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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEAN GUISEPPI DISTASIO,

APPELLANT

APPELLATE CASE NO. 2015-002130

SUPPLEMENTAL RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
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1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 The State Of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Dean G. Distasio,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

Warrant No: 2014A4610500072

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 2015 MAR 31 AM 11:06
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

**MOTION FOR BRADY AND
 OTHER FAVORABLE MATERIAL AND
 INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Defendant, by and through her undersigned counsel, and files this Motion for Brady and other favorable material and incorporated Memorandum of Law and, as grounds therefore, the undersigned would show as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 US 83, 83 S.Ct. 1194 (1963), the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under Brady, and its progeny, as well as the language and spirit of Giglio v. United States, 405 US 150, 92 S.Ct. 763 (1972); and Napue v. Illinois, 360 US 264, 79 S.Ct. 1173 (1959); that he is entitled to any and all records, memoranda and documents, as well as a statement of the County Solicitor and all appropriate state, federal and local law enforcement agencies as to:

(a) Any and all promises, rewards and inducements made to all witnesses herein, whether or not they have testified before any state or Federal Grand Jury, or other investigative

agency, and regardless of whether they will testify at the trial herein.

(b) Any offers or grants of immunity in this case to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this or any other case, related or otherwise.

(c) Whether any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric examination, treatment, mental status examination or care, and, if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.

(d) Any "inconsistent" statements of a particular witness or between witnesses.

(e) Any and all "rap" sheets or histories of arrests or convictions of any unindicted co-conspirator or State witness.

3. In addition, Defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.

4. Defendant also contends that he is entitled to any statement or admissions by a witness for or on behalf of the State with respect to the witness' memory or loss thereof.

5. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness' statement or a particular letter or exhibit can "help" the Defendant.

6. To the extent that specifically is required to demonstrate the materiality of the requested information, see United States v. Agurs, 427 US 97 (1976), the Defendant submits that this requirement is satisfied in this Motion.

7. To disclose to counsel for the defense any and all evidence in the actual or constructive possession of the State of which is of a favorable character for the Defendant in this case and material to the issue of guilt or innocence or to punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitutional, including, but not limited to, the following materials:

(a) Any oral, written or recorded statements made by any person to the police, to the Solicitor, or to the Grand Jury which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit or contradict the testimony of any witness whom the Government will call at the trial of the case. Brady v. Maryland, 373 US 83, S.Ct. 1194 (1963).

(b) Any police investigation report made to the police which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the case. Giles v. Maryland, 386 US 66, 87 S.Ct. 793 (1967).

(c) The names and addresses of witnesses who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the case.

(d) Any information or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the Government will call at the trial of the case. Napue v. Illinois, supra; Giglio v. U.S., supra.

(e) Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit or contradict the testimony of any witness whom the State will call at the trial of the case. Ashley v. Texas, 319 F.2d 80 (5th Cir.). cert.denied, 375 US 931, 84 S.Ct. 331 (1963).

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK)

The State Of South Carolina,)

Plaintiff,)

vs.)

Dean G. Distasio,)

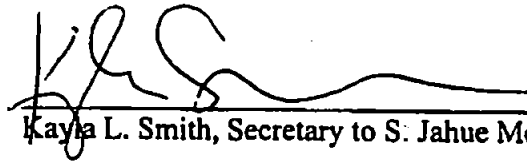
Defendant.)

Warrant No: 2014A4610500072

CERTIFICATE OF SERVICE BY MAIL

I, Kayla L. Smith, legal assistant to S. Jahue Moore, Jr., with the law firm of Moore Taylor Law Firm, P.A., hereby certify that I served a copy of the **MOTION FOR BRADY AND OTHER FAVORABLE MATERIAL AND INCORPORATED MEMORANDUM OF LAW**, on the following person by depositing a copy of the same in the United States Mail, first class delivery, with proper postage affixed thereto, this 26th day of March, 2015:

Thomas M. Hogge
York County Solicitor's Office
1675-1A York Hwy
York, SC 29745



Kayla L. Smith, Secretary to S. Jahue Moore, Jr.

West Columbia, South Carolina

CERTIFIED TRUE COPY
2015 MAR 31 AM 11:06
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

The State Of South Carolina,)
Plaintiff,)
v.)
Dean G. Distasio)
Defendant.)

Warrant No: 2014A4610500072

**REQUEST FOR INFORMATION PURSUANT
TO RULE 5 OF THE SOUTH CAROLINA
RULES OF CRIMINAL PROCEDURE**

CERTIFIED TRUE COPY
2015 MAR 31 AM 11:07
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY SC

TO: YORK COUNTY SOLICITOR'S OFFICE

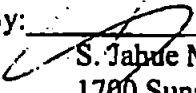
The Defendant, by and through her undersigned attorney, hereby requests, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, that the Defendant be allowed to inspect and copy or photograph all of the information subject to production pursuant to the aforementioned Rule.

Counsel hereby requests the State to advise as to the time and place when the aforementioned material shall be made available for inspection and copying.

Counsel hereby requests any and all documents concerning the arresting officer's certification with regard to the datamaster machine in this case.

In any event, pursuant to Rule 5(3), the undersigned requests a response no later than thirty (30) days after the receipt of this request.

MOORE TAYLOR LAW FIRM, P.A.

By: 
S. Jabue Moore, Jr.
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, S.C. 29171
(803) 796-9160
Attorney for the Defendant

West Columbia, South Carolina
March 25, 2015.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK)


The State Of South Carolina,)
Plaintiff,)
vs.)
Dean G. Distasio,)
Defendant.)

Warrant No: 2014A4610500072

CERTIFICATE OF SERVICE BY MAIL

I, Kayla L. Smith, legal assistant to S. Jahue Moore, Jr., with the law firm of Moore Taylor Law Firm, P.A., hereby certify that I served a copy of the **REQUEST FOR INFORMATION PURSUANT TO RULE 5 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE**, on the following person by depositing a copy of the same in the United States Mail, first class delivery, with proper postage affixed thereto, this 26th day of March, 2015:

Thomas M. Hogge
York County Solicitor's Office
1675-1A York Hwy
York, SC 29745



Kayla L. Smith, Secretary to S. Jahue Moore, Jr.

West Columbia, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that the David Spencer, attorney of record for Respondent, has provided written consent to the submission of this Appendix to the Record on Appeal pursuant to Rule 212, SCACR, and that Appendix to the Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of March, 2017.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County
Honorable Daniel D. Hall, Circuit Court Judge

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THE STATE,

RESPONDENT,

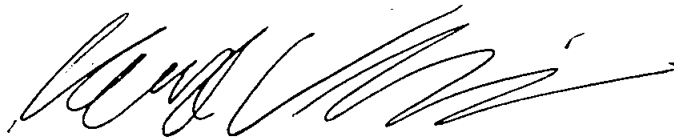
v.

DEAN GUISEPPI DISTASIO,

APPELLANT


CERTIFICATE OF SERVICE

I certify that a copy of the Appendix to the Record on Appeal in the above-referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of March, 2017.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of March, 2017.

 (L.S.)

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