

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.

Broad River Correctional
Institution

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Marion Unit - 215
S.C.D.C. #187595
Columbia, S.C. 29210

JAN 20 2015

S.C. SUPREME COURT

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Statement Of Issues

- 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.
- 2.) Whether the trial court erred in failing to allow the defendant to introduce any evidence or mentioning anything about "Third Party Guilt"? Pg. 7
- 3.) Whether the trial court erred in failing to give a correct and complete jury instruction on circumstantial evidence? Pg. 9

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...

(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 Drivers License" on December 3rd, 2010, (Tri p. 376 lines 10-21). Appellant was still in jail at the Cherokee County jail on December 6th, 2010, (Tri p. 413 lines 6-8). Appellant was served with a arrest warrant on December the 6th, 2010 at 3:08 p.m., (Tri p. 414 lines 1-5). The first jail informants statement was on December 5th, 2010 at 1:07... by Bryant Phillips... nickname "Skeet"... who went to school with Detective Richard Burgess, (Tri p. 381 line 23 through p. 382 line 23). These other fellows, they gave a statement on December 6th... (Tri p. 389 lines 14-19). Essentially they are telling two different versions of the same story... (Tri p. 387 line 7 through - p. 388 lines 25)... Mr. Stillwell was incorrect? Yes... (Tri p. 394 lines 3-22)

"The jail house informants statements

Joey Clark cannot be excluded as a "possible" contributors to this mixture...

Joyce Patrick is excluded as a possible contributor to the mixture, (Tri 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 standards to compare to. (Tri p. 539 lines 20-25)... there is one minor DNA type that is "not" attributable to Winter Wingard or Joey Clark, and Joyce Patrick is excluded, as a possible contributor to the mixture, (Tri p. 547 lines 4-7).

Also, see (Tri 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", (Tri p. 561 lines 15-23).

There was DNA information developed at three locations... There are types that are not consistent with Mr. Clark, (Tri p. 565 lines 16-21). Also, see (Tri p. 579 line 15 through p. 580 line 20), And also (Tri 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. (Tri p. 656 line 9 through p. 657 line 4.)

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 reasonable doubt and this burden rest on 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 a eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinctions between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required

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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.

Conclusion

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(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.

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State Of South Carolina
In The Court Of Appeals

Pg. 16

Appeal from Cherokee County
Howard P. King, Circuit Court Judge

The State

Respondent.

vs.

Joey 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 reference case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia SC 29201; this 16th day of January, 2015.

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

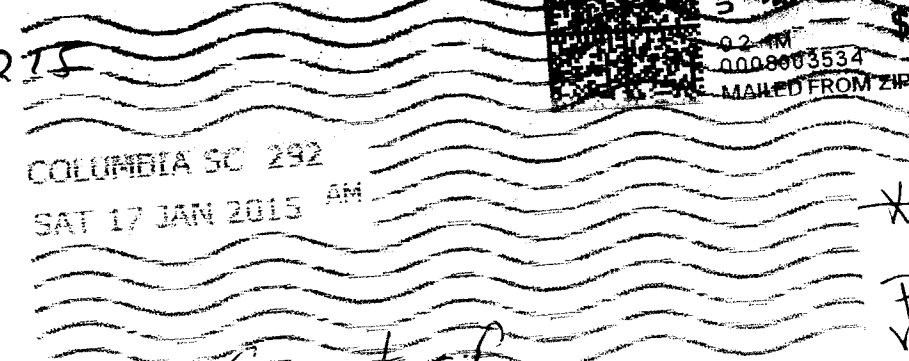
Subscribed and Sworn To
before me this 16th day
of January, 2015

Susan H. Drye
Notary Public for South Carolina
My Commission Expires:

My Commission Expires
March 8, 2018

J.
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