

A: Yeah.

This testimony was elicited by the Solicitor during direct examination. However, Appellant recently discovered that within 30 days of the nuisance hearing, the Solicitor dismissed all charges against Mr. Shultz with the listed justification of "defendant cooperation." **Exhibit A**. The charges dismissed by the solicitor were Possession of Cocaine, Trafficking Methamphetamine, and Possession of Contraband while incarcerated. This evidence demonstrates that the witness was untruthful about his cooperation deal with the solicitor, which required him to correct the Record immediately. That did not happen.

#### THE LAW

These actions constitute Constitutional violations under *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), and *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), since the knowing presentation of false evidence by the state is incompatible with the "rudimentary demands of justice." *Giglio v. United States, supra*, 153, quoting *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935). Furthermore, due process is similarly offended if the state, "although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue v. Illinois, supra*, 269. If a government witness falsely denies having

struck a bargain with the state, or substantially mischaracterizes the nature of the inducement, the state is obliged to correct the misconception. *Giglio v. United States*, supra; *Napue v. Illinois*, supra, 269-70. "Regardless of the lack of intent to lie on the part of the witness, *Giglio* and *Napue* require that the prosecutor apprise the court when he knows that his witness is giving testimony that is substantially misleading." *United States v. Harris*, 498 F.2d 1164, 1169 (3d Cir.), cert. denied sub nom. *Young v. United States*, 419 U.S. 1069, 95 S. Ct. 655, 42 L. Ed.2d 665 (1974). "A new trial is required if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury." *Napue [v. Illinois]*, supra, 271." *Giglio v. United States*, supra, 154; see *United States v. Bagley*, 473 U.S. 667, 678-80, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).

THEREFORE, Appellants seek leave to move the lower court to set aside the judgment based on Rule 60(b)(2), SCRPC and this newly discovered evidence. A check for the filing fee is being mailed to the Court of Appeals contemporaneously with the filing of this motion electronically.

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Motel and Four Nice Brothers,  
LLC,

Appellants.

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I hereby swear that I served a copy of the Motion for Leave to File a Rule 60, SCRCP Motion with the Lower Court and the Motion for an Extension of Time on opposing Counsel by mailing the same, with sufficient postage attached, to the following address:

James Battle  
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1200 Main Street  
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RESPECTFULLY SUBMITTED

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