

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County
Carmen T. Mullen, Circuit Court Judge

RECEIVED

MAY 25 2016

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

BRYAN REARICK,

APPELLANT

APPELLATE CASE NO. 2014-001692

MOTION TO ARGUE AGAINST PRECEDENT

The undersigned respectfully shows the Court:

1. The present case is **scheduled for oral argument before this Court on June 15, 2016**. It involves two issues: Whether the trial court erred by ordering a mistrial over appellant's objection where the state could not marshal its evidence; and, the issue of whether the granting of a mistrial over appellant's objection is immediately appealable since it constitutes double jeopardy under controlling Federal United States Supreme Court precedent.
2. Appellant now moves, as promised in his brief of appellant, to argue against the precedent of State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986), the seminal contrary state

case to Abney v. United States, 431 U.S. 651, 660-62 (1977). In Abney v. United States, 431 U.S. 651 (1977), the United States Supreme Court held that a pre-trial order denying a defendant's motion to dismiss on double jeopardy grounds was a "final decision," and that it was immediately appealable. The Supreme Court noted, "the rights conferred on a criminal accused by the double jeopardy clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence." Abney v. United States, 431 U.S. at. 660.

3. The "gotcha" nature of Miller saying you have only a statutory right of appeal, resulting in you being denuded of your Federal Double Jeopardy rights, is repellent. The Romans noted, "Ubi Jus, Ibi Remedium," "where there is a right there is a remedy."

4. Respectfully, any argument put forward by the state that appellant's assertion of double jeopardy here cannot be maintained unless and until he is convicted and sentenced must give way to the supreme law of the land as explained in Abney v. United States. "Initially, we note that an interlocutory appeal before retrial is proper in this kind of case, for otherwise the defendant could be subjected to the very thing the double jeopardy clauses are designed to guard against, *retrial for the same offense*. Abney v. United States, 431 U.S. 651, 660-62 (1977). (emphasis added).

WHEREFORE, appellant moves to argue against the precedent of State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986), and any other precedent which holds that the granting of a mistrial for the government, over the defendant's objection, is not immediately appealable as constituting double jeopardy.

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

Attorney for Petitioner

this 25th day of May, 2016.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Argue Against Precedent in the above referenced case has been served upon opposing counsel, Deborah R. J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Bryan Rearick, at 92 Shanklin Road, Lot 10, Beaufort, SC 29906, this 25th day of May, 2016.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 25th day of May, 2016.

Maui Meadows (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.