

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUAN ARROYO #354538

APPELLANT,

APPELLATE CASE NO.: 2013-000580

APPELLANT'S PRO SE RESPONSE TO ATTORNEY'S ANDERS BRIEF

Juan Arroya # 354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

(pro se litigant)

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MAR 19 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL RAISED BY APPELLANT

(I). Was the trial court in Appellant's subsequent trial deprived of subject matter jurisdiction by a Double Jeopardy Clause violation?

(II). Was Appellant denied his constitutional right to a fair trial where the State concealed potential witnesses and evidence in violation Brady v. Maryland?

STATEMENT OF THE CASE

On September 15, 2010, the State Grand Jury Of South Carolina indicted Appellant Juan Rodolpho Arroyo for trafficking heroin greater than fourteen grams but less than twenty-eight grams. (R.289-R.294; Tr.5, ln.12 -Tr.6, ln.9... The case was first tried November 15, 2011, wherein, a mistrial was declared. (Tr.71, ln.24-25).

The mistrial was granted on Appellant's Attorney's motion asserting prosecutorial misconduct and bad faith. (Tr.72, ln.19-22).

On March 4, 2013, The case was called to trial again, after the jury was selected, during pre-trial proceedings, Appellant's attorney made a motion to dismiss, arguing that the present trial was barred by Double Jeopardy. (Tr.72, ln.19-25)

However, The Motion was denied and the case proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury., the Appellant being represented by Debra R. Chapman and Bradley M. Kirkland, The State was represented by Cary N. Goings and Curtis A. Pauling, III. (Tr.1)

On March 5, 2013, the jury found appellant guilty as charged (Tr.272, ln.20-Tr.273, ln.8). The court imposed a 25 year prison sentence and a \$200,000 fine....

The Appellant filed a timely Notice Of Intent To Appeal, the appeal was assigned to Appellate Defender Benjamin John Tripp of the South Carolina Commission On Indigent Defense, who filed an Anders Brief on January 27, 2014, w/ a Petition To Be Relieved As Counsel.....

On February 6, 2014, Appellant recieved notice from The Clerk Of Court Of The South Carolina Court Of Appeals, dated February 4, 2014, giving Appellant (45) days to file a Response to Ander's Brief, listing any issues Appellant believes should be addressed by the Court., **And Thus,**

On this 10 day of March 2014, Appellant submits the following issues to this Honorable Court which he believes should be addressed.....

ARGUMENT ONE

WAS THE TRIAL COURT IN APPELLANT'S SUBSEQUENT TRIAL DEPRIVED OF SUBJECT MATTER JURISDICTION BY A DOUBLE JEOPARDY CLAUSE VIOLATION?

STATEMENT OF FACTS

On September 15, 2010, the State Grand Jury Of South Carolina indicted Appellant for trafficking heroin greater than fourteen grams but less than twenty-eight grams. (R.289-R.294;Tr.5,ln.12-Tr.6,ln.9)...

The case was first tried November 15, 2011, wherein, a mistrial was granted based on Appellant's Attorney's motion alleging prosecutorial misconduct and bad faith. (Tr.71, ln.24-24) and (Tr.72,ln.19-22).....

On March 4, 2013, The case was called to trial again, after the jury was selected, during pre-trial proceedings, Appellant's Attorney made a Motion To Dismiss, arguing that the present trial was barred by the Double Jeopardy Clause. (72, ln.19-25)...

The motion was denied and the case proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury.

On March 5, 2013, The jury found Appellant guilty as charged. (Tr.272, ln.20-273, ln. 8).....

The court imposed a 25 year prison sentence and a \$200,000 fine. (Tr.283, ln.18-25)

DISCUSSION

There can be no Retrial when bad faith conduct by either the trial judge or the prosecutor is responsible for the mistrial. The 'Double Jeopardy Clause protects defendants from harassment by successive prosecutions and from being required to forgo trial before the original tribunal in order to give the prosecutor a better chance to convict., **See:** United States v. Dinitz, 424 U.S. 600, 96 S.Ct.1075; Downum v. United States, 372 U.S.734, 83 S.Ct.1033; and Gori v. United States 367 U.S.364, 81 S.Ct.1523.....

The Record Of Transcript in Appellant's case indicates that the Appellant's

initial trial which ended in mistrial was the result of prosecutorial misconduct and bad faith. (Tr.72,lns.19-25)....

Therefore, The court did not have 'Subject Matter Jurisdiction' to conduct a trial, which would be barred by the Double Jeopardy Clause Of The State and United States Constitutions.

Although, Appellant's trial attorneys failed him in the following two respects:

- (1). If trial counsel was sure judge had granted the mistrial motion based on prosecutorial misconduct, finding bad faith., Appellant's Trial Attorneys should have ordered the transcript of record from the initial trial to support Motion To Dismiss because of a possible Double Jeopardy Clause violation... (This is assuming the initial Motion For A Mistrial was an 'oral' one and the court's Ruling granting the mistrial was oral)...
- (2) A Motion To Dismiss an Indictment on grounds of Double Jeopardy, An Order denying such a motion is appealable. (Abney v. United States 431 U.S. 651,97 S.Ct. 2034) and (United States v. Jorn 400 U.S. 470,91 S.Ct. 547)... However,Appellant's Trial Attorneys failed to preserve or appeal the Judge's Ruling Denying The Motion.

In spite of these errors by Appellant's Trial Attorneys, The Issue Appellant is raising in this 'Pro Se Brief'a question of 'Subject Matter Jurisdiction', which can be raised at any time. See: (State v. Ervin,333 S.C. 351,510 S.E. 2d. 220 (Ct. App. 1998)...

CONCLUSION OF ISSUE ONE

Therefore, Appellant respectfully ask this Honorable Court to deny Appellate Counsel's 'Petition To Be Relieved As Counsel' and Order him to obtain the Record Of Transcript from the first trial,in relation to the oral motion for mistrial and any oral Ruling from the Bench,and or any written motions or orders; then to amend such records to the Record Of Appeal Before This Honorable Court and then fully Brief the issue to this Court?

ARGUMENT TWO

WAS APPELLANT DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE THE STATE CONCEALED POTENTIAL WITNESSES AND EVIDENCE IN VIOLATION OF BRADY V. MARYLAND?

STATEMENT OF FACTS

The Appellant was indicted by the State Grand Jury Of South Carolina on September 15,2010 for Trafficking heoin greater than fourteen grams but less than twenty-eight grams.(R.289-R.294;Tr.6,ln.9)

The case was first tried November 15,2011,wherein a mistrial was declared.(Tr.72,ln.10-12)

The Appellant's current trial,which is before this court for review, took place on March 4-5,2013.(Tr.1,ln.10-11)....

The State's case consisted of two witnesses,The confidential informant Emigdio Penaloza and Law Enforcement Officer Ryan Curtis Wood.(Tr.174-215) and Tr. 97-152).

The State's assertion throughout the entire discovery process through affidavits,testimony,etc.,that Agent Ryan Woods searched the confidential informants person and car before the alleged control buy.(Tr.111,ln.7-10), and (Tr.142,ln.8-10).., Nowhere in the procedures or process does Agent Wood's or the State prosecutor inform the Defense Team that there was,in fact,another law enforcement officer,who actually conducted the search of confidential informant's car before the controlled drug buy.(Tr.212, lns.16-25)... Then,The confidential informant discloses to the defense legal team that there were several other officers involved. (Tr.213,ln. 1-6).... The Appellant's constitutional right to a fair trial includes the right to call witnesses who might be able to call into question state witnesses credibility,the appellant attorney was denied this right when the state did not disclose these other officers involvement or identities. This also infringed on Appellant's constitutional right to

present a defense.,because the purpose of a confidential informant's person and vehicle being searched prior to a controlled buy by the confidential informant is to prevent Defense Attorneys from raising a defense that the confidential informant brought the drugs with him and claiming they were obtained from a defendant.... See:(Tr.143,ln.9-14)....

There were other witnesses who were present and involved in the search of informant's vehicle prior to the controlled buy,who could have conclusively discredited Agent Wood's testimony,affidavits,and reports,which the Appellant's Attorneys were not made aware of by the prosecution,in violation of (Brady v. Maryland). See:(Tr.212,ln.6-10) and (Tr.212, lines 16-21,22,23,24,25 and (Tr.213,ln.1-6),then see state's key witsnesse's Agent Wood's testimony at (Tr.111,ln.7-10 and Tr.142,lns.8-10)....

This failure on the part of the prosecution to disclose these other witnesses who would have discredited the state's key witness testimony and credibility before the jury deprived the trial proceedings from fundamental fairness and denied Appellant his constitutional rights to a fair trial,.

1. The prosecution had a duty disclose to defense attorney's the names of these other witnesses who were involved in the search of confidential informant's person and car under Brady v. Maryland.
2. The prosecution had a duty to disclose to Defense Attorneys the names of the other officers who were involved and participated,on the scene, of the controlled buy under Brady v. Maryland.

The prosecution's failure to disclose the above information denied Appellant his constitutional right to present a defense,which is a part of the sixth amendment right to a fair trial.

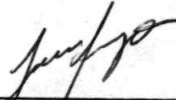
The courts have repeatedly stated,'When a defendant lacks knowledge of material evidence in the prosecution's possession,the waiver of constitutional rights cannot be deemed knowing and voluntary. (Gibson v. State 334 S.C. 515,514 S.E. 2d. 320 (S.C. 1999) Constitutional Law Key 43 (1).

CONCLUSION

Therefore,Appellant respectfully prays that this Honorable Court would Deny Appellate Counsel's Petition To Be Relieved As Counsel and Appellate Counsel Benjamin John Tripp be Ordered to Amend The Record On Appeal to include relevant parts from Appellant's first trial regarding any motion,

transcript, and or written orders requesting or granting the mistrial;
And That Appellate Counsel be Ordered to fully brief the two issues
Appellant has raised in this 'Appellant's Pro Se Response To Attorney's
Ander's Brief And Petition To Be Relieved As Appellate Counsel'.

Respectfully!



Juan R. Arroyo #354538
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990 Wisacky Highway
Bishopville, South Carolina
29010.
(Pro Se Litigant)

This 10 day of March, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

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JUAN ARROYO,

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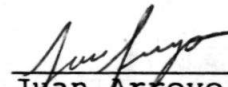
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CERTIFICATE OF MAIL SERVICE

Personally Appeared Before me, Juan Arroyo, Appellant in the above captioned matter, who first being duly sworn, deposes and states the following: That on this 10th, day of March 2014, I placed a copy of my 'Appellant's Pro Se Response To Anders Brief' in the United States Postal mail, postage pre-paid, mailing one copy addressed to Clerk Of Court For The South Carolina Court Of Appeals, Post Office Box 11629 Columbia, South Carolina 29211 and placing another copy in U.S. Postal mail addressing it to: Assitant Attorney General Cary Nicholas Goings, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201.

Respectfully!



Juan Arroyo #354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

(Pro Se Litigant)

3-10-14
Date:

cc:
Benjamin John Tripp, Esquire

March 10th, 2014

Juan Arroyo #354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Clerk Of Court jenney Abbott Kitchings
South Carolina Court Of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Juan Arroyo
Appellate Case Number: 2013-000580

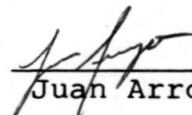
Dear Clerk Of Court,

I recieved your office letter dated February 4, 2014 on February 6, 2014, giving me 45 days to file a pro se brief addressing any issues I believe this court should address in response to Anders Brief file by my appointed Appellate Counsel.... On this 10th day of March 2014., Im timely filing my pro se brief response...

Please find enclosed pro se brief, along with certificate of mail service verifying I served Attorney General with a copy and sent Appellate Defender Benjamin John Tripp a copy.....

+Also, please find enclosed an extra copy, which I ask your office to clock-stamp recieved and return it to me via US Postal Mail?

"Thank You Very Much!"



Juan Arroyo #354538

3-10-14
Date:

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