

THE SUPREME COURT OF SOUTH CAROLINA

Charles H. Davis, #299511,

v.

EXPLANATION PURSUANT RULE (243(c))

State Of South Carolina,

No. : 2021-000781

Per Rule 243(c) of the SCACR which requires a written explanation as to why the lower court's determination was improper, the Appellant in this action would have this court defer to his NOTICE OF APPEAL For his explanation as to why the lower court's decision against appellant is improper. The notice contains sufficient facts, arguments, and citations to legal authority to that there is an arguable basis for asserting that the lower court was improper in their decision to dismiss.

Thank you

August 05 2021

SI Charles H. Davis  
Charles H. Davis, #299511  
Pro Se Appellant

RECEIVED  
AUG 16 2021  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF:

Charles H. Davis, # 299511  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS

6<sup>th</sup> JUDICIAL CIRCUIT

2020-CP-29-1195

NOTICE OF APPEAL

MAY IT PLEASE THE COURT, Applicant in the above action does hereby serve this notice of Appeal pursuant to his Post-Conviction Relief Application filed on Sept. 14, 2020. The Respondent made a Return and Motion to Dismiss on February 18, 2021, requesting the Application be summarily dismissed as untimely, successive, and for failure to make a *prima facie* case of newly discovered evidence.

Applicant filed response on June 8, 2021 titled "Objection to Conditional order of dismissal." In his response, Applicant argues: 1. After Discovered Evidence/New Evidence. A. Victim I. (Applicant's girlfriend) and Victim II. (Mr. Caskey), has since the trial in Applicant's absence, has changed their stories of the events of that night. Victim I. now states that the Applicant had a key to her apartment that she freely gave him and he had her permission to come

and go from her apartment and that Applicant did not break into her home the night of the incident. (Statement from victim I. Confirming new testimony). B. Victim II (Mr. Caskey), now States he was not aware that victim I., Ms. Colbert, was still involved with the Applicant. He further states that he would not of been there if he had known that Ms. Colbert had given the Applicant a key. He further states that he was NOT Assulted and that it was just a fight between two guys over a woman. He ends his Affidavit by stating that he does not feel that the Applicant should of been charged with the burglary or the ABHAW, and ended by saying noone threatened or forced him to give this statement.


The question(s) presented for review: Applicant request for a new trial based on After Discovered/new Evidence. Does the Affidavits signed and Notarized by the two Alleged Victims in this action constitute new evidence? State v Caskey, 256 S.E.2d 737, States in part that a motion for new trial based on after discovered evidence may be granted if: the movant shows that the evidence would probably change the result if a new trial was had, that the evidence was discovered post trial, could not have been discovered before trial, goes directly to the innocence, and is not merely cumulative or impeaching. The two Alleged Victims of the Crimes are both now saying there was no crime committed, however, the Respondent wont consider the victims own words that no crime was committed

Second. Has Applicant made a *prima facie* showing he is entitled to relief?

Under Black Law's definition of Prima Facie - A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. " The two victims, Ms. Polbert and Mr. Caskey has and is repeatedly tried to come forward since the trial to set the record straight because both victims feel that in no way did Applicant commit a crime. Both victims have submitted several Affidavits to the court to undo the miscarriage of Justice that they feel to blame for. The Applicant by way of due diligence has gotten statements from the alleged victims and assurances that if necessary, they will come to court and testify. The Respondent submits that Applicant's discovery of the victim's current opinions of the events does not constitute newly discovered evidence. " Not true! By the Respondent's own words makes it true. " Applicant's discovery of the victim's current opinion. " " Applicant's discovery. " " Victim's current opinions. " The Respondent's assertion that this information was discoverable prior to Applicant's trial in absentia has no merit. The only evidence presented was the victim's testimonies. The alleged victim's testimony only was found inconsistent AFTER trial. Because these victim's testimonies were the link that directly got the convictions. Now these same people are telling the very opposite of the tale they gave then.

## CONCLUSION

Applicant Davis by all accounts and by Black Law's definition of *prima facie*, has shown that he is entitled to an evidentiary hearing on this matter. Therefore, Applicant moves to get a hearing as this matter should be ruled on in Court and not just by the Attorney General's office.

  
CHARLES H. DAVIS # 299511  
Pro Se Applicant.

Case v State (1992) 277 SC 474, 289 SE2d 413 → Based on the particular circumstances of his case, a defendant was entitled to a hearing on his application for post-conviction relief despite the dismissal of a previous application for the same relief.

**RECEIVED**

AUG 16 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF:

6<sup>th</sup> JUDICIAL CIRCUIT

2020-CP-29-1195

Charles H. Davis, # 299511,  
Applicant,

vs.

CERTIFICATE OF SERVICE

State of South Carolina,  
Respondent.

I, Charles H. Davis, # 299511, Applicant in the above action, do certify that a true copy of Applicant's Notice of Appeal has been served on: South Carolina Supreme Court, Clerk's Office, P.O. Box 11330, Columbia SC 29211, by depositing said materials in the United States Mail.

s/ Charles H Davis  
CHARLES H. DAVIS # 299511

Pro Se Applicant

Sworn and Subscribed before me  
on this 13<sup>th</sup> day of July, 2021

Casthice A. Chaves  
NOTARY PUBLIC SOUTH CAROLINA

My Commission Expires: 12-22-2029

RECEIVED

AUG 16 2021

S.C. SUPREME COURT

#1

#1

Ryan Sharita Colbert

1/5/17

2020 CP 29 01195

To Whom It May Concern:

I, Ryan Sharita Colbert, am writing this letter stating that Charles Henry Davis, the father of my children, had a key to my apartment when I resided at 606 Pardue Street Apartments in Lancaster, South Carolina. I am having a hard time without him here to help me. I still need him to be home to help raise our twins. Charles Henry Davis was a wonderful father to his children when he was at home. He has such a big heart and was there to help any way that he can. My children miss him so much.

Ryan Sharita Colbert

*Ryan S. Colbert*

*Kenneth Coulter*  
*S.C. Notary Public*

**Commission Expires On  
March 12, 2019**

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OFFICE OF CLERK  
OF COURT  
2020 SEP 14 PM 2:52  
CLERK OF COURT  
LANCASTER, SC

#2

I Kylon Colbert

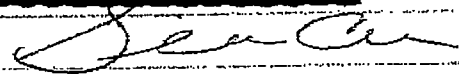
9/2/2020

want to state that Charles  
Henry Davis had a key to  
my Apartment.

2020 CP 24 01195

I don't think that he  
need to be locked up for  
burglary cause he had  
a key.  
Kylon Colbert

STEPHANIE S. COLON  
Notary Public - State of South Carolina  
My Commission Expires  
June 22, 2026



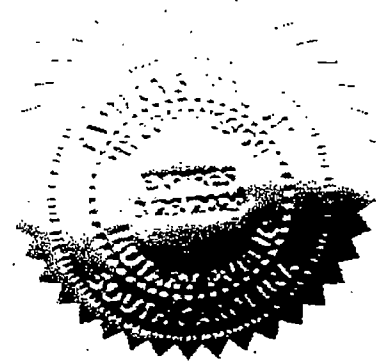
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CLERK OF COURT  
LANCASTER, SC

2020 CP 29 01195

To Whom Ever This May Concern, I Leon Caskey, Sr. will admit that Charles Davis and I had an altercation concerning Ryan Colbert she told him that I called the police on him in which I did not. That's how the altercation began. At the time I had been dealing with Ryan Colbert for a couple months before I actually found out she was involved with Charles Davis, but on the night of the attack I had no idea that he had a key to her house if I had known that I would have not dealt with her, so I was wondering why she put the stove against the door but she knew he had a key. But she didn't think he could move the stove after he entered the apartment. But later after it all happened she admitted that he had a key, so I really don't think he should be charged with Breaking and Entering. No one forced me to make this decision at all. Because you cannot break into a place if you have a key.

*Leon Caskey Sr.*

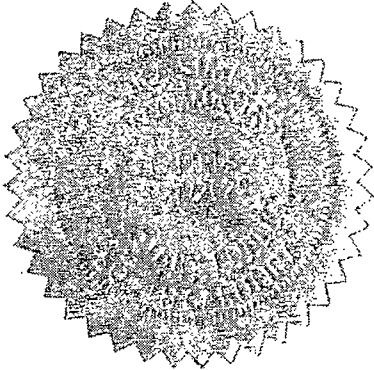
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 LANCASTER, SE



March 3, 2021

To Whom This Matter Concerns,

In the incident with Charles Davis, it was a fight. I hit him numerous times. He also got the best of me and I didn't want to admit it.

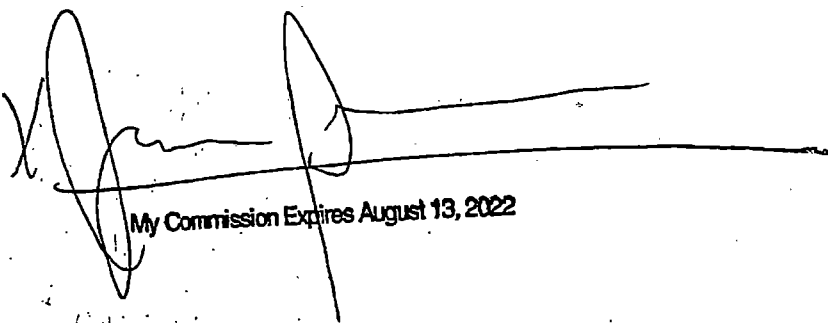


Leon Caskey, Sr.

*Leon Caskey Sr.*

I Ryan Sharita Colbert, want to state that Charles Davis had a key to my house and he has consent to come and go at anytime as he pleased.

X Ryan Colbert 2/26/21

X 

My Commission Expires August 13, 2022