

State of South Carolina  
IN THE COURT OF APPEALS

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APR 14 2023

SC Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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THE STATE (SC) Respondent

V

Derrick JaJuan Rivera Appellant

APPELLATE Case No: 2021-001285

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Pro-se Brief of Appellant  
additional Response to Anders Brief

David Alexander  
Appellate defender

S.C. Commission on Indigent defense

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# TABLE OF AUTHORITIES

## Cases

- S.C. vs Billy Phillips 430 S.C. 319 (2020)
- <sup>(NY)</sup> People vs Wright 25 N.Y.3d 769 (2015)
- Richards vs state C Docket No: 70530 (2018)
- Kansas vs D. King 308 Kan 16 (2018)
- Kansas vs Thomas Earl Brown Jr 316 Kan 154 (2022)
- <sup>state</sup> Kansas vs Corbett 281 Kan 294 (2006)

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Rule 702 SCRE

## Statement of the Case

Appellant was indicted in Harry County on two counts of murder and one count of armed robbery and on October 18, 2021, appellant was tried before the honorable Benjamin H. Culbertson and a Jury. R. 1 Scott R. Hixson represented the state and William S. McGuire represented appellant, R. 1. The Jury convicted appellant, R. 802, 1. 20 - 803, 1. 9 Judge Culbertson sentenced appellant to concurrent terms of life imprisonment for the murder charges and thirty years imprisonment for armed robbery R. 813, 1. 14 - 21. This appeal follows

## STATEMENT OF ISSUE ON APPEAL

- Did the solicitor Scott Hixson Prejudiced APPELLANT By drawing inferences for JURY Regarding Touch DNA Evidence in closing Arguments ?
- Did the Solicitor misstate and mis represented Touch DNA evidence by stating Evidence is conclusive to being Appellants DNA in closing Arguments ?

## Standard of Review

This court's review of the trial court's admission of scientific evidence is governed by the abuse of discretion standard. *Graves v CAS Medical Sys* 401 S. C. 63, 74 (2012) also rule 702 SCRB

# Argument

The solicitor did err when he misstated and misrepresented Touch DNA Evidence in closing arguments By stating ~~in~~ multiple different times that the appellant Derrick Rivera DNA was Present on Items of Evidence as being conclusive!

In Rebuttal closing arguments the solicitor stated that the DNA Evidence was conclusive to being Appellant Derrick Rivera's DNA on evidence See Transcripts Pg. 784 line 21, 22, 23.

This statement contradicts the DNA analyst Sara Goodman Testimony. See Page 576 line 1, 2, 3, 4, 5, 6, 7, 8, 9, also see Page 112, line 1-5. The DNA analyst stated "I would never say that it is definitely, without a doubt, that person.

The Solicitor statement identifying the tested DNA Evidence tested was conclusive to being my DNA in violation of S.C. vs Billy Phillips and rule 403.

Solicitor Scott Hixson misstatement was incorrect and could have misled the Jury into believing that Appellant Derrick Rivers DNA is conclusive and positive to being my DNA on tested items of evidence.

The misstatement was Prosecutors fallacy and/or Prosecutorial misconduct. This misstatement also violated rule 403 because it could and did confuse the issues regarding Touch DNA evidence.

The Solicitor was to use only scenarios and likelihood ratios when making references to appellants DNA being present on items of evidence.

The Solicitor is unskilled and isn't educated in the expert field of DNA evidence and in this case Touch DNA evidence. The Solicitor isn't a qualified expert in this science.

By the use of the term conclusive, the Solicitor has turned himself into a unsworn witness. He testified to facts not in evidence.

The Solicitor lacks the "specialized knowledge" required to test, analyze, and interpret Touch DNA Evidence as required in rule 702

Solicitor Scott Hixson lacks training, education, to be qualified as an expert witness. By the use of the term Conclusive it draws inferences for the jury and could've misled the jury into believing the DNA Evidence was positively matched to appellant Derrick Riveras DNA.

There was no overwhelming evidence of guilt in this case. There is no direct evidence at all conclusively proving appellants guilt. Even the Touch DNA Evidence was circumstantial and couldn't be regarded as conclusive or a positive match to anyone's DNA. There also was never an ID of Appellant.

Attorney William McGuire received a final ruling in pre-trial motion in limine and objected again at the introduction of Touch DNA evidence. Attorney McGuire wasn't required to object again and harass the judge after receiving a final ruling by trial court. Thus preserving issue for Direct appeal.

The use of the terms conclusive in regards to Touch DNA evidence is prejudicial. When referring to Touch DNA evidence the likelihood ratio and/or scenarios must be explain or argued if a solicitor wish to imply the probability of a suspects DNA being on any item of evidence, in violation of S.C. vs Billy Phillips 844 S.W.2d 651 (2020).

For the above mentioned error the solicitor committed prosecutorial misconduct by misstatement regarding Touch DNA evidence. The conviction of appellant should be reversed and/or acquitted of conviction

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## Argument # 2

Did the solicitor committ prosecutorial misconduct by incorrectly drawing inferences for the Jury by the use of "We Know" statements in closing arguments?

In closing arguments the solicitor scott hixson Did state "he knew" that appellant Derrick Rivera's DNA was on items of evidence. see transcripts Pg 756 line 14, 15, 16 ; Pg 764, line 23, 24, 25, 764 line 20, Pg 767 line 9, Pg 784 line 23

The courts have banned the use of terms "we know", "I think", because it draws inferences for the jury and implies the solicitor has knowledge of a matter he's not qualified to testify to.

When the solicitor stated "we know" it was Demick Riveras DNA it was in violation of Kansas vs Thomas Earl Brown Jr 316 Kan 154 (2022), stating Prosecutor commits reversible error when he says "we know" when drawing inferences from evidence.

The use of "we know" is often outside the prosecutors wide latitude. The term "we know" improperly expresses the prosecutors opinion regarding DNA evidence (See Kansas vs King 308 Kan 16 (2018), stating "If a prosecutor uses the words "we know" when drawing inferences for the jury rather than recounting uncontroverted evidence, then the prosecutor errs even if drawing a reasonable inference". State Kansas vs King 308 Kan 16 (2018))  
see also State Kansas vs Corbett 281 Kan 294 (2006)

In this case DNA expert Ryan Deane, and Sara Goodman testified that its possible appellant never touched, handle, or possess any item of evidence in this case. Also DNA expert who were qualified (traced) and possess specialized knowledge couldn't conclusively establish that items of evidence was a match to appellant DNA.

Expert DNA analyst also testified that my blood wasn't on items of evidence because the items of evidence wasn't tested for blood by use of serology test.

By solicitor Scott Hixson use of the term we know it was Derrick Rivers blood on shoe and pants violated rule 403, Billy Phillips vs S.G. He expressed his personal opinion on a matter not reasonably from evidence because again the DNA expert testified she would never say with certainty that the DNA evidence is without doubt one person without the use of likelihood ratios and scenarios

See Richards vs State (Docket # 70530 (2018))

Concluding that the Prosecutor committed misconduct during closing arguments when it asked the jury to arrive at a different conclusion than the state's expert about DNA Evidence.

For the above mentioned errors the conviction should be overturned. These errors was harmful because there was no overwhelming evidence of guilt. There wasnt one piece of evidence conclusively matching and proving guilt of appellant derrick Rivera. So any error could have been prejudicial to appellant and could have caused a guilty verdict.

# Conclusion

For the Foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial

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Certificate of Service

The undersigned hereby certifies a true copy of Pro se merits brief as part of Anders Brief filed by Counsel David Alexander. The above referenced case has been served to court of appeals. Jenny ABBOTT Kitchings, Clerk. P.O. Box 11629, Columbia S.C. 29211, this day April 6 2023

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