

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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 ORIGINAL

Appeal from Aiken County

William P. Keesley, Circuit Court Judge

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**RECEIVED**

FEB 12 2019

SC Court of Appeals

THE STATE,

Respondent,

v.

DENZIL TORRE JORDAN,

Appellant.

APPELLATE CASE NO 2018-001509

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*ANDERS BRIEF OF APPELLANT*

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JENNIFER E. ROBERTS  
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

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT .....4

The trial court abused its discretion in denying Appellant’s motion  
to sever his trial from that of his codefendant.....4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL .....8

**TABLE OF AUTHORITIES**

Cases

*Anders v. California*, 386 U.S. 738 (1967)..... 8

*State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006)..... 3

*State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) ..... 3

*State v. Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011)..... 3, 5

Rules

Rule 4 ..... 5

Rule 4(b) of the South Carolina Rules of Criminal Procedure ..... 5

Rule 211(b), SCACR ..... 10

**STATEMENT OF ISSUE ON APPEAL**

Did the trial court abuse its discretion in denying Appellant's motion to sever his trial from that of his codefendant?

## STATEMENT OF THE CASE

In 2018, the Aiken County Grand Jury indicted Denzil Torre Jordan (Appellant) for burglary in the first degree, armed robbery, kidnapping, possession of a firearm during the commission of a violent crime, and assault and battery in the first degree. On August 6-9, 2018, Appellant proceeded to a jury trial before the Honorable William P. Keesley. Derek Bush and Grant Gibbons represented Appellant at trial. Assistant Solicitors Bradley McMillian and Samuel Grimes prosecuted the case.

The jury returned a verdict of guilty, and Judge Keesley sentenced Appellant to an aggregate sentence of twenty-five (25) years' imprisonment. On August 14, 2018, Appellant filed a Notice of Appeal. This appeal follows.

## STANDARD OF REVIEW

““A motion for severance is addressed to the sound discretion of the trial court.”” *State v. Spears*, 393 S.C. 466, 475, 713 S.E.2d 324, 328 (Ct. App. 2011) (quoting *State v. Simmons*, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002)). ““The trial court’s ruling will not be disturbed on appeal absent an abuse of that discretion.”” *Id.* (quoting *State v. Rice*, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006)). ““An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.”” *Id.* (quoting *Rice* at 613, 629 S.E.2d at 395).

## ARGUMENT

**The trial court abused its discretion in denying Appellant's motion to sever his trial from that of his codefendant.**

### **Relevant Facts**

The State tried Appellant for burglary in the first degree, armed robbery, kidnapping, possession of a firearm during the commission of a violent crime, and assault and battery in the first degree along with his codefendant. Pretrial, both defendants moved to sever their trials before Judge Keesley. R. 23, line 24–R. 25, 9, line 4. The motion had previously been brought before the Honorable Doyet A. Early, III, who had denied the motion. R. 23, lines 13–23; R. 25, lines 1–4; R. 26, line 20–R. 27, line 7. The trial judge doubted his ability to hear the motion because Judge Early had denied it previously, but he allowed the parties to make arguments and preserve the record. R. 23, lines 15–23.

Defense counsel began by arguing that a conflict existed between Rule 4, SCrimP, and the case law concerning severance. R. 23, line 24–R. 24, line 3. His contention was that because the language in the case law indicates a motion for severance is addressed to the sound discretion of the trial court, the motion should be heard and ruled upon by Judge Keesley. R. 24, lines 1–14. He argued that not severing the trials would prevent the jury from making a reliable judgement about Appellant's guilt and that *Bruton* issues would arise from phone calls of his codefendant. R. 24, lines 14–22. The State argued that the redacted version of the phone call would not create a *Bruton* issue. R. 31, lines 2–7.

After listening to all arguments, the trial judge first found that the issue had already been ruled upon by Judge Early. However, he further determined that if it were proper for him to rule on it, he would also deny the motion to sever. R. 33, lines 1–8.

## Discussion

Rule 4(b) of the South Carolina Rules of Criminal Procedure provides that “[i]f any motion be made to any judge and be denied, in whole, or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.” Rule 4(b), SCrimP.

“A motion for severance is addressed to the sound discretion of the trial court.” *State v. Spears*, 393 S.C. 466, 475, 713 S.E.2d 324, 328.

Because Judge Early did not end up being the trial judge for the case despite ruling on the motion to sever, it was improper for Judge Keesley to base his ruling on that earlier ruling by a different judge. While Rule 4 seems to indicate that another judge cannot change an order of the judge who already denied a motion, the case law in *Spears* directly contradicts this by stating the “trial court” is the one that has the discretion to rule on a motion to sever. As Judge Early did not try the case, he was not the “trial court.” Thus, to the extent Judge Keesley based his own ruling on Judge Early’s and did not fully make a ruling on the record, that was an abuse of his discretion.

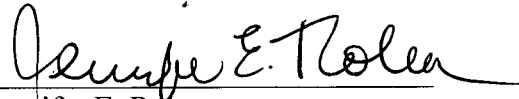
Moreover, to the extent Judge Keesley determined he too would have denied the motion to sever, he abused his discretion. *Spears* makes clear that a judge may order the indictments tried together **only** if a defendant’s substantive rights would not be prejudiced. “A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a defendant or prevent the jury from making a reliable judgment about a codefendant’s guilt.” *Spears*, 393 S.C. at 475, 713 S.E.2d at 329. Here, Appellant presented factors that weighed in favor of granting his motion to sever.

First, as defense counsel pointed out, being tried along with his codefendant prevented the jury from making a reliable judgment about Appellant's guilt. R. 24, lines 14–17. Second, the potential for a *Bruton* issue with the phone call should have been sufficient to cause the trial judge to grant the severance motion. At that point in pretrial motions, defense counsel did not know what parts of the phone calls might be admitted. The State served defense counsel with recordings of nine phone calls, and defense counsel knew that one of them implicated his client. R. 6, lines 3–4. Even though the State assured Judge Early it had no intention of introducing evidence that would create a *Bruton* issue, defense counsel had every right, and in fact was bound, to advocate for his client by pointing out a potential *Bruton* issue in evidence the State indicated it might use at trial. R. 9, lines 16–23.

Judge Early took the motion under advisement and ruled from the bench the next day, saying he had “not found that there's any serious risk that a joint trial would compromise . . . [t]he trial rights of any of the codefendants.” R. 14, lines 1–10. Specifically, he stated, “I'm not aware of any statement given by either codefendant implicating the other[;] therefore, I don't think there is [sic] any issues dealing with—that involve *Bruton*.” This was an abuse of discretion. Thus, when Judge Keesley agreed with his ruling, he in turn abused his discretion.

**CONCLUSION**

Based on the above arguments, Appellant's conviction and sentence should be reversed.



Jennifer E. Roberts  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County

William P. Keesley, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DENZIL TORRE JORDAN,

APPELLANT.

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PETITION TO BE RELIEVED AS COUNSEL

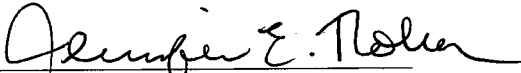
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Counsel for Denzil Torre Jordan states:

- (1) She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
- (2) She has reviewed the record of Appellant's trial before the Honorable William P. Keesley, which was held on August 6-9, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
- (3) She has, pursuant to *Anders v. California*, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the hearing.

WHEREFORE, she asks the Court to relieve her as counsel for Denzil Torre Jordan.

Respectfully Submitted,

  
Jennifer E. Roberts  
Appellate Defender

This 12th day of February, 2019.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
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William P. Keesley, Circuit Court Judge

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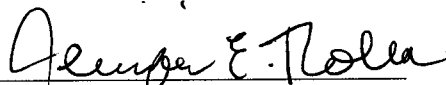
Appellant.

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentence sheets;
- (2) Motion Transcript dated July 24–25, 2018;
- (3) Entire Trial Transcript dated Aug. 6–9, 2018;
- (4) Defendant Jordan's Exhibit #2;
- (5) Defendant Moss's Exhibit #1;
- (6) Court's Exhibit #3 and #7.

I certify that this designation contains no matter which is irrelevant to this appeal.  
February 12, 2019.

  
Jennifer E. Roberts  
Appellate Defender

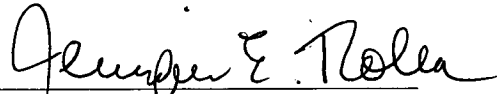
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(803) 734-1330

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."

February 12, 2019.



Jennifer E. Roberts  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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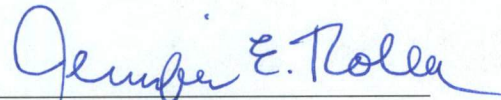
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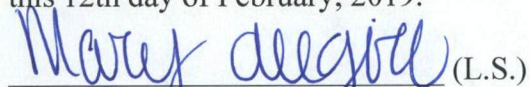
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned 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 have been served on Denzil Torre Jordan, #377365, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 12th day of February, 2019.



\_\_\_\_\_  
Jennifer E. Roberts  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 12th day of February, 2019.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027.