

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM SPARTANBURG COUNTY SC Court of Appeals
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No.: 2015-000907

The StateRespondent

v.

Jack Randall MooreAppellant.

**INITIAL REPLY BRIEF
OF APPELLANT**

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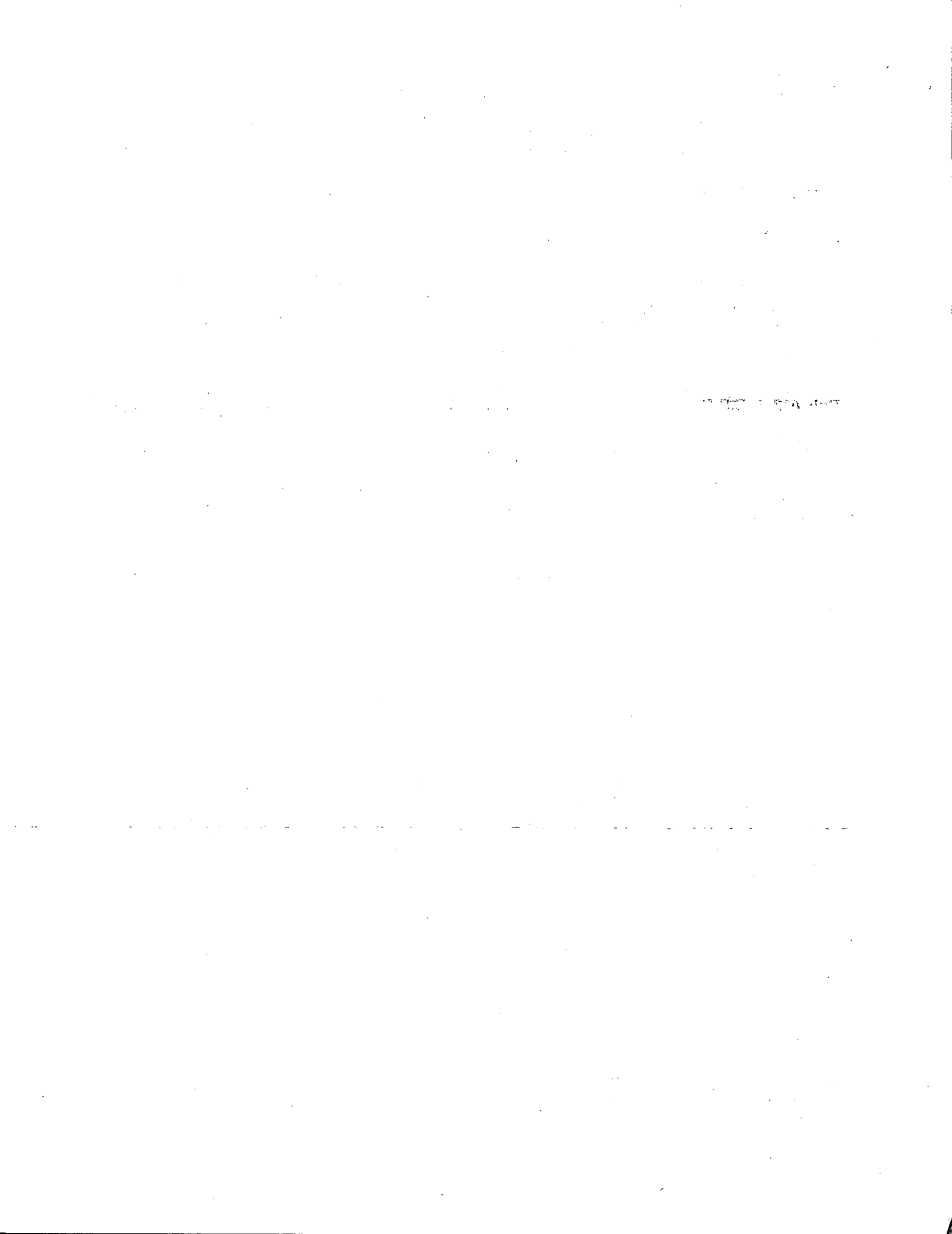


TABLE OF AUTHORITIES

Cases:

State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)1

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ARGUMENT

THE TRIAL COURT IMPROPERLY PROHIBITED THE APPELLANT FROM CROSS EXAMINING ELLEN BRADLEY ABOUT STATEMENTS SHE MADE TO HER DRIVER, WILLIAM COLEMAN, BECAUSE SUCH QUESTIONS WERE PROPER CROSS EXAMINATION.

The Respondent continues to confuse the introduction of hearsay with proper cross examination. The question before the court may be stated this way: Is asking Ellen Bradley if she made certain statements to William Coleman proper cross examination or an attempt to introduce what William Coleman said Ellen Bradley said which would be hearsay? Moore contends asking Ellen Bradley if she made the statements to William Coleman is proper cross examination under Rule 613 SCRE. The Respondent contends asking Ellen Bradley if she made the statements to William Coleman in an attempt to introduce William Coleman's out of court statement and therefore prohibited hearsay under Rule 801 SCRE.

The Respondent cites no case law in support of its position. Numerous court decisions support Appellant's position that he can properly ask Ellen Bradley if she made an out of court statement to a witness.

In State v. Galloway, 263 S.C. 585, 211 S.E.2d 885 (1975) the Court said, "The requirement of notice is met when the cross examiner advises the witness of the substance of the prior statement and the time when, the place where and the person to whom it was made." p. 591

In State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982), a witness was asked if told a law enforcement officer where the guns used in a murder were hidden. The witness denied making the statement and the law enforcement officer to whom the statement was made was allowed to impeach the witness with his prior out of court statement.


In State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010), a witness was impeached with a prior out of court statement. In upholding the impeachment, the court cited Rule 613 for the proposition that a witness may be impeached with a prior out of court statement to a third party.

The cited decisions are not exhaustive but to the point. A witness may be asked if he or she made an out of court statement to a third party as proper cross examination. Excluding the cross examination was error.

The error was not harmless. Three persons knew if Moore had demanded his refrigerated trailer be returned and had been promised its return before he reported it to the police – Moore, Bradley and Coleman. The prosecution chose not to call Coleman and there was no burden on Moore to produce Coleman. Thus the trial came down to credibility of Bradley. The fundamental function of cross examination is to test credibility. Denying Moore the right to cross examine Bradley prejudiced Moore and entitled him to have the verdict set aside and to have a new trial.

CONCLUSION

Moore respectfully asks this Court to declare the denial of his right to cross examine a witness about a prior inconsistent statement she allegedly made was an abuse of discretion, a blatant misreading of the rules of evidence, and harmful to his defense. The Court should reverse the conviction and grant such other and further relief as the Court deem just and proper.



O. W. Bannister