## THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

## THE STATE OF SOUTH CAROLINA In The Court of Appeals

Benjamin Keith Page, Jr., Appellant,
v.
State of South Carolina, Respondent.
Appellate Case No. 2017-002448
Appeal From Marion County William H. Seals, Jr., Circuit Court Judge  Unpublished Opinion No. 2020-UP-082 Submitted February 1, 2020 – Filed March 25, 2020

Christopher Reginald Geel, of Geel Law Firm, LLC, and Christopher W. Adams, of Adams & Bischoff, P.C., both of Charleston; and Susan Friedman, of New York, New York, all for Appellant.

**AFFIRMED** 

Attorney General Alan McCrory Wilson, Senior Assistant Deputy Attorney General William M. Blitch, Jr., and Senior Assistant Deputy Attorney General, J. Benjamin Aplin, of Columbia; and Solicitor Edgar Lewis Clements, III, of Florence, all for Respondent.

**PER CURIAM:** Benjamin Keith Page Jr. appeals the denial of his motion for a new trial pursuant to the Access to Justice Post-Conviction DNA Testing Act<sup>1</sup> and Rule 29(b), SCRCrimP. On appeal, Page argues the circuit court erred by failing to find (1) his newly-acquired DNA evidence would probably change the result of trial and (2) Sandra Shelley Richardson's (Victim's) eyewitness identification was irreparably undermined by that evidence. We affirm<sup>2</sup> pursuant to Rule 220(b), SCACR, and the following authorities:

- 1. As to whether the circuit court erred in finding the newly-acquired DNA evidence would probably change the result of trial: *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197-98 (1978) ("The granting of a new trial because of after-discovered evidence is not favored, and [appellate courts] will sustain the lower court's denial of such a motion unless there appears an abuse of discretion."); *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence." (quoting *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009))); *id.* ("In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence . . . is such as will probably change the result if a new trial is granted . . . .").
- 2. As to whether the circuit court erred in finding Victim's eyewitness identification was irreparably undermined by the newly-acquired DNA evidence: *State v. Hughes*, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001) ("An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law."); *Harris*, 391 S.C. at 545, 706 S.E.2d at 529 ("The credibility of newly-discovered evidence is for the trial court to determine."); *id*. ("Only the trial court and not the appellate court has the power to weigh the evidence . . . .").

## AFFIRMED.

LOCKEMY, C.J., and GEATHERS and HEWITT, JJ., concur.

<sup>&</sup>lt;sup>1</sup> S.C. Code Ann. §§ 17-28-10 to -120 (2014).

<sup>&</sup>lt;sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.