

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 12 2016

SC Court of Appeals

Appeal from Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEON LILLY,

APPELLANT

APPELLATE CASE NO. 2015-000179

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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Cases

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STATEMENT OF ISSUE ON APPEAL

Whether the record supports the trial judge's denial of Appellant's motion to dismiss the drug distribution charge against him based on a *Brady* violation where the solicitor refused to provide Appellant's trial counsel with a copy of a video of an alleged undercover drug buy and information about a woman in the video who was involved in the buy and working off criminal charges.

STATEMENT OF THE CASE

On October 8, 2013, the Edgefield County Grand Jury indicted Appellant Leon Lilly for distribution of methamphetamine. R. 284—R. 285. On January 20, 2015, Appellant proceeded to trial before The Honorable R. Knox McMahon and a jury. Aimee Zmroczek represented Appellant, and Ervin Maye and Frank Young represented the State. R. 1. The jury found Appellant guilty as charged, R. 267, lines 8-12, and Judge McMahon sentenced him to eight years' imprisonment, R. 291, lines 12-18.

ARGUMENT

The record does not support the trial judge's denial of Appellant's motion to dismiss for a *Brady* violation because the solicitor did not timely disclose to Appellant the identity of the woman police used as an undercover informant in the video-recorded drug sale.

FACTS

In his opening statement the solicitor alleged that on January 17, 2013, officers from the Aiken County Sheriff's Department used a local man named Michael Payne as an undercover informant to buy methamphetamine from Appellant at his home. The officers fitted him with a covert video camera and "searched him to make sure he didn't have any drugs on him ahead of time . . . to make sure he . . . wasn't setting anybody up." R. 117, line 1—R. 122, line 24. Prior to trial, Appellant moved to dismiss the charge based on the Solicitor's failure to provide information about a woman who appeared in the video of the drug buy. The woman appeared to be working with Michael Payne in conducting the buy. R. 54, line 19—R. 57, line 18. Appellant's trial counsel told the judge that the solicitor initially provided her twelve pages of discovery for the charge at issue via email on December 5, 2013. Although she requested to see copies of the video, the Solicitor told her she could not have one but could come to view it. After viewing the video, she repeatedly requested information about the woman but received no information until January 7, 2014, just thirteen days before trial. Trial counsel asked for follow-up information, and on January 16, 2014, she received "a very limited confidential informant agreement and some additional warrant information." R. 55, line 3—R. 56, line 14.

Trial counsel told the judge that when the solicitor finally provided the woman's name, trial counsel discovered that the woman had charges against her, which were the

same as the charges Michael Payne was facing; however, the State had not proessed her charges. Trial counsel explained that she had no information relating to, nor did the video show, police officers searching the woman prior to the alleged buy for drugs. R. 56, line 15—R. 57, line 20.

DISCUSSION

The record does not support the trial judge's denial of Appellant's motion to dismiss for a Brady violation because the solicitor did not timely disclose to Appellant the identity of the woman police used as an undercover informant in the video-recorded drug sale. Under *Brady v. Maryland*, 373 U.S. 83 (1963), the State has a duty to disclose evidence that is favorable to the defendant. *State v. Frazier*, 394 S.C. 213, 223, 715 S.E.2d 650, 655 (Ct. App. 2011) (citing *Brady v. Maryland*, 373 U.S. 83 (1963)). "The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching." *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). "The suppression by the [State] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." *Brady*, 373 U.S. at 87. "A defendant asserting a *Brady* violation must demonstrate that the evidence (1) is favorable to the accused; (2) 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* at 39, 631 S.E.2d at 73.

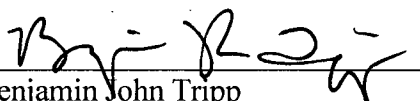
In this case, the record shows the solicitor's failure to provide information about the woman satisfied the four showings required for a *Brady* violation. First, the identity of the woman constituted evidence favorable to Appellant because she was present at the alleged buy and had a motive for turning over to police methamphetamine allegedly

bought from Appellant. The woman was facing criminal charges from the State and cooperated in the buy to receive reduction or dismissal of her charges. Thus, misrepresenting to police that she had made a successful transaction if Appellant never sold her drugs was in her best interest. Second, the solicitor had possession of the evidence insofar as he had a copy of the video and knew the police officers who coordinated the alleged buy with the woman. Third, the solicitor suppressed the evidence by refusing to timely provide trial counsel with a copy of the video or the woman's identity. Trial counsel requested a copy of the video weeks before trial, and the Solicitor refused. Even after she managed to view the video, she repeatedly requested information about the woman but received no information until just thirteen days before trial. Finally, the evidence was material to Appellant's guilt because evidence that the woman was not searched before the alleged buy and that she had a motive misrepresent where the methamphetamine came from could create reasonable doubt that Appellant sold it to her and Michael Payne. Accordingly, the record does not support the trial judge's denial of Appellant's motion under *Brady*, and this Court should reverse.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the trial judge and vacate his conviction.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2016.

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Appeal from Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

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LEON LILLY,

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APPELLATE CASE NO. 2015-000179

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leon Lilly states:

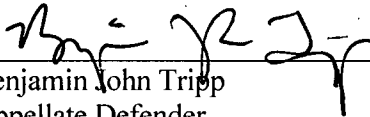
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on January 20-21, 2015, 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 Leon Lilly.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2016.

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**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) Transcript of January 20, 2015.

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

January 12th, 2016


Benjamin Joan 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

12 January 2016



Benjamin John Tripp
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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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 J. Benjamin Aplin, 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 Leon Lilly, #362785 at Allendale Correctional Institution, this 12th day of January, 2016.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2016.

(L.S.)

Notary Public for South Carolina
My Commission Expires: May 12, 2025