

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case Nos.: 2010GS1008190 and 2010GS1008191
Appellate Case No.: 2012-213248

THE STATE OF SOUTH CAROLINARespondent,

v.

DENORRIS HALLAppellant.

INITIAL REPLY BRIEF OF APPELLANT DENORRIS HALL

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ARGUMENT

Appellant relies upon the Initial Brief and this Reply Brief to respond the Respondent's argument with the following additions:

I. Issue Preservation

Respondent contends that the trial court properly denied Appellant's Motion for a Mistrial because there was no violation of *Brady v. Maryland*, 373 U.S. 83 (1963) or Rule 5 of the South Carolina Rules of Criminal Procedure. In support of its contention, Respondent argues that the issues raised in this appeal were not properly preserved. (Resp'ts Br. 9.) However, the record establishes that the trial court did decide the Appellant's motion and the issues therein were ruled upon by the trial court.

Counsel for the Appellant based his motion for a mistrial upon the newly discovered information that the victim was able to identify the shooter. (Tr. p. 119, lines 1-22.) After hearing the victim's proffered testimony, the trial court allowed the victim to identify Appellant in the presence of the jury and decided to continue the motion for mistrial until the following morning. (Tr. p. 124, line 3 – p. 128, line 21.) At that time, Appellant's counsel argued that only information available indicated that there were two black males involved in the shooting and that Mr. Smith, the co-defendant, admitted that he was the shooter. (Tr. p. 162, line 15 – p. 164, line 25.) Appellant's counsel further argued that the State violated Appellant's due process rights by withholding this vital information. (Tr. p. 164, lines 22-25.) Based upon the arguments of counsel, the trial court then denied the motion for a mistrial and allowed the previous in-court identification to stand. (Tr. p. 166, line 23 – p.167, line 12.) Clearly, the trial court ruled

upon the motion for a mistrial, and therefore, Appellant's right to appeal was properly preserved.

II. *Brady v. Maryland*

Respondent contends that there was no violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The Appellant disagrees. In *Brady*, the United States Supreme Court held that suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Id.* The overriding theme of the *Brady* line of cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. See *Riddle v. Ozmint*, 369 S.C. 39, 46, 631 S.E.2d 70, 76 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419 (1995)). An individual asserting a *Brady* violation must demonstrate that evidence: (1) is favorable to the accused; (2) is in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. *Riddle*, 369 S.C. at 44, 631 S.E.2d at 73 (citing *Kyles v. Whitley*, 514 U.S. 419 (1995); *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999)).


Here, Appellant's counsel argued that under *Brady*, the victim's ability to identify Appellant should have been disclosed by the State. (Tr. p. 162, lines 2-7.) Essentially, the fact that no one could identify the Appellant was favorable to him. Further, the evidence produced by the State indicated that the co-defendant admitted to the shooting. (Tr. p. 164, lines 6-9.) As applied to the *Brady* factors, the State was aware that no proper identification of Appellant as the shooter had been made, and the State suppressed

the information regarding the identification, which was material to the Appellant's guilt or innocence.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that this Court should grant a new trial in this matter.

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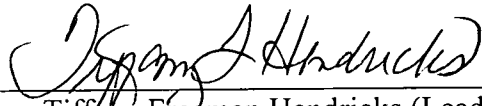
v.

DENORRIS HALLAppellant.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2014, addressed to its attorney of record, Christine J. Catoe, Assistant Attorney General, Office of the South Carolina Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

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April 23, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
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Columbia, South Carolina 29201

Re: ***State of South Carolina v. Denorris Hall***
Appellate Case No. 2012-21348

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the Initial Reply Brief of Appellant in the above-referenced matter. Please file the original and return a filed-stamped copy to my office via my courier.

By copy of this letter I am advising counsel for the Respondent, Christine J. Catoe, of my communication with the Court and serving a copy of the same as evidenced by the Proof of Service.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Tiffany F. Hendricks
Bar No.: 70678

TFH/mdl
Enclosures

cc: Christine J. Catoe, Esquire
Robert M. Dudek, Esquire

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