

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Nicholson, Jr., Circuit Court Judge

RECEIVED

Jun 16 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSEPH LAMAR BROWN, JR.

APPELLANT

APPELLATE CASE NO. 2019-000781

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

INDEX	ii
COURT’S EXHIBIT #4 (MOTION TO DIMISS ARMED ROBBERY INDICTMENT).....	1

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #38 (PHOTO); STATE’S EXHIBIT #39 (PHOTO); STATE’S EXHIBIT #40 (PHOTO); STATE’S EXHIBIT #41 (PHOTO); STATE’S EXHIBIT #42 (PHOTO); STATE’S EXHIBIT #48 (PHOTO); STATE’S EXHIBIT #49 (PHOTO); STATE’S EXHIBIT #50 (PHOTO); STATE’S EXHIBIT #51 (PHOTO); STATE’S EXHIBIT #78 (DVD – 911 CALL); DEFENDANT’S EXHIBIT #2 (PHOTO); DEFENDANT’S EXHIBIT #3 (PHOTO); DEFENDANT’S EXHIBIT #4 (PHOTO); COURT’S EXHIBIT #5 (PHOTO); COURT’S EXHIBIT #6 (PHOTO); COURT’S EXHIBIT #7 (PHOTO); COURT’S EXHIBIT #8 (PHOTO); COURT’S EXHIBIT #9 (PHOTO); COURT’S EXHIBIT #11 (VIDEO); COURT’S EXHIBIT #13 (PHOTO); COURT’S EXHIBIT #14 (PHOTO).

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

STATE OF SOUTH CAROLINA

-vs-

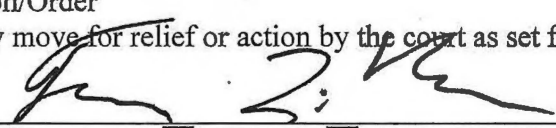
JOSEPH LAMAR BROWN, JR.
DEFENDANT

WARRANT/TICKET/

INDICTMENT #'s

2016A1010206049; -6052;

K404187

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☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED ☐ PROPOSED ORDER/CONSENT ORDER	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Dismiss Armed Robbery Indictment as Required by Double Jeopardy Protection</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: ☒ YES/ ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of ☐ Solicitor ☒ Attorney for Defendant <u>10/30/18</u> Date submitted	

FILED
 2016 OCT 30 11 55
 JUDGE J. ANDERSON
 CLERK OF COURT



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No(s): 2017-GS-10-04077, 2017-GS-10-
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	Warrant No(s): 2016A1010206049,
	)	2016A1010206050, 2016A1010206051,
STATE OF SOUTH CAROLINA	)	2016A1010206052, K404187
	)	Charge(s): Possession of a Firearm During the
v.	)	Commission of a Violent Crime, Kidnapping,
	)	Burglary (First Degree), Armed Robbery,
JOSEPH LAMAR BROWN, JR.,	)	Murder
	)	
Defendant.	)	MOTION TO DISMISS ARMED ROBBERY
	)	INDICTMENT AS REQUIRED BY
	)	DOUBLE JEOPARDY PROTECTIONS
	)	

Pursuant to the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and S.C. Const. Art. I, § 12, defendant Joseph Lamar Brown, Jr. respectfully moves to dismiss the armed robbery indictment.

During the week of June 11, 2018, the State tried Brown before The Honorable Kristi Harrington. The jury hung on the charges of Possession of a Firearm During a Violent Crime, Burglary (First Degree), and Murder, but did reach a unanimous verdict of not guilty on the charge of armed robbery. Now, the State seeks to try Brown again on the armed robbery indictment in violation of the Double Jeopardy prohibitions of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the South Carolina Constitution. This Court should dismiss the armed robbery indictment with prejudice.

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BY

FACTS

On December 23, 2016, at 12:56 PM, Hugh Pritchard asked a neighbor to call 911 and eventually reported to Dispatch that his cousin John “Johnny” Glenn Pritchard had been shot and robbed by an intruder into the victim’s home at [REDACTED] East Thomas Street in Lincolnville, South Carolina. Brown’s iPhone was found near the crime scene. Based primarily on that, officers arrested Brown on January 3, 2017. He was subsequently indicted on five charges: Possession of a Firearm During the Commission of a Violent Crime, Kidnapping, Burglary (First Degree), Armed Robbery, and Murder.

During the week of June 11, 2018, the state elected not to pursue the kidnapping charge but tried Brown on the four remaining charges. The jury was sworn on the afternoon of June 11, 2018. (Exhibit 1, Transcript Excerpt (“Tr.”) at 13). The trial proceeded through June 14, 2018, when the jury deliberations began at 12:18 p.m. (Exhibit 1, Tr. at 552). During the next five hours or so, the jury returned five notes and the testimony of Hugh Potter Pritchard was replayed at the request of the jury. *Id.* at 552-553. One of those notes indicated that the jury had reached a unanimous verdict of not guilty on armed robbery, but was unable to reach unanimous agreement on the other indictments. (Exhibit 2, Affidavit of Teresa L. Norris; Exhibit 3 Affidavit of Taylor J. Seman; Exhibit 5, Affidavit Addendum of Juror Heather Sharkey). At 4:51 p.m., after the jury indicated an inability to reach a verdict, Judge Harrington gave an *Allen* charge.¹ *Id.* at 553-555. After that time, two more jury notes were received by the court, before the jury was returned to the courtroom and the jury foreperson announced: “We, Your Honor, have just not been able to come to a unanimous decision on any of the indictments.” *Id.* at 556. The jury was then excused at 7:37 p.m. *Id.* at 557.

¹ *Allen v. United States*, 164 U.S. 492 (1896).

The following day, however, Juror Heather Sharkey called defense counsel Taylor Seman to inform her that the jury had been unanimous in acquitting Brown of armed robbery and had never again discussed that charge after the *Allen* charge. (Exhibit 4, Affidavit of Juror Heather Sharkey). Juror Sharkey provided an affidavit that includes the following pertinent information:

- 10) Mr. Brown had four indictments: murder, armed robbery, burglary, and possession of a weapon during a violent offense. His trial lasted from mid-day on Monday, June 11, through the evening of June 14, when the jury foreperson reported that the jury had been unable to reach any verdict. The judge then declared a mistrial and excused the jury.
 - 11) The following day, I called Taylor Seman, who was one of Mr. Brown's lawyers. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment. On the other three indictments at that time the vote was seven guilty and five not guilty.
 - 12) The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
 - 13) We continued deliberating after that for another 2 hours or so on the three indictments that we were disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in that last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
 - 14) When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
 - 15) Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.
- Id.* Juror Sharkey also provided a copy of her jury notebook, which includes a page indicating: "Armed Rob NG by UNI." (Exhibit 6, Affidavit of Juror Heather Sharkey with page from

notebook). Juror Lajune Hollins also provided an affidavit including substantially the same information. (Exhibit 7, Affidavit of Juror Lajune Hollins).

ARGUMENT

Under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, no person may “be subject for the same offence to be twice put in jeopardy of life or limb.”² See *Benton v. Maryland*, 395 U.S. 784, 793 (1969). The South Carolina Constitution also prohibits double jeopardy. S.C. Const. Art. I, § 12 (“No person shall be subject for the same offense to be twice put in jeopardy of life or liberty”). While state courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution, South Carolina courts, interpreting double jeopardy protections, have thus far “declined to extend broader protection under our state constitution than that afforded under the federal constitution.” *State v. Easler*, 327 S.C. 121, 132, 489 S.E.2d 617, 623 (1997), *overruled on other grounds by State v. Greene*, 423 S.C. 263, 283, 814 S.E.2d 496, 507 (2018).

The Double Jeopardy prohibition “protects a man who has been acquitted from having to ‘run the gantlet’ a second time.” *Ashe v. Swenson*, 397 U.S. 436, 446 (1970) (quoting *Green v. United States*, 355 U.S. 184, 190 (1957)). “The Clause does not, however, bar a second trial if the first ended in a mistrial.” *Blueford v. Arkansas*, 566 U.S. 599, 601 (2012). This is so even where a jury is unable to reach a unanimous verdict after the trial court has given an *Allen*² charge and urged the jury to reach a verdict. *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004).

² *Allen v. United States*, 164 U.S. 492 (1896).

The Federal Rules of Evidence specifically authorize the use of evidence from jurors in a situation like this one. As a general rule, juror testimony may not be the basis for impeaching a jury verdict. *State v. Pittman*, 373 S.C. 527, 555, 647 S.E.2d 144, 158 (2007); *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). But South Carolina recognizes exceptions in cases involving extraneous information or influence, as well as cases involving internal misconduct where necessary to ensure fundamental fairness, such as the influence of racial prejudice on a verdict. *State v. Franklin*, 341 S.C. 555, 560, 534 S.E.2d 716, 719 (Ct. App. 2000).

Specifically, Rule 606(b), SCRE, provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

At the time of adoption in September 1995, this rule was "identical to the federal rule." *Id.* Notes. The Federal Rule was amended in 2006, however, to recognize an exception allowing juror testimony "about whether . . . a mistake was made in entering the verdict on the verdict form." Fed. R. Evid. 606(b)(2)(C).

The Federal Rule was amended to conform with the exception already drawn by many courts recognizing that Rule 606(b) is not applicable where juror affidavits seek "correction in the transmission of the verdict rather than the impeachment of a verdict." *McCullough v. Conrail*, 937 F.2d 1167, 1169 (6th Cir. 1991). In other words, juror testimony is permitted where there is no inquiry "into the thought processes or emotional reactions of the jurors," *id.*, or the defendant seeks only inquiry into "what the jury decided and not why they did so," *Attridge v. Cencorp Div. of*

Dover Techs. Int'l, Inc., 836 F.2d 113, 117 (2d Cir. 1987). The South Carolina rule simply does not address the situation where the court is asked only to “consider jurors’ testimony that through inadvertence, oversight, or mistake, the announced verdict was not the one to which the jurors had agreed.” *Karl v. Burlington N. R.R. Co.*, 880 F.2d 68, 74 (8th Cir. 1989). See also *United States v. Dotson*, 817 F.2d 1127, 1130 (5th Cir. 1987) (juror’s affidavit “admissible to show that the verdict delivered was not that actually agreed upon . . . but a juror may not subsequently impeach a verdict by stating how it was reached”); *Young v. United States*, 163 F.2d 187, 189 (10th Cir. 1947) (jurors are competent witnesses to show that through oversight, inadvertence, or mistake respecting the verdict announced was not the verdict reached in the jury room). This Court should extend the common-sense protections of the Federal Rules and allow the introduction of evidence from Brown’s first jury.

Here, the jury did actually reach a unanimous verdict of not guilty on the armed robbery indictment. This verdict was announced through a jury note to the court. This result of acquittal is not changed by the subsequent proceedings involved in the *Allen* charge and additional deliberations, as the charge by its very nature was to conduct additional deliberations on the charges on which the jury had been unable to reach a unanimous verdict. Indeed, as affirmed by Juror Sharkey and Juror Hollins, the additional time in deliberations was spent attempting to resolve the disagreement about other counts and the jury never returned to the discussion of the armed robbery indictment because a verdict had already been reached. (Exhibit 4, Sharkey Affidavit at para. 13); (Exhibit 7, Hollins Affidavit at para. 16).

Neither federal nor state courts have addressed the exact issue in this case. *Blueford v. Arkansas*, 566 U.S. 599 (2012), does not control because it is factually and legally distinguishable. In *Blueford*, the defendant was charged with capital murder. In charging the jury, the court

instructed the jury that it could consider lesser-included offenses. Under state law, the jury was required to acquit of the greater charger before considering the lesser charges. Specifically:

The trial court instructed the jury that the charge of capital murder included three lesser offenses: first-degree murder, manslaughter, and negligent homicide. In addition to describing these offenses, the court addressed the order in which the jury was to consider them: “If you have a reasonable doubt of the defendant's guilt on the charge of capital murder, you will consider the charge of murder in the first degree. . . . If you have a reasonable doubt of the defendant's guilt on the charge of murder in the first degree, you will then consider the charge of manslaughter. . . . If you have a reasonable doubt of the defendant's guilt on the charge of manslaughter, you will then consider the charge of negligent homicide.”

Id. at 602. The jury was given five verdict forms to choose from.

There were four separate forms allowing the jury to convict on each of the charged offenses: capital murder, first degree murder, manslaughter, and negligent homicide. A fifth form allowed the jury to return a verdict of acquittal, if the jury found Blueford not guilty of any offense. There was no form allowing the jury to acquit on some offenses but not others.

Id. at 603. A few hours into deliberations, the jury sent out a note asking what would happen if the jury was unable to reach a verdict. The court gave an *Allen* charge and deliberations resumed. After another half hour, the jury foreperson informed the court that the jury was “hopelessly deadlocked.” *Id.* The court then asked the foreperson to disclose the jury's votes. The foreperson indicated that the juror was unanimous “against” capital murder and first degree murder; stuck at “[n]ine for, three against” on manslaughter; and, in accord with the court's instructions, had not yet progressed to vote on negligent homicide. *Id.* at 603-604. The court gave another *Allen* instruction and sent the jury out of additional deliberations. *Id.* at 604. After another half hour, the jury foreperson informed the court that the jury “had not reached a verdict” and the court declared a mistrial and discharged the jury. *Id.*

When the state sought to retry Blueford on the capital murder charge, Blueford moved to dismiss the capital murder and first degree murder charges on the basis of double jeopardy. The trial court denied the motion and the Arkansas Supreme Court affirmed the trial court on interlocutory appeal. The United States Supreme Court granted certiorari review and affirmed. The Court held that the foreperson's announcement that the jury had voted unanimously against capital murder and first degree murder prior to the conclusions of the deliberations was not a "formal verdict" or "final resolution of anything." *Id.* at 606. "The fact that deliberations continued after the report deprives that report of the finality necessary to constitute an acquittal on the murder offenses." *Id.* In short, because the jury "was free to reconsider a greater offense, even after considering a lesser one," *id.* at 607, the Court could not say whether the jury had returned to considering capital murder and/or one of its lesser included offenses, *id.*

Here, the situation is significantly factually and legally distinguishable. In *Blueford*, the jury was considering and discussing one set of circumstances and one resulting indictment that involved the defendant's level of criminal responsibility, or lack thereof, for the death of one person. The only reason for the jury to continue deliberating would be to discuss that set of circumstances. But Brown's jury was not considering a single count with lesser-included offenses. Instead, Brown's jury was considering four distinct indictments. And, in considering those indictments, the jury was able to reach a unanimous not-guilty verdict on one of those counts. When the jury was given an *Allen* charge it was not, as in *Blueford*, directed to continue deliberating on the only indictment before it. Brown's jurors were instead told that they had "a duty to make every reasonable effort to reach a unanimous verdict" on each charge. (Exhibit 1, Tr. at 553). Because they had already reached a unanimous verdict of not guilty on the armed

robbery charge, and had informed the court of that fact, the jury did not return to deliberations on that charge.

At the conclusion of the deliberations, the foreperson announced that the jury was “not [] able to come to a unanimous decision on any of the indictments.” (Exhibit 1, Tr. at 556). This pronouncement was made only because of confusion on the part of the jurors that they had to reach a verdict on all counts or none. (Exhibit 4, Sharkey Affidavit at para. 15); (Exhibit 7, Hollins Affidavit at para. 18). While a misunderstanding of the law does not warrant relief absent a denial of fundamental fairness, *State v. Pittman*, 373 S.C. 527, 554, 647 S.E.2d 144, 158 (2007), *State v. Galbreath*, 359 S.C. 398, 406, 597 S.E.2d 845, 849 (Ct. App. 2004), retrial on an armed robbery indictment that a jury has voted unanimously for acquittal on is the epitome of a denial of fundamental fairness.

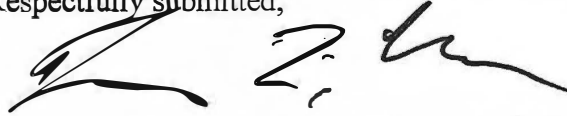
The only reason that this error was not corrected prior to the jury being excused on June 14, 2018, was that counsel and the court failed to inquire further. And, it is beyond question that trial counsel may be ineffective for failing to request that a confusing verdict be clarified. *Wertz v. State*, 349 S.C. 291, 294, 562 S.E.2d 654, 656 (2002). Likewise, it is beyond question that it is the trial court’s duty to clarify any confusion in the verdict. *Id.* See also *Roberts v. State*, 408 S.C. 123, 134, 757 S.E.2d 744, 750 (Ct. App. 2014). Regardless of where the blame lies in failing to clarify the record further on June 14, 2018, it is clear that Brown was acquitted of armed robbery and further prosecution on that indictment is prohibited.

CONCLUSION

This Court must dismiss the armed robbery indictment with prejudice because Brown has already been acquitted of that charge and a new trial on that indictment would be in violation of

the prohibition of double jeopardy in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the South Carolina Constitution.

Respectfully submitted,



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October 30, 2018
Charleston, South Carolina

FILED
2018 OCT 30 AM 9:56
JULIE J. ARYSTROM
CLERK OF COURT
BY _____

Exhibit 1

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-04083

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2 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
3 COUNTY OF CHARLESTON) CASE NO. 2017GS1004077,
04079, 04081, 04083

4

5 STATE OF SOUTH)
CAROLINA,)
6 Plaintiff,) Transcript of Record

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vs.

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JOSEPH LAMAR BROWN,
JR.,

Date: June 11, 2018 -
June 14, 2018

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Defendant.

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B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

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Ninth Judicial Circuit

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19

20

21

22

23

24

25

1	I N D E X	
2		Page
3	<u>THE JURY</u> SWORN	13
4	COURT'S OPENING REMARKS	13
5	OPENING STATEMENT BY MR. DURANT	21
6	OPENING STATEMENT BY MS. SEMAN	30
7	<u>HUGH PRITCHARD</u>	34
8	DIRECT EXAMINATION BY MR. DURANT	35
9	CROSS-EXAMINATION BY MS. NORRIS	54
10	REDIRECT EXAMINATION BY MR. DURANT	63
11	<u>CELESTE MCBRIDE</u>	67
12	DIRECT EXAMINATION BY MR. DURANT	67
13	CROSS-EXAMINATION BY MS. NORRIS	80
14	<u>ALLEN MCBRIDE</u>	83
15	DIRECT EXAMINATION BY MR. DURANT	83
16	CROSS-EXAMINATION BY MS. NORRIS	91
17	<u>THE INTERPRETER</u>	97
18	<u>MARVIN ALTO PEREZ</u>	97
19	DIRECT EXAMINATION BY MR. DURANT	98
20	CROSS-EXAMINATION BY MS. NORRIS	101
21	REDIRECT EXAMINATION BY MR. DURANT	103
22	RECROSS-EXAMINATION BY MS. NORRIS	104
23	<u>CHARLES ERIC GILLARD</u>	118
24	DIRECT EXAMINATION BY MR. DURANT	119
25	<u>INTERPRETER</u>	133

1	<u>MARTIN PEREZ</u>	133
2	DIRECT EXAMINATION BY MR. DURANT	134
3	CROSS-EXAMINATION BY MS. NORRIS	148
4		
5	REDIRECT EXAMINATION BY MR. DURANT	152
6	<u>COREY JACK SHELTON</u>	159
7	DIRECT EXAMINATION BY MR. DURANT	159
8	<u>HERSHEL MCELROY</u>	165
9	DIRECT EXAMINATION BY MR. DURANT	165
10	CROSS-EXAMINATION BY MS. NORRIS	199
11	<u>NAUTICA MANIGAULT</u>	241
12	DIRECT EXAMINATION BY MR. DURANT	243
13	CROSS-EXAMINATION BY MS. NORRIS	255
14	<u>ZULFIQAR KAHN</u>	259
15	DIRECT EXAMINATION BY MR. DURANT	260
16	<u>BARRY GOLDSTEIN</u>	269
17	DIRECT EXAMINATION BY MR. DURANT	269
18	CROSS-EXAMINATION BY MS. NORRIS	308
19	REDIRECT EXAMINATION BY MR. DURANT	320
20	<u>JOSEPH BROWN</u>	323
21	EXAMINATION BY THE COURT	323
22	<u>PAUL DAVID MCMANIGAL</u>	332
23	DIRECT EXAMINATION BY MR. DURANT	333
24	<u>RAYMOND HAUPT</u>	358
25	DIRECT EXAMINATION BY MR. DURANT	358

1	CROSS-EXAMINATION BY MS. SEMAN	397
2	REDIRECT EXAMINATION BY MR. DURANT	402
3	<u>MICHELLE EICHENMILLER</u>	403
4	DIRECT EXAMINATION BY MR. DURANT	404
5	CROSS-EXAMINATION BY MS. NORRIS	414
6	<u>ANGELINA PHILLIPS</u>	422
7	DIRECT EXAMINATION BY MR. DURANT	422
8	<u>TREY COLEMAN</u>	437
9	DIRECT EXAMINATION BY MR. DURANT	438
10	CROSS-EXAMINATION BY MS. NORRIS	457
11	REDIRECT EXAMINATION BY MR. DURANT	460
12	<u>JOSEPH LAMAR BROWN, JUNIOR</u>	464
13	EXAMINATION BY THE COURT	464
14	<u>JENNIFER NATES</u>	466
15	DIRECT EXAMINATION BY MS. NORRIS	466
16	CROSS-EXAMINATION BY MR. DURANT	483
17	CLOSING ARGUMENT BY MR. DURANT	495
18	CLOSING ARGUMENT BY MS. NORRIS	508
19	REBUTTAL CLOSING ARGUMENT BY MR. DURANT	522
20	JURY CHARGE	528
21	VERDICT - MISTRIAL	556
22	CERTIFICATE OF REPORTER	560
23		
24		
25		

1	E X H I B I T S		
2		Page/Line	
3	State's EXH. 1 - 143, Premarked for	11	4
4	identification by the Solicitor's		
5	Office.)		
6	State's EXH. 145, DVD	285	15
7	COURT'S EXH. 1, CD that was marked	66	14
8	Defendant's 1, with multiple clips		
9	COURT'S EXH. 5, DVD, Nautica Manigault	331	16
10	DFT. EXH. 2, Screen shots of dog	331	25
11	COURT EXH. 6, Jury note	552	21
12	COURT EXH. 7, Jury note	552	23
13	COURT EXH. 8, Jury note	552	25
14	COURT EXH. 9, Jury note	553	4
15	COURT EXH. 10, Jury note	553	6
16	DFT. 1 EXH. 11, Jury note	555	22
17	COURT EXH. 12, Jury note	555	24
18	STATE'S EXH. 61 in evidence	39	21
19	STATE'S EXH. 78 in evidence	51	22
20	STATE'S EXH. 1 - 12 in evidence	74	25
21	STATE'S EXH. 71 in evidence	78	6
22	STATE'S EXH. 132 in evidence	79	12
23	STATE'S EXH. 133 in evidence	79	13
24	STATE'S EXH. 63, iPhone, in evidence	87	18
25	STATE'S EXH. 98, DVD, in evidence	129	17

1	STATE'S EXH. 139 - 142, Screen shots, in	132	2
2	evidence		
3	STATE'S EXH. 62, Diagram, in evidence	136	13
4	STATE'S EXH. 77, Photograph, in evidence	147	14
5	STATE'S EXH. 17, 19, 20, 21, 22, 23, 24,	155	4
6	28, Photographs, in evidence		
7	STATE'S EXH. 15, 17, 19, 20, 21, 22, 23,	158	24
8	24, 26, 27, 28, Photographs, in evidence		
9	STATE'S EXH. 128, DVD, in evidence	164	17
10	STATE'S EXH. 64, Spent cartridge, in	175	15
11	evidence		
12	STATE'S EXH. 13, Photograph, in evidence	177	2
13	STATE'S EXH. 14, Photograph, in evidence	177	4
14	STATE'S EXH. 65, Projectile, in evidence	182	14
15	STATE'S EXH. 66, Hornady bullets, in	186	24
16	evidence		
17	STATE'S EXH. 67, Blazer bullets, in	187	1
18	evidence		
19	STATE'S EXH. 29 - 40, Photographs, in	188	16
20	evidence		
21	STATE'S EXH. 48 - 51, Photographs, in	188	24
22	evidence		
23	STATE'S EXH. 73 - 76, Photographs, in	195	6
24	evidence		
25	STATE'S EXH. 72, DVD, in evidence	197	18

1	STATE'S EXH. 43 - 47, Screen shots, in	198	11
2	evidence		
3	STATE'S EXH. 52, Photograph, in evidence	247	5
4	STATE'S EXH. 53, Photograph, in evidence	248	11
5	STATE'S EXH. 54, Photograph, in evidence	249	18
6	STATE'S EXH. 144, Photograph, in evidence	255	8
7	STATE'S EXH. 95, DVD, in evidence	264	9
8	STATE'S EXH. 97, DVD, in evidence	266	6
9	STATE'S EXH. 135, Screen shot, in	267	5
10	evidence		
11	STATE'S EXH. 136, Screen shot, in	267	7
12	evidence		
13	STATE'S EXH. 137, Screen shot, in	267	9
14	evidence		
15	STATE'S EXH. 138, Screen shot, in	267	11
16	evidence		
17	STATE'S EXH. 145 in evidence	285	22
18	STATE'S EXH. 130, Copy of a search	299	7
19	warrant, in evidence		
20	STATE'S EXH. 101 in evidence	301	3
21	STATE'S EXH. 108, Phone extraction	341	11
22	report, in evidence		
23	STATE'S EXH. 109, Phone extraction	342	23
24	report, in evidence		
25	STATE'S EXH. 112, Phone extraction	344	12

1	report, in evidence		
2	STATE'S EXH. 110, Phone extraction	345	21
3	report, in evidence		
4	STATE'S EXH. 113, Call log, in evidence	347	21
5	STATE'S EXH. 114, Phone extraction	348	17
6	report, in evidence		
7	STATE'S EXH. 115, Phone extraction	349	12
8	report, in evidence		
9	STATE'S EXH. 116, Phone extraction	351	7
10	report, in evidence		
11	STATE'S EXH. 117, Phone extraction	352	8
12	report, in evidence		
13	STATE'S EXH. 118, Phone extraction	353	11
14	report, in evidence		
15	STATE'S EXH. 119, Phone extraction	354	14
16	report, in evidence		
17	STATE'S EXH. 120, Images from iPhone, in	356	19
18	evidence		
19	STATE'S EXH. 121, Images from iPhone, in	356	21
20	evidence		
21	STATE'S EXH. 68, Call records, in	361	23
22	evidence		
23	STATE'S EXH. 127, Facebook certificate of	364	4
24	authenticity, in evidence		
25	STATE'S EXH. 79, Facebook business	365	5

1	record, in evidence		
2	STATE'S EXH. 80, Facebook business	365	7
3	record, in evidence		
4	STATE'S EXH. 88, Facebook business	365	9
5	record, in evidence		
6	STATE'S EXH. 89, Facebook business	365	11
7	record, in evidence		
8	STATE'S EXH. 90, Facebook business	365	13
9	record, in evidence		
10	STATE'S EXH. 92, Facebook business	365	15
11	record, in evidence		
12	STATE'S EXH. 93, Facebook business	365	17
13	record, in evidence		
14	STATE'S EXH. 134, ATF Trace Summary, in	390	20
15	evidence		
16	STATE'S EXH. 129, Verizon summary, in	396	2
17	evidence		
18	STATE'S EXH. 55 - 60, Autopsy	428	14
19	photographs, in evidence		
20	DFT. EXH. 1 in evidence	61	13

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1 (The following proceedings were had
2 June 11, 2018, State v Brown, Charleston County
3 General Sessions Court, 2:37 p.m.)

4 (STATE'S EXH. 1 - 143, Premarked for
5 identification by the Solicitor's Office.)

6 THE COURT: All right. Anything, Ms.
7 Seman?

8 MS. SEMAN: Yes, Judge, just very
9 briefly. The way I understand the state of South
10 Carolina law, at this point, I believe I have to
11 make a contemporaneous objection during Mr.
12 Durant's opening to preserve any of your pretrial
13 rulings or preserve my record on your pretrial
14 rulings, but I just wanted to let you know that I
15 was planning on doing that so you will know where
16 my objections will be coming from.

17 THE COURT: Okay.

18 MS. NORRIS: Your Honor, just one
19 housekeeping matter. I don't recall Judge Dennis
20 telling jurors this morning that lawyers would
21 avoid them in the hallways, et cetera. And I
22 almost ended up in an elevator with a juror, so I
23 would like the Court to explain to them that we're
24 not being rude.

25 THE COURT: Okay. All right. Thank

1 you. Are they all here? Are the jurors here?

2 BAILIFF: Yes, ma'am.

3 THE COURT: And they have their
4 notepads? And you know Mrs. Fetterolf has been
5 selected as the foreperson.

6 BAILIFF: The notepads are in their
7 chairs, Your Honor.

8 THE COURT: All right. Thank you.
9 Notepads in their chairs. All right. Bring them
10 in. All right.

11 Ms. Seman, the rule of sequestration
12 has been invoked. If you could please scan the
13 audience and make sure that you are compliant.

14 MS. SEMAN: I believe we are compliant,
15 Your Honor.

16 (Jury in, 2:31 p.m.)

17 BAILIFF: All jurors are present.

18 THE COURT: Thank you. Please be
19 seated. Good afternoon, ladies and gentlemen. Did
20 you comply with my instructions over the lunch
21 hour? If you followed my instructions, please
22 raise your right hand.

23 Thank you. All 14 jurors have
24 indicated they have complied with the Court's
25 instructions.

1 Mr. Clerk, if you would please give
2 them their oath.

3 THE CLERK: Will the defendant please
4 rise?

5 Ladies and gentlemen, please rise and
6 raise your right hand.

7 THE JURY,
8 being first duly sworn, testified as follows:

9 THE CLERK: Your Honor, let the record
10 reflect the jurors have been sworn.

11 THE COURT: Ladies and gentlemen, as I
12 indicated before our lunch break, the case that
13 we're about to try is the case of the State versus
14 Joseph Lamar Brown, Junior, the defendant. What I
15 now say is intended to serve as an introduction to
16 the trial of this case. These remarks are not a
17 charge on the law.

18 I will instruct you on the law during
19 the trial as it becomes applicable, but, most
20 importantly, at the end of the trial before you
21 retire to consider your verdict. This is merely an
22 explanation of the procedures we'll be following so
23 you may be better able to understand what is
24 happening.

25 The defendant is charged by four

1 door and indicate to the bailiff that you have
2 completed your verdict on all four indictments.

3 To the first 12, is there any member of
4 the jury panel, for whatever reason, you feel that
5 you would not be able to begin and complete your
6 deliberations in this case? If so, please stand.

7 Thank you. All 12 jurors have
8 indicated that they are able to begin and complete
9 their deliberations.

10 To my alternate, at this time, this
11 completes your service to this case, but I will
12 have you remain with us separate from the other 12
13 until I release you.

14 Ladies and gentlemen, this is the last
15 time that I will say this to you. Do not begin
16 your deliberations; do not begin discussing this
17 case amongst yourselves. We are gathering the
18 evidence and the verdict form, and once we have
19 done that, the bailiffs will indicate to you that
20 you may begin your deliberations.

21 Please rise for the jury.

22 Make sure you take all of your
23 belongings.

24 (Jury out, 12:02 p.m.)

25 THE COURT: Thank you. Be seated.

1 Any objections, corrections to the
2 charges read? From the State?

3 MR. DURANT: No, ma'am.

4 THE COURT: From the defense?

5 MS. NORRIS: No, Your Honor.

6 THE COURT: All right. And you've
7 reviewed the verdict form. Do you want to look at
8 them one more time?

9 MS. NORRIS: You read them; the name is
10 correct now.

11 MR. DURANT: No, Your Honor.

12 THE COURT: If you will come and just
13 verify that all of the exhibits that we're putting
14 in the box are the correct ones.

15 All right. You agree that the evidence
16 that is going back has been admitted.

17 MS. NORRIS: Oh, yes.

18 THE COURT: You may take the box.

19 Thank you.

20 (Jury deliberating, 12:18 p.m.)

21 (COURT EXH. 6, Jury note, was marked
22 for identification.)

23 (COURT EXH. 7, Jury note, was marked
24 for identification.)

25 (COURT EXH. 8, Jury note, was marked

1 for identification.)

2 (Testimony of Hugh Potter Pritchard
3 played to the jury in the jury room.)

4 (COURT EXH. 9, Jury note, was marked
5 for identification.)

6 (COURT EXH. 10, Jury note, was marked
7 for identification.)

8 (Jury in, 4:51 p.m.)

9 THE COURT: Thank you. Please be
10 seated. Ladies and gentlemen, you have indicated
11 that you have been unable to agree on a verdict in
12 this case. As I instructed you earlier, the
13 verdict of the jury must be unanimous.

14 When a matter is in dispute, it isn't
15 always easy for even two people to agree. So when
16 12 people must agree, it becomes even more
17 difficult. In most cases absolute certainty cannot
18 be reached or expected; however, you have a duty to
19 make every reasonable effort to reach a unanimous
20 verdict.

21 In doing this, you should consult with
22 one another; express your own views, and listen to
23 the opinions of your fellow jurors; tell each other
24 how you feel and why you feel that way; discuss
25 your differences with open minds.

1 Although the verdict of the jury must
2 be unanimous, every one of you has the right to
3 your own opinion. The verdict you agree to must be
4 your own verdict, the result of your own
5 convictions. You should not give up your
6 firmly-held beliefs merely to be in agreement with
7 your fellow jurors.

8 The majority should consider the
9 minority's opinion and the minority should consider
10 the majority's opinion. You should carefully
11 consider and respect the opinions of each other and
12 reevaluate your position for reasonableness,
13 correctness, and impartiality.

14 You must lay aside all outside matters
15 and re-examine the questions before you based upon
16 the law and the evidence in this case.

17 If you do not agree on a verdict, I
18 must declare a mistrial. In that case, it does not
19 mean anybody wins. It just means that at some
20 future time I will try this case with some other
21 jury sitting exactly where you are.

22 The same participants will come in and
23 the same lawyers will ask basically the same
24 questions and get basically the same answers. We
25 will go through this whole process again.

1 You were selected in the same manner
2 and from the same source as any future jury will
3 be, and there's no reason for me to suppose that
4 this case will ever be submitted to 12 more
5 intelligent, impartial, and conscientious,
6 competent jurors; or, that any more or clearer
7 evidence will be produced on one side or the other.

8 I ask you to return to your
9 deliberations. Please rise for the jury.

10 (Jury out, 4:54 p.m.)

11 THE COURT: Any objection to the Allen
12 charge?

13 MR. DURANT: Not from the State, Your
14 Honor.

15 MS. NORRIS: No, Your Honor.

16 THE COURT: Thank you. We'll be at
17 ease.

18 (A recess transpired.)

19 THE COURT: Thank you. Be seated. All
20 right. Let's bring in the jury. Please rise for
21 the jury.

22 (COURT EXH. 11, Jury note, was marked
23 for identification.)

24 (COURT EXH. 12, Jury note, was marked
25 for identification.)

1 THE BAILIFF: All jurors are present.

2 THE COURT: Thank you. Please be
3 seated. Madam Foreperson, what is the
4 announcement?

5 THE FOREPERSON: We, Your Honor, have
6 just not been able to come to a unanimous decision
7 on any of the indictments.

8 THE COURT: All right. Thank you. You
9 can have a seat. As I indicated to you, I will
10 have to declare a mistrial at this time. And, as I
11 indicated to you, that does not mean that anybody
12 wins. It simply means that we're going to try the
13 case again, calling the very same witnesses, and
14 the same attorneys will appear.

15 I thank you for your service to
16 Charleston County and for your contribution to the
17 justice system. Your service to this case is
18 complete. Your service is complete for the week.

19 Ladies and gentlemen, you may discuss
20 this case with anyone at this time, but you also
21 have the option not to discuss this case at any
22 time.

23 You may receive a questionnaire from
24 the attorneys involved in this case, and that
25 simply is called the practice of law because

1 sometimes they like to know what they could have
2 done differently. And so feel free to answer those
3 questions, but also feel free not to.

4 You may now talk about this case, post
5 about this case, do anything that you wish to do.

6 Again, I thank you for your service to
7 Charleston County, and you are excused. Good luck
8 to you all. Thank you.

9 Please rise for the jury.

10 You can take your notes with you or
11 leave them and we'll shred, it's up to you.

12 (Jury out, 7:37 p.m.)

13 THE COURT: Thank you. Please be
14 seated. Anything further from the State?

15 MR. DURANT: No, Your Honor.

16 THE COURT: Anything further, Ms.
17 Norris.

18 MS. NORRIS: Your Honor, we have the
19 bond issue. He was out on bond, and I would ask
20 that he -- that his bond be continued. He's got an
21 ankle monitor.

22 THE COURT: State's position?

23 MR. DURANT: I would ask that he be
24 held without bond, Your Honor. I don't believe he
25 should have been on bond to begin with. His bond

1 was set at a time when, admittedly, our case
2 against him was weak.

3 Our case against him has gotten much
4 stronger since then, which he is aware. In
5 addition, at the time that he was arrested for this
6 offense, he was already doing YOA probation for
7 doing substantially the same thing. And we believe
8 that under the circumstances that you should deny
9 bond.

10 THE COURT: Okay. Based upon all of
11 the factors, I am going to keep him in custody and
12 deny your request to release him on bond.

13 MS. NORRIS: Are you ready for him to
14 leave, Your Honor?

15 THE COURT: He appears to be ready.
16 Good luck to you, sir.

17 (Defendant escorted out of the
18 courtroom.)

19 THE COURT: And I believe that I've
20 said this to the three of you before, but thank you
21 for your very zealous representation, Ms. Norris
22 and Ms. Seman.

23 It's unfortunate that your client
24 didn't feel the need to stay, but he received more
25 than appropriate and zealous representation, and

1 you should be very proud what you did for the
2 client here today.

3 And, again, thank you for your
4 contribution to the justice system. And, more
5 importantly, the way the three of y'all worked
6 together was tremendous and truly the epitome of
7 professionalism for everyone involved. So thank
8 you. Thank you, Investigator. Thank you.

9 MR. DURANT: Thank you.

10 THE COURT: We're at ease.

11 (These proceedings were concluded at
12 7:58 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 25th day of August, 2018 at
13 Charleston, Charleston County, South Carolina.
14
15

16 
17

18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 February 27, 2028
23
24
25

Exhibit 2

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-04083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No(s): 2017-GS-10-04077, 2017-GS-10-
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	Warrant No(s): 2016A1010206049,
STATE OF SOUTH CAROLINA	)	2016A1010206050, 2016A1010206051,
	)	2016A1010206052, K404187
v.	)	Charge(s): Possession of a Firearm During the
	)	Commission of a Violent Crime, Kidnapping,
JOSEPH LAMAR BROWN, JR.,	)	Burglary (First Degree), Armed Robbery,
	)	Murder
Defendant.	)	
	)	AFFIDAVIT
	)	OF TERESA L. NORRIS
	)	
	)	

Personally appeared before me, TERESA L. NORRIS, upon being duly sworn, deposes and says as follows:

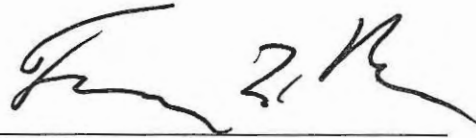
- 1) I am an attorney licensed to practice law and in good standing in South Carolina since November 1990. Since January 2017, as a member of the Charleston County Public Defender's Office, I have represented Joseph Lamar Brown, Jr., who was indicted on charges of murder, kidnapping, armed robbery, burglary, and possession of a firearm during a violent crime.
- 2) During the week of June 11, 2018, the case was brought to trial before The Honorable Kristi Harrington. The State, through Deputy Chief Solicitor Bruce Durant, elected not to proceed with the kidnapping charge, but the trial proceeded to jury deliberations on the four remaining charges.
- 3) During the deliberations, which began at 12:18 p.m. on June 14, 2018, the jury sent out at least five notes, some of which had multiple parts. These notes were marked as Court Exhibits but not read into the record. One of those notes returned prior to the court giving an *Allen* charge

at 4:51 p.m. indicated that the jury had reached a unanimous verdict of not guilty on the armed robbery indictment but that the jury could not reach a verdict on the remaining charges.

- 4) Judge Harrington gave the *Allen* charge at 4:51 p.m. After the jury sent out several more notes, the jury was returned to the courtroom around 7:30 p.m. and the foreperson announced that the jury had been unable to reach any verdict. The court declared a mistrial and the jury was excused.
- 5) For whatever reason, whether it be tiredness after four long days in court or the lateness of the hour, I failed to request that the court inquire whether the jury had reconsidered its unanimous vote of not guilty on the armed robbery charge as announced earlier. Having never had a hung jury before, I also did not realize that the court exhibits would not be maintained by court personnel.
- 6) The next day, Juror Heather Sharkey contacted Taylor Seman, my co-counsel in the case, and informed her that the jury had not deliberated any more on the armed robbery charge after sending its note indicating that there had been a unanimous vote of not guilty on the armed robbery indictment.
- 7) At my direction, my team subsequently searched for the court exhibits. We were informed by the Clerk of Court's office, the court reporter, the Judge's chambers, and the Solicitor's office that none were in possession of the court exhibits. Thus, those notes are unavailable.
- 8) Juror Sharkey and Juror Lajune Hollins provided affidavits attesting to the unanimous not guilty verdict on armed robbery. Juror Sharkey also provided a copy of her jury notebook, which includes the attached page indicating: "Armed Rob NG by UNI."

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

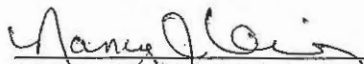
Further affiant sayeth naught.



TERESA L. NORRIS

SWORN to and subscribed to before me this

30th day of October, 2018.



NOTARY PUBLIC for SOUTH CAROLINA

My Commission Expires: 8-5-2024

Exhibit 3

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-04083

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No(s): 2017-GS-10-04077, 2017-GS-10
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	Warrant No(s): 2016A1010206049,
	)	2016A1010206050, 2016A1010206051,
STATE OF SOUTH CAROLINA	)	2016A1010206052, K404187
	)	Charge(s): Possession of a Firearm During the
v.	)	Commission of a Violent Crime, Kidnapping,
	)	Burglary (First Degree), Armed Robbery,
JOSEPH LAMAR BROWN, JR.,	)	Murder
	)	
Defendant.	)	AFFIDAVIT
	)	OF TAYLOR J. SEMAN
	)	
	)	

Personally appeared before me, TAYLOR J. SEMAN, upon being duly sworn, deposes and says as follows:

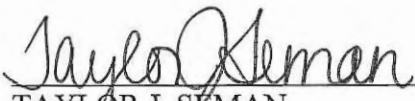
- 1) I am an attorney licensed to practice law since February 2015. I am in good standing in South Carolina. I participated as second chair in the trial of Joseph Lamar Brown, Jr., who was indicted on charges of murder, kidnapping, armed robbery, burglary, and possession of a firearm during a violent crime.
- 2) During the week of June 11, 2018, the case was brought to trial before The Honorable Kristi Harrington. The State, through Deputy Chief Solicitor Bruce Durant, elected not to proceed with the kidnapping charge, but the trial proceeded to jury deliberations on the four remaining charges.
- 3) During the deliberations, the jury sent out notes, some of which had multiple parts. These notes were marked as Court Exhibits but not read into the record. One of those notes returned prior to the court giving an *Allen* charge indicated that the jury had reached a unanimous verdict

of not guilty on the armed robbery indictment but that the jury could not reach a verdict on the remaining charges.

- 4) Judge Harrington gave the *Allen* charge. After the jury sent out several more notes, the jury was returned to the courtroom and the foreperson announced that the jury had been unable to reach any verdict. The court declared a mistrial and the jury was excused.
- 5) The next day, Juror Heather Sharkey called me and told me that the jury had not deliberated any more on the armed robbery charge after sending its note indicating that there had been a unanimous vote of not guilty on the armed robbery indictment.

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.


TAYLOR J. SEMAN

SWORN to and subscribed to before me this

30th day of October, 2018.

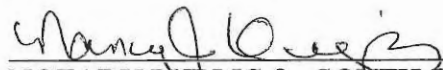

NOTARY PUBLIC for SOUTH CAROLINA
My Commission Expires: 8-5-2024

Exhibit 4

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-04083

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s): 2016-019282
) Warrant No(s): K-404187
) Charge(s): MURDER, ARMED ROBBERY,
) BURGLARY 1ST, POSSESSION OF A
) WEAPON DURING THE COMMISSION OF A
) VIOLENT CRIME

STATE OF SOUTH CAROLINA)

vs.)

JOSEPH LAMAR BROWN)

Defendant)

AFFIDAVIT OF
HEATHER SHARKEY

Personally appeared before me, HEATHER SHARKEY, upon being duly sworn, deposes and says as follows:

1. That my name is Heather Sharkey.
2. I work at [REDACTED] Rutledge Ave Charleston SC 29403.
3. My Birthdate is [REDACTED].
4. I am voluntarily providing this Affidavit to Investigator Harry Long who is employed by the Charleston County Public Defender's Office.
5. I understand I do not have to speak with him, and I am free to stop at any time.
6. I met with Investigator Long on June 19 2018, in reference to providing this Affidavit to him about Joseph Lamar Brown's trial and jury deliberation.
7. I am not under the influence of any substance that would impair me to give this affidavit.
8. I am over the age of 18 years old, a United States Citizen, and a citizen of Charleston County. I am a paralegal at the Fields Law Office and my mother, Joyce C Rueger, is a court reporter.
9. During the week of June 11-15, 2018, I served as a juror in Charleston County. I was qualified by Judge Dennis in the general qualifications and then sent to Judge Harrington's courtroom for additional questioning and qualification. Following additional questioning, in which both my job and my mother's job were disclosed, I was seated as a juror for the trial of Joseph Lamar Brown Jr.
10. Mr. Brown had four indictments: murder, armed robbery, burglary, and possession of a weapon during a violent offense. His trial lasted from mid-day on Monday, June 11

through the evening of June 14, when the jury foreperson reported that the jury had been unable to reach any verdict. The judge then declared a mistrial and then excused the jury.

11. The following day, I called Taylor Seman, who was one of Mr. Brown's lawyers. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous agreement on the armed robbery, and our verdict was not guilty. On the other three indictments at that time the vote was seven guilty and five not guilty.
12. The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
13. We continued deliberating after that for another 2 hours or so on the three indictments that we disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on the murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in the last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
14. When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
15. Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.

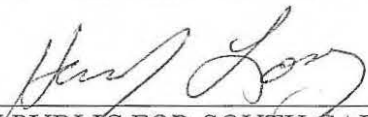
That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.

A handwritten signature in black ink, appearing to read "Hara Shing", written over a horizontal line.

SWORN to and subscribed to before me this

19 day of JUNE, 20 18.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-27-24

Exhibit 5

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-04083

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) **IN THE COURT OF GENERAL SESSIONS**
) **FOR THE NINTH JUDICIAL CIRCUIT**
) Case No(s): 2016-019282
) Warrant No(s): K-404187
) Charge(s): MURDER, ARMED
ROBBERY, BURGLARY 1ST, POSSESSION
OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

STATE OF SOUTH CAROLINA)

vs.)

JOSEPH LAMAR BROWN)

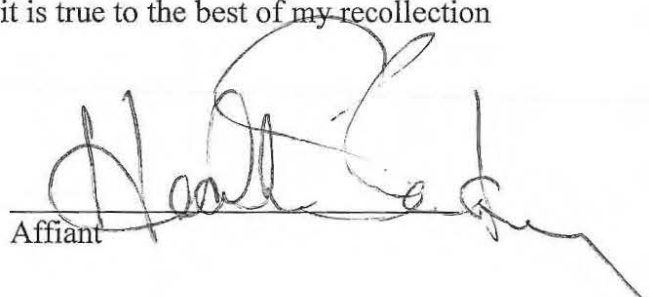
Defendant)

**ADDENDUM TO AFFIDAVIT OF
HEATHER SHARKLEY**

Personally appeared before me, Heather Sharkley, upon being duly sworn, deposes and says as follows:

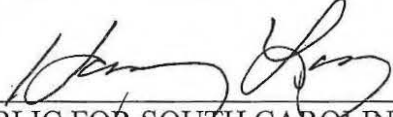
1. On June 19, 2018, I met with Investigator Harry Long with the Charleston County Public Defender's Office and signed my original affidavit.
2. I have read this addendum, and I am signing this addendum freely and voluntarily.
3. The following day, I called Taylor Seman, who was one of Mr. Brown's attorneys. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment.
4. ((ADDED) **DURING DELIBERATIONS WE SENT OUT SEVERAL QUESTIONS TO THE COURT ASKING TO REHEAR VARIOUS BITS OF EVIDENCE, GET ADDITIONAL INSTRUCTIONS, ECT. ONE OF THE LAST NOTES WE SENT OUT INFORMED THE JUDGE THAT WE HAD ONLY BEEN ABLE TO REACH A UNANIMOUS AGREEMENT ON THE ARMED ROBBERY AND OUR VERDICT WAS NOT GUILTY.**

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.


Affiant

SWORN to and subscribed to before me this

29 day of Oct, 2018.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires. 3-27-24

Exhibit 6

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-0408

Berkeley County
 219 N. Hwy. 52, Suite E
 P.O. Box 1687
 Moncks Corner, SC 29461
 (843) 899-2777
 (843) 899-2701 Fax
 Cody J. Groeber
 Berkeley County Public Defender

Ninth Circuit Public Defender
Berkeley & Charleston Counties

D. Ashley Pennington, Circuit Defender
 publicdefender@charlestoncounty.org
 (843) 958-1850

Charleston County
 O.T. Wallace Building
 101 Meeting Street, 5th Floor
 Charleston, SC 29401-2214
 (843) 958-1850
 (843) 958-1860 Fax
 Lorelle D. Proctor
 Charleston County Public Defender

10-29-18

I, Heather Starkley, have viewed the page out of my trial notebook shown to me by Investigator Harry Long, and I recognize it as my handwriting and the page came out of my trial notebook.

Heather Starkley
 AFFIANT

10.29.18
 DATE

clm. H. Long
 WITNESS

Armed Rob

NG bay

UNI

At other 3 w/cid
w/ murder

Exhibit 7

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,
2017-GS-10-0408

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS

) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2016-019282

Warrant No(s): K-404187

Charge(s): MURDER, ARMED ROBBERY,
BURGLARY 1ST, POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

STATE OF SOUTH CAROLINA

vs.

JOSEPH LAMAR BROWN

Defendant

AFFIDAVIT OF
LAJUNE HOLLINS

Personally appeared before me, LAJUNE HOLLINS, upon being duly sworn, deposes and says as follows:

1. That my name is Lajune Hollins.
2. I live at [REDACTED] Bream Rd [REDACTED] North Charleston SC 29405.
3. I am voluntarily providing this Affidavit to Investigator Harry Long who is employed by the Charleston County Public Defender's Office.
4. I understand I do not have to speak with him, and I am free to stop at any time.
5. I met with Investigator Long on July 25 2018, in reference to providing this Affidavit to him about Joseph Lamar Brown's trial and jury deliberation.
6. I am not under the influence of any substance that would impair me to give this affidavit.
7. I am over the age of 18 years old, a United States Citizen, and a citizen of Charleston County.
8. During the week of June 11-15, 2018, I served as a juror in Charleston County. I was qualified by Judge Dennis in the general qualifications and then sent to Judge Harrington's courtroom for additional questioning and qualification; I was seated as a juror for the trial of Joseph Lamar Brown Jr.
9. Mr. Brown had four indictments: murder, armed robbery, burglary, and possession of a weapon during a violent offense. His trial lasted from mid-day on Monday, June 11 through the evening of June 14, when the jury foreperson reported that the jury had been unable to reach any verdict. The judge then declared a mistrial and then excused the jury.

10. During our jury's deliberation we unanimously voted NOT GUILTY on the armed robbery charge.
11. During deliberation there was much discussion on the lack of evidence to prove Mr. Brown guilty of the armed robbery.
12. We were under the impression that you had to vote guilty or not guilty on all charges, and that it could not be guilty of one charge and not guilty on another.
13. I do not know how it was reported to the Judge.
14. I just know we all were in agreement with the not guilty of the armed robbery.
15. The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
16. We continued deliberating after that for another 2 hours or so on the three indictments that we disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on the murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in the last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
17. When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
18. Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.



SWORN to and subscribed to before me this

25 day of July, 2018.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-27-24

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

MOTION COVERSHEET

STATE OF SOUTH CAROLINA

-VS-

JOSEPH LAMAR BROWN, JR.
DEFENDANT

WARRANT/TICKET/

INDICTMENT #'s

2016A1010206049; -6052

K404187

Solicitor:

Bruce DuRant, Bar No. _____

Address:

101 Meeting St., Charleston, SC 29401

Phone: (843)958-1900

E-mail: bruce@scsolicitor9.org

Defendant's Attorney:

Taylor J. Seman, Bar No. 101974

Address:

101 Meeting St., Charleston, SC 29401

Phone: (843)958-1850

E-mail: tseman@scsolicitor9.org

☒ MOTION HEARING REQUESTED

☐ FORM MOTION, NO HEARING REQUESTED

☐ PROPOSED ORDER/CONSENT ORDER

SECTION I: Hearing Information

Nature of Motion: Motion to Include Supplemental Exhibit

Estimated Time Needed: 10 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Taylor J. Seman
Signature of ☐ Solicitor ☒ Attorney for Defendant

10/31/18
Date submitted

FILED
2018 OCT 31 PM 4:05
CLERK OF COURT
J. ARMSTRONG

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

VS.

JOSEPH LAMAR BROWN, JR.
Defendant.

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

Warrant Nos.: 2016A1010206049;
2016A1010206050;
2016A1010206051;
2016A1010206052;
K404187Charges: Poss. Firearm During a Violent Crime;
Kidnapping; Burglary – 1st;
Armed Robbery; MurderMotion to Attach Supplemental Exhibit

On October 29, 2018, Defendant Brown filed a Motion to Dismiss Brown's Armed Robbery Indictment as Required by Double Jeopardy Protections. The Motion included seven Exhibits. At this time, Brown submits an additional exhibit to be attached to the Motion. The additional Exhibit is labeled as Exhibit 8 and is enclosed here.

I SO MOVE:

Taylor J. Seman
Taylor J. Seman
Teresa L. Norris
Attorneys for Defendant

Charleston, South Carolina.

Dated: 10/31, 2018.

FILED
2018 OCT 31 PM 4:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Exhibit 8

MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081;
2017-GS-10-0408

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s): 2016-019282
Warrant No(s): K-404187
Charge(s): MURDER, ARMED
ROBBERY, BURGLARY 1ST, POSSESSION
OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

STATE OF SOUTH CAROLINA

VS.

JOSEPH LAMAR BROWN

Defendant

ADDENDUM TO AFFIDAVIT OF LAJUNE HOLLINS

Personally appeared before me, LAJUNE HOLLINS, upon being duly sworn, deposes and says as follows:

1. On July 25, 2018, I met with Investigator Harry Long with the Charleston County Public Defender's Office and signed my original affidavit.
2. I have read this addendum, and I am signing this addendum freely and voluntarily.
3. The following day, I called Taylor Seman, who was one of Mr. Brown's attorneys. ~~Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment.~~
4. ((ADDED) DURING DELIBERATIONS WE SENT OUT SEVERAL QUESTIONS TO THE COURT ASKING TO REHEAR VARIOUS BITS OF EVIDENCE, GET ADDITIONAL INSTRUCTIONS, ECT. ONE OF THE LAST NOTES WE SENT OUT INFORMED THE JUDGE THAT WE HAD ONLY BEEN ABLE TO REACH A UNANIMOUS AGREEMENT ON THE ARMED ROBBERY AND OUR VERDICT WAS NOT GUILTY.

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

X Laborer Hce
Affiant

SWORN to and subscribed to before me this

30 day of October, 2018.

Ken Long

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-27-24

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED

Jun 16 2020

SC Court of Appeals

s/Susan B. Hackett

Susan B. Hackett

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of June, 2020.