

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUN 15 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRYAN REARICK,

APPELLANT

APPELLATE CASE NO. 2014-001692

\_\_\_\_\_  
RETURN TO MOTION TO  
DISMISS APPEAL AS INTERLOCUTORY  
AND REQUEST TO HOLD CASE  
IN ABEYANCE PENDING SUPREME COURT  
RULING ON MOTION TO CERTIFY

1) Undersigned Counsel respectfully requests that this Court deny the state's motion to dismiss his appeal as it is presently pending in the Supreme Court on the motion filed June 2, 2015 to certify this case for review by the Supreme Court. 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 before this Court, and on a motion to certify it to the Supreme Court. Appellant

requests that this Court hold this case in abeyance pending a ruling on his motion to certify the case.

2) Defense counsel argued below, and appellant counsel continues to argue on appeal, 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 its evidence against appellant. It was not going to be able to survive a directed verdict motion for several reasons including the fact that the blood-alcohol sample taken at the order of the state Trooper, *without a warrant*, would have to be suppressed or this case would be reversed on appeal.

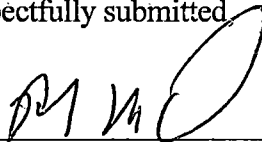
3) The present precedent in this state concerning an appeal at this stage is State v. Miller, 289 S.C. 426, 346 S.E2d 705 (1986). Miller holds that a defendant cannot raise the constitutional prohibition against being placed twice in jeopardy for the same offense under the Double Jeopardy Clause until he has been subsequently subjected to trial and sentenced for the offense. Appellant intends to move to argue against this precedent in the Supreme Court 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.

4) This Court would be bound by our Supreme Court's holding in State v. Miller, *supra*. Consequently, this important federal constitutional issue would not have an opportunity to be resolved as explained in appellant's motion to certify. Judicial economy would therefore be

better suited if the Supreme Court, as the highest Court in this state, certifies this case for review. Counsel most respectfully will then demonstrate to that Court that procedural rules cannot trump Federal Due Process guarantees, a principle soundly enunciated in Chambers v. Mississippi, 410 U.S. 284 (1973).

WHEREFORE, undersigned counsel requests that the state's motion to dismiss appeal be denied for the reasons stated above, and in the motion to certify the case to the Supreme Court. Appellant also requests that this case be held in abeyance pending the Supreme Court ruling on the motion to certify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

June 15, 2015

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IN THE COURT OF APPEALS

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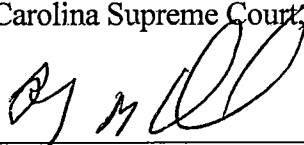
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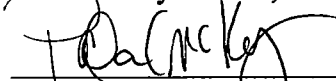
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the return to the motion to dismiss appeal as interlocutory in the above-referenced case has been served upon opposing counsel, Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the South Carolina Supreme Court, this 15<sup>th</sup> day of June, 2015



\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me  
this 15th day of June, 2015.

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

 ORIGINAL



**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

June 15, 2015

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: State v. Bryan Rearick, Appellate Case No. 2014-001692

Dear Ms. Kitchings:

Enclosed please find an original and six copies of the return to the motion to dismiss appeal as interlocutory along with a certificate of service.

Sincerely,



Robert M. Dudek  
Chief Appellate Defender

RMD/pcm

Enclosure

cc: Deborah R.J. Shupe, Esquire