The Supreme Court of South Carolina

The State, Respondent,

v.

Freddie Eugene Owens, Appellant.

Appellate Case No. 2024-001397

ORDER

Freddie Eugene Owens filed separate motions on August 30, 2024, and September 5, 2024, asking this Court to stay his September 20, 2024 execution. The Court entered one order on September 12 denying both motions. In that order, the Court explained in detail the basis for its rulings. Owens has now filed an "Emergency Motion to Reconsider Denial of Stay of Execution." We find no reason to reconsider our September 12 decision to deny the motions to stay.

However, Owens also cites another new affidavit by testifying codefendant Steven Golden dated yesterday, September 18, 2024. Owens relies on *Johnson v. Catoe*, 345 S.C. 389, 548 S.E.2d 587 (2001), in arguing this new affidavit warrants a stay of execution. In Golden's newest affidavit, he (1) now claims Owens was not present for the Speedway robbery and murder, (2) continues his insistence that he (Golden) was not the shooter, but (3) refuses to say who was the shooter although Golden swears he knows the person's identity. This new affidavit is squarely inconsistent with Golden's testimony at Owens' 1999 trial, at the first resentencing trial in 2003,[1] and in the statement he gave law enforcement officers immediately after he participated in committing the crimes in 1997.

We find the situation in *Johnson v. Catoe* was vastly different from the situation Owens presents here, for several reasons. While none of these reasons is independently dispositive, together they demonstrate this case is not controlled by *Johnson v. Catoe*.

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[1] *See* Record on Appeal at 162, *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004).

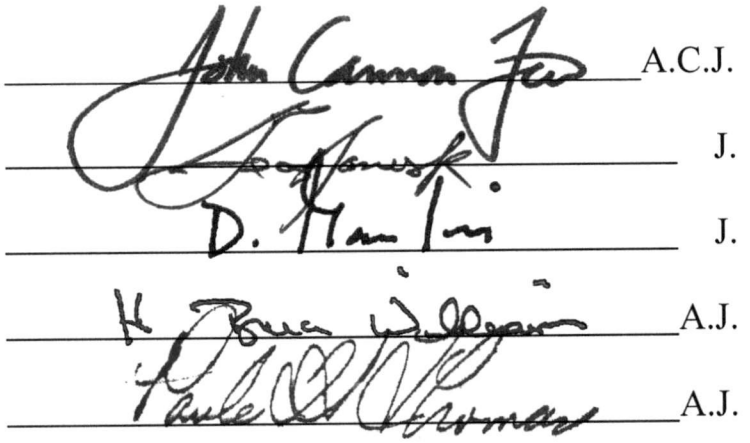
First, Connie Hess' last-minute affidavit in *Johnson v. Catoe* was actually *a confession*. *See* 345 S.C. at 393, 548 S.E.2d at 589 ("In this statement, Hess stated . . . she, alone, killed Trooper Smalls."). In Johnson's 1999 request for a stay, his counsel relied heavily on the fact Hess confessed to murder in arguing the existence of "exceptional circumstances" as required by *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996). Johnson stated in the "Conclusion" of his motion, "To say that this case is extraordinary would be an understatement. Never before, in the modern history of capital punishment in this state, has someone else admitted that she committed the murder for which another person is scheduled to die." Pet. for Writ of Habeas Corpus, *Johnson v. Catoe* (S.C. Sup. Ct. Oct. 22, 1999). Hess' confession to a murder for which she could still be prosecuted had a significantly different character than Golden's recantation of all his prior testimony and statements. *See Johnson v. Catoe*, 345 S.C. at 400, 548 S.E.2d at 593 (Waller, J., dissenting) (stating the fact Hess' statement was a "confession" is "troubling"); 345 S.C. at 403, 548 S.E.2d at 594 (Pleicones, J., dissenting) ("noting . . . the probative value of confessions" and quoting *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 1257, 113 L. Ed. 2d 302, 322 (1991)); *Fulminante*, 499 U.S. at 296, 111 S. Ct. at 1257, 113 L. Ed. 2d at 322 ("A confession is like no other evidence. Indeed, 'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. . . . [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.'" (quoting *Bruton v. United States*, 391 U.S. 123, 139-40, 88 S. Ct. 1620, 1630, 20 L. Ed. 2d 476, 487 (1968) (White, J., dissenting))). Recanted testimony, on the other hand, is among the least reliable evidence. *See State v. Mayfield*, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) ("Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." (quoting *State v. Whitener*, 228 S.C. 244, 89 S.E.2d 701 (1955))).

Next, Hess was Johnson's potential co-defendant who did not testify live at the trial in which Johnson was last convicted and did not testify in Johnson's first trial that she saw Johnson shoot Trooper Smalls. *See State v. Johnson*, 306 S.C. 119, 125, 410 S.E.2d 547, 551 (1991) (stating as to Johnson's second trial, "Connie Hess was not available for this trial"); *Johnson v. Catoe*, 345 S.C. at 394, 548 S.E.2d at 589 (referring to Johnson's first trial and stating Hess "reiterated she did not know if petitioner had killed Trooper Smalls after he picked up the gun because she could not see what occurred").

Third, the circumstances under which Hess' 1999 affidavit was prepared differ significantly from Golden's newest affidavit. Johnson's counsel—recognizing the conflict of interest in asking Hess to confess to murder for the benefit of Johnson—ensured Hess was represented by counsel before signing the affidavit. Hess' attorney consulted privately with her before advising her not to sign the affidavit. Johnson's attorney arranged for an independent officer—an attorney—to preside over the execution of the affidavit, and that attorney questioned Hess at length about her knowledge of her legal rights, including Johnson's attorney's adverse position, and the voluntariness of her confession before notarizing her signature. All of these facts were presented to this Court in Johnson's 1999 request for a stay both in the body of the motion and in affidavits signed by the attorney who presided over the execution of the affidavit and another attorney who took extensive notes of precisely what was discussed. Here, on the other hand, we have no indication of the circumstances under which Golden was asked to sign his most recent affidavit in which he claims he committed the crime of perjury when he testified to the opposite in two of Owens' three trials.

Finally, it is not merely Golden's own testimony in two trials that his new affidavit squarely contradicts. Rather, as this Court, the United States District Court, and the United States Court of Appeals for the Fourth Circuit have repeatedly documented, the State presented considerable other evidence to the jury in Owens' 1999 criminal trial to support the facts that he was present for the Speedway robbery and fired the fatal shot killing Ms. Graves. This includes the evidence of Owens' five separate confessions—which certainly vary in terms of their inculpatory quality—to his girlfriend, his mother, Nakeo Vance, and two law enforcement officers.

Our responsibility here is only to determine whether Owens has demonstrated "exceptional circumstances" to warrant a stay of execution. *In re Stays of Execution in Cap. Cases*, 321 S.C. at 548, 471 S.E.2d at 142. The situation Owens now presents to this Court bears no meaningful similarity to the compelling circumstances that led us to grant a stay of execution in *Johnson v. Catoe*. Owens has failed to demonstrate "exceptional circumstances" and we again deny the motion to stay Owens' execution.



A.C.J.

J.

J.

A.J.

A.J.

Columbia, South Carolina
September 19, 2024

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