

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEAL

Appeal from Cherokee County

Howard P. King, Circuit Court Judge

STATE,

Respondent,

Vs

JOEY L. CLARK,

Appellant.

APPELLATE CASE No.  
# 2014-000797

Amendment of Appellant's  
Brief

Appellant,  
Pro Se.

JOEY L. CLARK  
Appellant.

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**SC Court of Appeals**

Broad River  
Correctional  
Institution  
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S.C.D.C. # 187595  
Columbia, S.C. 29210

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(1.)

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# STATEMENT OF ISSUES ON APPEAL

- 1.) Whether the trial court ERRED in allowing the State to enter into evidence, statements from Inmates without them taking the stand and allowing the defendant to confront his accusers? ..... pg. 5
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## 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

(1)

The trial court erred in allowing the state to enter into evidence, statements from inmates without them taking the stand and allowing the defendant to confront his accusers.

Appellant was arrested for a traffic offense, "No Driver's License" on December 3rd, 2010, (TR. p. 376 lines 10-21). Appellant was still in jail at the Cherokee County jail on December 6th, 2010, (TR. p. 413 lines 6-8). Appellant was served with a arrest warrant on December the 6th, 2010 at 3:08 p.m., (TR. p. 414 lines 1-5). The first jail informants statement was on December 5th at 1:07... by Bryant Phillips... nickname "steet" ... who went to school with Detective Richard Burgess, (TR. p. 381 line 23 through p. 382 line 23). These other fellows, they gave a statement on December 6th... (TR. p. 389 lines 14-19). Essentially they are telling two different versions of the same story... (TR. p. 387 line 7-through-p. 388 line

(5)

25),... MR. Stillwell was incorrect?  
Yes.. (TR. p. 394 lines 3-22).

"The jail house informants  
Statements were still marked and  
entered into the record as evidence."  
(TR. p. 421 line 16 - through - p. 422  
line 21),... They don't have the  
witnesses proffered, they didn't put  
the witnesses on the stand, they  
did ~~not~~ document any of their  
reliability... (TR. p. 589 lines 18-20).  
The Court: I was a little bit surprised,  
MR. Harbin, that the statements came  
in as to what they said without the  
individuals coming forward...  
(TR. p. 593 lines 11-13)... Jail house  
witnesses... if the State honestly  
believed that these were reliable  
people, wouldn't they have put them  
on the stand? Why didn't they put  
them on the stand?... (TR. p. 621 lines  
14-21)... The State was having you  
believe that there were no public  
information available about this,  
and yet we find out through the  
coroner that there was a press  
Release that contained almost  
every detail that the statements  
had... (TR. p. 623 lines 4-24).

(6.)

In Crawford V. Washington,  
the Supreme Court, the...  
Confrontation Clause by Ruling  
... out-of-court statements are  
inadmissible if the accused did not  
have the opportunity to cross-  
examine the accuser... Which  
is also a violation of the Sixth  
Amendment to the United States  
Constitution... to be confronted  
with the witnesses against him.

(2)

We see that the trial court  
ERRED in failing to allow the defendant  
to introduce any evidence or  
mentioning anything about "Third-  
Party Guilt".

The next motion filed by the  
State is a third-party guilt motion.  
The State filed the motion in limine  
to prevent the defense from  
introducing any evidence or  
mentioning anything in openings,  
closings about any third-party guilt  
in this case, (TR. p. 5 lines 13-18).

(But, theirs evidence of "third-party  
Guilt.")

(7)

The DNA profile developed from the swab from the BRIAR identified as SLED 21,1 is a mixture of at least three individuals. The DNA profile developed from the major contributor to this mixture also matches the DNA profile of Winter Wingard. Joey Clark cannot be excluded as a "possible" minor contributor to this mixture.

... Joyce Patrick is excluded as a possible minor contributor to this mixture (TR, p. 536 line 20-through-p. 537 line 6). The DNA profile developed from the swab from the tree limb is a mixture of at least three individuals.

Winter Wingard, and Joey Clark cannot be excluded as a "possible" contributors to this mixture....

Joyce Patrick is excluded as a possible contributor to the mixture, (TR, p. 538 lines 8-15). Based on the mixture obtained,.... It indicates that there is at least one individual present in these mixtures that I don't have the DNA standard to compare to, (TR, p. 539 lines 20-25).

...there is one minor DNA type that is "not" attributable to Winter Wingard or Soey Clark, and Soey Patrick is excluded as a possible contributor to the mixture, (TR. p. 547 lines 4-7).

Also, see (TR. p. 556 line 2-through-p. 558 line 17). If there were foreign DNA present on Ms. Wingard from Mr. Clark, it may be possible for it to be transferred to the tree limb or the briars through "secondary transfer", (TR. p. 561 lines 15-23).

There was DNA information developed at three locations... There are types that are not consistent with Mr. Clark, (TR. p. 565 lines 16-21).

Also, see (TR. p. 579 line 15-through-p. 580 line 20). And also (TR. p. 642 lines 21-23).

(3)

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

The trial court gave a jury instruction on circumstantial evidence, (TR. p. 656 line 9-through-p. 657 line 4).

(9)

Which states:

There are generally two types of evidence which were 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 that the State relies on circumstantial evidence, all of the circumstantial / 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 and this burden rests with the state, regardless of whether the state relies on direct evidence, circumstantial evidence, or some combination of the two, (Tr. p. 656 line 9 - through - p. 657 line 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 is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the

evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

(12.)

# CONCLUSION

(1.)

Because the trial court erred in allowing the State to enter into evidence, statements from Inmates without them taking the stand and allowing the defendant to confront his accusers.

(2.)

Because the trial court erred in failing to allow the defendant to introduce any evidence or mentioning anything about "Third-Party Guilt".

(3.)

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

Respectfully submitted,

Joey L. Clark  
Appellant PRO-se

This 16th day of January, 2015.

(13.)

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Cherokee County

Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

Vs,

JOEY L. CLARK,

Appellant.

APPELLATE CASE NO. 2014-000797

DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL

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.

(14.)

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THE STATE,

Respondent,

vs,

SOEY L. CLARK,

Appellant.

CERTIFICATE OF SERVICE

The undersigned Pro-se, appellant hereby certifies that a true copy of the Amendment of Appellant's Brief and Designation of Matter in the above referenced case has been served upon Donald J. Zelentka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201; this 15th day of January, 2015.

(16.)

January 16, 2015

~~Joey L. Clark~~  
JOEY L. CLARK  
Appellant Pro-se.

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(15.)

Joey R. Clark  
Joey L. Clark  
Pro-se Appellant.

Subscribed And Sworn To  
before me this 16<sup>th</sup> day  
of January, 2015.

Susan H. Frye

Notary Public for South Carolina  
My Commission Expires:

My Commission Expires  
March 5, 2018

(17.)

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