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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to ask during voire dire whether potential jurors would be able to judge the believability of law enforcement officers by the same standards as any other witness, regardless of his social standing or position in life?

STATEMENT OF THE CASE

On September 15, 2010, the State Grand Jury of South Carolina indicted Appellant Juan Rodolpho Arroyo for trafficking heroin greater than fourteen grams but less than twenty-eight grams. R. 289 – R. 294; Tr. 5, ln. 12—Tr. 6, ln. 9. On March 4, Appellant proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury. Debra R. Chapman and Bradley M. Kirkland represented Appellant, and Cary N. Goings and Curtis A. Pauling, III represented the State. Tr. 1.

On March 5, 2013, the jury found Appellant guilty as charged. Tr. 272, ln. 20—Tr. 273, ln. 8. The court imposed a 25 year prison sentence and a \$200,000 fine. Tr. 283, ll. 16-24.

ARGUMENT

THE TRIAL JUDGE ERRED IN REFUSING TO ASK APPELLANT'S SPECIFIC QUESTION REGARDING WITNESS CREDIBILITY DURING VOIRE DIRE WITHOUT CONSIDERING WHETHER IT WAS NECESSARY TO ENSURE APPELLANT RECEIVED A FAIR TRIAL.

STATEMENT OF FACTS

The State alleged that on April 29, 2010, Appellant sold twenty-five grams of heroin to a confidential police informant. Tr. 83, ln. 20—Tr. 88, ln. 16. Prior to jury selection, Appellant requested that the court pose the following question regarding the credibility of Appellant and any police officers during voire dire:

Jurors are often required to decide which witnesses to believe and which not to believe. In deciding believability, jurors may consider how the witnesses presented themselves, certain factors in the witnesses' background, and many other factors. However, you may not judge believability of a witness based simply on that person's occupation or position in life.

Understanding these rules, would you be able to judge the believability of law enforcement officers and other government witness[es] by the same standard as any other witness?

R. 287 (Court's Exhibit 1).

During voire dire, the court asked potential jurors the following questions, inter alia:

(1) "Is there anything about your experience, your relationship with those individuals that affects your ability to be fair and impartial as a juror in the case?" (2) "Have any of you formed expressed any opinions about this case[?]" (3) "Are any of you aware of any interest, bias or prejudice that you might have for or against the State, for or against the defendant, for or against anyone or any entity involved in this case[?]" and (4) "Can each of you give both the State of South Carolina and the defendant, Mr. Arroyo, a fair and

impartial trial?” The court refused to ask Appellant’s proposed question regarding credibility, and Appellant objected. Tr. 50, ln. 4—Tr. 51, ln. 19.

DISCUSSION

The trial judge erred in refusing to ask Appellant’s specific question regarding witness credibility during voir dire without considering whether it was necessary to ensure Appellant received a fair trial. The scope and manner of conducting voir dire are within the sound discretion of the trial judge. *State v. Wise*, 359 S.C. 14, 23, 596 S.E.2d 475, 479 (2004). The failure to exercise discretion is itself an abuse of discretion. *State v. Allen*, 370 S.C. 88, 95, 634 S.E.2d 653, 656 (2006). To constitute reversible error, a limitation on questioning must render the trial “fundamentally unfair.” *State v. Hill*, 331 S.C. 94, 104, 501 S.E.2d 122, 127 (1998). “In the final analysis, what is constitutionally mandated is the selection of a fair and impartial jury. . . . [T]he trial judge has the discretion and the duty to monitor the voir dire so as to ensure that the jury selected measures up to the constitutional standard.” *State v. Hill*, 361 S.C. 297, 310, 604 S.E.2d 696, 702 (2004).

At the trial below, Appellant posed a question specifically regarding the potential jurors’ assessment of credibility based on the witness’s standing or social status in life. The question was important because Appellant is a Hispanic immigrant, and the State planned to call as witnesses law enforcement officers. The trial judge summarily refused to ask the question and never examined its import or possible impact in ferreting out jurors with unacceptable preconceptions about the credibility of Hispanic immigrants versus law enforcement officers. This absence of analysis was a lack of discretion in its most bare form.

Further, this abuse of discretion rendered the trial fundamentally unfair. Laymen naturally regard law enforcement with esteem and defer to their authority. On the other hand, immigrants are often viewed in our society as subversive to the law. Thus, a specific inquiry into these preconceptions—beyond the ordinary conversations about credibility—was necessary to ensure that the jurors selected would initially treat witnesses on equal footing.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his conviction and remand for a new trial. Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of January, 2014.

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IN THE COURT OF APPEALS

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William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

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APPELLATE CASE NO. 2013-000580

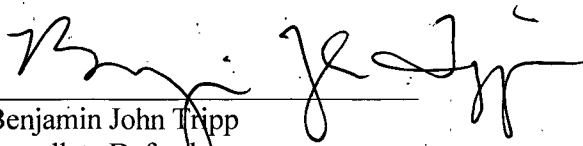
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Juan Arroyo states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on March 5, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Juan Arroyo.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of January, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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APPELLATE CASE NO. 2013-000580

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (March 4 – 5, 2013)
- (3) Court's Exhibit #1

I certify that this designation contains no matter which is irrelevant to this appeal.

January 27, 2014



Benjamin John Tripp
Appellate Defender

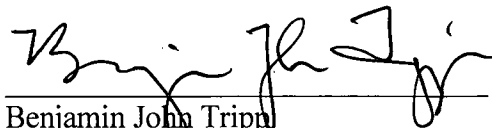
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 27, 2014

A handwritten signature in black ink, appearing to read "Benjamin John Tripp", written over a horizontal line.

Benjamin John Tripp
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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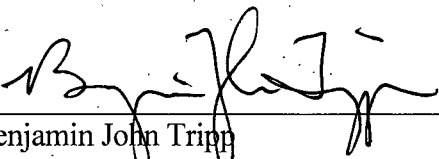
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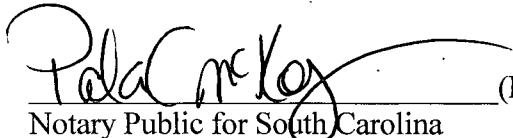
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Cary N. Goings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Juan Arroyo, #354538 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 27th day of January, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2014.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.