



The Supreme Court of South Carolina

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May 21, 2019

John Joseph Kozelski, III, Esquire
101 Meeting St., 5Th Floor
Charleston SC 29401

Re: The State v. Devin Johnson
Appellate Case No. 2019-000844
Lower Court Case No. 2011GS1005207

Dear Counsel:

This Court has received the enclosed correspondence from your client. This correspondence has been construed as a notice of appeal from the conviction and sentence in this case. I remind you that you remain his counsel of record before this Court. Rule 264 of the South Carolina Appellate Court Rules (SCACR).

This appeal has been assigned the appellate case numbers that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of

personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The order can be found at

www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

For this matter to proceed, you will need to provide the following within ten (10) days of the date of this letter:

- (1) A proof of service showing that a copy of the notice of appeal has been served on the counsel for the State as required by Rule 203(d)(2)(B)(i), SCACR; and,
- (2) A statement regarding the date on which sentence was imposed, or if the appeal is from a written order, the date on which you received written notice of entry of that order. *See* Rules 203(b)(2) and 203(e)(1)(C), SCACR.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

Enclosure

cc: Office of the Attorney General
Solicitor, Ninth Judicial Circuit

Supreme Court of South Carolina
PO box 12159
Columbia SC, 29211

RECEIVED

MAY 21 2019

S.C. SUPREME COURT

RE: Quash of Indictment/relief from Charges

1. FACTS

On June 8, 2011 Charleston Police Department (CPD) responded to a call of shots fired in the Georgetown Apartment complex. Once CPD was on the scene of the crime to conduct a search, blocking off the complex to start their investigation. Upon further investigation, Akem Smalls was found by Officer Matthew Jahngen of CPD with a gun shot wound to the back. At no point does Smalls ever tell Officer Jahngen who shot him during their interaction before EMS arrived before Mr. Smalls expired. Authorities ultimately developed Devin Johnson as one of two suspects and charged him, along with Diangelo Bumcum, with Smalls' murder on June 11, 2011.

On March 31, 2014 Johnson proceeded to trial and on April 3, 2014 was found guilty upon jury trial. However during deliberation the jury asked the judge "If Johnson wasn't the shooter can he still be found guilty?" During Pre-trial the prosecutor asked the judge to charge the jury with the "hand of one" but the judge declined stating that "the whole time you said that Johnson is the shooter... that's boot scraping... I don't see where the evidence supports that theory." So the judge respectfully decline the "Hands of one" charge. Ultimately when the jury ask the question they were already deliberating an hour when the judge erroneously charged the jury with the accomplice liability and "the hand of one is the hand of all". On April 3, 2014 Johnson was found guilty and sentenced to 36 years in Prison.

Upon appeal Johnson won his oral argument Nov. 16, 2016, stating that the accomplice liability and "the hand of one" charge was untimely and rendered the trial unfair. The state rehearing was denied plus the En Banc hearing, giving the state its last result to a Writ of Certiorari. On Nov. 21, 2017 the Supreme Court of South Carolina agreed to the decision of the Appellant court and granted Johnson a new trial; Johnson's case was remitted back to the lower courts for a new trial that was dated Dec. 17, 2018. On Dec. 10, 2018 an indictment of accomplice liability theory and "The hand of one is the hand of all" charge was ultimately added on to Johnson's charges.

Dec. 19, 2017 Johnson had a mistrial because Diangelo Buncum who was release from this murder case. three months after he was charged Had lead (GSR) on his shirt two days After the murder which wasn't brought up in the 2014 trial of Mr. Johnson which lead the Judge to a mistrial. Judge Goldstich detained Mr. Johnson which was out on bond and gave the Prosecutor (4) months to have Johnson back in trial Or Johnson will have his bond back until the Prosecutor is ready for trial. Trial was set for Mr. Johnson April 1, 2019 with the added indicted charge of Accomplice liability theory "The hand of one" charge. Johnson's Original Charges was Murder and Possession of a fire arm during the Commission of a violent crime.

April 1, 2019 Johnson proceeded to trial and was found guilty for murder on the Accomplice liability theory and "the hand of one" charge, Johnson has been Sentenced to 36 Years in Prison.

II. DISCUSSION

Due Process; equal Protection of laws: No Person shall be deprived of life, liberty, or property without due Process of law; nor shall any Person be denied the equal Protection of laws. Double Jeopardy: No Person shall be Subject for the same offense to be twice Put in Jeopardy of life or liberty; Double Jeopardy after trial in Municipal or magistrates court: Whenever a municipal or a magistrates court shall have acquired Jurisdiction by reason of a Person committing an act which is alleged to be in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring Jurisdiction shall be a "Complete bar" to another court for the same alleged unlawful act or acts. See Ash V. Swinton in regards to the double Jeopardy Corollateral StopDel case which is similar to Johnson's case, See Green V. US also. Once Johnson was untimely charged with the accomplice liability theory and "the hands of one" charge and therefore had his case overtured and granted a new trial; Johnson However shouldn't been indicted for the same charge in Dec. 10, 2018 that was untimely charged in his trial in 2014. Both trials in March 31, 2014 and April 1, 2019 was tried by Judge Denise However erroneously charge the Jury of the accomplice liability theory and "the hands of one" charge, considering the evidence the Prosecutor Presented

On April 1, 2019 didn't at all support "the hands of one" charge. The prosecutor was consistent that Johnson was the shooter, the State ultimately went as far as to put little puzzle pieces together to form Johnson's booking photo in closing argument. David Osborne, the State's own witness and lead detective, testified that he would not even serve a murder warrant on the passenger, because as the passenger Osborne would want to talk to him to see what he knew and how he was involved. Therefore both trials in March, 2014 and April, 2019 puts Johnson in double jeopardy and in violation of his due process. In the process of Johnson's last two trials upon the new trial he was granted by the Supreme Court of South Carolina Johnson's charges stayed the same not charging him with any lesser included offenses but the same charges with the added on charge which was untimely and erroneously charged.

III. CONCLUSION

For all the foregoing reasons, Mr. Johnson ask the Supreme Court of South Carolina to respectfully dismiss all the indicted charges against him because of the violation of the Double Jeopardy Clause and Due Process.

Respectfully Submitted
Devin Johnson
Devin Johnson