

6/3/22

State of South Carolina
In The Supreme Court

on Petition For writ of Certiorari to the
Court of appeal

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SC Court of Appeals

APPeal from Richland County
court of General Sessions
Deondra G. Benjarmin, Circuit Court
Judge

Appellate Case no. 2019GS4005634

The State Respondent,
Mr. Correy T. Brown Petitioner;

Return to Petition for a writ of Certiorari

Other Counsel of record:
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Mr. Correy T. Brown 197932 BA11
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statement of the case

Mr. Correy T. Brown was convicted of one count of Murder and sentenced to forty-two years on June 11, 2021. The Appellant now ~~moves~~ moves To Appeal his Conviction and sentence.

ISSUES FOR APPEAL

- 1. FAILURE TO PROVE BEYOND A REASONABLE DOUBT**
- 2. PROSECUTORIAL MISCONDUCT**
- 3. MOTION FOR A DIRECT VERDICT**
- 4. ILLEGAL SENTENCE**
- 5. INEFFECTIVE COUNSEL**
- 6. VIOLATION OF MIRANDA RIGHTS**
- 7. BRADY VIOLATION**
- 8. ABUSE OF DISCRETION**

FAILURE TO PROVE BEYOND A REASONABLE DOUBT

1. The defense motioned for a direct verdict of acquittal due to the state and its case evidence failing to prove all elements of the crime beyond a reasonable doubt. The evidence, direct and circumstantial, fails to prove all elements of the case.
2. Davis' statement of tension was inadmissible. It was late discovery, and not entered into evidence until after the trial had already begun, as well as other witness testimony contradicted this altogether.
3. Guyton's witness statement is inadmissible as it violates Rule 608(b) S.C.R.E., "State vs. Riddle", "Brady vs. Maryland", as well as the defendants 6th Amendment rights.
4. The still images shown to the jury showed the victim happy and in a good mood, which is also a contradiction of the witness testimony.
5. Parker's statement saying "there was no argument, no tension, everything was cool" contradicts the states witness testimony and fails to prove motive or intent. As well as the state's prosecutor addressing the jury stating "We don't know what happened!"
6. The testimony by the medical examiner was worded differently making the testimony inconsistent with what is described in the autopsy report, therefore not providing the jury with the correct information as an expert witness for the state. The medical examiner was untruthful and misleading about the bullet trajectory.

Meaning without the medical examiner's misleading testimony the state fails to prove motive, malice, or intent. The inconsistent statement also fails to prove that the defendant caused or committed a voluntary act. The defendant contends that the testimony of the medical examiner was inconsistent with the coroner's report, and therefore is a violation of "Brady vs. Maryland". The autopsy report states the trajectory of the bullet had traveled "right to left". During the defendant's trial, the medical examiner testified under oath that the bullet traveled "from back right and exited front left". This is inconsistent with the testimony of the medical examiner as well as the lead investigator's statement during the preliminary hearing.

- a. The lead investigator testified under oath, stating (court transcript: pg. 19, track 16): "But it comes from right to left is the trajectory, that's what the coroner's report say." This statement made by the investigator shows that medical examiner was untruthful under oath. Also stated by investigator during cross examination (pg. 19 track 19 – 25, cont'd pg. 20 tracks 1 – 8):

Q: Okay, so no one's saying they can definitely say it came from the backseat?

A: I mean no. They wouldn't be able to say that in the coroner's report.

Q: Right

A: Because, again, we don't have the position of the body at the time when the.... cause they had already moved him in the vehicle and everything like that.

Q: Oh right, because that was an accident....

A: Yeah, they basically treated it as a fatality. So we don't have anything as far as, you know, other than some pictures that were taken by the coroner that night where the victim was in the vehicle precisely, stuff like that.

7. The testimony of the witness shows the medical examiner committed perjury. The state's eye witness stated that he had previously moved the victim over to drive the victim's car. So, the testimony given under oath by medical examiner "the trajectory is from back right and exited front left", is impossible. The investigator and the witness testified the body had been moved prior to knowing this was more than a traffic fatality, so the trajectory cannot be determined without the position of the victim's body at the scene of the crime. This also compromises any evidence that was collected because the crime scene was not contained. The coroner's report also states it was not discovered the victim had been shot until the autopsy, which took place at the coroner's office. This proves that the state failed to prove that the defendant is guilty beyond reasonable doubt. All of the state's evidence is circumstantial and the witness testimonies contradict the facts presented to the jury. This violates *In Re Winship* 397 US 358, and the cumulative effects of these major violations have prejudiced the jury and make it impossible to grant the defendants' rights to a fair trial and the laws of due process. These errors committed by the state are uncurable and the ruling in this case should have been vacated by the Motion for a Directed Verdict of Acquittal.

PROSECUTORIAL MISCONDUCT

1. The prosecutor committed prosecutorial misconduct during the closing argument. On Friday June 11, 2021 the state moved to rest its case and to proceed with closing arguments. During the closing the state presented information to the jury stating that the defendant was present at the time of the offense. The state based this information on the testimony of the medical examiner, crime scene investigators, and police.
2. The medical examiner put the autopsy into discovery that stated the trajectory of the bullet traveled from right to left. The eye witness through his own testimony placed himself in the direction of the trajectory, stating he switched seats with the victim, so prior to switching seats he is on the victim's right side matching the trajectory of right to left which was stated in the autopsy. However, during the trial the medical examiner added specific wording stating that the trajectory is from the back right to the front left of the victim. This statement is inconsistent with the autopsy report, and is a direct violation of "Brady vs. Maryland". As well as creates reasonable doubt when it comes to proving that the elements of the crime as a voluntary act committed by the defendant. The state's crime scene witness stated that there was one finger print on the outside of the door handle on the victim's car. The prosecutor while using this information during closing arguments used the specific words "touch DNA". This is a very misleading statement that will prejudice the jury to believe the defendant was in the car or around the victim at the time of the crime. This is considered to be prosecutorial

misconduct for even mentioning touch DNA during the closing arguments. This is a direct violation of State vs. Phillips Ruling, in which both prosecutor and expert witness misrepresented DNA vs touch DNA evidence. We need to determine the risk of innocent confusion materialized in this case. Due to incorrect statements made during the closing arguments. The misinformation can cause the jury to be confused or mislead while deliberating about the facts of the case. If there was any possibility of this touch DNA being considered harmless evidence, the state definitely prejudiced the jury with her incorrect and misleading information regarding the defendant's DNA vs touch DNA being found on the victim's car.

3. 844 SE 2D 651 (2020) The court of appeals have upheld the court's ruling in "State v. Ostrowski" (2021). Quoting "State v. Phillips", 844 SE 2D 651 (2020), stating the mere mentioning of touch DNA without the "Counsel" hearing being performed violates Rule 702 and Rule 403(b). The prosecutor has withheld evidence (video tape), entered the trial with late evidence multiple times and withheld new witness statements from Davis and Guyton until after the defendants' trial had already proceeded and provided the misleading information about touch DNA to the jury during closing arguments.
4. All of the information presented shows evidence of prosecutorial misconduct, and has surely caused the jury to be prejudicial toward the defendant. The compounding effect of this misconduct is a violation of the defendants' 5th, 6th, and 14th amendments. This should be grounds for dismissal of the charges, or at least grant the defendant a new trial.

MOTION FOR A DIRECT VERDICT

1. The defendant's trial began at 9:00 am on June 7, 2021. After the jury was sworn in at 2:23 pm, the prosecutor entered new evidence, a new statement from Davis was presented to the court during the trial. The prosecutor requested the late discovery to be heard during the trial. The defense objected to the new statement being heard by the jury. The judge over ruled the objection and allowed the prosecutor to enter the late statement into the trial. On June 8, 2021 for a continuance to review the statement in full. The court denied the defense's request and prompted the witness and allowed the jury to hear the statement anyway. The statement being allowed after the defendant's trial began is a direct violation of the defendant's 6th and 14th amendment rights, as well as Brady v. Maryland. The court knowingly allowed the jury to base its decision off of the late statement entered by the prosecutor. This will impede the defendant's right to have a fair trial.

2. On June 11, 2021 after 5 days of trial the state rested its case, and the defense entered a motion for a directed verdict of acquittal. The defense counselor went on record stating that the state failed to prove all elements of the case beyond a reasonable doubt. The motion was denied, after the judge tried to explain why it was denied. It was stated on record that the motion for a direct verdict of acquittal was denied because of the new statement the prosecutor allowed the jury to hear from Davis. The court also stated that it "sensed a scintilla of malice from Davis'

statement." The law states, "A trial court should grant a motion for directed verdict of acquittal where a jury would be speculating as to the guilt of the accused or where evidence is sufficient only to raise suspicion of guilt". Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof (State v Lollis Supra). In this particular matter the lower court judge abused its discretion by allowing the court to base the decision on a clear legal error made by the state. Allowing the jury to convict from a "scintilla of malice" shows that the state's evidence presented only a raised the level of suspicion and does not prove guilt. The state committed an error (Brady Violation) by allowing the state to enter Davis' statement into evidence after the defendants' trial began. Then allowing the jury to base its decision on the late statement. The defense attempted to stop this error by the motion, this is evidence that Davis' statement was a violation of the law and the defendants' constitutional rights. "The court will reverse the P.C.R. court's decision if it is controlled by an error of law" - Pierce v. State 338 S.C. 139 (2000). The trial court's decision was controlled by Davis' statement and was a "total manifested unreasonable judgement". Had the court not allowed the jury to hear Davis's statement, the outcome of the defendants' trial would have clearly taken a different verdict. The court would have binded by the law to grant the defendant's motion of directed verdict of acquittal. Davis' statement being allowed into evidence violated Rule 403 of the S.C.R.E. The law says once a rule (5) violation is shown, reversal is required only when the defendant suffered prejudice from the violation, State v. Landon 370 S.C. 103. This is a violation of the defendants'

5th, 6th, and 14th amendment rights. This also states that by law, the defendant's case ruling must be vacated.

ILLEGAL SENTENCE

1. The defendant contends that the sentence imposed by the trial court was controlled by a legal error. The law says "The court will reverse the P.C.R. court's decision if it is controlled by an error of law. *Pierce v. State* 338 S.C. 139 (2000) On June 2, 2021 the states eye witness had a meeting with the assistant solicitor. The states witness made a 3rd statement. In that statement, the witness stated that he suffered from anxiety and PTSD. The statement shows that the witness was incompetent to stand trial. The court allowing the witness to take the stand and testify violated Rule 702(b). The prosecutor and judge knew the witness suffered mental health issues prior to the testimony of the witness. The witness testimony proves he was not capable of standing trial. During his testimony the witness suffered memory loss and told the defense counselor "He doesn't remember what happened that night about the offense". This particular statement is a violation of the defendant's 8th amendment rights. The testimony of the witness is what the law and the sentence imposed are to be determined. This also violates the defendants' 5th, 6th, and 14th amendment rights.
2. During a meeting with the solicitor on June 2, 2021, the witness stated "after he (victim) was shot he was still alive. He also stated that he could hear the victim "gasping for air". At the trial the witness stated the same "I could hear the victim gasping for air". The trial court allowed the witness to stand trial. The supreme court held that "murder is a composite one with the assault and the death." (*State v. Blakeney* 33 SC 111, *State v. Platt* 154 SC 1, *State v. Rector* 158 SC 212,

State v. Winns 363 SC 414). The death of the victim according to the witness was not a composite one because the victim did not die "then and there" as the law prescribes for murder. The statement of the witness did not constitute a conviction for murder under "16-3-10" or "16-3-20". The evidence and witness statement clearly points to dismissal of the charge of murder. The evidence lacked the combination of death and intent to kill. The courts, the prosecutor, as well as the defense counselor all violated the defendant's right to a fair trial and due process, by not instructing the jury that they could also go with a lesser offense. The defense counselor should have inquired with the prosecutor about this lesser offense for the defendant.

3. If the witness was incompetent, and in direct violation of Rule 702(b), the courts are in violation of the defendant's 14th amendment rights. If the witness was found competent then due to the testimony of the witness, the trial judge violated the defendant's 8th and 14th amendment rights. The law states "The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 SC 296 (2001).

INEFFECTIVE COUNSEL

1. The trial began on June 7, 2021. Throughout the course of the trial, the defense counselor fell below the threshold for effective assistance. As mentioned in *Strickland v. Washington* 466 US 668. The cumulative effect of these errors on behalf of the trial counselor violated the defendant's 5th, 6th, and 14th amendment rights.
2. The defendant contends that the trial counselor was ineffective because there no objection made during the inconsistencies made by the medical examiner. The statements wording and intent to the jury matters, and the defense counselor did not object. Changing the trajectory of the bullet from "right to left" to then state it was "back right to front left" changes the whole dynamic of the trial. The lead investigator also stated during under oath page 19 track 16 "But it comes from right to left is the trajectory. That's what the coroner's report says". This statement shows the medical examiner made an untruthful statement under oath. The lead investigator also stated during cross examination page 19 tracks 19 – 25, continues on page 20 tracks 1 – 8.

Q: Okay, so no one's saying that they can definitively say it came from the backseat?

A: I mean, no. They wouldn't be able to say that in the coroner's report.

Q: Right

A: Because, again, we don't have the position of the body at the time when the...cause they had already moved him in the vehicle and everything like that.

Q: Oh right, because that was an accident.....

A: Yeah, they basically treated it as a fatality. So, we don't have anything as far as, you know, other than some pictures that were taken by the coroner that night where the victim was in the vehicle precisely stuff like that.

The combination of statements from the medical examiner as well as the lead investigator, should have given the trial counselor a reason to object. The failure to object to the inconsistencies from the state makes the counselor for the defendant ineffective. The statements made by the medical examiner was a direct Brady violation, in which the counselor still did not object.

3. The courts allowing the defense to be ineffective and the jury to base their decision on statements made by the state, is a direct violation of the defendant's 5th, 6th, and 14th amendment rights. The combination of statements also show that the state failed to prove who actually shot the victim, the evidence doesn't prove who shot the victim, the witness doesn't corroborate anything, the case should be vacated immediately.
4. During the state's closing argument, the prosecutor mentioned "touch DNA", again there was no objection by the defense, and this allowed the jury to believe the defendants' DNA was found on or near the victim. This statement along is prosecutorial misconduct, in State v. Phillips, the prosecutor is not to say that the DNA of a suspect is on any item of evidence if the issue is touch DNA. 844 SE

2d 651 (2020) The trial counselor failure to object or motion to request a mistrial is proof of ineffective counsel. The court and defense counselor allowed the state's prosecutor to commit misconduct, and violate the defendants right to a fair trial. As well as violates his 5th, 6th, and 14th amendment rights. The case should have been declared a mistrial and dismissed.

5. The trial counselor failed to motion for a mistrial, after all the issues present during the trial. The prosecutor is using a witness with admitted mental health issues, prosecutorial misconduct by the mention of touch DNA, late discovery, withholding evidence. These are all problems that should have been addressed by the defendant's trial counselor, and they were not. The trial counselor violated rule 403, and Strickland v. Washington. Because of this the trial counselor violated the defendant's 6th and 14th amendment rights.
6. The state's witness stated he could hear the victim "gasping for air, trying to breath". This means the victim did not die immediately, meaning the state as well as the defense counsel could have requested the jury be given instruction on a lesser charge. The statement by the witness does not fit the requirement for murder. He also stated that he moved the victim and drove the victim's car for an undetermined distance. This statement, as presented in State v. King 158 SC 251(1930), The evidence presented at trial showed that the defendant was entitled to a jury instruction of a lesser included offense. The defendant's trial counselor failed to request for the jury instruction. The counselor violated

Strickland v. Washington 446 US 668 (1984), also violating the defendant's 14th amendment rights.

VIOLATION OF MIRANDA RIGHTS

1. Once the defendant was arrested, he was questioned by 2 investigators that were involved in the case, Caldwell and Laurita. During the interrogation the defendant asked several times for an attorney. The defendant made several attempts at asking for counsel before he answered any questions. The officers made several comments that were in direct violation of the defendant's ~~5th~~ ^{5th and 6th} and 14th amendment rights.
2. During the interrogation process the defendant asked for counsel several times and was told ^{"NO your lawyer cant drop The charges."} ~~"what do you need a lawyer for"~~. The moment that the defendant asked for counsel, all questioning and interrogation should have ceased. The 2 officers were in direct violation of the defendant's rights. All statements made after the defendant asked for counsel should be suppressed and the case in question dismissed.
3. Due to the fact that the interrogation was ~~not~~ recorded, and there is only the officer's memory, the officer's testimony should have never been accepted as a part of the investigation or evidence. The officers should have allowed counsel, defendant's rights were ignored from the moment that they started questioning him. He was with them for several hours and asked for counsel over 10 times. They continued to poke, prod, and question the defendant, after he implied several more times he wanted to speak to a lawyer. They violated the defendant's Miranda rights as well as his ~~5th~~ ^{5th and 6th} 14th amendment rights.

The defendant's statement should have been suppressed.

The state presented testimony via Investigator Laurita during the pre-trial Jackson v denno hearing. Mr. Brown's statement was also audio and video recorded and a transcript of the statement was complete by Compuscripts. Prior to trial the state supplied both the statement on recording and transcript to the judge for review.

Correy Brown (Brown) contends that the following exchange between him and Investigator Laurita (Laurita) and Investigator Caldwell (Caldwell) was an invocation of his right to counsel and request for the assistance of an attorney and that the interrogation should have ceased at that moment.

Mr. Brown: Man, I-I got some evidence that's
going to shoot that out

the water.

Investigator Laurita: Well, let's hear it.

Sergeant Caldwell: What's that?

Mr. Brown: I, I – can I get that to a lawyer? I mean, I don't mean to be---

Investigator Laurita: No, I mean, this is your chance. If you want to clear your name—

Investigator Caldwell: Your lawyer can't drop charges. We can.

Brown's question "...can I get that to a lawyer?" was an unambiguous request for the assistance of an attorney. In *Davis*, the Court "requires, at a minimum some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Davis v United States*, 512 U.S. 452. Brown^{*} unambiguously asked if he could get information to a lawyer and was told "No." Indeed, Investigator Caldwell, when he said "your lawyer can't drop charges," clearly understood that Brown was requesting a lawyer. Allowing the statement to be admitted as evidence against him at trial and heard by the jury violated Brown's rights under the 5th, 6th, and 14th amendments of the Constitution.

Under *Miranda*,

"when at any point during an interrogation the accused seeks affirmatively or impliedly to invoke his right to silence or counsel, interrogation must be forgone or postponed...failure to follow the new procedure requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof." *Miranda v Arizona*, 384 US 436.

Additionally, Caldwell's statement that "Your lawyer can't drop charges. We can,"

constituted a promise of leniency. Although in South Carolina, the Court has held that an officer stating he/she will relay a defendant's cooperation does not constitute a promise of leniency, Caldwell's declaration went well beyond a mere statement regarding cooperation. *State v Arrowood*, 375 S.C. 359, *State v Rochester*, 301 S.C. 196. Caldwell made this assertion directly on the heels of Laurita telling Brown he could not get his information to an attorney. The comment implied that if Brown continued to speak his charges would be dismissed. The combination of these statements by law enforcement warranted suppression of Brown's statement. He invoked his right to counsel and was immediately given a promise of leniency after being denied that right.

Even after this exchange, Brown made further inquiries about the need for an attorney. It is also clearly reflected in the audio/video recording and transcript. Brown makes the following statements in response to Laurita requesting a buccal swab:

"Do I need to do this in front of a lawyer?"

"I might need to do it in front of a lawyer ..."

"Do I need to do this in the presence of a lawyer?"

"Well, I might need to wait and do it in front of a lawyer then."

Brown argues that the combination of all these statements is again him requesting the assistance of counsel. In *State v Kennedy*, "Well, I think I need a lawyer" was found to be unambiguous. 333 SC 426. After the last comment listed above, Laurita and Caldwell move on with the interview. However, a short time later, they again start asking Brown for a buccal swab. Brown again makes comments about a lawyer and says the following:

"I asked—I asked you did I need a lawyer..."

"Should I have a lawyer present then?"

"I think - should I ask a lawyer, or should I go on your word?"

Laurita and Caldwell should have ceased the interview. The cumulative effect of all Brown's comments, starting from the initial exchange

"Can I get that to a lawyer?" accompanied by comments he made thereafter, should reveal, upon an objective inquiry, that Brown's requests rose to a "statement that can reasonably be construed to be an expression of a desire for an attorney's assistance." *Davis v United States* 512 U.S. 457.

The statement should have been suppressed during the *Jackson v Denno*. The court abused its discretion by failing to suppress Brown's statement and Brown is requesting the court to grant a new trial based on this error.

BRADY VIOLATION

1. The trial court committed misconduct the day of the trial by entering new evidence in after the trial started. On June 8th the defense requested for a continuance to review the new statement. The court denied the continuance and ordered that the trial proceed. On June 9, the prosecutor addressed the court and stated they had a witness and on April 16, the witness gave a new statement. The prosecutor never disclosed the new statements to the defense. They called the witness on the 3rd day of trial and the court allowed this new statement to be entered into the trial as well as let the witness testify. Allowing the witness and the statements after the trial had begun is late discovery and direct violation of Brady v. Maryland. The defense counselor objected to the witness. But the court over ruled, and the witness was allowed. The allowance of this witness prejudices the defendant's trial and is a violation of Brady v. Maryland, as well as the defendant's 5th, 6th, and 14th amendment rights. The unfair prejudice for the jury to base its decision on the witness statement and not the evidence. This could have changed the outcome of the trial for the defendant. As the witness is the girlfriend of the other state witness who said he moved the body and drove the victims' car. However, the state decided to proceed with their case is the prosecutor's choice, but the defendant still has right's and they are obligated to uphold the law.

ABUSE OF DISCRETION

1. The defendants' trial began on June 7, 2021. The defendant contends that during his trial the court allowed the prosecutor and judge to abuse their discretion. The law states "The court is bound by the trial courts factual findings unless they are clearly erroneous. State v. Quattlebaum 338 SC 441 (2000)". On April 16, two of the state's witnesses entered the solicitor's office and gave a statement. During the trial the prosecutor stood before the court and stated she had two new statements from Ms. Guyton and Mr. Parker (witnesses), weeks after the state had received the statements from Guyton. The prosecutor still failed to issue the defense a copy of Guyton's full statement until several days into the trial. The law states clearly, a late admission of any evidence violates Brady v. Maryland.

2. The prosecutor had possession of the statement prior to the defendant's court date, and intentionally withheld this statement until after the trial had already begun. The statement was to help corroborate the statement made by the state's only witness. During cross examination it was relayed that Guyton had never made a documented statement on record. Guyton is the live – in girlfriend of the witness, and sat with him while he gave his statement to the prosecutor. The defense objected to the court allowing Guyton's testimony, as her testimony is unreliable. The court rejected the defenses objection, and allowed Guyton to testify as a corroborating witness. This is to help bolster the state's eye witness testimony, from her husband. Although through her own testimony Guyton

admitted to not being present until after her husband returned home. The court abused its discretion by submitting an improper corroborating testimony which derived from an illegal error committed and allowed by court officials and officers of the law. By allowing the jury to hear Guyton's statement, while trying to improperly bolster the witness testimony, the court violated Rule 801(d)(1)(B).

3. The evidence shows that Guyton's motive was to support her boyfriend's testimony. The court by over ruling the defenses' objection and allowing Guyton to testify prejudiced the jury during the defendant's trial by allowing the prosecutor to enter a late statement for the jury to hear. In allowing the statement the violated rule 801(d)(1)(B), as well as rule 403 of the SCRE, which is a direct correlation to violating the defendant's 5th, 6th, and 14th amendment rights. Guyton's testimony is a violation of Rule 801(d)(1)(B) and Rule 403 because during cross examination the witness (Mr. Parker) stated "He doesn't remember what happened the night of the offense and that there was no argument, no tension, and everything was cool." This statement from the eye witness shows that Guyton had an improper motive to protect the credibility of the state's eye witness. The trial court abused its discretion allowing the jury to base its judgement from the improper statement and improper bolstering testimony, and prejudiced the defendant. As well as violates the defendants' 5th, 6th, and 14th amendment rights (State v. Saltz, 2001).
4. The appellant argues the trial court erred in ruling on the admissibility of prior inconsistent statements of witnesses. In the first instant, appellant asserts the

trial court erroneously permitted hearsay to bolster the witness testimony. In State v. Saltz the courts held that "erroneously admitting corroborating testimony is not harmless merely because it is cumulative. On the contrary, it is precisely this cumulative effect which enhances the devastating impact of improper corroboration" 346 SC 124. Had the jury not heard the erroneous corroborating statements the defendant trial verdict would have been different. By the law, and clearly stated, because of these errors made by the state, the defendant request that the court remand and vacate said conviction.

Abuse of Discretion

The defendant's trial began June 7, 2021. The Court throughout the course of the trial committed error after error, during the course of the trial. The state called to the stand Investigator (John Barron) D.N.A. examiner. Prosecutor (Mr. McElroth) called the witness and asked over a dozen questions and the witness ~~answered~~ ^{Answerd} as the court allowed in an expert's opinion. On page 690 lines 15-19 the witness was asked questions about ~~the~~ D.N.A. line 15-14 of the trial transcript and testimony goes as "So what -- we simply just went ahead and extracted it for D.N.A. to see how much DNA was present, and in this case, there was enough

D.N.A. to identify Correy Brown."

Prosecutor Mcglothlin continued to ask the witness more questions. on Page 691 line 16-18

Mr. Mcglothlin asked Q "Looking at the description on "16" being being a door handle inside the vehicle, is it your opinion that that is most likely some form of touch D.N.A.?"

The witness John Barron on line 19 of Page 691 stated A. yes. I mean, based ~~upon~~ upon looking at the quantity of D.N.A. That would be most consistent with somebody touching it, yes.

The Courts abused Its discretion by allowing the witness to testify to the touch D.N.A. without having a "counsel" hearing heard, This violates state v Phillips 844 SE 2d 651 (2020), stating the mere mentioning of touch D.N.A.

Without the "Counsel" hearing being performed violates rule 402 and Rule 403(b). This violates State v Phillips (2020) and the defendants 5th 6th and 14th amendment. Also the Prosecutor Kathryn Cavanaugh stated during the closing argument on page 904 line 22-24 stating to the jury, "That same Back seat that has His D.N.A. on the Interior door handle." This statement during the states closing ~~argument~~ argument displayed prosecutorial misconduct, it violates state v. Phillips (2020) Also the mere mentioning of touch D.N.A. during closing argument(s) violates Rule 403(b) and the defendants 5th 6th and 14th amendment. The defendant Requests A new trial for the error or the offense vacated.

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SC Court of Appeals

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