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Jul 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CALHOUN COUNTY

Court of General Sessions
The Honorable Maite Murphy

Case No.: 2019-000926

State of South Carolina,

Respondent,

vs.

Derrick Tyler Mills,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221 (a) of the South Carolina Appellate Court Rules, Petitioner Derrick Mills respectfully petitions the Court to grant a rehearing in *State v. Mills*, Unpublished Op. No.: 2022-UP-309 (S.C. Ct. App. filed July 20, 2022).

Rehearing is proper in this case because, simply, there is case law to cite in order to support Appellant's position. Despite lengthy research by the undersigned, no case law or rules of court could be found declaring when a court proceeding is over. The nearest to a satisfactory answer to this query can be found in the idea that a mistrial is not a final order, but rather an interlocutory order and the court retains jurisdiction until the end of the term. *See Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, ___, 21 S.E.2d 209, 211-212 (1942) (recognizing an

order granting a mistrial is not a final judgment and, instead, is an interlocutory order); *see also* *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”); *State v. Hinson*, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”); *State v. Patterson*, 272 S.C. 2, 4, 249 S.E.2d 770, 771 (1978) (recognizing terms of court generally last for one week). Appellant recognizes that these were cited by Respondent in its brief, but they show the lack of information available.

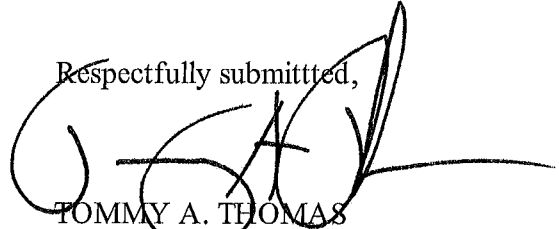
A “failure” to cite case law on point when it does not exist (as conceded by Respondent) should not prevent Appellant from having review of a fundamentally unfair occurrence. To borrow Respondent’s citations again, “In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial.” *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). To protect that right, a trial judge is typically afforded broad discretion over how a criminal trial is conducted. *State v. Humphery*, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981). This discretion, however, should not extend to reassembling a jury when they had dispersed so far as to be called back from the parking lot. The Tennessee rule, as cited by Respondent, considers such a situation because jurors had left the court’s control prior to the issuance of a verdict, even though one had apparently been made. *Clark v. State*, 97 S.W.2d 644, 646 (Tenn. 1936).

Washington State also held that when a jury has left the court’s control, “contamination is presumed even though the jurors may not have taken advantage of the opportunity to discuss the case.” *State v. Edwards*, 552 P.2d 1095, 1097 (Wash. Ct. App. 1976).

Only oblique citations such as these can be made because our courts simply have not ruled on the matter. For this court to continue not to rule on the matter due to a perceived preservation error

would further prejudice Appellant. Appellant, therefore, respectfully requests a rehearing and substantive decision on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. A. Thomas', with a long horizontal flourish extending to the right.

TOMMY A. THOMAS

Bar No.: 005536

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Irmo, SC 29063

(803) 732-5507

ATTORNEY FOR APPELLANT

July 28, 2022

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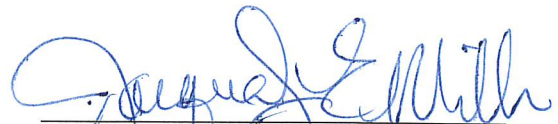
vs.

Derrick Tyler Mills,

Appellant.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Appellant hereby certify that pursuant to an Order of the Supreme Court dated March 20, 2020 regarding Operation of the Appellate Courts During the Coronavirus Emergency, I emailed a copy of the Petition for Rehearing to Mark R. Farthing, Esq., at the Office of the Attorney General, at mfarthing@scag.gov



Jacquelyn E. Miller
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July 28, 2022
VIA EMAIL

V. Clare Allen, Deputy Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Derrick Mills v. State
Appellate Case No.: 2019-000926

Dear Ms. Allen:

Attached please find a Petition for Rehearing and Certificate of Service for filing in the above referenced matter.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Tommy A. Thomas', written over a blue circular stamp or watermark.

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Mark R. Farthing, Esq. - Email