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JUN 02 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRYAN REARICK,

APPELLANT

APPELLATE CASE NO. 2014-001692

MOTION TO CERTIFY CASE FOR REVIEW BY THE
SOUTH CAROLINA SUPREME COURT

Pursuant to Rule 204(b) SCACR appellant, Bryan Rearick, through his undersigned attorney motions this Court to certify this case for review before it is determined by the Court of Appeals. There is a significant legal principle of major importance in this case involving double jeopardy. The trial judge declared a mistrial, on her on motion, over the objection of the defense in this case. The matter was then appealed, and is pending in the Court of Appeals.

Defense counsel argued below, and appellant counsel continues to argue on appeal, as evidenced in the brief attached to this motion as Exhibit A, that the mistrial granted on the trial judge's own motion in this case essentially allowed the poorly

prepared inept prosecution an opportunity to regroup, and marshal it's evidence against appellant. It was not going to be able to survive a directed verdict motion.

The present precedent in this state concerning an appeal at this stage is State v. Miller, 289 S.C. 426, 346 S.E2d 705 (1986). Miller holds that a defendant cannot raise the constitutional prohibition against being placed twice in jeopardy for the same offense under the Double Jeopardy Clause until he has been subsequently subjected to trial and sentenced for the offense. Appellant intends to move to argue against this precedent because he strongly maintains it conflicts with applicable United States Supreme Court precedent as enunciated in Abney v. United States, 431 U.S. 651 (1977). Abney contains substantial analysis of the Federal constitutional ban against double jeopardy. Abney demonstrates why an appeal *now* is required. Abney holds that an adverse ruling on a motion to dismiss on Double Jeopardy Grounds is a "final decision," and it is immediately appealable.

The Court of Appeals in this case would be bound by this Court's holding in State v. Miller, supra. Consequently, this important federal constitutional issue would not have an opportunity to be resolved by the Court of Appeals. Judicial economy would therefore be better suited if this court, as the highest Court in this state, certifies this case for review. Counsel most respectfully will then demonstrate to this Court that procedural rules cannot trump Federal Due Process guarantees, a principle soundly enunciated in Chambers v. Mississippi, 410 U.S. 284 (1973).

WHEREFORE, the undersigned appellate counsel respectfully requests this Court to grant the motion to certify this case for review.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

June 2, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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THE STATE,

RESPONDENT,

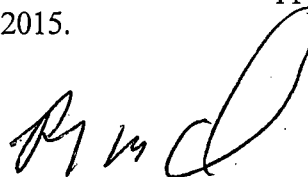
V.

BRYAN REARICK,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion to Certify Case for Review by the South Carolina Supreme Court in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and South Carolina Court of Appeals, 1015 Sumter Street, Columbia, SC 29201, this 2nd day of June 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of June, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.