

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Cherokee County

Howard P. King, Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JOEY L. CLARK,

APPELLANT

APPELLATE CASE NO. 2014-000797  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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**TABLE OF AUTHORITIES**

**Cases**

State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) ..... 6

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in failing to give a correct and complete jury instruction on circumstantial evidence?

## **STATEMENT OF THE CASE**

Appellant was convicted of murder after a jury trial held before the Honorable Howard P. King on March 18 – 20, 2014, in Cherokee County. A sentence of forty-five (45) years was imposed. H. Chase Harbin, Esquire, was trial counsel. Kimberly L. Leskanic, Esquire, and Jennifer Jordan, Esquire, were the Assistant Solicitors.

This appeal follows.

## ARGUMENT

The trial court erred in failing to give a correct and complete jury instruction on circumstantial evidence.

Appellant was tried for the murder of Winter Wingard that occurred on December 2, 2010. Appellant was Wingard's ex-boyfriend. She had kicked him out of the house she was living in with her mother in October. She took up with a girlfriend, Anne Mooney. Around 3:30 in the afternoon on October 2, a passerby found a body off Mikes Creek Road. (R. 625, ll. 3-16). In the early morning hours of October 2, the victim's cell phone was found in the backyard of her home on Songbird Lane. The phone was covered in red dirt from her backyard. She had made it to her car where she left fingerprints on the car with the same red dirt from the backyard. Her blood was found in the passenger side of the vehicle. It was the victim's body that was found off Mikes Creek Road. She had been strangled, beaten in the head, face and chest. There were thirteen stab wounds in her neck. There were clumps of fiber from Wolverine boots found on some barbed wire on a fence near where the victim's body was found. That fiber matched the same fiber found in a pair of appellant's Wolverine boots. While at the crime scene, Detective Henson bumped into briars and a tree limb. He took samples figuring the suspect may have also bumped into it. DNA was found and it excluded 99 percent of the population, but it did not exclude appellant. (R. 629, l. 18 – p. 633, l. 14).

The vehicle was found about 600 feet from the residence on Songbird Lane. Appellant said he located the vehicle and told the victim's mother about it. She said it was not her vehicle and he told her it was. (R. 633, l. 16 – p. 634, l. 24).

The trial court gave a jury instruction on circumstantial evidence. (R. 681, l. 9 – p. 682, l. 4). It was not the charge recommended in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). The recommended charge is as follows:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

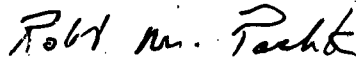
Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

**CONCLUSION**

Because the trial court failed to give a complete and correct jury instruction on circumstantial evidence, appellant's conviction should be reversed.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of December, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

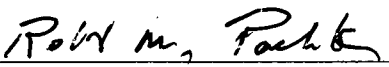
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Counsel for Joey L. Clark states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Howard P. King, which was held on March 20, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Joey L. Clark.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of December, 2014.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Pretrial Hearing Transcript (March 17, 2014);
- (3) Trial Transcript (March 18, 2014).

I certify that this designation contains no matter which is irrelevant to this appeal.

December 1, 2014

*Robert M. Pachak*  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

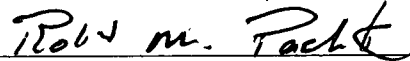
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 1, 2014



Robert M. Pachak  
Appellate Defender

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Division of Appellate Defense  
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Columbia, South Carolina 29211-1589

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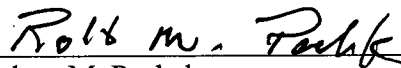
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joey L. Clark, #187595 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of December, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 1st day of December, 2014.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.