

State of South Carolina

The State

Respondent

v.

Raekwon M. Ellerbe
Appellant

In The Court of Appeals

Case No. 23-001563

Motion To Amend Pro Se

Anders Brief Actual

Innocence

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OCT 30 2025

SC Court of Appeals

Appellant moves before this Honorable Court with a "Motion To Amend Pro Se Anders Brief Actual Innocence." Appellant contends that he just learned of this issue when he read South Carolina's most recent opinion of September 3, 2025, State v. Erb, 2025 WL 2525354. This issue is a matter of liberty interest and Appellant in no way is attempting to delay the Court by filing this motion. Appellant respectfully amends the following ground and question of law:

Question of Law

Was the trial judge's statements at sentencing phase that Appellant was, "clearly overcome with grief and emotion at the time... It's clear from the video it's not what you intended... You didn't mean to kill her," a finding that negated the essential element of murder, malice aforethought which was related to guilt or innocence and, was therefore a directed verdict of acquittal.

Ground 5

Trial judge's statements at sentencing phase that Appellant was, "clearly overcome with grief and emotion at the time... It's clear from the video it's not what you intended... You didn't mean to kill her," was a finding that negated the essential element of murder, malice aforethought which was related to guilt or innocence and, was therefore a directed verdict of acquittal. See R. 369, L 7-12; R. 369, L 18-19; R. 370, L 8-11. See and incorporate Grounds 1-4

Discussion

Appellant contend that trial judge's statements at sentencing clearly proves that he recognized the lack of malice in his case, which is an essential element of murder in South Carolina law that must be proven to convict on a charge of murder.

United States Supreme Court Cases Defining Acquittals

United States Courts Legal Glossary - defines Acquittal - "A jury verdict that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support a conviction."

Evans v. Michigan, 568 U.S. 313 (2013), "Michigan trial court's midtrial directed verdict and dismissal of case against defendant charged with burning of real property other than a dwelling, due to prosecution's failure to prove that burned building was not dwelling, which trial court erroneously believed was element of offense was "acquittal"... Our cases have defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense... Any other ruling which relates to the ultimate question of guilt or innocence... Here we know trial court acquitted Evans, not because it incanted the word "acquit" (which it did not), but because it acted on its view that the prosecution had failed to prove its case." See United States v. Martin Linen Supply Co., 430 U.S. 564 (1977); U.S. v. Scott, 437 U.S. 82 (1978).

The U.S. Supreme Court established in Burks v. United States, 437 U.S. 1 (1978), that when a trial court determines that the prosecution has failed to meet their "burden of proof" or that the evidence was "legally insufficient" to convict, not only is such findings an acquittal, but also establishes the person's "innocence" and "lack of criminal culpability" to have committed the offense charged, and the "only" just remedy after making

Such findings is to enter a verdict of "acquittal."

Trial Judge Statement

"I do have a great sympathy for what you had to struggle with that night. You did not cause any problems. You looked like you were away from all of this. And then you witnessed your friend murdered, which is why I charged the jury with voluntary manslaughter because you were clearly overcome with grief and emotion at the time. R. 369, L 7-12... It's clear from the video, it's not what you intended... "R. 369, L 18-19. See also R. 370, L 8-11. "With regard to the murder conviction, the minimum sentence is 30 years. This is not a life sentence. You didn't mean to kill her. So I'm going to sentence you to 33 years for "murder."

Appellant contends that trial judge's statements at sentencing clearly proves that he recognized the lack of malice in his case and according U.S. and South Carolina law such ruling was an "acquittal." Appellant contends that according to Burks, after the trial judge made these statements, ~~they~~ the "only" just remedy was to set aside the jury verdict of guilty and enter a directed verdict of acquittal. See: State v. Gregorie, 339 S.C. 2 (2000); State v. Clifford, 335 S.C. 129 (1999), "the conviction was reversed based on the "legal

insufficiency" of evidence, the matter is remanded to the trial court with instructions to enter a verdict of acquittal. The controlling authority is Burks v. United States, 437 U.S. 1 (1978). See also. Horry County v. Parbel, 378 S.C. 253 (2008).

For the foregoing reasons the appellate court should remand this case to the trial court with instructions to enter a verdict of "acquittal."

Date 10-27-25

With kind regards,

S, PMM EMM

Raekwon M. Elkerbe

Ker. C. I.

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Notice

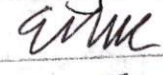
RE: State v. Raekwon Ellerbe
Case No. 2023-001563

Dear Clerk:

Enclosed please find one original and one copy of Motion To Amend Pro Se Anders Brief Actual Innocence. Stamp file please send copy to me.

Date 10-27-25

South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

With Kind regards,
S. PUM 
Raekwon M. Ellerbe
Ker. C. I.
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Certificate of Service

I Raekwon M. Ellerbe certifies that on this
day of 2025 filed a Motion To Amend
Pro Se Anders Brief Actual Innocence by placing
in U.S. Mail postage pre-paid sent to the addresses
below:

South Carolina Court of Appeals
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