

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

RECEIVED

APR 08 2020

SC Court of Appeals

THE STATE,

Respondent,

v.

RANDY COLLINS,

Appellant.

**REPLY TO APPELLANT'S RETURN IN
OPPOSITION TO ALLOW FILING OF A
SUPPLEMENTAL RECORD ON APPEAL**

The State, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On February 25, 2020, the State filed a motion to supplement the record on appeal in light of Appellant's testimony against his codefendant, Marissa Cohen on January 8, 2020. On March 6, 2020, this Court granted the State's motion to supplement the record on appeal. On March 9, 2020, Appellant filed a return to the State's motion to allow filing of a supplemental record on appeal. On March 31, 2020, this Court withdrew its previous order in light of Appellant's return and allowed the State to file a reply to Appellant's return. This reply of the State to Appellant's return now follows:

II.

Appellant argues the State's motion to supplement the record on Appeal should be denied for two reasons. First, Appellant argues that it is improper to supplement the record on appeal because Rule 210(c) SCACR expressly bars matter that was not considered by the lower court. Secondly, Appellant argues that his subsequent testimony does not eliminate the prejudice caused by the trial court's admission of Appellant's statements to law enforcement. In support of this argument, Appellant argues "Appellant should not be barred from directly challenging the errors made by the lower court in his case merely because he provided assistance to the State in Ms. Cohen's trial." (Appellant's Return 6). Appellant's argument misapprehends the purpose of the State's motion to supplement the record on appeal. The State is not seeking to dismiss Appellant's appeal before this Court or otherwise prevent Appellant from challenging any alleged errors committed by the trial judge. The State seeks to supplement the record on appeal with a transcript of Appellant's admission of guilt at a subsequent trial because it is relevant for this Court's analysis of whether Appellant was prejudiced by the admission of his original confession to law enforcement at his trial. In light of Appellant's subsequent confession, Appellant has not suffered any prejudice from the admission of his confession at trial. Therefore, any error committed by the trial judge in admitting Appellant's original confession is now harmless.

In his final brief to this Court, Appellant argued that the trial judge erred in admitting Appellant's incriminating statements from his interview with law enforcement because they "were induced by deception regarding their use, promises of leniency, threats of severe punishment, and other factors indicating that the statements were not voluntarily given." (Final Brief of Appellant 15). As a remedy for this error, Appellant requests that this Court reverse his

convictions and remand for a new trial. (Final Brief of Appellant 24). However, in light of Appellant's subsequent sworn testimony admitting his involvement in planning the first degree arson for which he was tried and convicted, Appellant can no longer achieve any meaningful remedy from this Court on appeal. The State is not arguing, as Appellant suggests, that this Court should no longer consider the merits of Appellant's appeal. However, if this Court determines the trial judge erred in admitting Appellant's original confession and chooses to reverse Appellant's conviction and remand Appellant's case for a new trial, Appellant will most likely be retried. In the event of a re-trial, Appellant's sworn testimony from January 8, 2020 will certainly be used against him at a subsequent trial.

In his return, Appellant asserts "Appellant can demonstrate that he was prejudiced by the trial court's error because he would not have testified in Ms. Cohen's trial but for such error." (Return of Appellant 2). Contrary to Appellant's assertion, it is irrelevant whether Appellant would have testified against his co-defendant if not for the trial judge's alleged error. The relevant consideration for this Court is that Appellant gave sworn testimony admitting his involvement in the arson while being represented by appellate counsel. (Supp. 4-13). Appellant testified with no promise of reward other than the State recommending a general downward departure. (Supp. 5). Furthermore, Appellant testified with full knowledge of the potential consequences to his pending appeal. During Appellant's January 8, 2020 testimony the following exchange occurred:

Assistant Solicitor Richardson: And Mr. Collins, is your sentence or your conviction currently under appeal? You appealed it, your sentence?

Appellant: Yes, ma'am.

Assistant Solicitor Richardson: Okay. And you've got a lawyer helping you with that?

Appellant: Yes, ma'am.

Assistant Solicitor Richardson: Okay. And is he in the courtroom, Mr. Gaskins?

Appellant: Yes.

Assistant Solicitor Richardson: Okay. And you're here to testify today?

Appellant: Yes, ma'am.

Assistant Solicitor Richardson: Okay. And that's voluntary, nobody's forced you to do that?

Appellant: Right.

Assistant Solicitor Richardson: Okay. And would you tell this Jury what you're hoping to get from this?

Appellant: I'm hoping to get my sentence cut a little bit.

Assistant Solicitor Richardson: Okay. And has anybody promised you that that's going to happen?

Appellant: No.

Assistant Solicitor Richardson: And you understand that that's up to the judge?

Appellant: Right.

Assistant Solicitor Richardson: And is it true that we have promised that we would bring it to the Judge's attention?

Appellant: Right.

Assistant Solicitor Richardson: But it's completely up to the Judge?

Appellant: Yes.

Assistant Solicitor Richardson: Been no agreement as to what number it would be?

Appellant: Right.

Assistant Solicitor Richardson: All right. And Mr. Collins, do you understand that by testifying today that could hurt your appeal?

Appellant: Right.

Assistant Solicitor Richardson: And could cause you some problems there?

Appellant: Right.

Assistant Solicitor Richardson: Do you also understand that anything you say can be used against you if you were to have go (sic) back to court?

Appellant: Right.

(Supp. 4-5, lines 14-25, 1-25).

Appellant's subsequent admission of guilt was voluntary and would be admissible against him in any future trial. Appellant will not suffer any prejudice from supplementing the record on appeal with his subsequent testimony, nor will his current appeal be adversely affected.

Appellant may well prevail in his appeal to this Court and still be unable to obtain any meaningful relief in light of his subsequent sworn admission of guilt¹.

Appellant's January 8, 2020 testimony could not have possibly been considered by the trial judge at Appellant's trial in November 2018. However, under the unique facts of Appellant's case, the State seeks the leave of this Court to supplement the record on appeal to include Appellant's subsequent testimony because it is relevant to this Court's consideration of

¹ Contrary to Appellant's assertion in his return, Appellant's testimony on January 8, 2020 conclusively established his guilt. Appellant admitted to engaging in a criminal conspiracy with Marissa Cohen and James Miller to burn down Cohen's trailer in exchange for \$5,000 of insurance proceeds. Appellant further admitted that he suggested using kerosene and that kerosene was supposed to have been poured inside the trailer when he and Miller arrived. Appellant also witnessed Miller light a piece of paper on fire and throw it at one of the trailer's windows. (Supp. 9-13). It is irrelevant whether Appellant actually saw the fire start. See State v. Chavis ("When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking, '...the act of one is the act of all and all are presumed to be present and guilty.'") State v. Chavis, 277 S.C. 521, 522, 290 S.E.2d 412-413 (1982) (quoting State v. Gilbert, 107 S.C. 443, 446, 93 S.E. 125, 126 (1917)).

whether Appellant was prejudiced from the admission of his original confession and whether any potential error by the trial judge was harmless.

WHEREFORE, Respondent prays that this Court will allow the State to file a Supplemental Record on Appeal; accept the filing of the State's Supplemental Record on Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

By: 
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April 8, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

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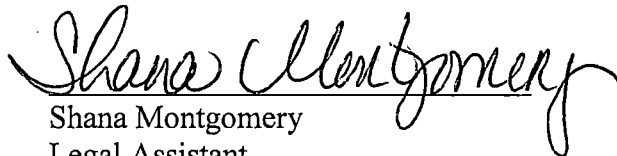
Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Respondent's Reply to Appellant's Return in Opposition to Allow Filing of a Supplemental Record on Appeal on Appellant by depositing a copy in the United States mail, postage prepaid, addressed to:

E. Brandon Gaskins, Esquire
Moore & Van Allen PLLC
78 Wentworth Street
Post Office Box 11589
Charleston, SC 29401

I further certify that all parties required by Rule to be served have been served.
This eighth day of April, 2020.



Shana Montgomery
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ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

April 8, 2020

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Randy Collins
Appellate Case No. 2018-002056

Dear Ms. Kitchings:

Enclosed please find the original of Respondent's Reply to Appellant's Return in Opposition to Allow Filing of a Supplemental Record on Appeal in the above-referenced appeal. I will send opposing counsel each a physical copy and an electronic copy

Sincerely,

Scott Matthews
Assistant Attorney General
Bar # 101464

JSM/
Enclosures

cc: E. Brandon Gaskins, Esq.
Robert M. Dudek, Esq.
Victim Services