

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lee County
Honorable R. Ferrell Cothran, Jr., Judge
Appellate Case No. : 2019-000969

The State, Respondent,

vs.

Kevin E. Herriott, Appellant.

REPLY BRIEF

RECEIVED
MAY 27 2022
SC Court of Appeals

Kevin E. Herriott
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TABLE CONTENTS

TABLE AUTHORITIES,	1.
ARGUMENT,	2-5.
CONCLUSION,	6.

TABLE OF AUTHORITIES

CASES

Faretha v. California, 422 U.S. 806, 95 S.Ct. 2525,
45 L.Ed. 2d 562 (1975)

McKaskle v. Wiggins, 465 U.S. 168, 79 L.Ed.2d 122,
104 S.Ct. 944 (1984)

¹State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494

United States v. Adley Husni Abdal Wahab, 2011 U.S.
Dist. LEXIS 108529

United States v. Simmons, 2008 U.S. Dist. LEXIS
63451, 2008 WL 3850778

United States v. Singleton, 107 F.3d 1091, 1103 (4th
Cir. 1997)

STATUTE(S)

S.C. Code Annotation § 24-13-0440

¹ omit "State v. Gentry"

The Appellant Kevin E. Herriott direct the Court's attention to the filings of Appellant's pro se motions that were filed during the pre stages before trial. The Appellant was not represented by counsel at the time he filed his motions pro se in which were three (3). The first motion was to quash the indictments on all counts; the second, was to proceed pro se; the third, was asking for Brady material and exculpatory evidence.

At the trial court's discretion, the trial court allowed the Appellant to put forth facts as it relates to the errors the Appellant identified in his motions. See *United States v. Adley Husni Abulwahab*, 2011 U.S. Dist. LEXIS 108529, the decision to grant or deny hybrid representation lies solely within the discretion of the trial court.

The trial court accepted to hear the motions to quash the indictments and Brady's motion. However, the trial court denied the Appellant to proceed Pro Se.

The Appellant raise that the Appellant has a Constitutional right to self-representation. See *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975), the Court held that a defendant in a criminal case has a constitutional right to self-representation.

The Appellant asserts he did not choose to be represented by counsel. The Appellant further asserts that he was forced to have a (n) counsel. The Appellant directs the Court's attention to the Appellant's competency hearing showing that he wanted to proceed pro se and addressed the Court about the concerns in Appellant's pro se motion. See *Faretta, supra*, "Indeed, courts must take care not to force counsel upon a defendant, because in addition to the right to the assistance of counsel, the Sixth Amendment implicitly provides a(n) affirmative right to self-representation. And that right must be preserved { 107 F.3d 1096 } even if the Court believes that," the defendant will benefit from the advice of counsel. See *McKaskle v. Wiggins*, 465 U.S. 168, 79 L.Ed. 2d 122, 104 S.Ct. 944 (1984).

The Appellant does not abandoned what he has objected to at trial, but solidify that his *Faretta* right to present his defense pro se was impaired by the distraction, intrusive, and unsolicited participation of counsel throughout the trial.

Howbeit, the Appellant demonstrates to the Court that the Respondent has made an erroneous statement. The Respondent states, "there is no right to hybrid representation, and because Appellant was represented by trial counsel, his motions and complaints should not have been heard or considered by the trial

Court and should not be considered on appeal because they were a nullity."

In Accordance to *United States v. Singleton*, 107 F.3d 1091, 1103 (4th Cir. 1997), *United States v. Simmons*, 2008 U.S. Dist. LEXIS 63451, 2008 WL 3850778, at *1 (N.D. W. Va. Aug. 14, 2008), there is a right for hybrid representation when a defendant makes a showing reason for the defendant to act as co-counsel.

The Appellant provided this Court that the trial court considered the motions because of the issues the motions addressed. These issues violated the Appellant's substantial rights and he were affected thereby.

Nevertheless, the State lack to show that the government's interest in ensuring the integrity and efficiency of the trial to which outweighs the defendant's interest in acting as his own lawyer.

The Appellant moves forward to a) manifest Constitutional error that is plain and indisputable that affected his substantial rights. The state's prosecution failed to disclose favorable exculpatory and potentially impeachment material evidence. The materiality of evidence the Appellant sought was the knife/shank vice pro that the State's prosecution failed to profer in chief at trial before a) impartial jury.

The State failed to preserve the knife acting in bad faith. The exculpatory value of the knife in particular at issue was apparent before its destruction, and the nature of the knife in particular at issue was such that the Appellant would be unable to obtain comparable evidence by other reasonably available means.

The Appellant sought an directed verdict on all charges that includes the possession of knife by a(n) inmate. Because of that charge according to the S.C. Code Annotation Statute § 24-13-0440, the knife has to be six inches or more to which is a(n) viable element.

The State never field tested the knife, failed to take pictures of the knife, failed to preserve the knife, and most importantly, failed to prove the elements of possession that of a(n) inmate charge within itself is unsatisfactorily.

Furthermore, the Appellant raised that the video footage is incompetent evidence because the State knowingly suppressed four (4) different angles of the video footage. The video footage that was preserved is prejudicial to the Appellant. The video footage does not show the Appellant turning the knife on himself before the Appellant reached for the mace canister in an effort not to strike the alleged victim Officer Lucky nor to rob the alleged victim. It goes to the Appellant's conduct whether the Appellant's state of mind was to commit a crime.

CONCLUSION

WHEREFORE UPON, the above legal premises,
the Appellant Kevin E. Herrriott ask that the judgment
and conviction of the lower court be reversed.

Done This 20 Day of May, 2022.
Respectfully Submitted,

K. E. Herrriott
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R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2019-000969

The State,

Respondent,

vs.

Kevin E. Herriott,

Appellant.

PROOF OF SERVICE

I, Kevin E. Herriott, do hereby, certify have served the Reply Brief on ALL Parties involved by depositing a copy of it in the internal mailing system at Souza-Baranowski Correctional Center on May 20, 2022.

May 20, 2022.

1st *K. E. Herriott*

Kevin E. Herriott

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May 20, 2022

V. Claire Allen

Chief Deputy Clerk

Clerk's Office

Post Office Box 11629

Columbia, SC 29211

Re: The State vs. Kevin Herrdott
Appellate Case No.: 2019-000969
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I ask that you file within this office. The Supreme
Court of the United States has ruled on my Writ of
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I need a copy of my initial brief and designation of
matter. I gave the only copy I had to the Attorney
General's Office and have not gave it back to me.

Yours Truly,

H. E. Herriott

Keith E. Herriott, PRO SE.

Heidi E. Herrdott, # T97826
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