

The State of South Carolina

In the Court of Appeals

The State, Respondent

**RECEIVED**

AUG 25 2022

**SC Court of Appeals**

v

Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder, Appellants

Appellate Case No. 2022-000671

**MOTION TO UPDATE CASE AND REQUEST FOR CONDITIONAL ORDER**

Petitioners, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Felder moves before this Honorable Court, with a Motion to Update Case And Request For Conditional Order.

- (1) Petitioner, Terron Dizzley is still being held kidnapped/falsely imprisoned in the S.C.D.C. without any legal nor jurisdictional authority.
- (2) Petitioners are still being denied procedural due process by this S.C. Court of Appeals which has waited several months to answer their MOTION TO REINSTATE and EMERGENCY MOTION FOR IMMEDIATE RELEASE, although Petitioners provided this Court with proof that Petitioner Terron Dizzley is being held falsely imprisoned for 8 years and counting. Despite this, this Court still fails to adjudicate this case, although these motions were filled under a S.C. Emergency statute, S.C. Code s 20-4-50 , which requires that when life or liberty is at stake a hearing must be held within 24 hours of the Clerk of Court receiving the emergency motion. Petitioners contend that it's also clearly established U.S. Supreme Court laws , that when life or liberty is at stake, a hearing is "paramount." Moore v. Moore, 376 S.C. 467 (2008),"Emergency hearing within 24 hours of petition for protection from abuse order did not violate procedural due process; denial of husband's motion for continuance of emergency hearing on petition did not violate equal protection." In re Treatment and Care of Luckabaugh,

351 S.C. 122 (2002), “ A person’s interest in freedom from bodily restraint is at the core of the liberty protected by the due process clause from arbitrary government actions.” Board of Regents of State Colleges v. Roth, 408 U.S.564 (1972), “Requirements of procedural due process apply only to deprivation of interest encompassed by Fourteenth Amendment protection of liberty and property, and when protected interest are indicated, the right to some kind of prior hearing is paramount.”

Petitioners contend that such denial of procedural due process to Petitioner Terron Dizzley under such circumstances is kidnapping/false imprisonment, and conspiracy to kidnapping/false imprisonment, and “willful blindness” to kidnapping/false imprisonment, and further violates Petitioners Gwendolyn B. Frasier and LaQuesha Felder’s First and Fourteenth Right rights to Familial Association with Terron, whereas clearly this Court has jurisdiction to adjudicate this case. See: State v. Guthrie, 352 S. C. 103 (2002), “The lack of subject matter jurisdiction over a criminal case can be raised at any time, can be raised for the first time on appeal and can be raised sua sponte by the Court. Lack of subject matter jurisdiction over a criminal case may not be waived, even by consent of all parties, and should be taken notice of by appellate court. The acts of court with respect to a matter as to which it had no jurisdiction are void.” Global -Tech Appliances Inc. v. SEB S.A., 563 U.S. 7754 (2011), “a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing who can almost be said to have actually known the critical facts.”

Petitioners contend that on August 11, 2022, this Court issued an order granting Petitioners Motions to Reinstate and ordered that their Motion For Immediate Release filed in this Court be held in abeyance and remanded Petitioners case back to the circuit court.

Petitioners contend that it's clearly established by the S.C. Supreme Court and the U.S

Supreme Court that when life or liberty is at stake a motion for stay violates procedural due.

See: Moore v. Moore, *supra*, 376 S.C. 467 (2008).

Petitioners contend that, although they have addressed to this court that Clerk of Court of Georgetown County, Alma Y. White has been depriving Petitioner Terron Dizzley of his First and Fourteenth Amendment Rights to access the courts for 8 years and counting by refusing to file countless motions from Petitioner, Terron Dizzley for relief, or schedule these motions for a hearing, which is a “felony” crime of “obstruction of justice.” This Court fails to address these “grave violations” of Petitioners constitutional rights, which has now also violated Petitioners, Gwendolyn B. Frasier and LaQuesha Felder’s constitutional rights to access the courts by refusing to schedule a hearing for them, who has recently filed this Motion For Immediate Release as a party with Terron Dizzley for his immediate release, on the grounds that such unlawful restraint of Terron Dizzley’s liberty is also a violation of their First and Fourteenth Amendment Rights to Familial Association with Terron and also violates the rights of Terron’s kids. Petitioners contend that they have also addressed to this Court that the Circuit Court Judge Benjamin Culbertson refuses to give a clear ruling based on findings of facts and conclusions of law, as required by law, on their MOTION FOR IMMEDIATE RELEASE of Petitioner, Terron Dizzley. Whereas the only reason Petitioners received any ruling at all, is because their motion was sent straight to the judge *ex parte*.

Petitioners contend that, although this Court has been put on notice of the unconstitutional and criminal acts of the Circuit Court, this Court’s order to remand does not provide any conditions which orders the Clerk of Court, Alma Y. White, to cease from violating Petitioners constitutional rights and to schedule an “**emergency hearing** “ within **24 hours** of

the issuance of this order which is required by the laws of this state under such circumstances.

See: S.C Code s 20-4-50.

Petitioners respectfully request, as of right, pursuant to liberty and justice that this Honorable Court issue a Conditional Order that Petitioner, Terron Dizzley is immediately released from being held kidnapped/falsely imprisoned for 8 years and counting or schedule them an **“emergency hearing within 24 hours”** of the filing of this motion, as required by S.C. Code s 20-4-50, and afford Petitioners procedural due process, and equal protection of laws to fully and fairly present, argue, and exhibit their case.

Petitioners contend that this Court’s order indicates that Petitioners have 15 days to update this case or it may be dismissed. Petitioners contend that Terron Dizzley is being held kidnapped without any legal nor jurisdictional authority, however, this Court implies that the Court has the authority to continue to kidnap Terron if he fails to comply with procedural rules pursuant to this Court’s order, which is contrary to clearly established United States Supreme Court laws and S.C. own laws, whereas, the finality of litigation must yield when life or liberty is at stake, and subject matter jurisdiction can be raised at any time, even for first time on appeal and cannot be waived even by consent.” See: State v Guthrie, supra, 352, S. C. 103 (2002). Sanders v U.S., 371 U.S. 1(1963), “A prisoner who claims that his sentence was imposed in violation the Constitution or laws of the United States, may seek relief from the sentencing by filing a motion in the sentencing court stating the facts of his claim. Conventional notions of finality of litigation have not place where life or liberty is at stake, and infringement of Constitutional Rights are alleged.” Fay v Noia, 372 U. S. 391 (1963) “Conventional notions of finality in criminal litigation cannot be permitted to defeat manifest federal policy that federal constitutional rights of personal liberty are not be denied without fullest opportunity for plenary federal judicial

review. State courts, equally with federal court are charged with duty of protecting an accused in enjoyment of his constitutional rights. U. S. Ohio Power Co., 353 U.S. 98, (1957), “The interest in finality of litigation “must yield” where interest of justice would make unfair, strict application of Supreme Court’s rules.” See: Bell v. Hood, 327 U. S. 678 (1946), “Action against FBI officers for damages for illegal arrest, false imprisonment, and unlawful searches and seizures of property belonging to plaintiffs. A judgment dismissing the complaint for lack of jurisdiction was affirmed by the Circuit Court of Appeals, and plaintiff brings certiorari. Reversed. It is estimated practice for the Supreme Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the Fourteenth Amendment forbids the state to do. Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief, and federal courts may use “any” available remedy to make good the wrong done.”. Petitioners contend that, Petitioner Terron Dizzley is being held kidnapped for 8 years and counting, and the entire time of his unlawful imprisonment, the government officials who have sworn an oath to protect Petitioners rights, have done everything possible to violate Petitioner’s rights by abusing their authority, even committing felony crimes, to keep Petitioners away from the courts to secure Terron’s unlawful conviction. Petitioners respectfully request that this Court show cause as to why it would issue an order which implies that it can hold Petitioner in prison illegally for failing to comply with procedural rules which are contrary to the law.

## **ARGUMENT 1**

### **False Imprisonment, Double Jeopardy, “Judgment of Judgment of Acquittal”,**

#### **Lack of Trial Court’s Jurisdiction to Impose Sentence**

Solicitors Gregory Hembree and Erin Bailey did unlawfully and maliciously prosecuted Terron Gerhard Dizzley for a second time in 2014 for the same offense of murder of which he was acquitted in his first trial of 2012 resulting in kidnapping and false imprisonment for over eight years and counting. An unlawful conviction under such circumstances, The Supreme Court of the United States has established that any sentence imposed on Terron is without jurisdiction and holds no authority to hold him in prison, and he must be immediately discharged. Exparte Lange, 85 U.S. 163 (1873).

I. The Honorable Judge Baxley’s ruling in Petitioner’s first trial of 2012, stating that his decision to declare a mistrial/hung jury, was not based on a failure on the jury’s part that they could not bring back a unanimous verdict, but that his decision to declare a mistrial was, “a strong message to the prosecution that they are unable to meet their “burden of proof” to the extent that they could bring back a unanimous verdict” was a “judgment of acquittal”, which barred retrial under the Fifth Amendment Double Jeopardy Clause, and terminated the jurisdiction of Petitioner’s case.

#### **STATEMENT OF CASE**

The constitutional guarantees of the Fifth Amendment Double Jeopardy Clause which was violated against Petitioner in this case is grounded in the

United Supreme Court Laws which defines “acquittals” for purposes of double jeopardy. United States Courts Legal Glossary defines Acquittal – “A jury verdict that a criminal defendant is not guilty or the finding of a judge that the evidence is insufficient to support a conviction.”

After the state of South Carolina rested its case in Petitioner’s first trial of 2012, Petitioner’s trial counsel moved for a directed verdict of not guilty on the grounds that the prosecution failed to present any evidence of the elements of murder, and most importantly, that the prosecution failed to present any evidenced that identified Petitioner as the person that committed the offense for which he was charged. The Honorable Judge Baxley denied directed verdict, and trial counsel renewed his directed verdict motion after the presentation of Petitioner’s alibi witnesses. See: 2012 Transcript ( of Court Reporter, Krystal Smith), Tr. P. 66, L. 15 – 17. See also: Transcript of 2012 trial ( of Court Reporter Grace Hurley), Tr. P. 299, L. 19 – p. 300, L 1 – 4.

In The Charge on the Law, by The Honorable Judge Baxley, to jury before closing arguments and deliberations, ( See: Trial Transcript of 2012, Court Reporter, Crystal Smith, Tr. P. 74, L. 8 – 25, citing from 20 – 25). Judge Baxley specifically stated the following: “In this state, according to the Constitution, the prosecution must prove their case to the standard of proof we call beyond a reasonable doubt, which is – that is before a finding of guilt may occur, and if the state failed to meet this high burden and it is a high burden, the defendant is entitled to an acquittal.

On August 30, 2012, after only three to four hours of deliberations, The Honorable Judge Baxley received a note from the jury that they were unable to reach a decision. Judge Baxley then, spontaneously declared a mistrial/hung jury. Judge Baxley stated that his decision to spontaneously declare a mistrial was not based on a failure on the jury's part that they could not reach a unanimous decision, but that his decision to declare a mistrial was "a strong message to the prosecution that they are unable to meet their "burden of proof" to the extent that they could bring back a unanimous verdict." Therefore, according to The Honorable Judge Baxley's own charge to the jury, Petitioner is entitled to an acquittal pursuant to Judge Baxley's own ruling that the prosecution failed to meet their burden of proof.

Petitioner contends that according to clearly established United States Supreme Court law, The Honorable Judge Baxley's ruling was based on his view that the prosecution provided insufficient evidence to enable the jury to convict Petitioner, which is an "acquittal".

Petitioner also contends that The Honorable Judge Baxley's decision to spontaneously declare a mistrial was based on the same reasons that defense counsel moved for a directed verdict of not guilty – because the prosecution failed to meet their burden of proof. See: Transcript of 2012 trial ( by Court Reporter, Grace Hurley). Ruling of the Honorable Judge Michael Baxley., Pages 314, Lines 4 – 18 through Pages 315, Lines 1 – 8. "First of all, I don't want you to think in any way that your exercise as jurors have been a failure on your part because you could not reach a verdict. That's not a failure on your part. That really the

strength of our system because we bring diverse citizens from different backgrounds from the same community to hear a set of “facts” and make a decision to whether or not in criminal court a person is guilty or innocent.

Now what you’ve told us is that you can’t reach a unanimous decision, and I would say to you that that’s not a failure on your part. That’s actually a strong message to the prosecution that they are unable to meet the “burden of proof” to the extent that they can bring back a unanimous verdict.”

In our Fourth Circuit, it was determined in ” U. S. v Alvarez, 351 F. 3d. 126 (2003 4<sup>th</sup> Cir.), “Judgment of Acquittal entered by District Court after jury deadlocked did not implicate double jeopardy clause. In its order, The District Court never expressively stated that it undertook review the sufficiency of the evidence, never recited the standard for an acquittal - “that the evidence was insufficient for any reasonable jury to return a unanimous verdict of guilty”. In response to this conclusion, Alvarez and Gonzelez argued that the district court corrected any deficiencies in its judgment of acquittal by recharacterizing the judgment in a later order that denied the government’s motion for detention of the defendants. In the detention order, the district court characterized its earlier judgment of acquittal as holding that “there was insufficient evidence for any reasonable jury to return a unanimous verdict of guilty”. If that, in fact, had been the basis for the district court’s judgment of acquittal, we would agree with the defendant that this appeal would be barred. A judgment of acquittal may not be determined simply by the form or caption of the court’s order, The Court of Appeals determines whether the ruling of the judge whatever its label, actually represents a resolution correct or not, of some or

all of the factual elements of the offense charged.”

However, in Petitioner’s case, the trial judge clearly, expressively stated that it undertook the review of the sufficiency of the evidence, and recited almost word-for-word, (verbatim), what Alvarez has determined is the standard for acquittal, that his decision to declare a mis-trial was not a failure on the part of jury that they could not reach a unanimous verdict, but that his decision to declare a mistrial was a “strong message to the prosecution that they were unable to meet their “burden of proof” to the extent that they could reach a unanimous verdict. Therefore, the judge’s characterization of his own action as a mistrial/hung jury does not control the classification of his actions, and accordingly to clearly established federal law, Judge Baxley’s ruling was a judgment of acquittal. See also: United States v John-Baptiste, 747 F. 3d 186 (2014 3<sup>rd</sup> Cir.), “ a judgment of acquittal is a substantive judicial determination that the prosecution has failed to carry it’s burden.” See: Evans v. Michigan, 568 U. S. 313 (2013). “Here we know that trial court acquittal Evans, not because it incanted the word, “acquit” (which it did not) but because it acted on its view that the Prosecution had failed to prove its case.” “An acquittal for double jeopardy purposes includes a ruling by the court that the evidence is insufficient to convict, a factual finding that necessarily establishes the criminal culpability, and other rulings which relates to the ultimate question of guilt or innocence. Labels do not control the analysis of whether a decision dismissing a criminal case bars retrial under double jeopardy clause, rather the substance of the court decision does. The U.S. Supreme Court, Justice Sotomayor, held that midtrial directed verdict and dismissal, based on trial court’s erroneous requirement of an extra element for the charge offence, was “acquittal” for double jeopardy purposes. Most relevant here, an “acquittal encompasses any ruling that the prosecution’s proof is insufficient to establish criminal liability for an

offence.” U. S. v. Martin Linen Supply Co., 430 U.S. 564 (1977), “The U.S. Supreme Court, Mr. Justice Brennan held that double jeopardy clause barred appeal by U.S. from judgments of acquittal entered under Rule 29 (c) following discharge of jury which had been unable to agree on verdict in criminal contempt trial. Affirmed. What constitutes an “acquittal” for purposes of applications of Double Jeopardy Clause, is not to be controlled by the form of Judge’s actions; rather, we must determine whether the ruling of the judge, whatever it’s label, represents a resolution, correct or not, of some or all the factual elements of the offense charged. The court made only too clear it’s belief that the prosecution’s case was “the weakest (contempt case that) I’ve ever seen.”. In entering the judgment of acquittal, the court also recorded its view that “the government has failed to prove the material allegations beyond a reasonable doubt.”. Thus, it is plain that the District Court in this case evaluated the Government’s evidence and determined that it was legally insufficient to sustain a conviction. The Court of Appeals concluded that this determination of insufficiency of evidence triggered double jeopardy protection.”

Petitioner contends that, as in Martin, in his case, what constituted an “acquittal”, for purposes of application of Double Jeopardy, is not controlled by the form of Judge Baxley’s actions, or the label he placed on his actions of declaring a hung jury/mistrial, rather, it is the substance of Judge Baxley’s ruling which constitutes an “acquittal”. Petitioner contends that Judge Baxley made “only too clear” that his decision to declare a mistrial was not based on a failure on the jury’s part that they could not reach a unanimous verdict, but that his decision to declare a mistrial was “a strong message to the prosecution that they are unable to meet their “burden of proof” to the extent that they could bring back a unanimous verdict. Thus, it is plain that Judge Baxley evaluated the prosecution’s case and “strongly” determined that the prosecution evidence was insufficient to enable the jury to

convict Petitioner. Petitioners contends that such determination of insufficiency of evidence triggered double jeopardy protection. See: Lee v. U.S., 432 U.S 23 (1977). “Questions as to whether double jeopardy clause prohibits retrial after the case has been terminated, after jeopardy has attached, without a finding on the merits does not depend upon whether the court labels its action a dismissal or declaration of “Mistrial” but rather whether the order contemplates an end to all prosecution of the defendant for the offense charged.” “Sanabria v. U.S., 437 U.S. 54 (1978), Fong Foo v. U.S., 369 U.S 141 (1962) “A judge’s entry of an acquittal because he viewed the government’s initial witnesses as inherently incredible constituted a bar to further proceeding even though the judge went beyond the relevant federal rules provision by directing the acquittal before the prosecution had completed its case – in chief.”

It is well established by the United States Supreme Court that a Judge cannot discharge a defendant’s jury on the grounds that the prosecution was unable to meet their burden of proof and then turn around and rule that he is going to give the prosecution another opportunity to retry the defendant in attempt to meet their burden of proof in a second trial, by declaring a mistrial. Burks v. United States, 437 U.S. 1 (1978), The Supreme Court ruled, “The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceedings. By deciding that the government failed to come forward with sufficient proof of petitioner’s capacity to be responsible for criminal acts, the court was clearly saying that Burks criminal culpability had not been established. If the District Court had so held in the first instance, as the reviewing court said it should have been done, a

judgment of acquittal would have been entered and, of course, petitioner could not be re-tried for the same offense. ”

Petitioner contends that, as in Burks, in his case, The Honorable Judge Baxley, by stating that his decision to declare a mis-trial was not based on a failure on the jury's part that they could not reach a unanimous verdict, but, that his decision to declare a mis-trial was a strong message to the prosecution that they are unable to meet the “burden of proof” to the extent that that they could bring back a unanimous verdict, was clearly saying that Petitioner Dizzley's criminal culpability had not been established, that the prosecution provided insufficient evidence to enable the jury to convict Petitioner – which according to United States Supreme Court law is an acquittal. Hudson v. Louisiana, 450 U. S. 40 (1981). “Double Jeopardy principles precluded re-trial where petitioner moved for a new trial on the grounds that evidence was legally insufficient to support the verdict and trial judge granted motion on grounds that State failed to prove it's case as a matter of law.”

According to clearly established United States Supreme Court Law, Judge Baxley's ruling was an “acquittal”. See also Pages 315, L 1 - 8.

“I don't want to you believe in any way, zero way, that somehow you are responsible for that, because you are not. You're given a set of facts that were the best that a state could adduce from what happened and what they were able to determine, they put that up to you and you brought back a wise, common-sense decision that you simply could not agree upon it. There is a message in that and so you've accomplished your purpose.

According to the U. S . Supreme Court, South Carolina Supreme Court and

Federal Courts, not only was Judge Baxley's ruling an "acquittal", but such a ruling:

1. Barred retrial under the Fifth Amendment Double Jeopardy Clause. See: Smalis v. Pennsylvania, 476 U. S. 140 (1986), "The Supreme Court, Justice White, held that trial judge's ruling on defendants' demurrer holding that Commonwealth's evidence was insufficient to establish factual guilt was an acquittal under double jeopardy clause and barred Commonwealth's appeal." Smith v. Massachusetts, 534 U. S. 462 (2005), "The U.S Supreme Court, Justice Scalia, held that: (1) State trial judge's initial ruling on defendant's motion for finding of not guilty on firearm charge, in which judge evaluated commonwealth's evidence and decided that it was not legally sufficient to sustain conviction on firearm charge qualified as "judgment of acquittal" for double jeopardy purposes; and (2) once state trial judge had entered midtrial judgment of acquittal on firearm count, with no reservation of right to reconsider this ruling or indication that the ruling was not final, and once trial had proceeded to introduction of evidence by defendant, double jeopardy clause barred trial judge from reconsidering that acquittal after defendant and his codefendant had rested. Reversed and Remanded. U. S. v Black Lane, 454 F. 3d 922 (2006), " District Court's dismissal of assault prosecution with prejudice mid-trial based on the determination that the government failed to carry its burden of proof was the functional equivalent of an acquittal, and the Double Jeopardy Clause precluded government's appeal." U. S. v Baptiste, 832 F. 2d 1173 (1987), "On motion for judgment of acquittal, after government presented its case and rested, magistrate dismissed case on grounds that Marine Corps police lacked probable cause under Hawaii law to order defendant out of his car. The Court of Appeals held that magistrate's action was properly characterized as judgment of acquittal, and therefore, appeal was barred by double jeopardy.

Magistrate's characterization of action taken with respect to prosecution being tried before him does not control its classification, that is, whether it is a ruling that government evidence is legally insufficient to sustain conviction, so that appeal would violate principles of Double Jeopardy." U. S. v Govro, 833 F. 2d 135 (1987), "Magistrate Sua Sponte termination of trial in defendant's favor independent of factual guilt or innocence barred retrial, by the reason of Double Jeopardy."

U. S. v. Thompson, 690 F. 3d. 977, 966, (8<sup>th</sup> Cir. 2012) "double jeopardy bar because judge's initial acquittal at close of defendant's case was determination that government had not met burden of proof. U.S. v. Ogles, 440 F. 3d 1095, 1104 (9<sup>th</sup> Cir. 2006) "Judgment of acquittal entered at close of prosecution's case on charge of willfully engaging in business dealings firearms without a license presented double jeopardy bar to government appeal where court found evidence legally insufficient to prove factual element of crime. The government suggest that because Ogles did not contest his licensed status, the district court's ruling did not meet The Supreme Court's definition of acquittal – that "what it's label, it actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged. *Id.* The Court's double jeopardy decisions do not, however, condition an acquittal under Rule 29 (a) on district court's examination of contested facts. Here, the district court determined that a factual element of the offense had not been proved by the government. What is this if not a "resolution? Nor do we credit the government's argument that the acquittal is somehow flawed by the absence of recitation of the legal standard. That the district court did not recite the text of Rule 29(a) or employ a specific phrase, such as "evidentiary insufficiency" is not determinative. As *Smith* makes clear, "what matters is that, as Rule 29 authorizes, the judge evaluated the government's evidence and determined that it

was legally insufficient to sustain a conviction” We conclude that the district court did exactly that and, therefore, the Double Jeopardy Clause bars the government’s appeal.”

In Petitioner’s case, the judge clearly indicated that he evaluated the facts, and he recited the legal standard for an acquittal by determining that the prosecution failed to meet their “burden of proof” to convict Petitioner. As stated in *Olges*, “What is this if not a “resolution”? Therefore, despite whatever label Judge Baxley placed on the discharge of Petitioner’s jury, Judge Baxley’s ruling was a “Judgment of Acquittal” based on “insufficiency of evidence” and, therefore, Double Jeopardy barred retrial. *U. S. v Fay*, 553 F. 2d 1247 (1977), “Trial court did not abuse its discretion in granting motions for acquittal, in view of trial court’s conclusion that there was an absence of proof on basic conspiracy charge.”

*U.S. v. Lynch*, 162 F. 3d 732, 735 (2d Cir 1998) “double jeopardy bar to government appeal of bench acquittal because government failed to prove facts sufficient to establish element of charge.” *Piaskowski v. Bett*, 256 F. 3d 687, 694-95 (7<sup>th</sup> Cir. 2001) “double jeopardy bar to retrial because of court’s holding that evidence insufficient acted as “functional equivalent of an acquittal”. *U.S v. Hunt*, 212 F. 3d 539, 543-44 (10<sup>th</sup> Cir. 2000) “double jeopardy bar to government appeal of bench acquittal because government failed to prove facts sufficient to establish elements of charge.” *State v. Clifford*, 335 S. C. 129 (1999). “Reversing the conviction based on the legal insufficiency of evidence, the matter is remanded to the trial court with instructions to enter a verdict of acquittal.” Arbrogated by *State v. Gregorie*, 339 S. C. (2000) on the grounds of statute of appeals, “The Circuit Court found the State failed at trial to meet it’s burden of proof and ordered a new trial. Petitioner contends, correctly, that under these circumstances, a second trial in

Magistrate Court would violate his Double Jeopardy Rights.” Overruled by State v. Rearick, 417 S. C. 391 (2016), on the grounds of statute of appeal remedies.

Petitioner contends that the Prosecution’s case rested solely on identity where alleged witnesses indicated that an individual with a mask and hoodie whom they could not identify came in the bar, shot the victim, and shot at others, then ran out of the bar. Petitioner contends that he was never identified as the person who committed the crime and provided an alibi defense for the entire time that the crime occurred. See: Ashe v. Swenson, 397 U.S. 436 (1970), “Where three or four armed men robbed six poker players in home of one of the victims and defendant was charged in separate counts with robbery of each of the six poker players and was tried on one count and was acquitted for insufficient evidence in prosecution in which identity of defendant as one of the robbers was the single rationally conceivable issue in dispute, federal rule of collateral estoppel, embodied in the Fifth Amendment guarantee against double jeopardy, precluded subsequent prosecution of defendant for robbery of a different player. In this case, the State in its brief frankly conceded that following the Petitioner’s acquittal, it treated the first trial as no more than a dry run for a second prosecution; No doubt the prosecutor felt the State had a provable case on the first charge and, when he lost, he did what every good attorney would do— he redefined his presentation in light of the turn of events at the first trial; but this is precisely what the Constitutional guarantee forbids.”

Petitioner contends that his case and Ashe v. Swenson are so strikingly similar, both legally and factually, that the same results reached in Ashe must also be reached in his case.

Whereas, both Ashe and Petitioner’s case rested solely on identity and Ashe was acquitted due to insufficient evidence, and Petitioner was also acquitted due insufficient evidence pursuant to a

ruling by the Judge that the Prosecution failed to meet their burden of proof. United States Courts Legal Glossary defines Acquittal – “A jury verdict that a criminal defendant is not guilty or the finding of a judge that the evidence is insufficient to support a conviction.

2. Terminated the jurisdiction of Petitioner’s case and may not be appealed. Exparte Lange, 85 U. S. 163 (1873); U. S. v. Scott, 437 U. S. 82 (1978), “A judgment of an acquittal, whether based on jury verdict of not guilty or on a ruling by the court that the evidence is insufficient to convict may not be appealed and terminates the prosecution when a second trial would be necessitated by reversal.”; U. S. v. Wilson, 420 U. S. 332, 95 S. Ct. 1013 (1975), “Constitutional protection against government appeals attaches only where there is a danger of subjecting the defendant to a second trial for the same offence. Provision of the Criminal Appeals Act of 1907 that government could not have a writ of error in any case where there had been a verdict in favor of the defendant was to assure that the statute would not conflict with the principles of the double jeopardy clause.”
3. A second trial judgment, and sentence poses no authority for the South Carolina Department of Corrections to hold Petitioner in prison for the same offense and he “must” be discharged. Exparte Lange, 85 U. S. 163 (1873). “A second judgment of the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged”

## **ARGUMENT 2**

### **Double Jeopardy**

#### **“Manifest Necessity or Ends of Public Justice”**

II. The Honorable Judge Baxley’s sua sponte declaration of mistrial/hung jury after only three

to four hours of deliberations, without any consideration to any alternatives or any communication with the jury collectively or individually whether such an agreement as to a unanimous verdict was possible with further deliberations was not a “manifest necessity” to declare a mistrial, and violated Petitioner’s Fifth Amendment “valued right” to have the allegations brought against him resolved under a particular tribunal, whereas, jeopardy attached when the jury was sworn in.

Petitioner contends that the Honorable Judge Baxley’s ruling of “acquittal” resulted from an improvidently granted mistrial /hung jury after only three to four hours of deliberations, portions of that time was consumed by a lunch break, and several questions from the jury and time for answering these questions. Judge Baxley, with no consideration to any alternative, without giving any advance warning or notice to the defense counsel or the court, and without polling the jury, spontaneously declared a mistrial/hung jury. According to clearly established federal law the Honorable Judge Baxley’s decision to declare a mistrial was not dictated by a “manifest necessity” or “ends of public justice,” which violated Petitioner’s Fifth Amendment right to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in, Petitioner’s second trial was barred by double jeopardy. See: Transcript of 2012 by Court Reporter, Crystal Smith, trial pages 116 – 125. See also: Transcript of Court Reporter, Grace Hurley, transcript pp. 308, L6 – 316.

#### **STATEMENT OF CASE**

On August 29, 2012, at 1:07 p.m., the jury began deliberations. Shortly after deliberations began, the jury sent a message asking to hear the testimonies of Petitioner’s four alibi witnesses; the judge responded that it would take approximately an hour to set

up. At 3:57 p.m., the jury entered the courtroom and listened to the witnesses' testimonies until 4:52 p.m. and told the judge that they could not reach a verdict "that afternoon". At this point, the jury had only deliberated only three hours and four minutes before entering the courtroom to listen to the testimonies of the four alibi witnesses. Instead of the judge directing the jury to continue deliberations, at 5:26 p.m., the judge called the jury back into the courtroom and sent them home that day.

The next day, August 30, 2012, jury deliberations continued at 9:42 a.m., however, instead of the jury deliberating, the jury only sent a series of notes to the judge. The first note was received at 10:03 a.m.; and a reply was sent back at 10:21 a.m. Another note was received at 11:12 a.m. that the jury could not reach a verdict, and at 11:25 a.m., the jury enter entered the courtroom, and the judge gave an Allen Charge and sent the jury back to continue deliberations. At 12:20 p.m., the jury sent another not indicating that they were still unable to reach a verdict. Trial judge then, spontaneously, in the presence of the jury, with no advance warning or notice to the defense counsel or the court, declared a mistrial, stating that his decision to declare a mistrial was not based on a failure on the on jury's part to reach a verdict, but that his decision was based on "a strong message to prosecution that they were unable to meet their burden of proof" to the extent that they could bring back a unanimous verdict.

Petitioner contends that the record shows that there was no manifest necessity to declare a mistrial after only three to four hours of deliberations. Whereas (1) the trial record does not reflect that there exists a significant risk that a verdict may have resulted from pressures inherent in the situation rather than the considered judgment of all the jurors, which would suggest; "a genuinely deadlocked" jury; (2) the trial record does not

reflect that the trial judge delicately balanced Petitioner's "valued right" to have his trial completed by a "particular tribunal." (3) The trial record reflects that the trial judge, after receiving the note from the jury indicating that they were unable to agree, did not discuss with the jury whether they could reach an agreement before declaring a mistrial. (4) Trial record reflects that there was no inquiry of the foreman or of individual jurors whether it was a consensus of the jury, that they had made progress, or whether the jury expected to reach a verdict, or whether such an agreement was possible.

According to United States Supreme Court where a mistrial is declared sua sponte, the classical test to determine whether a defendant may be retried without violating the double clause is a "manifest necessity". U.S. v. Jorn, 400 U.S. 470 (1971) "In finding a lack of manifest necessity, the plurality stressed that the trial judge gave absolutely "no consideration" to the alternative of trial continuance, and "indeed, acted so abruptly discharging the jury" that the parties were given no opportunity to suggest the alternative of continuance or to object in advance to the discharge of the jury. The plurality concluded that where trial judge simply "made no effort to exercise sound discretion to assure that there was a manifest necessity for the sua sponte declaration of a mistrial, "a" re-prosecution would violate the double jeopardy provision of the Fifth Amendment." Downum v. U.S., 372 U.S. 734 (1963); Benton v. Maryland, 395 U.S. 784 (1969); Wade v. Hunter, 336 U.S. 684 (1949); Illinois v. Somerville, 410 U.S. 458 (1973); See also: U. S. v Horn, 583 F. 2d 1124 (1978 10<sup>th</sup> Cir.) "The Court of Appeals, held that although the jury foreman the night before, after three to four hours of deliberations, had sent a note that the jury was deadlock, as a result of which the court on the following morning gave an Allen charge, there was no "manifest necessity" for the court, acting Sua Sponte after somewhat more than one hour's

further deliberations to declare a mistrial without inquiry of jurors at such time as to whether they had made progress or expected to reach a verdict and jeopardy attached by reason of such erroneous declaration of mistrial.” .” U. S. ex. rel. Webb v Court of Common Pleas of Philadelphia County, 516 F. 2d. 1034 (1975), “ Constitutional Double Jeopardy considerations precluded trial of the defendant for a third time on same charges where, after initial prosecution had resulted in hung jury, trial judge in second prosecution, after six and one- half hours of jury deliberations, raised issue of jury deadlock sua sponte and declared a mistrial because of hung jury after having interrogated only jury foreman and as to state of jury’s deliberations.” U. S. ex rel. Russo v Superior Court of New Jersey, Law Division, Passaic County, 483 F. 2d 7 (1973), “The Court of Appeals held that there was not manifest necessity to declare a mistrial after only 15 hours of deliberations on grounds that jury was too exhausted to reach an impartial verdict. Defense counsel’s failure to object to declarations of mistrial while jury was in the box after being recalled by court rather than in judge’s chambers after jury had been dismissed, did not prejudice right to challenge subsequent retrial as placing defendant in double jeopardy where defense counsel had no advance warning or notice that mistrial was to be declared and to have objected in front of the jury, might have prejudice the defendant for trying to “show up”, the trial judge, who granted mistrial on ground that jury was exhausted, especially if some members of the jury actually did want to go home despite their civil obligation.” See also: Love v Morton, 112 F. 3d 131 (1997); U. S. v Bates, 917 F. 2d 388 (1990 9<sup>th</sup> Cir.); Washington v Jarvis, 307 F. Supp. 2d 794 (2004 4<sup>th</sup> Cir.); Lovinger v Cir. of the 19<sup>th</sup> Judicial Circuit, Lake County, Ill., 845 F 2d 739 (1988 7<sup>th</sup> Cir.); Jones v Hogg, 732 F. 2d 53, 57 ( 1984 6<sup>th</sup> Cir.); U.S. v White, 914 F. 2d 747 (1990 6<sup>th</sup> Cir.). U.S. v. Razmilovic, 507 F. 3d 130 (2007).

“This case at hand calls on us to review such a ruling to determine whether it was an abuse of discretion for a trial court to decide that a single note indicating deadlock created “manifest necessity” to declare a mistrial. On the record before us, we conclude that it was. We therefore hold that retrial of defendants- appellants Michael DeGennaro and Frank Borghese would violate double jeopardy clause of the Fifth Amendment. We also must decide whether Borghese consented to the mistrial but then almost immediately changed his position. We find that Borghese did not deliberately forego his right to have his guilt determined by his original tribunal. The Court of Appeals Circuit Judge Katzmman held that (1) there was no manifest necessity to declare mistrial and (2) defendant did not move for or consent to mistrial. Reversed and Remanded.” United States v. Gordy, 526 F. 2d 631, 636-37 (5<sup>th</sup> Cir. 1976), “Finding that the record was insufficient to determine that “no verdict could be reached,” despite statement by foreman that jury was “hung” because no dialogue “was developed with the jurors individually”, and it could not be said with certainty that further deliberations “would have proved futile.”

In State v. Prince, 279 S.C. 30 (1983), the Supreme Court held that where jury had been deliberating only from approximately 4:30 in the afternoon until 10 o'clock at night, a portion of that time consumed by evening meals, mistrial was ordered over defendant's objections after jury request testimony of two witnesses to be read and court reporter indicated that the testimony would take approximately two hours and 10 minutes was not dictated by manifest necessity or ends of public justice, and therefore retrial of the defendant was barred by double jeopardy.

Reversed. Citing Benton v. Maryland, 395 U.S. 784 (1969); Wade v. Hunter, 336 U.S. 684

(1949); Illinois v. Somerville, 410 U.S. 458 (1973); State v. Rowlands, 343 S.C. 454 (2000), “Double Jeopardy Clause barred for DUI after an improvidently granted mistrial; state moved for a mistrial, after jury was sworn, on ground that one of his material witnesses was missing, which accounted to a “failure of proof”, and, therefore, the trial court granted mistrial was not dictated by manifest necessity or ends of public justice.”

Petitioner contends that after three to four hours of deliberations, Judge Baxley, with no consideration to any alternative, without polling the jury, spontaneously declared a mistrial. Petitioner contends that the record shows that Judge Baxley’s decision to declare a mistrial was not dictated by a manifest necessity or ends of public justice which violated his “valued right” to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in, Petitioner’s second trial was barred by the Fifth Amendment Double Jeopardy Clause. See: Arizona v. Washington, 434 U. S. 497 (1978) “Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant’s “valued right” to have his trial completed by a particular tribunal. The reasons why this “valued right” merits constitutional protection are worthy of repetition. Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolong the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecution is entitled to one and, only one, opportunity to require an accused to stand trial.”; Crist v Bretz, 437 U. S. 28 (1978).

Petitioner is innocent of the charges for which he is falsely imprisoned. Petitioner contends that according to Judge Baxley's ruling, supported by clear law of The Supreme Court of the United States that he was proven innocent in a court of law of this country. The record shows that:

1. Petitioner appeared in a Georgetown South Carolina Court of General Session for the charge of murder in 2012, whereas he is presumed innocent until proven guilty.
2. A jury was sworn in and jeopardy attached to Petitioner in the 2012 trial.
3. At this point, the State had the burden to introduce sufficient evidence to sustain each essential element of the crime charged beyond a reasonable doubt to obtain a conviction. In re Winship, 397 U.S 358 (1970),” Rule requiring establishment of guilt of criminal charge beyond a reasonable doubt is accepted in common-law jurisdictions as measure of persuasion by which prosecution must convince trier of all elements of guilt.”
4. The Honorable Judge Baxley abruptly stopped deliberations in Petitioner's trial after only three to four hours of deliberations and stated that his reason for violating his Fifth Amendment Rights to have these wrongful allegations brought against him resolved under that particular jury had nothing to do with a failure on the jury's part. Judge Baxley clearly indicated that the reason for abruptly stopping the deliberations and discharging the jury was because the Prosecution “did not meet the burden of proof” to sustain a conviction. According to the laws of The Supreme Court of the United States Judge Baxley's ruling was an acquittal.

Petitioner contends that the rulings and the cases cited in this petition are identical to the Honorable Judge Baxley's ruling in Petitioner's first trial of 2012, which The Supreme Court of the U. S. has determined is an "acquittal". Under the "Equal Protection Clause" of the Fourteenth Amendment, Petitioner is entitled to the same rulings, and he must be immediately discharged from this false imprisonment/kidnapping.

**Footnotes:**

The Double Jeopardy Clause of the 5<sup>th</sup> Amendment commands that "(n)o person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." It is the oldest edict in the Bill of Rights. Double Jeopardy rights date back to ancient Rome and Greece, and are even in the Bible. In addition, the Double Jeopardy Clause is "one of the most frequently litigated [constitutional] provisions." Despite this history, one justice of the Supreme Court has called the Clause "one of the least understood provision (s) of the Bill of Rights. See: **Untangling Double Jeopardy in Mix- Verdict Cases**, by Professor Lissa Griffin.

**Note:** The most common issues with judges and lawyers when it comes to "acquittals" for purposes of double jeopardy is: (1) There is a lack of understanding as to what an acquittal is. It has been misconstrued that an acquittal is "only" when a jury brings back a unanimous verdict of not guilty. There is an extreme lack of knowledge in the judicial system as to "judgments of acquittals." United States Legal Glossary defines Acquittal- "A jury verdict that a criminal defendant is not guilty or the finding of a judge that the evidence is insufficient to support a conviction." A judgment of acquittal is when a judge makes a ruling or acts on their view that the prosecution failed to prove its case, or that there is insufficient evidence to convict, or that the prosecution failed to meet some element(s) of the offense charged. U.S.v. Scott, 437 U.S. 82

(1978); U.S. v. Martin Linen Supply Co., 430 U.S. 564 (1977); Burks v U.S., 437 U.S. 1 (1978); Smalis v. Pennsylvania, 476 U.S. 140 (1986); Evans v. Michigan, 568 U.S. 313 (2013).

**Note:** The most common misconception as to “judgments of acquittals” when a mistrial is declared, is that, because the judge declared a mistrial, that automatically retrial is not barred by the Double Jeopardy Clause. However, this misconception is contrary to U.S. Supreme Court laws. According to clearly established U.S. Supreme Court laws, a judgment of acquittal may not be determined simply by the label, form, caption, or the judge’s characterization of his/her own actions as a mistrial, hung jury, dismissal, continuance or whatever. It is the substance of the judge’s ruling which must be evaluated to determine whether the judge’s ruling is a “judgment of acquittal.” See: Evans v. Michigan, 568 U.S. 313 (2013), “Most relevant here, an “acquittal” encompasses “any” ruling that the prosecution’s proof is insufficient to establish criminal liability for an offence.” See also: U.S. v. Martin Linen Supply Co., 430 U.S. 564 (1977).

**Note:** According to the landmark precedent case on Double Jeopardy, Exparte Lange, 85 U.S. 163 (1873), “A second judgment of the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he “must” be discharged.”

**Note:** The most common misconception and misinterpretation that judges and lawyers have when a judge declares a “mistrial/hung jury ” because the jury could not reach a verdict, is that there is “bright- line rule” according to Perez, that no matter what the circumstances is surrounding the declaration of a mistrial, that automatically double jeopardy does not bar retrial. However, this is contrary to Perez. Perez establishes that a judge’s discretion to declare a mistrial is “only “ under circumstances where there is a “manifest necessity” to declare a mistrial. This has been best explained in the Fourth Circuit, in Washington v. Jarvis, 307 F.

Supp. 2d 794 (2004 4<sup>th</sup> Cir. ). In Washington the Supreme Court of Virginia announced a “bright-line rule” that double jeopardy protections are waived absent a objection to the mistrial. The Court of Appeals ruled that “Not only did the Supreme Court of Virginia misconstrue the opinions it utilized to support its ruling, but the Court also unreasonably failed to extend well established controlling U.S .Supreme Court legal principles in the instant situation. When a court declares a mistrial sua sponte, a “manifest necessity” determination is the appropriate test for double jeopardy principles. U.S. v. Perez, 22 U.S. 579 (1824), “Mr. Justice Story, We think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all circumstances into consideration, there is a manifest necessity for the act, or ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious cases; and in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favor of the prisoner. But, after all, they have the right to order the discharge; and the security which the public have for the faithful, sound and conscientious exercise of this discretion, rest, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office. “ Therefore, Perez does not establish a “bright-line rule,” that anytime a judge declares a mistrial or hung jury because the jury could not reach a verdict, that automatically retrial is not barred by the Double Jeopardy Clause. Perez is the precedent case used to determine whether a retrial after a mistrial is declared would violate the Double Jeopardy Clause, and that classical test used to determine this is a “manifest necessity.”

**STATE STATUTORY AND CONSTITUTIONAL  
LAWS**

S.C. Code 1976 § 16-3-910, “Kidnapping”. See Also, 16-3-920, “Conspiracy to Kidnap”, which is also defined as “false imprisonment: See State v. Berntsen, 295 S. C. 51 (1988); S.C. Constitution, Art. I, § 12, “Double Jeopardy”; § 3, “Privileges and Immunities”.

**FEDERAL STATUTORY AND CONSTITUTIONAL LAWS**

Amend. 5, U. S. Const. “Double Jeopardy”; Amend. 14 U. S. Const., “Due Process, Equal Protection of Laws”; Amend. 13 U. S. Const., “Right to Be Free from Slavery”; 18 U.S.C.A. § 1201, “Kidnapping”; 18 U.S.C.A. § 241, (Conspiracy Against Rights); 242, (Deprivation of Rights Under Color of Law); 42 U.S.C.A. § 1985, “Conspiracy to Interfere with Civil Rights”; § 1986 “Action for Neglect to Prevent; § 1988, ‘Proceeds and Vindication of Civil Rights.

**ARGUMENT 3**

**INDICTMENT**

On July 8, 2009, Georgetown County Solicitors, Gregory Hembree and Scott Hixon did commit the crimes of kidnapping and false imprisonment against Terron Gerhard Dizzley by fabricating an indictment, then prosecuting him without probable cause or presentment, nor indictment by a grand jury.

Petitioner’s indictment indicates that he was allegedly indicted by a Grand Jury Court of General Sessions on July 8, 2009, however, according to the South Carolina Judicial Department Terms of Court Calendar, there was no terms of court held on July 8, 2009.

Also, according to the South Court Administration, there is no longer special terms of court held. Additionally, Petitioner's indictment has no Clerk of Court stamp on it, which shows (proves) that it was filed through The Clerk of Court, which would make Petitioner's indictment, "a case" that would warrant jurisdiction. See: Exhibits enclosed.

The record shows that it is impossible for Petitioner to have been indicted by a Grand Jury of General Sessions on July 8, 2009, as his indictments alleges. This violates The Fifth Amendment of the U. S. Constitution. Renigar v. U. S. 172 F. 646 (4th Cir.), "A paper purporting to be an indictment, endorsed as a true bill by the foreman of a federal grand jury, and delivered by him alone to the clerk of court in the courtroom when court was not in session, is not an indictment, and confers no jurisdiction on the court to try the accused. To constitute a valid indictment for an infamous crime in a federal court, it must have been publicly presented in open court, all grand jurors being present and answering to their names, the indictment being delivered by the foreman to The Clerk of Court, and the fact entered on the record." Pringle v. State, 287 S. C. 409 (1986), "While it is preferable for a grand jury foreman to sign the true bill, foreman's signature is not essential to validity of indictment when the indictment is in writing and published by the clerk." Anderson v. State, 338 S. C. 629 (2000). "Remand was required for a hearing to determine whether the court that tried defendant for murder was vested with subject matter jurisdiction." State v. Bultron, 318 S.C. 323 (1995).

The Fifth Amendment of the United States Constitution states in part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." Exparte Wilson, 114 U. S.

417 (1885), “Holding Petitioner to answer for such infamous crime, and sentencing him to such imprisonment without indictment or presentment by a Grand Jury, exceeded its jurisdiction and he is, therefore, entitled to be discharged. The United States Supreme Court, having no jurisdiction of criminal case by writ of error or appeal, cannot discharge, on habeas corpus, a person imprisoned under the sentence of a circuit or district court in a criminal case, unless the sentence exceeds the jurisdiction of that court, or there is no authority to hold the prisoner under the sentence.” Mackin v. U. S., 117 U. S. 348 (1886); Rosen v. U. S. 161 U. S. 161 U. S. 29 (1896). Costello v. U. S. 350 U. S. 363 (1956). “Indictment returned by a “legally” constituted and unbiased Grand Jury, like an information drawn by the Prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more.”

Petitioner contend that the evidence is undisputed that his indictment was merely “rubbers-stamped and was not “legally” constituted by an unbiased Grand Jury and is the result of fraud.

Petitioner was illegally tried twice and held to answer for an infamous crime without presentment or indictment of a Grand Jury in violation of his Fifth and Fourteenth Amendment Rights. According to Exparte Wilson, 114 U. S. 417 (1885), a sentence under such circumstances exceeds the jurisdiction of that court, and there is no authority to hold Petitioner in prison under such a sentence, and he must be discharged.

Solicitors Gregory Hembree and Scott Hixon’s actions amounted to the crimes of kidnapping and false imprisonment. In Violation of:

## **STATE STATUTORY AND CONSTITUTIONAL LAWS**

S.C. Code 1976 § 16-3-910, “Kidnapping”. See Also, 16-3-920, “Conspiracy to Kidnap”, which is also defined as “false imprisonment: See State v. Berntsen, 295 S. C. 51 (1988); S.C. Constitution, Art. I, § 11, “Indictment”; § 3, “Privileges and Immunities”.

## **FEDERAL STATUTORY AND CONSTITUTIONAL LAWS**

Amend. 5, U. S. Const. “Indictment”; Amend. 14 U. S. Const., “Due Process, Equal Protection of Laws”; Amend. 13 U. S. Const., “Right to Be Free from Slavery”; 18 U.S.C.A. § 1201, “Kidnapping”; 18 U.S.C.A. § 241, (Conspiracy Against Rights); 242, (Deprivation of Rights Under Color of Law); 42 U.S.C.A. § 1985, “Conspiracy to Interfere with Civil Rights”; § 1986 “Action for Neglect to Prevent; § 1988, ‘Proceeds and Vindication of Civil Rights.

## **ARGUMENT 4** **Arrest Warrant**

On December 11, 2008, Investigators, Melvin Garrett and Dustin Morris, of the Georgetown, South Carolina Police Department and Magistrate Judge, Elaine C. Elliott, did commit the crimes of false arrest, false imprisonment and kidnapping against Terron Gerhard Dizzley by applying for an arrest warrant for Petitioner, Terron Gerhard Dizzley, for murder without probable cause and prepared an affidavit in the arrest warrant that does not provide any information at all that would enable a magistrate judge to determine probable cause. Thus, according to the Fourth Amendment, Petitioner’s arrest warrant is constitutionally deficient.

Petitioner's unlawful seizure, and false imprisonment pursuant to an invalid arrest warrant in which Arresting Officer, Investigator, Melvin Garrett's, affidavit did not provide any information to enable a magistrate to determine probable cause, and made false declarations to the magistrate to obtain Petitioner's arrest warrant, violated Petitioner's Fourth and Fourteenth Amendment Rights to due process resulting in a conviction and confinement contrary to the constitution and fundamental laws. Whereas the record shows the magistrate in Petitioner's preliminary hearing relied on the invalid arrest warrant and false declarations made to obtain the arrest warrant to bound Petitioner's case over to criminal court; the prosecution also relied on the invalid arrest warrant and false declarations made to obtain the arrest warrant, to fabricate a false indictment on Petitioner. The prosecutor also relied on Investigator Garrett's botched investigation, which led to the invalid arrest warrant and false declarations made to obtain it, as the sole issue in the prosecutor's case, which tainted the entire judicial process.

#### **STATEMENT OF CASE**

Petitioner contends that according to the United States Constitution, Fourth Amendment, the only variable that separates the crime of kidnapping, from a lawful arrest is "probable cause".

Petitioner contends that he is innocent of the crimes of which he is falsely imprisoned.

Petitioner contends that, from day one, of his unlawful imprisonment, he was kidnapped by the Georgetown County Sheriff Department pursuant to an

invalid arrest warrant, without probable cause, of which Petitioner turned himself in under and claimed his innocence.

The Fourth Amendment of the United States Constitution states that:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” See: 18 U.S.C. § 1201 Kidnapping.

On December 11, 2008, Investigator Melvin Garrett of the Georgetown, South Carolina Police Department applied for an arrest warrant for Petitioner, Terron Gerhard Dizzley, for murder without probable cause and prepared an affidavit in the arrest warrant that does not provide any information at all that would enable a magistrate judge to determine probable cause. Thus, according to the Fourth Amendment, Petitioner’s arrest warrant is constitutionally deficient. After hiring a Private Investigator, Bennie L. Webb, it was also found that Investigator Garrett made “false declarations” to the magistrate to obtain , Petitioner’s arrest warrant. See: Exhibits.

Petitioner contends that an evaluation of his arrest warrant, compared to The Fourth Amendment, and clearly established United States Supreme Court law proves that his arrest warrant is constitutionally deficient. Whereas Petitioner’s arrest warrants only recite no more than elements of the crime charged, and only states that , Petitioner allegedly committed the crime charged

without any personal knowledge of the complaining officer, Investigator Garrett.

**ARREST WARRANT AFFADAVIT IN GIORDENELLO v. U. S.**

“The undersigned complainant (Finley) being duly sworn state: That on or about January 26, 1956, at Huston, Texas in the Southern District of Texas, Veto Giordenello did receive, conceal, etc. narcotic drugs, to – wit: heroin, hydrochloride with knowledge of unlawful impartation; in violation of Section 174, Title 21, U. S. Code.”

Petitioner contends that The United States Supreme Court in Giordenello has determined that the above arrest warrant affidavit in Giordenello’s arrest warrant was constitutionally deficient. See: Giordenello v. U. S., 357 U. S. 480 (1958) “ Under Federal Rules of Criminal Procedure, complaint merely charging the concealment of heroin without knowledge of it’s illegal impartation in violation of designated statute and containing no affirmative allegations that the complaining officer spoke with personal knowledge of the matters contained therein and not indicating any sources for the officer’s belief and not setting fourth any other sufficient bases upon which a finding of probable cause could be made and did not authorize U. S. Commissioner to issue a warrant for arrest of defendant, and the deficiencies could not be cured by Commissioner’s reliance upon a presumption that the complaint was made on personal knowledge of complaining officer. The Commissioner should not accept without question the complainant’s mere conclusion that the person whose arrest they sought had committed the crime.” See: Arrest Warrant of Terron Dizzley.

**ARREST WARRANT AFFIDAVIT OF TERRON GERHARD DIZZLEY**

“That on or about December 1, 2008, at approximately 10:30 p.m. at 899 Oakland Road in the County of Georgetown, while at the Paradise Club/First and Ten Sports Barr, one Terron Gerhard Dizzley did, with malice and forethought cause the death of Aundrey Evans, Jr. by shooting him about the body multiple times with a handgun. This being against the peace and dignity of The State of South Carolina and a violation of South Carolina Code of Law 16-03-0010. 12080088 / Inv. M. Garrett / Inv. D. Morris”.

Petitioner contends that a comparison of his affidavit in his arrest warrant with the affidavit in the arrest warrant in Giordenello shows that they are identical and provide no sufficient basis for which a finding of probable cause could be made. Therefore, The United States Supreme Court has determined that such affidavit as in, Petitioner’s arrest warrant is constitutionally deficient under The Fourth Amendment, which results in an unlawful seizure, false imprisonment and unlawful pre-trial detainment. See: Illinois v. Gates, 462 U. S. 239 (1983), “ Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his actions cannot be a mere ratification of the bare conclusions of others.” Whiteley v. Warden, Wyo. State Pen., 401 U. S. 560 (1971), “ Complaint signed by county sheriff which recited that defendant, and another did and there unlawfully break and enter particular locked and sealed building was not sufficient to support independent judgment of disinterested magistrate and was

not sufficient showing of probable cause for issuance of arrest warrant. Before warrant for either arrest or search warrant can be issued, judicial officer must be supplied with sufficient information to support independent judgment that probable cause exists for the warrant.” Malley v. Briggs, 475 U. S. 335 (1986); Beck v. Ohio, 379 U. S. 89 (1964); Wong Sun v. U. S., 371 U. S. 471 (1963); Franks v. Delaware, 438 U. S. 154 (1978).

### **FALSE DECLARATIONS TO THE MAGISTRATE**

Petitioner contends that the truth, which was also omitted from the affidavit is that the entire investigation of his case rested solely on an alleged hearsay statement by victim that “D” or “Little D” was the person who shot him. Witnesses who alleged that the victim made this statement indicated that he never stated to them who this “D” or “Little D” was, no description, or whether this individual is white, black, Hispanic, male , female, etc ., and the witnesses indicated that the individual had on a mask and could not be identified.

Petitioner contends that he hired a Private Investigator, Bennie L. Webb, to investigate his arrest warrant. According to Bennie L. Webb’s Investigative report, on April 26, 2018, he spoke to Investigator Garrett and Investigator Garrett informed Investigator Webb that he told the Magistrate that he had statements from Naomi Alston and Aundry Evans, Sr. that victim told them that “Terron Dizzley” shot him. However, such statements do not exist, and Investigator Garrett admitted this, in Petitioner’s second trial of 2014. Therefore, Investigator Garrett intentionally made “false declarations” to the magistrate , which was used to obtain Petitioner’s arrest warrant, without

providing any information in the arrest warrant's affidavit which would establish probable cause. See: exhibits

See: Exhibit 1. Aundry Evans, Sr.; Investigative Report of Investigator Nelson on December 1, 2008 at 11:20 p.m. at the hospital in Georgetown, S. C. . "When asked who shot him , the victim responded he was speaking with his father and did not wish to speak with me. When asked again, victim stated someone just came in and shot him and asked me to leave .... Victim's father then exited the room. I inquired if his son had disclosed any information to him, to which Mr. Evans, Sr. stated " he had not" ...

See: Exhibit 3. However, the next day, December 2, 2008, 0500, "Aundry, Sr. stated that his son had informed him in The Georgetown Hospital that "Little D" was the individual who shot him. Mr. Evans, Sr. did not know who "Little D" was".

The totality of the circumstances of Aundry Evans, Sr.'s statements: proves that; (1) None of them stated that his son told him that Terron Dizzley shot him . (2) Evans, Sr. gave two statements that are inconsistent as to the material point; ( 3) Aundry Evans, Sr.'s statements clearly reveal that if his son (victim) did make the statement "Little D" shot him, he never indicated who this "Little D" was." Whereas the incident report states that: "Mr. Evans, Sr. did not know who "Little D" was."

See: Exhibit 2. Naomi Alston: Investigator Nelson's Incident Report, 12 - 1 - 2008,, 11:20 p.m., second Page, "I responded to the ER where I attempted to speak to the victim, and he would not cooperate and would not provide any information.....". "I then went to the waiting room where the victim's fiancé', Naomi Alston, provided me with the victim's information and also stated the victim told her that the male that shot him was called "Little D". Alston stated that "she believed" the suspect's name was Tyron Dibsly, but "she knew" he

was called "Little D."

See also: Trial, 2012, Tr. P. 98, L25 – P. 99, L1 – 2.

25. Q. Did he talk about the identity of the shooter at all

1. in the hospital to you?

2. A. He didn't.

**Investigator Garrett, Trial of 2014, P. 550, L6 – 15**

6. Q. And in terms of why, you were, you were trying to find

7. Terron Dizzley. You had, you had already heard, at least,

8. That Naomi Alston claimed that Terron Dizzley, that he

9. Identified Terron Dizzley as the person that shot him? You

10. Knew that; right?

11. A. No. What I heard was that he identified a person by the

12. Name of "Little D" that shot him.

13. Q. Well, "Little D", but then you said "Little D" you

14. Wanted someone to confirm that "Little D" was Terron Dizzley?

15. A. That's correct.

See also: Trial of 2014, Tr.P. 544, L1 – 21 specially P. 545, L19 – 21.

19. A "After identifying who

20. "We thought", was Little D. of course, we went to try to track

21. him down and speak with him.

Investigator Nelson, (2014, Tr. P. 482, L6 – P. 483, L1 – 4); Investigator Nelson testified in Petitioner's trial that he asked Aundry Evans, Jr. several times at the hospital on the night of December 1, 2008, did he know who shot him and Aundry would not provide any information

**Officer Jarred Bardon, (2014, Tr. P. 463, L18 – 20)**

18. Q. Yeah. Did the victim make any statements to you

19. regarding who he thought shot him?

20. A “He did not.”

Petitioner contends that had Investigator, Melvin Garrett, provided the truth to the magistrate, that his entire investigation rested solely on a vague nickname (s), “D” and “Little D”, which did not identify anyone, pursuant to an alleged “hearsay statement”, then such an arrest warrant would have been considered as a “John Doe” warrant, therefore, would be constitutionally deficient. U. S. v Doe, 703 F. 2d. 745 (1983, 3<sup>rd</sup> Cir.), “Describing its subject as “John Doe, a/k/a Ed” Was constitutionally insufficient and that insufficiency was not cured by fact that law enforcement agency who executed warrant had independent knowledge that defendant was person for whom warrant was intended. The “John Doe Warrant” in this case does not reduce to a tolerable level the number of potential subjects: anyone with the first name, “Ed” – and, therefore, must be thousands of “Ed” in the Pittsburgh area – is fair game.” See: West v. Cabell, 153 U. S. 78 (1894), ‘A warrant for the arrest of James West without other description of the person intended, give no authority to arrest a person whose name is V. M. West or Vandy West, and who have never been known as James West; and it is immaterial that such person was the one the commissioner had in mind he issued the warrant.’”

The omission of this truth was misleading and its inclusion and circumstances surrounding these witnesses’ statements would have defeated probable cause. Whereas, Petitioner has never gone by the names “D” nor “Little D”, and there must be thousands of individuals with the nickname “D”. Because the arrest warrant’s affidavit does not state

any probable cause, at all , there is nothing for the court to consider as any remaining content of the affidavit to determine if it is still sufficient to establish probable cause. See: Franks v. Delaware, 438 U. S. 154 (1978); Thus, any evidence or testimony gathered pursuant to Petitioner's arrest warrant should have been excluded.

#### **FOURTEENTH AMENDMENT DUE PROCESS VIOLATION**

Petitioner contends that the record shows that the State's entire case rested solely on Investigator Garrett's botched investigation and the same fabricated evidence he presented to the magistrate to obtain Petitioner's arrest warrant. The record show that the state presented testimony from Naomi Alston, victim's finance and Jerilether Jones,( victim's girlfriend, who were not witnesses of the crime) of a photo-line-up procedure conducted by Investigator Garrett and Investigator Dustin Morris, which alleged that Alston and Jones picked Petitioner out of a photo lineup not as the person who committed the crime, but, as the person they allegedly knew by the nickname, "D" or "Little D" and that they believed that the victim was speaking of Petitioner when he allegedly made the "hearsay" statement.

Petitioner contends that the record shows that the solicitor's sole purpose for presenting the photo-line-up was to mislead and confuse the jury and to unlawfully "pin" the nickname on Petitioner as the shooter. Whereas, when the trial judges asked the solicitor was her purpose for presenting the photo-lineups was to show that Jerilether and Alston picked out someone whom they knew "too" by nicknames, "D" or "Little" and not for the purpose of who

committed the crime. The solicitor agreed that this was her purpose. See: Tr. P. 118, L. 17 – P. 119, L. 1 – 4. However, the solicitor then made the following statement, “specifically, Ms. Alston and Miss Jones picked this defendant out of a lineup as being “the one” referred to by nickname.” See: Tr. P. 119, L. 23 – 25.

Petitioners contends that it was found through after-discovered evidence which consisted of the transcription of three CD’s, which consisted of interviews and statements taken by Investigator Garrett and Investigator Dustin Morris of the Georgetown County Sherriff’s Department of state’s witnesses which proves prosecutorial misconduct.

Petitioner contends that the State knowingly presented false testimony from key witness, Douglas Morris, whom he never met, seen or knew, who has never met, seen or known Petitioner, to intentionally make false statements for the State, testifying falsely in both of Petitioner’s trials, that he knew Petitioner by the nickname, “Little D” , or “D”. Petitioner found out through the discovery of the transcriptions of these CD’s that Douglas Morris, on December 2, 2008, the day after the shooting, in which Petitioner was charged, gave statements to Investigators Garrett and Investigator Dustin Morris in the presence of his mother, Sonya Jones and his Sister Jerilether Jones. In this interview, Douglas stated that after Aundry was shot, he allegedly made a statement “D” was the one who shot him in reference to the unknown, unidentified shooter, according to witnesses was wearing a mask a hoodie and other articles of clothing to hide their identity. During this interview, Investigator Garrett then asked Douglas Morris, “do you know who “D” is”? Douglas Morris responded,” “No Sir”. Investigator Garrett also asked Douglas Morris during this

interview, "This guy you saw come in did he remind you of anybody that you may have seen before? Douglas responded, "No Sir, not really". Douglas Morris also stated the individual, "He was kind of dark skinned."

See: Transcription of Douglas Morris Interview of December 2, 2008, Taken by Investigators Melvin Garrett and Dustin Morris, Tr. P. 7, Lines 7 – 14.

7. Sonia: What did Aundry say to Y'all in the club after he
8. got shot?
9. (A) He told us that "D" was the one who shot him.
10. (Q) Dee ?
11. (A) Yes, he said that he recognized him by his voice and Dee
12. was the one who shot him.
13. (Q) Do you know who D is?
14. (A) No Sir.

See also: Tr., P. 4, Lines 24 – P. 5, L1

24. (Q) This guy that you saw come in, did he remind you
25. of anybody that you may have seen before?
1. (A) No. Sir, not really.

Because Petitioner had two trials and Solicitor Erin Bailey reviewed Petitioner's first trial transcript, she knew that Douglas Morris had testified falsely in reference to his initial statements as to knowing who this "D" was "allegedly" mentioned by Aundry.

**State v. Terron Dizzley, 2012**

**Motion, Tr. 70, L15 – P. 71, L1**

15 ... Aundry did clearly state, "I

16. cannot believe "D" done to me. I recognize his voice"
17. (Q). Okay, what was the environment or the - what was the
18. environment like after the shooting in the, in that space?
19. (A) I mean, everybody was in shock . Like after, after he
20. stated the name I guess a couple of friends that had been out
21. there before had knew who "D" or whatever. They was in
22. shock. I was in shock myself from just seeing him a couple of
23. times before.
24. (Q) Okay, did you know Terron Dizzley prior to that evening?
25. I seen him like four or five times before, but as far as
1. (P. 71) like having a conversation like, no , no, Sir, I don't.

**Trial of (2012) Direct by State**

**Tr. P. 247, L 25 – P 248, L1 – 7**

25. (Q) Okay, did you know prior to this Terron Dizzley?
1. (A) I saw him a few times before.
2. (Q) Okay, did you know him by nickname?
3. (A) "D".
4. (Q) Okay, and do you recognize "D" in the courtroom today?
5. (A) Yes, sir, I do.
6. (Q). And where is he?
7. (A) Sitting right there.

This was proof that The Solicitor knew that Douglas Morris either lied in his testimony at the first trial of 2012, or he lied in his statements given to Investigator Garrett

on December 2, 2008. See: State v Stanley, 365 S. C. 24 (2005); See: S. C. Code § 16-9-10, which provides

that: A. (1) "It is unlawful for a person to willfully give misleading, incomplete testimony under oath in any court or record, judicial, administrative, or regulatory proceeding in this state;

(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this state."

Petitioner contends that the record shows that the Solicitor deliberately compromised the integrity of the fact finding and truth-seeking process by knowingly introducing Douglas Morris' false testimony as to Petitioner's identity to obtain a conviction.

**See: State v. Terron Dizzley (2014)**

**Tr. P. 265,L 13 – 25.**

13. (Q) And did you know this Mr. Dizzley at the time?

14. (A) I've seen him four or five times before prior to the

15. event , but I didn't actually have a conversation with him as

16. knowing him

17. (Q) Okay, in what context did you see Mr. Dizzley?

18. (A) Ma'am?

19. (Q). What occasion would you have had to have seen Mr.

20. Dizzley?

21. (A) If Aundry brought him around the house just every now and

22. Then

23. (Q) Okay. What was your understanding, based on your  
24. personal knowledge, of the relationship between Andre Evans,  
25. Jr., and Mr. Terron Dizzley?

1. (A) he never talked about that with me. (P. 266)

See: (2014), Tr. P. 278, L6 – 11

1. (A) Did you ever hear Aundry Evans, Jr. , who you called a  
2. brother, referred to anyone else as “Little D” or “D”?  
3. (A). No, ma’am.  
4. (Q) Okay, so if he says “Little D” or “D”, who do you think he's  
5. referring to?  
6. (A) He was referring to as Terron.

Petitioners contend that not only did the Solicitor knowingly present Morris’ false testimony, but the Solicitor also presented his testimony to mislead the jury and make false statements that the victim recognized Petitioner’s voice. However, this was false and not supported by the record. “Further, in Mr. Douglas’ proffered, testimony, Your Honor heard that in just a few moments Mr. Douglas is going to testify that the victim was able to recognize the defendant’s voice.” The Solicitor knew that none of the witnesses stated that Aundry “allegedly” stated that “Terron Dizzley” shot him, and he recognized “Terron Dizzley” by his voice. The Solicitor’s false statements to the Judge proves that she intentionally introduced Douglas Morris’ false testimony to unlawfully , maliciously “pin” false nicknames on Petitioner as the shooter, and that Aundry “allegedly” stated that he recognized Terron Dizzley by voice.

See: (2014), Tr. P. 271, L 24, - P. 272, L1 – 2.

Although Douglas Morris stated in his initial statement of December 2, 2008, that the shooter was , “ he was like a kind of dark skinned”. However, during Petitioner’s trial of 2014,

Douglas testified: See: (2014), Tr. P. 268, L 13 – 21.

13. (A) Okay, do you – can you describe any further what

14. man who was masked look like? Were you able to see his

15. face?

16. ( A) No, ma'am.

17. ( Q)

18. (A) I, I was able to tell he was a little bit lighter than my

19. complexion at the time.

20. (Q) Lighter than your complexion?

21. (A) Yes, ma'am

It is clear from the record that The Solicitor knew of Douglas Morris’ initial interview of December 2, 2008, the time, day, and contents of Morris’ statements, because they were part of the State's investigation, and the Solicitor made references to these interviews during redirect, and also Mr. Barr made references to them on Cross by Defense.

**Direct by State (2014, Tr. P. 286, L 14 – 16)**

14. (Q) the police officer that you told this to at your

15. mother's house the next day, do you remember was he black or white?

16. (A) He was black.

**Cross by Defense (2014, Tr.84, L 9 – 17)**

9. (Q) When did you tell police, if you did, that you

10. heard Aundry make a statement?
11. (A) December 2 , 2008,
12. (Q) And you heard Aundry make a statement?
13. (A) Yes, Sir.
14. (Q) And you do know who you told that to?
15. (A) I don't know which police officer.
16. (Q) Where were you at the time you told then?
17. (A) I was at my mother's house.

The Solicitor even admitted in closing arguments that she knew some of her witnesses were not telling the truth. However, the Solicitor knowingly presented their false testimonies anyway.

**Closing arguments by the State**

**(2014, Tr. P. 714, L 17. 22)**

“I wanted each and every, every one of you to know what every person who may have witnessed anything having to do with this saw. Some of them saw a lot. Some of them can't remember. Some of them aren't telling the truth. Clearly, I didn't tell them what to say or they would have done better.”

Petitioner contends that such false and misleading, in-court identification of him, as “the one” referred to by nickname pursuant to the, alleged “hearsay” statement by victim that “D” or “little D” shot him, pursuant to the out-of-court photo line-up procedure and testimony from Jerilether Jones and Naomi Alston, and the fact that the solicitor knowingly

presented false testimony from Douglas Morris as to knowing Petitioner by the nickname “D” or “Little D”, and eliciting testimony from Douglas Morris that the victim was speaking of Petitioner when he made the alleged statement pursuant to the nicknames as to who shot him which is a direct connection to the same false declarations that Investigator Garrett made to the magistrate to obtain Petitioner’s arrest warrant violated his Fourteenth Amendment Right to Due Process and should have been suppressed as “fruit of the poisonous tree”.

See: Humbert v Mayor and City Counsel of Baltimore City, 866 F. 3d. 546 (2007

4<sup>th</sup> Cir.), “ (1) Statement in arrest warrant application, that rape victim had positively identified arrestee as her attacker was, false, and its inclusion in application amounted to, at least, recklessness. (2) Warrant application was invalid based on officers’” reckless inclusion of a material false statement. (3) Officers lack of probable cause to make arrest independent of invalid arrest warrant; (4) Legal process instituted against arrestee, and his resulting pretrial detention, were unsupported by probable.” See: U. S. v Crews, 445 U. S. 463 (1980), “For purposes of determining whether a Fourth Amendment violation requires exhaustion of a victim’s in-court identification of the accused, identification has three distinctive elements, first, the victim is present at trial to testify as to what transpired between her and offender, and to identify defendant as the culprit; second, the victim processes knowledge of and ability to reconstruct prior criminal occurrence and identity defendant from her observations at the time of the crime; and third, defendant is also physically

present in the courtroom so that the victim can observe him and compare his appearance to that of the offender.” See also: U. S. v Ceccolini, 435 U. S. 268 (1978). “Court would reject Government’s suggestion to adopt per se rule that live witnesses should not be excluded at trial no matter how close and proximate the connection between it and a violation of The Fourth Amendment.” Wong Sun v U. S., 371 U. S. 471 (1963), “Even though informant had been under police surveillance and heroin was found in his possession upon his arrest, information that he had bought heroin from “Blackie Toy”, identified only as proprietor of laundry on specified street, constituted insufficient cause for arrest of defendant who answered doorbell at “Oyes Laundry” on specified street. Information too vague and from too untested a source to permit judicial officer to accept it as probable cause for arrest warrant is insufficient information upon which to base arrest without warrant. Verbal evidence which derives immediately from unlawful entry and unauthorized arrest is not less the “fruit” of official illegality than more common tangible fruits of unwarranted intrusion, and Fourth Amendment may protect against overhearing of verbal statements as well as against more traditional seizure of papers and effects.” Davis v Mississippi, 394 U. S. 721 (1969), “Where city police made no attempt to employ procedures which might comply with requirements of Fourth Amendment, detention at police headquarters of defendant and others was not authorized by judicial officer, defendant was unnecessarily required to undergo two fingerprinting sessions and defendant was not merely fingerprinted during

first detention but was also subject to interrogation, fingerprints obtained from defendant during first detention were a product of the illegal detention and were improperly admitted into evidence in state rape prosecution.” Brown v. Illinois, 422 U. S. 590 (1975), “For Fourth Amendment purposes, the cause of connection between illegality of arrest and confession; and that in custody statements which stemmed from an illegal arrest were not rendered admissible merely because defendant had been given Miranda warnings prior to making statements.”

Petitioner contends that the state also presented witnesses, Maurice Giles and Willie Stanley whose testimony was also the result of Investigator Garrett’s botched investigation, and their testimonies were also about allegedly hearing victim state that “D” or “Little D” shot him and the state also used their testimonies to falsely attribute these nicknames to Petitioner as being “the one” victim was allegedly speaking as to who shot him pursuant to the alleged hearsay statement, which is a causal connection between the same false declarations that Investigator Garrett made to the magistrate to obtain Petitioner’s arrest warrant.

The record shows that the state also presented Investigator Garrett and Investigator Dustin Morris to testify about their investigation and what lead them to obtain an arrest warrant for Petitioner, which only bolstered the witnesses’ false testimony pursuant to the photo line-up procedures of Naomi Alston, Jerilether Jones and other witnesses pursuant to falsely

identifying Petitioner by nickname pursuant to obtaining Petitioner's deficient arrest warrant. Wong Sun v U. S., 371 U. S. 471 (1963), *supra*, U. S. v Ceccolini, 435 U. S. 268 ( 1978), *supra*. .

For these reasons, according to clearly established Supreme Court Law, the testimonies of Naomi Alston, Jerilether Jones, Douglas Morris, Maurice Giles, Willie Stanley, Investigator Garrett and Investigator Dustin Morris testimonies pursuant to any in-court or out-of-court identification of Petitioner should have been suppressed on the grounds that they were obtained as a result of "fruit of the poisonous tree" pursuant to Investigator Garrett's botched investigations which lead to Petitioner's unlawful seizure pursuant to the deficient arrest warrant and "false declarations" made to the magistrate to obtain his arrest warrant.

See: Testimonies of state witnesses, trial of 2014, that should have been suppressed , Naomi Alston tr. Pp. 105 – 116; 175 – 234; Jerilether Jones, tr. Pp. 245 – 263; Douglas Morris, tr. Pp. 124 – 130; 264 – 285; Maurice Giles, tr. Pp. 189 – 103; 288 – 297; Willie Stanley, tr. Pp. 75 – 86; 312 – 355; Investigator Melvin Garrett, tr. Pp. 538 – 566; Investigator Dustin Morris, tr. Pp. 582 – 626.

### **ARREST WARRANT, INDICTMENT**

Petitioner contends that in affecting his arrest and detention pursuant to an arrest warrant that did conform to the requirement of the Fourth Amendment and was obtained by knowingly making false declarations to the magistrate deprived him of his liberty without due process of law.

Petitioner contends that the record shows that magistrates', at his

preliminary hearing, decision to bound his case over to criminal court of general sessions was based on the constitutional deficient arrest warrant and false declarations to obtain the arrest warrant.

Petitioner contends that the record also shows that the Georgetown County Sheriff Department conspired with the Georgetown County Solicitor's Office in fabricating a false indictment on him, by falsely indicating in Petitioner's indictment that The Georgetown County Sheriff's Department were the witnesses in Petitioner's alleged grand jury's proceedings. See: Exhibits and Ground 3. Whereas the record shows that Petitioner's indictment indicates that he was allegedly indicted by a Grand Jury Court of General Sessions in Georgetown, South Carolina on July 8, 2009. However, according to the South Judicial Department Terms of Court Calendar, for Georgetown and Horry Counties, there was no General Sessions nor Common Pleas terms of Court held on July 8, 2009, which makes it impossible for Petitioner to have been indicted by a Grand Jury and impossible for the Georgetown Sherriff Department to have been a witness in this alleged grand jury.

Therefore, by knowingly making such false material declarations on Petitioner's indictment, violated 18 U.S.C.A. § 1623. Petitioner contends that there is a direct connection between the Georgetown County Sheriff's Department's fabrication of evidence to obtain his arrest warrant with conspiring to also make false declarations in his indictment. Therefore, Petitioner's false indictment was also a result of Government misconduct by the Georgetown, County Sherriff's Department.

Petitioner contends that the unconstitutional acts of procuring his arrest warrant tainted the entire process of the criminal procedure which resulted in his unlawful conviction and unlawful imprisonment for over 8 years and counting.

Drawing from Frank v Delaware, 438 U.S. 154 (1978), a facially valid warrant or other facially sufficiently legal process ( be it a preliminary hearing ruling” or even a grand jury indictment) does not cut off a person Fourth Amendment Right if the process has been so tainted that “the result is that probable cause is lacking.”

Petitioner contends that the prosecution knew that the affidavit in his arrest warrant did not provide any information sufficient to establish probable cause and was secured by making false declarations to the magistrate. Yet, and still, the prosecution prosecuted Petitioner pursuant to information that they knew was false pursuant to Investigator Melvin Garrett’s botched investigation, which resulted in a false identification and prosecutorial misconduct. Berger v U.S., 295n U.S. 78 (1935), “Prosecutor’s duty is not only to use every legitimate means to bring about a just conviction, but to refrain from improper methods calculated to produce a wrong conviction”. Napue v Illinois, 360 U. S. 264 (1959), “A state may not knowingly use false evidence, including false testimony to obtain a tainted conviction.” Conviction obtained through use of false testimony, known to be such by representative of the state, is a denial of due process.” Mooney v Holohan, 294 U. S. 103 (1935); Giglio v U. S., 405 U.S. 150 (1972); Miller v Pate , 386 U. S. 1 (1967).

Petitioner contends that his arrest warrant tainted the entire judicial process which led to his false imprisonment for over eight years and counting, because the legal process he received failed to establish what the Fourth Amendment makes essential to believe that he committed a crime. Manuel v City of Joliet, 137 S. Ct. 911 (2017), “The Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process.”

Petitioner contends that for the foregoing reasons, his unlawful seizure, false imprisonment pursuant to an invalid warrant in which the Arresting Officer, Investigator Melvin Garrett’s, affidavit did not provide any information to enable a magistrate to determine probable cause and made false declarations to obtain Petitioner’s arrest warrant, violated Petitioner’s Fourth Amendment Rights and tainted the entire legal process, resulting in a Fourteenth Amendment Due Process Violation, therefore, resulting in a conviction and a confinement contrary to the constitution and fundamental laws. Therefore, Petitioner’s unlawful conviction should be vacated and set aside.

According to the laws of this state and laws of the U. S. Constitution, it is unlawful for a police officer to apply for an arrest warrant without probable cause and provide an affidavit in an arrest warrant which does not provide any information which would enable a magistrate to determine probable cause. It is also unlawful for a magistrate judge to issue an arrest warrant without probable cause. Such actions amounts to the crimes of kidnapping, false arrest and false imprisonment. In Violation of:

## STATE STATUTORY AND CONSTITUTIONAL

### LAWS

S.C. Code 1976 § 16-3-910, "Kidnapping". See Also, 16-3-920, "Conspiracy to Kidnap", which is also defined as "false imprisonment: See State v. Berntsen, 295 S. C. 51 (1988); S.C. Constitution, Art. I, § 10, "Search and Seizures, Invasion of Privacy".

### FEDERAL STATUTORY AND CONSTITUTIONAL LAWS

Amend. 4, U. S. Const. "Search and Seizures, Warrants"; 18 U.S.C.A. § 1201, "Kidnapping"; 18 U.S.C.A. § 241, (Conspiracy Against Rights); 242, (Deprivation of Rights Under Color of Law); 42 U.S.C.A. § 1985, "Conspiracy to Interfere with Civil Rights"; § 1986, Action for Neglect to Prevent; § 1988, 'Proceeds and Vindication of Civil Rights.

For the foregoing reasons, Petitioner respectfully request Petitioners respectfully request, as of right, pursuant to liberty and justice that this Honorable Court issue a Conditional Order that Petitioner, Terron Dizzley is immediately released from being held kidnapped/falsey imprisoned for 8 years and counting or schedule them an **"emergency hearing within 24 hours"** of the filing of this motion, as required by S.C. Code s 20-4-50, and afford Petitioners procedural due process, and equal protection of laws to fully and fairly present, argue, and exhibit their case.

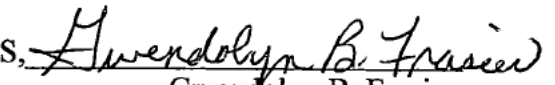
Date: \_\_\_\_\_

Respectfully submitted,

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## EXHIBITS, ARREST WARRANT, INDICTMENT

**Exhibit 1:** Arrest Warrant, Affidavit does not establish any probable cause.

**Exhibit 2:** Investigative Report from Benny L. Webb of "The Palmetto Center for Law and Justice", 710 Window Drive, Sumter, SC. 29150. See: Page 1, Paragraph 6 (Last Through Page 1, Paragraphs 1 and 2. Interview with Investigator Garrett, where Investigator Garrett admitted that he told the Magistrate that statements given by Mr. Evans, Sr., (Victims Father) and Naomi Alston indicated that the victim Allegedly told them that Terron Dizzley shot him. Investigator Garrett indicated that this information which is clearly false and not supported by any record of Evans, Sr. and Alston's statements is what he told the Magistrate to obtain my son's arrest warrant.

**Exhibit 3:** Testimony of Investigator Garrett in 2014 trial, transcript, Page, 550, L 6 - 12. Whereas Investigator Garrett admitted that Alston had not indicated to him that the victim identified Terron Dizzley as the person who shot him. Investigator Garrett testified that he heard the victim "allegedly" identified a person by the name of "Little D". However, according to Investigator Garrett, during his interview which was given to Private Investigator Webb, this is not what he told the Magistrate to obtain the arrest warrant on Terron Dizzley for the murder of Aundry Evans, Jr.

**Exhibit 4:** Incident Report, Investigator Nelson, 12-02-08-10100. 1. Underlined which indicates that investigators spoke to victim at the hospital and asked him if he knew who shot him, and was not provided with any information after asking several times. 2. Underlined, Investigators asked victim's father, Aundry Evans, Sr. had his son disclosed to him who shot him and Evans, Sr. stated he had not. 3. Underlined, Investigator indicates that Naomi Alston, victim's fiancé, stated that victim allegedly told her that "Little D" shot him, not Terron Dizzley; and never indicated who "Little D" was. Investigator Nelson's incident report indicates that "Alston" "believes" that "Little D" is Tyron Dibsly. My son's name is not "Tyron Dibsly and he has never gone by the nicknames "D" nor "Little D".

**Exhibit 5:** See also Ex. 5.

**Exhibit 6:** See Underlined Third (3) Paragraph. Mr. Evans, Sr., Incident report of Investigator Nelson. 12-02-08-0500, indicates that the next day after the

shooting, Evans, Sr. gives another statement contrary to his initial statement that, at the hospital, victim allegedly told him that "Little D" shot him. However, the incident report states: Mr. Evans, Sr. did not know who "Little D" was.

**Exhibit 7:** Testimony of Officer Jarred Bardon, trial of 2014, Transcript Pages, 463, L18 – 20. Officer Bardon testified that while attending victim at the scene, after victim was shot, victim never made any statements regarding who he thought shot him.

**Exhibit 8:** Testimony of State's Witness, Gary Gibson, trial of 2014, Transcript Pages 404, L10 – 25. Gibson, a witness of the shooting, testified that the individual that shot Evans, Jr. had on a mask and a hoody and that he could not identify the shooter or tell whether the person was white, black Puerto-Rican or Indian.

**Exhibit 9:** Gary Gibson's testimony, Page 406 L4 – Page 407, L1 – 25: Trial Counsel told told my son, Terron, to stand up. Trial Counsel than asked Gary Gibson was the shooter Terron's height. Gibson look at Terron and testified that the shooter was taller that Terron, the same statement that he gave Investigator Brown on August 20, 2012, which would have made it impossible to have been Terron.

**Exhibit 10:** Testimony of Jameson Wright, trial of 2014. Wright witnessed the individual get out of his car while standing outside of the club. According to Wright, the individual was a "tall fellow", and they went inside the club. See: Transcript, Page 418, L10 – 11. Jameson Wright's testimony also makes it impossible for the shooter to have been Terron.

**Exhibit 11:** Indictment. Notice that the indictment indicates that the witness who testified before the Grand Jury is Georgetown County Sheriff's Office, who is the same Sheriff's Office who made "False Declarations to the Magistrate to obtain Terron's arrest warrant. Notice also that the indictment indicates that Terron was "allegedly" indicted before a Grand Jury in General Sessions on July 8, 2009, in Georgetown County.

**Exhibit 12:** Calendar of Terms of Circuit and Family Court of July 2009 which clearly indicates that there was not General Sessions Term of Court held in Georgetown or Horry County on July 8, 2009; nor was there any Sessions of Common Pleas on July 8, 2009. This shows that Terron was never indicted before a Grand Jury.

**Exhibit 13:** A letter from South Carolina Court Administration, South Carolina Supreme Court in response to Terron's letter requesting to ascertain whether there were any Special terms held that was requested by the Solicitor in which Terron was indicted on July 8, 2009, which would explain why there was no indication of terms of court held on July 8, 2009. The response from the SC Court Administration and the South Carolina Supreme Court was that there was no

special terms of Court held, and under the current constitutional provisions, all terms of the circuit court are set by the Chief Justice and, there are no special terms.

Ex-1

J-525436

GCSO

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 510

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me the affiant Melvin Garrett whobeing duly sworn deposes and says that defendant Terron Gerhard Dizzleydid within this county and state on or about 12/01/2008

violate the criminal laws of the

THE STATE

against

Terron Gerhard Dizzley

Address:

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: D Height: 5 5 Weight: 165

DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0220000Prosecuting Agency: Georgetown County SheriffProsecuting Officer: Melvin Garrett - 0018Offense: Murder / MurderOffense Code: 0116Code/Ordinance Sec: 16-03-0010, 0020This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to  
defendant Terron Gerhard Dizzley  
on 12-18-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P. O. Drawer 421270

129 Screven Street, Room 221

Georgetown, SC 29442

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## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/1/2008 defendant Terron Gerhard Dizzley

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Georgetown ) as set forth belowDESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/11/2008Elaine C. Elliott (L.S.)

Signature of Issuing Judge

Elaine C. Elliott

Judge Code: 7018

Signature of Affiant

Affiant's Address 430 N. Fraser StreetGeorgetown, SC 29440-Affiant's Telephone (843)436-3600Judge's Address Magistrate's OfficeHemingway, SC 29554-3841Judge's Telephone (843)545-3637Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

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Ex. 2

August 14, 2018

# Investigative Report

To: Attorney Ellen Cleary

From: Benny L. Webb, Private Investigator

RE: Post Conviction Relief (PCR)

Terron Gerhard Dizzley, Petitioner

Charles Barr, Esquire, Respondent

County: Georgetown County

## Introduction:

On April 4, 2014, Terron Gerrhard Dizzley was convicted of the murder of Nathaniel Evans, Jr., by a jury in general session court in Georgetown County. Mr. Dizzley was sentenced on the murder charge to thirty five (35) years confinement at the South Carolina Department of Corrections.

## Summary:

On April 2, 2018, I was retained by the family of TerronDizzley to investigate the above claims by Mr. Dizzley that his Attorney Charles Barr was ineffective in representation of him during his trial in April of 2014.

On April 2, 2018, I met with Ms. Gwendolyn Frasier, the mother of TerronDizzley, and she advised me of all relevant information that she had concerning the ineffectiveness of Attorney Barr during his son's trial. Ms. Frasier told me of her concerns of how distracted Attorney Barr appeared to be during the trial and that he also appeared to be disinterested in performing his duties as an attorney representing her son during the trial. Ms. Frasier told me that Attorney Barr fell asleep several times during the hearing.

Ms. Frasier also gave me all relevant documents that she had at the time in reference to the case against her son.

On April 2, 2018, I read and reviewed all relevant documents given to me by Ms. Frasier including a partial transcript, incident reports by the Georgetown County Sheriff's Office, an investigative report conducted by Focal Point Investigations, LLC of Charleston, South Carolina, witness statements, and a list of jurors on this trial.

On April 26, 2018, I spoke with Investigator Melvin Garrett of the Georgetown County Sheriff's Office. Investigator Garrett indicated to me that he was the case investigators assigned to the death of Nathaniel Evans, Jr. Investigator Garrett told me that he spoke with Nathaniel Evans, Sr. at the hospital

on the night of the incident and he asked Mr. Evans if his son, Nathaniel Evans, Jr. (Victim) told him who shot him. Investigator Garrett stated that initially, Mr. Evans, Sr. told him that his son did not tell him who shot him. Investigator Garrett told me that in a subsequent interview that Mr. Evans, Sr. told him that Terron Dizzley shot him. Investigator Garrett told me with the statement by Mr. Evans, Sr. and a subsequent state by Naomi Austin stating that Mr. Evans, Jr. told her that Terron Dizzley shot him, that he was able to obtain an arrest warrant for Terron Gerhard Dizzley for the murder of Nathaniel Evans, Jr.

On April 26, 2018, I was able to ascertain from Investigator Garrett and medical officials at Georgetown Memorial Hospital the fact that none of them recall observing Naomi Austin speak to Nathaniel Evans, Jr. during his ambulatory care at the hospital. There is no evidence, information, or proof that Naomi Austin spoke with Nathaniel Evans, Jr. at the hospital or that he gave her the name of Terron Dizzley as the person who shot him at the Paradise Club in the Oatland Community of Georgetown County on December 1, 2008.

On April 26, 2018, I spoke with juror number 189 from the trial of State vs. Dizzley, 2014. Juror 189 told me that in her opinion the attorney for Mr. Dizzley was inattentive, not focus, and did not do a good job representing Mr. Dizzley. Juror 189 told me that she thought that the attorney for Mr. Dizzley was a public defender, but she later found out that he was a paid attorney. Juror 189 told me that she then thought that he was just working for the money and not for his client.

Juror 189 also told me that Juror 332 told the bailiff and the rest of them on the jury that she saw Mr. Dizzley drove himself to court and that she was concern why he was not in jail on this charge.

On April 26, 2018, I spoke with Mr. Dizzley via telephone after he had contacted his mother, Gwendolyn Frasier, from the Department of Corrections. Mr. Dizzley indicated that Attorney Barr was sleep or sleepy during portions of the trial.

On April 26, 2018, I spoke with Ms. Gwendolyn Frasier about the information that juror 189 had given me. Ms. Frasier told me that during the trial, she and her family became aware of the bias of juror 332. Ms. Frasier told me that they pleaded with Attorney Barr to argue for her removal from the jury. Ms. Frasier told me that Attorney Barr refused to argue for juror 332 to be removed instead Attorney Barr told them that he would rather have her, even with her biasness toward Mr. Dizzley, then the white/male alternate juror. Ms. Frasier told me that she and Terron disagreed with Attorney Barr's decision to keep juror 332 on the jury.

He was then asked if he, Aundry Evans, Jr., says Little D or D, who did he think he was referring to? And the answer given by Douglas was Terron

This again is in direct contradiction to his statement given on December 1, 2008 to investigators when Morris was asked if he knew who D was, he replied "NO."

On May 7, 2018, spoke with Autarus Dizzley, who is the brother of, Terron Gerhard Dizzley. A. Dizzley indicated that his brother has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Sherrie Frasier, who is the sister of Terron Gerhard Dizzley. Sherrie Frasier indicated that her brother has never gone by the name "Little D" at home or in the community. Ms. Frasier stated that he either went by the name "Dizz" or "Rhard."

On May 7, 2018, spoke with Deputy James Elmore who has known Mr. Dizzley over fifteen years. Deputy Elmore stated that his Mr. Terron Dizzley has never gone by the name "Little D" at home or in the community. Deputy Elmore stated that he has never anyone call Mr. Dizzley by the name "Little D."

On May 7, 2018, spoke with Juwee Collins who is the former girlfriend of Terron Gerhard Dizzley. Ms. Collins indicated Mr. Dizzley has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Carlos Wineglass who is a friend of Terron Gerhard Dizzley. Mr. Wineglass indicated that Mr. Dizzley has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Grover Gasque who is a friend of Terron Gerhard Dizzley. Mr. Gasque indicated that Terron Dizzley has never gone by the name "Little D" at home or in the community.

On August 9, 2018, I spoke with Marvin in Orangeburg, South Carolina. Mr. Riley stated that he first met Terron Dizzley around 2006 when both of them were living in Orangeburg. Mr. Riley stated that he and other that they associated with called Terron Dizzley "Shard."

Mr. Riley stated that he started doing Dee Jay work for Shard approximately two weeks before the incident happened at Club Paradise in the Oatland Community of Georgetown County on December 1, 2008.

Mr. Riley stated that Naomi Alston was the girlfriend of Audrey Evans, Jr., the victim in this incident. Riley stated that Audrey Evans, Jr., and Shard were partners in Club Paradise as far as he knew at the time. Riley stated that during the time that he was at the club, he never heard anyone referred to Terron Dizzley as anything other than Shard.

Riley stated that he did not hear anyone called Shard "Little D" until after the incident when the cook (chef) at the club had spoken to the investigator, he also referred to Shard as "Little D" during the investigation.

Mr. Riley stated that prior to speaking to the investigator, the cook, referred to Shard as "Your Boy" or "Old Boy."

Benny L. Webb

Private Investigator

SLED PI # 2724

A copy of this report will be retained by Private Investigator Benny L. Webb for his file.



THE PALMETTO CENTER FOR LAW AND JUSTICE



710 Windrow Drive  
Sumter, South Carolina 29150  
(803) 972-3613

May 7, 2018

Benny L. Webb  
CEO and Executive Advocate  
"A Not for Profit Organization"  
Private Investigator and Consultant

In accordance with South Carolina Code of Laws 1976 annotated, Section 30-4-30, The Palmetto Center for law and Justice, under the Freedom of Information Act, request the following information:

- 1) To inspect and/ Or copy of any run sheets, or any other other investigative documents pertaining to the case of Terron Gerhard Dizzley, Georgetown County Case number 12080088, the decedent in this case being Aundry Nathaniel Evans. This incident occurred at the paradise club located at in the Oatland Community on December 1, 2008.

I understand that there will be a reasonable cost for research and copying this material and that this cost will be consistent with the Laws of the State of South Carolina.

Please make the requested items available within fifteen days (except Saturdays, Sundays, and Legal Holidays) in accordance with South Carolina Code of Law 1976 annotated Section 30-4-40 ©.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Benny L. Webb  
Private Investigator/Consultant  
Palmetto Center for Law and Justice.

C: Attorney Leah Moody

Ex. 7 4

Ex. 3

550

Melvyn Garrett - Cross by Defense

1 girlfriend. Yes.

2 Q All right. So you took, you took it to the two  
3 girlfriends, and, of course, you knew that he had a  
4 relationship with both of the women?

5 A Yes.

6 Q And in terms of why, you were, you were trying to find  
7 Terron Dizzley. You had, you had already heard, at least,  
8 that Naomi Alston claimed that Terron Dizzley, that he  
9 identified Terron Dizzley as the person that shot him? You  
10 knew that; right?

11 A No. What I heard was that he identified a person by the  
12 name of Little D that shot him.

13 Q Well, Little D, but then you said that Little D you  
14 wanted somebody to confirm that Little D was Terron Dizzley?

15 A That's correct.

16 Q All right. Now, you, you, you were aware of the  
17 statement that had been given by Gary Gibson?

18 A Yes.

19 Q And --

20 MS. BAILEY: Your Honor, just to clarify, Gary Gibson  
21 gave several statements. Which one are we referring to?

22 MR. BARR: I'm talking about the statement that he gave  
23 dated the 20<sup>th</sup> of August of 2012 that he gave Steven Brown.

24 A No. I'm not aware of that statement.

25 Q You were not aware of that statement? So as far as you

## ADDITIONAL NARRATIVE

Ex. 4 4

|              |                           |        |           |                   |                        |        |          |
|--------------|---------------------------|--------|-----------|-------------------|------------------------|--------|----------|
| Agency Name: | Georgetown County Sheriff | ORI #: | SC0220000 | Report Date/Time: | 12/12/2008 11:20:00 PM | OCA #: | 12080088 |
|--------------|---------------------------|--------|-----------|-------------------|------------------------|--------|----------|

SUPPLEMENT CASE # 12080088 NELSON

2/1/08 / 2340 - RESPONDED TO 899 OATLAND RD (PARADISE CLUB) IN RESPONSE TO A SHOOTING. UPON ARRIVAL MET WITH SGT SMITH WHO STATED ON THIS DATE AT APPROXIMATELY 2330 HRS THE VICTIM (EVANS) WAS SHOT BY AN UNKNOWN ASSAILANT. SMITH STATED THE SUSPECT IS DESCRIBED AS A BLACK MALE, APPROXIMATELY 505 IN HEIGHT WEARING A BLACK COLOR HAT WITH HIS FACE OBSCURED BY SOME SORT OF MATERIAL. THE SUSPECT ENTERED THE ESTABLISHMENT HANDLING A SEMIAUTOMATIC HANDGUN, MADE A LINE DIRECTLY TOWARDS THE VICTIM AND BEGAN TO FIRE THE WEAPON TOWARDS AND STRIKING THE VICTIM AN UNKNOWN NUMBER OF TIMES ABOUT THE LOWER TORSO AND UPPER EXTREMITY AREA. THE SUSPECT THEN LEFT THE SCENE BY AN UNKNOWN MEANS. ACCORDING TO SGT SMITH THERE WERE APPROXIMATELY FOUR INDIVIDUALS IN THE CLUB DURING THE SHOOTING. THE NAMES INCLUDED MAURICE GILES, JAMES TANLEY, LARRY COOPER AND THE VICTIM. ONLY GILES WOULD PROVIDE A WRITTEN STATEMENT. THE OTHERS INDICATED THEY HAD NOT OBSERVED THE EVENT.

UPON ENTERING THE ESTABLISHMENT, THE ROOM WAS DEVOID OF ANY PERSONS. INSIDE THE MAIN BAR AREA WERE TWO POOL TABLES. THE LEFT MOST POOL TABLE APPEARED TO BE THE CENTER OF THE INCIDENT. AS BLOOD WAS LOCATED TO THE LEFT OF THIS TABLE, AS WERE SOME SPENT 40 CALIBER BRASS.

THE FOLLOWING ITEMS WERE LOCATED AND COLLECTED:

- ITEM 1 - ONE (1) SHELL CASING MARKED 40 S&W CBC. THIS ITEM WAS LOCATED ON THE RIGHT SIDE OF THE POOL TABLE ON THE GROUND.
- ITEM 2 - ONE (1) SHELL CASING MARKED 40 S&W CBC. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE ON THE GROUND.
- ITEM 3 - ONE (1) SPENT BULLET. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE TOP BETWEEN THE CORNER AND CENTER POCKET.
- ITEM 4 - ONE (1) SHELL CASING MARKED 40 S&W RP. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE TOP NEAR REAR CORNER POCKET.
- ITEM 5 - TWO (2) SWABS OF VICTIM'S SUSPECTED BLOOD FROM LEFT SIDE OF POOL TABLE FLOOR.

NO OTHER ITEMS WERE LOCATED AT THE ESTABLISHMENT. PHOTOGRAPHS WERE OBTAINED.

Ex. 4

2/2/08 / 0100 - ARRIVED AT THE GEORGETOWN EMERGENCY ROOM AND LOCATED THE VICTIM IN ROOM #5. VICTIM WAS BEING STABILIZED AND WAS LUCID AND ABLE TO SPEAK. WHEN ASKED WHO SHOT HIM, THE VICTIM RESPONDED HE WAS SPEAKING WITH HIS FATHER AND DID NOT WISH TO SPEAK WITH ME. WHEN ASKED AGAIN, VICTIM STATED SOMEONE JUST CAME IN AND SHOT HIM AND ASKED ME TO LEAVE. WHILE WAITING FOR THE VICTIM'S FATHER, EVANS SR, I WAS ADVISED BY MEDICAL STAFF THE VICTIM HAD SEVERAL WOUNDS ON HIS BODY. ONE WAS OBSERVED ON HIS LEFT SIDE LOWER TORSO, ONE WAS OBSERVED ON HIS LEFT SIDE UPPER THIGH, ONE WAS OBSERVED ON HIS LEFT SIDE REAR UPPER LEG AND AN ADDITIONAL WOUND WAS LOCATED ON HIS RIGHT SIDE LOWER TORSO. AT THIS TIME MEDICAL STAFF COULD NOT DETERMINE ENTRY VERSUS EXIT OR THE EXACT NUMBER OF WOUNDS. VICTIM'S CLOTHES HAD BEEN REMOVED BY MEDICAL STAFF AND UPON REMOVING THE PANTS AN ADDITIONAL SPENT BULLET FELL FROM THE PANTS. THIS BULLET WAS FLATTENED PARTIALLY AND DID NOT APPEAR TO HAVE BLOOD OR TISSUE ATTACHED. THIS ITEM TOO WAS COLLECTED AND PLACED INTO EVIDENCE, ALONG WITH THE VICTIM'S CLOTHING. VICTIM'S FATHER THEN EXITED THE ROOM. I INQUIRED IF HIS SON HAD DISCLOSED ANY INFORMATION TO HIM, TO WHICH MR EVANS SR STATED HE HAD NOT. I THEN ASKED IF HIS SON HAD DISCLOSED INFORMATION, WOULD HE TELL ME. MR EVANS SR THEN STATED HE WAS UNSURE IF HE WOULD TELL ME OR NOT AS HE WANTED TO UNDERSTAND WHAT HAD HAPPENED PRIOR TO ANY DISCLOSURE. I PROVIDED MR EVANS SR WITH MY BUSINESS CARD AND WAITED HELICOPTER TRANSPORT FOR THE VICTIM. AS THE VICTIM WAS BEING PREPARED FOR DEPARTURE, MS NAOMI JUSTIN, THE VICTIM'S FIANCE STATED THE INDIVIDUAL RESPONSIBLE FOR THE SHOOTING WAS SOMEONE SHE KNOWS AS "LITTLE D". MS AUSTIN ADVISED SHE BELIEVES "LITTLE D" IS A TYRON DIBSLY. VICTIM HAD INFORMED MS AUSTIN OF THIS INFORMATION PRIOR TO HIS DEPARTURE. VICTIM WAS LOADED ON THE MEDEVAC HELICOPTER AND TRANSPORTED TO MUSC. 1 UNITS CLEARED THE GEORGETOWN HOSPITAL.

ALL EVIDENCE WAS DROPPED AT THE SHERIFF'S OFFICE.

ATTEMPT TO LOCATE TYRON DIBSLY VIA VISIONS, DMV ONLINE, JAIL VISIONS WERE UNSUCCESSFUL. VARIOUS SPELLINGS WERE ATTEMPTED WITH THE SAME RESULTS.

2/08 / 0300 - WAS ADVISED BY SGT SMITH THE VICTIM HAS SUCCEEDED TO HIS INJURIES SHORTLY AFTER HIS ARRIVAL IN ARLESTON.

ADDITIONAL NARRATIVE

~~Ex. 5~~  
Ex. 5

|                                          |                    |                   |                   |
|------------------------------------------|--------------------|-------------------|-------------------|
| Agency Name<br>Georgetown County Sheriff | ORI #<br>SC0220000 | Report Date/Time: | OCA #<br>12080088 |
|------------------------------------------|--------------------|-------------------|-------------------|

STANDING APPROX. 5FT 5IN IN HEIGHT. THE UNKNOWN MALE THEN POINTED THE GUN AT THE VICTIM AND BEGAN SHOOTING AT HIM. THE VICTIM FELL TO THE FLOOR AND THE UNKNOWN MALE LEFT. THE WITNESS WAS UNABLE TO GIVE A VEHICLE DESCRIPTION OR A DIRECTION OF TRAVEL.

WE SPOKE TO SEVERAL WITNESSES THAT WERE OUTSIDE THE CLUB AND THEY WOULD NOT PROVIDE A VEHICLE DESCRIPTION. E.M.S. RESPONDED ON SCENE AND TRANSPORTED THE VICTIM TO THE GEORGETOWN E.R. I THEN RESPONDED TO THE E.R. WHERE I ATTEMPTED TO SPEAK TO THE VICTIM AND HE WOULD NOT COOPERATE AND WOULD NOT PROVIDE ANY INFORMATION.

I THEN WENT TO THE WAITING ROOM WHERE THE VICTIM'S FIANCEE WAS LOCATED AND SPOKE TO HER. THE VICTIM'S FIANCEE NAOMI AUSTIN PROVIDED ME WITH THE VICTIM'S INFORMATION AND ALSO STATED THAT THE VICTIM TOLD HER THAT THE MALE THAT SHOT HIM WAS CALLED LITTLE D. AUSTIN STATED THAT SHE BELIEVED THE SUSPECT NAME WAS TYRON DIBSLY BUT SHE KNEW HE WAS CALLED LITTLE D.

INV. NELSON THEN ARRIVED AT THE E.R. AND SCENE WAS TURNED OVER TO HIM.

ADDITIONAL NARRATIVE

~~Ex-6~~ <sup>3</sup>  
Ex-6

|                                        |                 |                                         |                |
|----------------------------------------|-----------------|-----------------------------------------|----------------|
| Agency Name: Georgetown County Sheriff | ORI#: SC0220000 | Report Date/Time: 12/1/2008 11:20:00 PM | DCA#: 12080058 |
|----------------------------------------|-----------------|-----------------------------------------|----------------|

SUPPLEMENT CASE # 12080088 NELSON

2/2/08 / 0330 MADE CONTACT WITH MR GILES AND REQUESTED HE MEET WITH ME.

2/2/08 / 0400 - MET WITH MR GILES HE PROVIDED A REVISED STATEMENT WITH INFORMATION HE PREVIOUSLY FORGOT. MR GILES STATED THE INDIVIDUAL RESPONSIBLE FOR THE SHOOTING WAS KNOWN TO HIM AS "LITTLE D". MR GILES WAS ADVISED TO THINK ABOUT ALL THE DETAILS AND TAKE HIS TIME. MR GILES COULD NOT RECALL ANY ADDITIONAL INFORMATION OR INDIVIDUALS PRESENT AT THE TIME OF THE EVENT.

2/2/08 / 0500 - SPOKE WITH MR EVANS SR. MR EVANS SR STATED HIS SON HAD INFORMED HIM IN THE GEORGETOWN HOSPITAL "LITTLE D" WAS THE INDIVIDUAL WHO SHOT HIM. MR EVANS SR DID NOT KNOW WHO "LITTLE D" WAS.

2/2/08 / 0645 - OBTAINED A SEARCH WARRANT FROM JUDGE DUNN FOR THE PROPERTY AND BUILDING LOCATED AT 899 OUTLAND RD..

2/2/08 / 0800 RECEIVED INFORMATION REGARDING ADDITIONAL PARTY ON SCENE AT 899 OUTLAND RD. A SONJA JONES STATED HER SON, DOUGLAS MORRIS WAS PRESENT DURING THE SHOOTING. CONTACT WAS MADE WITH MS JONES REQUESTING SHE AND HER SON MEET AT THE SHERIFF'S OFFICE FOR AN INTERVIEW. MS JONES STATED SHE WOULD ARRIVE AT APPROXIMATELY 1000 HRS WITH HER SON.

2/8/08 / 0900 - MET WITH MR GILES AT THE SHERIFF'S OFFICE. MR GILES PROVIDED ADDITIONAL NAMES OF INDIVIDUALS WHO WERE PRESENT AT THE LOCATION SOMETIME DURING THE COURSE OF THE EVENING. THE LIST IS COMPRISED OF MOSTLY PHONETIC NAMES AND WILL BE DECIPHERED.

2/8/08 / 1000 - OBTAINED BLOOD SAMPLES FROM THE GEORGETOWN HOSPITAL COLLECTED FROM THE VICTIM. SAMPLES WILL BE SENT TO MUSC ALONG WITH CLOTHING FOR AUTOPSY.

~~Ex. 9~~ 6  
Ex. 7

Jarred Bardon - Cross by Defense

463

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q The victim kept asking for Mo?

5 A Yes. Mo.

6 Q Did Mo show up during the time that you were attending  
7 the victim?

8 A I, I, I don't remember meeting a Mo. There was nobody in  
9 there by that name that I could recall.

10 Q Did you have on officer, did you have on, did you have on  
11 a police uniform or were you dressed in street clothes at that  
12 time?

13 A Police uniform.

14 Q You got a police uniform on?

15 A Yes.

16 Q Badge and gun and everything?

17 A Everything.

18 Q Yeah. Did the victim make any statements to you  
19 regarding who he thought shot him?

20 A He did not.

21 Q Just kept asking for Mo?

22 A Yes.

23 Q Now, did you assist in setting up the crime scene?

24 A As far as keeping everyone out of the crime scene, yes.

25 Q And you put up tape?

Gary Gibson - Direct by State

404

1 the incident happened. She was there fast, but she wasn't  
2 there time the incident happened. Whatever he said to Mo, no,  
3 I did not hear it.

4 Q And but did Naomi get there before law enforcement? Do  
5 you remember?

6 A I believe she did. Yeah. Because I didn't even have her  
7 number. I don't even know who called her.

8 Q Do you know Mr. Dizzley?

9 A No. I do not.

10 Q Can you -- I know it happened fast, but the person who  
11 came into that club with a mask, can you give us any further  
12 description of that person?

13 A Not really. I mean, all I can -- I mean, somebody comes  
14 in a club shooting and they got a ski mask and a hoody on,  
15 what is, what is your reactions? To hide for cover, and  
16 that's what I did.

17 Q Could you tell if that person was white, black or  
18 Hispanic?

19 A You really couldn't tell because, I mean, you got a hoody  
20 on with a ski mask and the eye and the mouth, I mean, and  
21 they're shooting you ain't going to sit there, look to try to  
22 see, you know, if they're white, black, Puerto-Rican or what,  
23 Indian or what. You're going to try get out the way.

24 Q All right. Were you able to tell how tall that person  
25 was?

Ex. 9

Gary Gibson - Cross by Defense

406

1 THE COURT: Mr. Barr, your witness.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q Stand up. Didn't you tell the police officers that the  
5 man you saw came into the club, the shooter, was taller than  
6 Terron Dizzley?

7 MS. BAILEY: Objection, Your Honor. He didn't -- there's  
8 no information. That's -- that would be a misstatement of the  
9 facts is my objection.

10 THE COURT: Well, again, if you could, you need to  
11 identify the time and the place of the statement. Let's  
12 follow the rule concerning out-of-court statements.

13 BY MR. BARR:

14 Q On August 20<sup>th</sup> of 2012, you spoke with -- you spoke with  
15 the investigators with the Georgetown County Sheriff  
16 Department. Do you have a recollection of that?

17 A Yes.

18 Q Did not you tell them at that time that you thought the  
19 man that you saw come in the club, the shooter, was too tall  
20 to be Terron Dizzley?

21 A I said five-six, five-seven. How tall is Mr. Dizzley?

22 Q Well, didn't you tell them that you looked at Mr. Dizzley  
23 or you thought about it and that you believed that he was too  
24 short to shoot over the bar?

25 A I just said he was five-six or five-seven. That's taller

Ex. 10

Jameson Wright - Direct by State

418

- 1 A It was long.
- 2 Q One was long?
- 3 A Yeah.
- 4 Q What about the other one?
- 5 A I ain't see the other one.
- 6 Q You didn't see the other one?
- 7 A Huh-uh, huh-uh.
- 8 Q Okay. What happened next? Anybody get out of the car?
- 9 A Yeah.
- 10 Q Who got out of the car?
- 11 A A tall fellow.
- 12 Q Okay. Was that out of the back seat or the front seat?
- 13 A The front seat.
- 14 Q Front driver or passenger?
- 15 A Passenger side.
- 16 Q And what did that person do who got out of the passenger
- 17 side?
- 18 A Go on inside the club.
- 19 Q He went inside the club?
- 20 A Yeah.
- 21 Q And did anybody get out of the back of the car?
- 22 A No, ma'am.
- 23 Q Did anybody point a gun at you?
- 24 A Yes, ma'am.
- 25 Q I'm sorry?

**WITNESSES**

Georgetown County Sheriff's Office

DOCKET NO. 2009GS2200778 <sup>4</sup>**The State of South Carolina****County of Georgetown**Scott R. Hixson08G00972**COURT OF GENERAL SESSIONS****JULY, 2009 TERM****REST WARRANT NUMBER**J525436CDR: 0116 §16-03-0010, 0020DOI: December 1, 2008**ACTION OF GRAND JURY****TRUE BILL**Foreperson of Grand Jury *[Signature]*Date: 7-8-09**VERDICT**Foreperson of Petit Jury *[Signature]*Date: 4/3/2014**THE STATE****VS.****TERRON GERHARD DIZZLEY**2715 Old Cameron RoadOrangeburg, SC 29115DOB: 4/28/1978SSN: 248-85-9726N/MATTORNEY: Barr, Charles D.**Indictment for****MURDER**J. Gregory Hembree, Solicitor

Ex. 141 12

July 2009 Go To Date

### Terms of Circuit and Family Court July 2009

Holiday:

Fri Jul 03, Independence Day (Observed) (Observed)

| Circuit Number | 7/6/2009                                                                                                                                                    | 7/13/2009                                                                                                                                                                               | 7/20/2009                                                                                                                                                                                | 7/27/2009                                                                                                                                                                                                                                                                                                                       |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15             | Common Pleas<br>Horry<br>Hyman, Larry<br><br>MCCALL 6, 7, 8 am<br>NO CR NEEDED 8 pm, 9, 10<br><br>Administrative Week<br>John, Steven<br><br>EUBANK         | Common Pleas Non-Jury<br>Culbertson, Benjamin<br><br>HURLEY<br><br>General Sessions<br>Horry<br>Hyman, Larry<br><br>BABB<br><br>General Sessions<br>Horry<br>John, Steven<br><br>EUBANK | General Sessions<br>Horry<br>Culbertson, Benjamin<br><br>BUCKNER<br><br>General Sessions<br>Horry<br>Hyman, Larry<br><br>BABB<br><br>Common Pleas<br>Horry<br>John, Steven<br><br>EUBANK | General Sessions<br>Georgetown<br>Culbertson, Benjamin<br><br>HURLEY<br><br>Common Pleas Non-Jury/PCR<br>Hyman, Larry<br><br>MCCALL 27, 28, 29<br>NO CR NEEDED 30, 31<br><br>Common Pleas<br>Horry<br>John, Steven<br><br>EUBANK<br><br>Common Pleas<br>Horry<br>Russo, Thomas<br><br>BUCKNER 27, 28, 29<br>NO CR NEEDED 30, 31 |
|                | Family Court<br>Horry<br>Caldwell, Wylie H.<br><br>BABB 6, 7, 8<br>HURLEY 9<br>BABB 10<br><br>Family Court<br>Horry<br>Bromell Holmes, Jan B.<br><br>WRIGHT | Family Court<br>Horry<br>Kinon, Lisa A.<br><br>ALLEN 13, 14, 15, 16<br>NO CR NEEDED 17<br><br>Family Court<br>Georgetown<br>Bromell Holmes, Jan B.<br><br>WRIGHT<br><br>Family Court    | Family Court<br>Horry<br>Spruill, James A.<br><br>MCCALL 20, 21, 22, 23<br>HURLEY 24<br><br>Family Court<br>Horry<br>Kinon, Lisa A.<br><br>ALLEN<br><br>Family Court                     | Family Court<br>Horry<br>Kinon, Lisa A.<br><br>ALLEN<br><br>Family Court<br>Georgetown<br>Bromell Holmes, Jan B.<br><br>WRIGHT<br><br>Family Court<br>Horry                                                                                                                                                                     |



**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

TONNYA K. KOHN  
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355

August 15, 2017

Mr. Terron Dizzley, #359480  
McCormick Corr. Inst.  
386 Redemption Way  
McCormick, South Carolina 29899

Re: Your correspondence received August 11, 2017

Dear Mr. Dizzley:

Your recent request for information has been received by this office and forwarded to this section for response. You requested information relating to special terms of court pursuant to S.C. Code of Laws, §14-5-910. Please be advised that with the adoption of the amendments to Article V of the South Carolina Constitution in 1973, the Chief Justice has the authority to set the terms of the Court of General Sessions. Article V, §4 of the South Carolina Constitution states in part that "[t]he Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system." Therefore, under the current constitutional provision, all terms of the circuit court are set by the Chief Justice and there are no special terms.

Please be further advised that this office is not the custodian of records relating to the county grand juries. You may contact the Georgetown County Clerk of Court or the Solicitor's Office to request information relating to the convening of the Georgetown County grand jury.

All terms of court, dating back to 2002, are available on the South Carolina Judicial Department Website at [www.sccourts.org/calendar/scmapimg.cfm](http://www.sccourts.org/calendar/scmapimg.cfm). If you do not have access to the internet, you may wish to have a friend or family member download and print this information for you.

Sincerely,

Staff Attorney Section/tr

**THE HONORABLE JUDGE BAXLEY'S RULING OF "ACQUITTAL" IN TRIAL OF 2012**

**STATE V TERRON DIZZLEY**

**Case No. 2009-GS-22-00778**

**Pages 308 – 316**

**TRANSCRIBED BY**

**COURT REPORTER, GRACE HURLEY**

1 o'clock we'll be prepared to have a charge conference and if  
2 you'd step forward and get the charge we are in recess now,  
3 ladies and gentlemen, until 9:30 here in the courtroom  
4 tomorrow morning.

---

5 OFF THE RECORD

---

6 (On the record, August 30, 2012. Jury deliberations continue  
7 at 9:42 a.m.)

8 (Note from jury [Court's Exhibit Number Five] received at  
9 10:03 a.m. Reply from Court sent back to jury at 10:21 a.m.)

10 (Note from jury at 11:12 a.m. The following takes place  
11 outside the presence of the jury.)

12 THE COURT: Let's go back now on the record in the  
13 case of the State versus Dizzley. We have a message from the  
14 jury, ladies and gentlemen, or counsel, you want to step up  
15 and look at it? Have you already seen it?

16 MR. BARR: I've seen it, Judge.

17 THE COURT: All right, very good. It would be the  
18 State's intention at this time to bring the jury back,  
19 including our alternates, and give an Allen charge and I'll be  
20 glad to hear from either side as to whether you object or  
21 concur with that procedure. What says the State?

22 MR. HIXSON: I concur, Your Honor.

23 THE COURT: All right, and Mr. Barr, you want to be  
24 heard?

25 MR. BARR: Your Honor, I just need to consult with my

1 MR. THOMPSON: It was close.

2 THE COURT: Very good. Well, I, I appreciate your  
3 willingness to be back today and when we had such adverse  
4 weather conditions yesterday. We're going to wait just one

5 moment for our alternate and we have at least one of our  
6 alternates is still remaining with us.

7 While we have our 12 though assembled in the courtroom  
8 let me ask, ladies and gentlemen, when we were apart from one  
9 another last night is there any member of the jury panel who  
10 had a discussion with any third person concerning or any other  
11 jury panel member for that matter during the evening break  
12 concerning the facts of this case? If you did please raise  
13 your hand.

14 (No response.)

15 THE COURT: And again, let's let the record reflect no  
16 one has raised their hands. Thank you for complying with the  
17 Court's request. Welcome back, and we still, we still have  
18 Ms. Morrison with us this morning as well, is that correct?  
19 All right, good. Here she comes. Good morning.

20 All right, and ladies and gentlemen, I'm going to ask you  
21 if you would just secure the back door so that we won't have  
22 people coming and going as we talk with the jury here.

23 Ladies and gentlemen, first of all, welcome back to the  
24 courtroom and I have received your message that you've been  
25 unable to reach a verdict in the case, and as I instructed you

1 client for just a second.

2 THE COURT: Very good. We'll wait a moment.

3 MR. BARR: Nothing from the Defendant, Judge.

4 THE COURT: Very good. Madam court reporter, let's

5 mark this as a Court's Exhibit, please, this note, and would

6 you please bring our two alternate jurors from the back and

7 then would you please bring our jury panel from the jury room.

8 MR. BARR: And Judge, I think we've just got one now.

9 THE COURT: Are we down to one now, all right.

10 (Whereupon, the following takes place in the presence of  
11 the jury at 11:25 a.m.)

12 THE COURT: Welcome. I don't think you're going to  
13 need your pad. That's what some of the jurors are asking. I  
14 can hear them in the back. So I think you're fine where you  
15 are. That's fine. We'll wait a moment. We're fine. We're also  
16 waiting on our alternate to join us. So we'll just be at ease  
17 for a moment. Ladies and gentlemen, just while we are waiting  
18 for our others to join us I want to thank you for coming back  
19 today. I know that probably some of you, if you were like me,  
20 were confronted by a flood on the way home yesterday and I  
21 couldn't help but go notice as I drove by your business, Mr.  
22 Thompson, I believe it flooded yesterday; did it not?

23 MR. THOMPSON: No, no.

24 THE COURT: It did not? All right, well, it had some  
25 heavy standing water near it.

1 earlier and as we're all aware the verdict in this case must  
2 be unanimous. Now just thinking about this though at any time  
3 there is a matter in dispute it isn't always easy for even two  
4 people to agree who may be discussing it, much less 12, and so  
5 when 12 are required to agree on something well it's even more  
6 difficult and in most cases I think we would all agree that  
7 absolute certainty can never be reached and that's not what is  
8 expected. However, you have a duty to make every reasonable  
9 effort to reach a unanimous verdict if you can. In doing this  
10 you should consult with one another just as you have been  
11 doing, express your own views, but listen openly to the  
12 opinions of your fellow jurors, tell each other how you feel  
13 and why you feel that way and discuss your differences with  
14 open minds as opposed to closed minds, and although the  
15 verdict of the jury must be unanimous every one of you has the  
16 right to your own opinion and the verdict that you agree to  
17 must be your own verdict, the result of your own convictions  
18 and you should not give up a firmly held belief merely to be  
19 in agreement with fellow jurors. The majority should consider  
20 the minority's opinion and the minority should consider the  
21 majority's opinion and each of you should consider the others  
22 opinion. You should carefully consider and respect the  
23 opinions of each other and reevaluate your position for its  
24 reasonableness, correctness and impartiality. You must lay  
25 aside all outside matters and reexamine the questions before

1 you based on the law as I gave you and the evidence as you  
2 found it in the case.

3 Now, let's talk about what happens if you do not agree or  
4 cannot agree on a verdict. If that happens and the Court

5 declares a mistrial and what that means is that nobody wins,  
6 neither the State nor the Defendant. It just means that at  
7 some future time this case will be tried again with some other  
8 jury sitting where, where you sit today. The same  
9 participants will come in, same witnesses, most likely give  
10 the same testimony, the same lawyers will basically ask the  
11 same questions and we'll go through the entire process of the  
12 trial again.

13 Now, you were selected in the same manner and from the  
14 same jury pool really, the community, as any future jury will  
15 be and there's no reason for me to suppose or expect that the  
16 case would ever be submitted to 12 more intelligent and  
17 capable, that is capable, impartial and conscientious and  
18 competent jurors than you are and that some greater evidence  
19 or more or clear evidence will be adduced on one side or the  
20 other.

21 So, ladies and gentlemen, I'm going to ask you to return  
22 to your deliberations one more time. If you're unable to  
23 reach a verdict please advise me of that, but I ask you in  
24 compliance with the instructions that I've given you to go  
25 back and try again and out of respect for you and your efforts

1 we're going to remain where we are while you return to the  
2 jury room. Thank you, ladies and gentlemen.

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: That's fine. If they wish to take a smoke  
6 break please give them that opportunity. Now, any objection  
7 to the charge that's just been given by the Court from the  
8 State?

9 MR. HIXSON: No, Your Honor.

10 MR. BARR: No, Judge..

11 THE COURT: And from Defense. Then hearing none then  
12 we're ready to move into other business now, Mr. Hixson, and  
13 please call your next case.

14 OFF THE RECORD

15 (On the record. Note from jury at 12:20 p.m. The following  
16 takes place outside the presence of the jury.)

17 THE COURT: Let's go back in the record, on the record  
18 in the case of the State versus Dizzley and while everyone is  
19 coming back in let's go ahead and bring the jury in and let's  
20 bring our alternate jurors. Ms. Owens, if you'd bring the  
21 alternate jurors as well into the courtroom.

22 (Whereupon, the following takes place in the presence of  
23 the jury.)

24 THE COURT: All right, ladies and gentlemen, welcome  
25 back and Mr. Grate, Mr. Foreman, ladies and gentlemen of the

1 jury, I've received a message that tells me that the jury is  
2 still deadlocked and unable to reach a decision in this case  
3 and I wanted to, first of all, tell you one or two things that  
4 ~~I have on my mind and heart about this matter. First of all,~~  
5 ~~I don't want you to think in any way that your exercise as~~  
6 jurors has been a failure on your part because you could not  
7 reach a verdict. That's not a failure on your part. That's  
8 really the strength of our system because we bring diverse  
9 citizens from different backgrounds all from the same  
10 community to hear a set of facts and make a decision as to  
11 whether or not in criminal court a person is guilty or  
12 innocent.

13 Now, what you've told us is that you can't reach a  
14 unanimous decision, and I would say to you to that that's not  
15 a failure on your part. That's actually a strong message to  
16 the Prosecution that they are unable to meet the burden of  
17 proof to the extent that they can bring back a unanimous  
18 verdict.

19 Now, the way this process actually works is it is up to  
20 the Solicitor as to whether they will dismiss the charge or  
21 whether they will retry this case or perhaps redevelop the  
22 charge in some way and bring a separate charge of some kind  
23 and try that. It's a - the decision rests with the Solicitor.  
24 It's not within the control of the Defendant, but what's going  
25 to happen here is the Court is going to declare a mistrial, .

1 but I don't want you to believe in any way, zero way that that  
2 somehow you are responsible for that because you are not.  
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9 (Instructions for juror payment given and jury  
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~~I, the undersigned, Grace L. Hurley, Official Court~~

~~Reporter for the State of South Carolina, do hereby certify~~

that the foregoing is a true, accurate and complete Transcript  
of Record of the trial held in the case of The State versus  
Terron Gerh rd Dizzley, held in the Court of General Sessions  
for Georgetown County, Georgetown County Courthouse,  
Georgetown, South Carolina, on August 27, 28 and 30<sup>th</sup>, 2012.

I do hereby certify that I am neither of kin, counsel,  
nor interest to any party hereto.

Grace L. Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

**THE HONORABLE JUDDGE BAXLEY'S RULING OF "ACQUITTAL" IN TRIAL OF 2012**

**STATE V TERRON DIZZLEY**

**Case No. 2009-GS-22-00778**

**Pages 308 - 316**

**TRANSCRIBED BY**

**COURT REPORTER, GRACE HURLEY**

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17 THE COURT: All right, very good. It would be the  
18 State's intention at this time to bring the jury back,  
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20 glad to hear from either side as to whether you object or  
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22 MR. HIXSON: I concur, Your Honor.

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7 While we have our 12 though assembled in the courtroom  
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8 expected. However, you have a duty to make every reasonable  
9 effort to reach a unanimous verdict if you can. In doing this  
10 you should consult with one another just as you have been  
11 doing, express your own views, but listen openly to the  
12 opinions of your fellow jurors, tell each other how you feel  
13 and why you feel that way and discuss your differences with  
14 open minds as opposed to closed minds, and although the  
15 verdict of the jury must be unanimous every one of you has the  
16 right to your own opinion and the verdict that you agree to  
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19 in agreement with fellow jurors. The majority should consider  
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11 same questions and we'll go through the entire process of the  
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13 Now, you were selected in the same manner and from the  
14 same jury pool really, the community, as any future jury will  
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3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: That's fine. If they wish to take a smoke  
6 break please give them that opportunity. Now, any objection  
7 to the charge that's just been given by the Court from the  
8 State?

9 MR. HIXSON: No, Your Honor.

10 MR. BARR: No, Judge..

11 THE COURT: And from Defense. Then hearing none then  
12 we're ready to move into other business now, Mr. Hixson, and  
13 please call your next case.

14 OFF THE RECORD

15 (On the record. Note from jury at 12:20 p.m. The following  
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18 in the case of the State versus Dizzley and while everyone is  
19 coming back in let's go ahead and bring the jury in and let's  
20 bring our alternate jurors. Ms. Owens, if you'd bring the  
21 alternate jurors as well into the courtroom.

22 (Whereupon, the following takes place in the presence of  
23 the jury.)

24 THE COURT: All right, ladies and gentlemen, welcome  
25 back and Mr. Grate, Mr. Foreman, ladies and gentlemen of the

1 jury, I've received a message that tells me that the jury is  
2 still deadlocked and unable to reach a decision in this case  
3 and I wanted to, first of all, tell you one or two things that  
4 ~~I have on my mind and heart about this matter. First of all,~~

~~5 I don't want you to think in any way that your exercise as~~  
6 jurors has been a failure on your part because you could not  
7 reach a verdict. That's not a failure on your part. That's  
8 really the strength of our system because we bring diverse  
9 citizens from different backgrounds all from the same  
10 community to hear a set of facts and make a decision as to  
11 whether or not in criminal court a person is guilty or  
12 innocent.

13 Now, what you've told us is that you can't reach a  
14 unanimous decision, and I would say to you to that that's not  
15 a failure on your part. That's actually a strong message to  
16 the Prosecution that they are unable to meet the burden of  
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18 verdict.

19 Now, the way this process actually works is it is up to  
20 the Solicitor as to whether they will dismiss the charge or  
21 whether they will retry this case or perhaps redevelop the  
22 charge in some way and bring a separate charge of some kind  
23 and try that. It's a - the decision rests with the Solicitor.  
24 It's not within the control of the Defendant, but what's going  
25 to happen here is the Court is going to declare a mistrial,.

1 but I don't want you to believe in any way, zero way that that  
2 somehow you are responsible for that because you are not.  
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~~I, the undersigned, Grace L. Hurley, Official Court~~

~~Reporter For the State of South Carolina, do hereby certify~~

that the foregoing is a true, accurate and complete Transcript  
of Record of the trial held in the case of The State versus  
Terron Gerhard Dizzley, held in the Court of General Sessions  
for Georgetown County, Georgetown County Courthouse,  
Georgetown, South Carolina, on August 27, 28 and 30<sup>th</sup>, 2012.

I do hereby certify that I am neither of kin, counsel,  
nor interest to any party hereto.

Grace L Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

**JURY DELIBERATIONS IN TERRON GERHARD DIZZLEY'S FIRST TRIAL OF 2012**

**STATE V TERRON DIZZLEY**

**Case No. 2009-GS-22-00778**

**Pages 116--125**

**TRANSCRIBED BY**

**COURT REPORTER, KRYSTAL SMITH**

1 (Whereupon, the exhibits are checked by counsel.)

2 THE COURT: All right and ---

3 MR. HIXSON: It's okay, Your Honor.

4 THE COURT: All right. The evidence is in order and,  
5 ladies and gentlemen, we're going to stand down now subject to  
6 the arrival of lunch for the jury and then the jury's  
7 deliberations. Counsel, if you leave this floor, please make  
8 sure that my clerk or our county clerk has your cell number  
9 and please don't go far because we may need you immediately in  
10 the event of a question. This Court is now in recess.

11 MR. HIXSON: Thank you, Your Honor.

12 MR. BARR: Judge, I do have a Family Court matter. We've  
13 got Family Court going on on the second floor.

14 THE COURT: Yes, they do. They have a busy court day.  
15 Good luck to you, Mr. Barr. We'll be in recess now awaiting  
16 the call of the jury.

17 (Whereupon, there is a break in the proceedings from  
18 12:14 p.m. until 1:07 p.m. for lunch.)

19 (Whereupon, jury deliberations begin at 1:07 p.m. The  
20 two alternate jurors are separated from the jury and held  
21 in another room during deliberations.)

22 THE COURT: All right. We have a message from the jury.  
23 We have a message from the jury that asks -- that requests --  
24 it is a note that essentially asks audio transtape -- I think  
25 is the word -- of all four. And so what I would intend to do

1 is to respond to them that this will take approximately an  
2 hour and if they wish for it to be played, then we will bring  
3 them in and play it. Is that satisfactory, Mr. Barr?

4 MR. BARR: Yes, sir.

5 THE COURT: All right. Here's the response back, Mr.  
6 Bailiff, if you would take that in to them, please. Thank  
7 you. And we'll just wait for a reply. I asked them if they  
8 wished to hear all four and advised them of the collective  
9 time it will take.

10 (Whereupon, there is a pause in the proceedings.)

11 THE BAILIFF: They want to hear it.

12 THE COURT: All right. Let's bring our two alternate  
13 jurors in and have them seated in the alternate seats. We've  
14 retained the alternates in sequestration while the jury has  
15 been deliberating.

16 (Whereupon, there is a pause in the proceedings until the  
17 alternate jurors enter the courtroom.)

18 THE COURT: All right. We now have our two alternates  
19 back in the courtroom. Please come in and be seated. The  
20 jury has asked that we replay some testimony. Thank you for  
21 your courtesy and patience in waiting for us and we want to  
22 bring you out first to let you know what it is we're going to  
23 hear, and we'll bring the rest of the jury out and begin the  
24 process. The jury has asked that we hear four defense  
25 witnesses on the issue of alibi and we are going to bring the

1 jury out and play that testimony through the court reporter.

2 So welcome back to the courtroom and please bring in the jury.

3 (Whereupon, the jury enters the courtroom at 3:57 p.m.)

4 THE COURT: All right, ladies and gentlemen, welcome back  
5 to the courtroom. While our court reporter is setting up, let  
6 me explain the process that we use. In each of the courtrooms  
7 in South Carolina where we have a court reporter, the court  
8 reporter is manually taking down the testimony, but we also  
9 run an actual tape in the event the jury wishes to hear some  
10 testimony so that -- as opposed to someone reading it back and  
11 using their own inflection or intonation or punctuation. We  
12 actually just play back exactly what the witnesses said. So  
13 the reason that we play the entire direct and cross of the  
14 witnesses is we're not certain when the jury asks what  
15 specifically you're looking for and it may be as we try to  
16 pinpoint, we would miss something that a particular juror may  
17 wish to have.

18 So we are set up now to play all four witnesses, one  
19 after the other, direct and cross. We're going to have to  
20 test the sound system to make sure that you're able to hear  
21 from the tape and let's give that a try, please.

22 (Whereupon, a sound test is performed.)

23 THE COURT: Are you able to hear that, ladies and  
24 gentlemen?

25 (Whereupon, the jurors indicate positively.)

1 THE COURT: Good.

2 (Whereupon, testimony is played from audiotape in open  
3 court before the jury of the following four witnesses:  
4 Laquesha Felder, Daniel Robinson, Stephon Jamison, and  
5 Leon Devaughn Dizzley, Jr.)

6 THE COURT: All right, ladies and gentlemen, that  
7 concludes the request of the four witnesses. We'll let you  
8 return to your jury room. Let me ask, ladies and gentlemen,  
9 is there anybody on the jury who needs to call someone because  
10 it's five o'clock and they may be expecting you? All right.  
11 Well, let's do this. We'll give you an opportunity to make a  
12 call before the jury begins their deliberations. All right?  
13 So if y'all will just make provisions for that. To our  
14 alternates, we appreciate your longsuffering and patience and  
15 please return to your area.

16 (Whereupon, the jury exits the courtroom at 4:52 p.m.)

17 THE COURT: Ladies and gentlemen, the rest of us will be  
18 in recess subject to the call of the jury.

19 (Whereupon, there is a break in the proceedings from 4:53  
20 p.m. until 5:23 p.m.)

21 THE COURT: Ladies and gentlemen, what we're going to do  
22 is we're just going to make a blind draw among the two  
23 alternates. It appears that our jury has not been able to  
24 reach a verdict this afternoon according to a message that  
25 they've sent us and thus we are going to send the jury home

1 and bring them back tomorrow morning to begin their  
2 deliberations. Our two alternates were sequestered. We're  
3 going to choose by random draw between the two and have one of  
4 them return tomorrow in the event we lose one of our jurors  
5 overnight to illness or emergency or whatever may happen. Is  
6 there objection to drawing the name of a juror between the two  
7 just at random from a cup in which we have those two names  
8 from the State?

9 MR. HIXSON: No, Your Honor.

10 THE COURT: And from the defense?

11 MR. BARR: No, sir.

12 THE COURT: All right, very good. Now, what I'm asking  
13 you to do, Madam Clerk, if you'll just draw without looking  
14 from the two names in that cup. And you have drawn the name  
15 of Ms. Morrison, who is Juror Number 95. And let's bring our  
16 two alternates, if you will, and we'll seat them in the -- in  
17 the box.

18 (Whereupon, the alternate jurors enter the courtroom at

19 5:26 p.m.)

20 THE COURT: And then while our alternates are coming in  
21 we will bring the rest of the jury as well. All right,  
22 ladies, please come join us, if you will, one more time to  
23 your seats. We're going to bring the rest of the jury in to  
24 sit with you as well.

25 (Whereupon, the jury enters the courtroom at 5:26 p.m.)

1 THE COURT: All right, Mr. Foreman, ladies and gentlemen  
2 of the jury, welcome back to the courtroom. We have received  
3 a message that you are unable to reach a verdict this  
4 afternoon and what we're going to do is we're going to end  
5 these proceedings for the day and we're just going to stop for  
6 the day and let you come back tomorrow morning and overnight  
7 have an opportunity to reflect upon your deliberations that  
8 you've had and come back tomorrow morning and see where you  
9 stand. What we will do is we will ask you to be back at nine  
10 thirty tomorrow morning in the jury room.

11 Now, you probably have noticed that they have been very  
12 gracious about it, that Ms. Port and Ms. Morrison, who are our  
13 alternate jurors, have remained with us and what they've done  
14 is they've been sequestered in a room up front in the event  
15 that one of you should have the inability to go forward, have  
16 an emergency, or something would happen, and we certainly hope  
17 it would not. We were prepared in the event that it did.

18 I will tell you that we have now placed your two names  
19 randomly in a cup and we have made a blind draw and, Ms.  
20 Morrison, your name has been drawn and we would ask you to  
21 return tomorrow morning as well and we're going to release Ms.  
22 Port so that we will not have to bring both of you back  
23 tomorrow morning. But, Ms. Morrison, if you would kindly  
24 return tomorrow morning and come to the courtroom, then we'll  
25 place you in the front room again. We'll try not to just

1 leave you there sitting there with nothing to do. If you wish  
2 to bring a book to read or whatever you wish, please do.

3 Now, ladies and gentlemen of the jury, let me talk a  
4 little bit more about tonight. Please, when you go home, do  
5 not undertake any type of investigation or analysis on legal  
6 points or factual points, whatever may have been occurring  
7 with the jury room. Just have a good evening. Free your  
8 mind. Take a break and come back tomorrow morning and begin  
9 again. We're going to take up your notes and we're not going  
10 to review them, but we're going to keep them secure and give  
11 them back to you in the morning without reviewing them.

12 So if you want to close your book, feel free to. Please  
13 write your name either on the first page or someplace that's  
14 appropriate. If you would, put your juror tag on it as an  
15 excellent way to do that so that tomorrow morning you will be  
16 able to pick the book back up. Now, let me say the reason we  
17 do that is to make sure we're all on the same wavelength.  
18 Again, this is not for us to review your notes, your personal  
19 comments or thoughts, whatever they may be, because we will  
20 not do -- no one will do that, but this is to preserve the  
21 confidentiality of jury proceedings and we will keep those  
22 notes secure and give them to you in the morning.

23 Okay, Ms. Knox has -- with her years of experience here  
24 has reminded me that it's best not to leave your badge on the  
25 book because it will have to be scanned in in the morning when

1 you walk in the door. So if you would, just put your name on  
2 the first page or somewhere on the front of the book if you  
3 can so no one has to look into it even to identify whose it is  
4 would be fine and we will look to see you tomorrow morning at  
5 nine thirty.

6 Now, again please don't discuss this with your loved ones  
7 at home what's happening because that would be inappropriate  
8 because clearly you're a jury under deliberation at this time.  
9 All right, any questions from our jury about scheduling?

10 Then, Ms. Port, as you leave, ma'am, I will come down and  
11 shake your hand for my expression of gratitude for your  
12 service and then we'll see the rest of our jurors tomorrow  
13 morning. We'll remain where we are as you depart the  
14 courtroom. Have a good day and someone will take up your  
15 books as you're leaving -- leaving the jury box.

16 And I hate to tell you this again. It was raining when I  
17 last looked outdoors. Hopefully, it stopped in the last  
18 couple minutes.

19 (Whereupon, the jury exits the courtroom at 5:31 p.m.)

20 THE COURT: All right, ladies and gentlemen, we will be  
21 in recess. The staff will be in -- please be in by nine and  
22 -- because there will be other defendants -- other individuals  
23 here who will have bonds, pleas and other matters. We'll pick  
24 up with the jury at nine thirty. This Court is in recess for  
25 the day.

1 (Whereupon, the proceedings end at 5:32 p.m. for the  
2 day.)

3 (Whereupon, the jury notes are marked as Court's Exhibit  
4 Number 1.)

5  
6 --- END REQUESTED TRANSCRIPT ---  
7  
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1 STATE OF SOUTH CAROLINA )

2 ) CERTIFICATE

3 COUNTY OF FLORENCE )

4

5 I, the undersigned, Krystal J. Smith, Official Court  
6 Reporter for the Twelfth Judicial Circuit of the State of  
7 South Carolina, do hereby certify that the foregoing is a  
8 true, accurate, and complete Transcript of Record of all the  
9 proceedings had and evidence introduced in the hearing of the  
10 above captioned case, relative to appeal, in the Court of  
11 General Sessions for Georgetown County, South Carolina, on the  
12 29th day of August 2012.

13 I do further certify that I am neither of kin, counsel,  
14 nor interest to any party hereto.

15

Krystal J. Smith

Court Reporter

17

18

19 Florence, South Carolina

20 October 26, 2013

21

22

23

24

25

**EXHIBITS IN SUPPORT OF**

**GROUND 4**

**ARREST WARRANT, FALSE IMPRISONMENT, FOURTH AND FOURTEENTH AMENDMENT  
VIOLATION**

**PORTIONS OF TRANSCRIPTION OF INTERVIEWS OF STATE WITNESS, DOUGLAS MORRIS,  
TAKEN BY INVESTIGATORS, MELVIN GARRETT AND DUSTIN MORRIS, ON DECEMBER 2, 2008,  
WHICH PROVES THAT THE PROSECUTION KNOWINGLY PRESENTED FALSE TESTIMONY FROM  
DOUGLAS MORRIS AS TO KNOWING PETITIONER AS NICKNAME "D" AND/OR "LITTLE D".**

ANDREA R. KELLY

401 WITHERSPOON DRIVE  
KINGSTREE, S. C. 29556  
PHONE: 843-354-7169

August 28, 2012

Mr. Charles David Barr  
Barr and Barr  
Kingstree, S. C. 29556

Re: Transcription of three CD's in Georgetown murder trial

|                       |          |
|-----------------------|----------|
| Willie Stanley        | \$120.00 |
| Larry Cooper          | \$ 90.00 |
| Douglas Morris, Sonia |          |
| Jones, Toni Jones     | \$ 66.00 |
| Total                 | \$276.00 |

Thank you

SS# 248-80-5058

1 A

No, sir.

2 Q

No. What else can you tell me about this guy that

3

ran in with the mask on. When he came in which

4

door did he come in. There are two doors there.

5 A

He came in through the side door.

6 Q

Side door.

7 A

Like next to where the bar is.

8 Q

Where the bar is, and that's where you were

9

sitting?

10 A

Yes, sir.

11 Q

Can you tell me anything about him or what he

12

looked like other than he had the mask on. What

13

was he wearing?

14 A

He was like kind of dark skinned, and I think he

15

had on a gray hoodie, a black T-shirt and a pair of

16

blue jeans. I didn't get to see the sneakers. He

17

was about 5'4, and that's all I really got to see

18

before he started shooting, and I ducked down

19

behind the bar.

20 Q

So he was a pretty short guy?

21 A

Yes, sir.

22 Q

Okay, was this your first time at the bar?

23 A

Yes, sir.

24 Q

This guy that you saw come in, did he remind you

25

of anybody that you may have seen before?

- 1 A No, sir, not really.
- 2 Q Do you remember what kind of gun he had, what
- 3 it looks like?
- 4 A It was a 9 millimeter, black.
- 5 Q It was black?
- 6 A Yes.
- 7 Q And he came in and he shot at who?
- 8 A Andre' Evans.
- 9 Q And you were ducked down behind the bar when
- 10 that happened?
- 11 A Yes, sir.
- 12 Q What happened after he shot?
- 13 A He ran out, and he got in a black Taurus and he
- 14 flee the scene.
- 15 Q Okay, a black Taurus.
- 16 A Yes, sir.
- 17 Q Was there anybody else with him?
- 18 A From what other people said there were another
- 19 dude standing at the door and three more outside.
- 20 Q Right, but what did you see?
- 21 A All I saw was him when he came storming in.
- 22 Q You just saw him, okay. When he jumped into
- 23 this black Taurus did he get in the driver's side or
- 24 the back seat?

1 off?

2 A No, sir.

3 Q Is there anything else about last night that you

4 want to tell me that maybe you forgot or anything

5 like that?

6 A No, sir.

7 Sonia Jones What did Andre' say to y'all in the club after he

8 got shot?

9 A He told us that Dee was the one who shot him.

10 Q Dee?

11 A Yes, he said he recognized the voice and Dee was

12 the one who shot him.

13 Q Do you know who Dee is?

14 A No, sir.

15 Sonia Jones I've seen him a couple of times.

16 Q You've seen Dee?

17 Sonia Jones I've seen him. I have actually picked him up from

18 the airport in Charleston when they came back off

19 of a trip.

20 Q When who came back?

21 Sonia Jones Him and Andre' they went out of town. This has

22 about three months ago, and when they came back

23 we had to go pick Andre' up from the airport my

24 daughter and I. He was with Andre' then, and he

In the Court of Appeals

The State, Respondent

v

Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder, Appellants

Appellate Case No. 2022-000671

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AUG 25 2022

**SC Court of Appeals**

Notice

Dear Honorable Clerk:

Enclosed, please find one original and one copy of "Motion to Update Case and Request for Conditional Order" stamped filed, please send copy to Petitioners.

Date: August 24, 2022

Respectfully submitted,

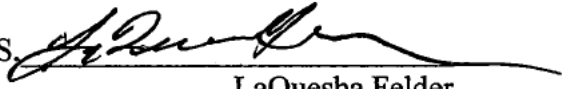
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Columbia, South Carolina 29210

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