

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Georgetown County

SC Court of Appeals

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

a

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SC ST § 40-5-80

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STATEMENT OF ISSUES ON APPEALS

I. Whether the Circuit Court Judge err in his ruling at the November 17, 2022 hearing that trial judge's ruling at Appellant's first trial of 2012, discharging Appellant's jury on the grounds that the state failed to meet their burden of proof to convict Appellant was not a judgment of acquittal for purposes of double jeopardy which barred Appellant's second trial of 2014 because of the label place on trial court's ruling as a mistrial..?

II. Whether the Circuit Court Judge stated an error of law in his ruling at the November 17, 2022 hearing and acquit Appellant again when he stated that the trial judge's ruling in Appellant's first trial of 2012, which was a jury trial, discharging Appellant's jury on the grounds that the prosecution failed to meet their burden of proof to convict Appellant was a judgment of acquittal, but judgments of acquittals only applies to bench trials and not jury trials?

III. Whether the trial judge's sua sponte declaration of a mistrial was dictated by a manifest necessity or ends of public justice and violated Appellants Fifth Amendment rights under the Double Jeopardy Clause?

IV. Whether the affidavit in Appellant's arrest warrant provided by arresting officer, Investigator, Melvin Garrett, which does not provide any information to enable a magistrate to determine probable cause, and made false declarations to the magistrate to obtain Appellant's arrest warrant result in a constitutionally deficient arrest warrant which violated Appellant's Fourth and Fourteenth Amendment rights to due process, result in an unlawful seizure, false imprisonment, and tainted the entire judicial process, and resulted in an unlawful prosecution and conviction without jurisdiction?

V. Whether The trial court exceeded its jurisdiction by holding Appellant to answer for an infamous crime and sentencing Appellant to imprisonment without indictment or presentment by a grand jury?

VI. Whether the Circuit Court Judge and the Attorney General's false accusations made at the November 17, 2022 hearing that Appellants, Gwendolyn B. Frasier and LaQuesha Felder, were "individuals practicing law without a license" for exercising their First and Fourteenth Amendment rights to familial association, to prevent Appellants from prosecuting their case and testifying amount to intimidation and threatening Appellants and result in prosecutorial misconduct and an abuse of discretion and violated their right to due process?

VII. Whether the Circuit Court Judge erred by refusing to allow Appellant to testify in his defense and denying him his right to self-representation at Appellant's November 17, 2022, pursuant to his Emergency Motion For Immediate Release, Double Jeopardy, False Imprisonment, Lack Of Trial Court Jurisdiction To Impose Sentence?

VIII. Whether Circuit Court Judge abused his discretion by allowing the Attorney General to argue at Appellant's November 17, 2022, hearing challenging the trial court's jurisdiction to sentence him because his sentence violated the Fifth Amendment Double Jeopardy Clause?

STATEMENT CASE

October 28, 2021, Appellant Terron Dizzley, Gwendolyn B. Frasier, Terron's mother, and LaQuesha Felder, Terron's wife, filed "Proposed and Exparte Motions for Emergency Petition for Immediate Release of Terron Dizzley Pursuant To Double Jeopardy, False Imprisonment, Lack Of Trial Court's Jurisdiction To Impose Sentence," On April 12, 2022. The Honorable Judge Culbertson denied Appellants Emergency Petition on April 25, 2022. Appellants then filed an "Emergency Motion for Alteration, Modification, Amend, Reconsideration, and Rescission of Order." When Judge Culbertson refused to respond to Appellant's motion to alter and amend, Appellants filed a timely appeal to the South Court of Appeals and also filed the same motion for immediate release in the South Carolina Court of Appeals exercising their right to challenge subject matter jurisdiction even for the first time on appeal. The South Carolina Court of Appeals dismissed Appellants appeal as untimely. Appellants, then filed a "Motion to Reinstate" their appeal. The South Court of Appeals granted Appellants motion to reinstate on August 11, 2022, on the grounds that Appellants motion to alter and amend tolled the time for filing an appeal and remanded Appellant's case to the Circuit Court for a ruling on Appellants' motion to alter and amend and ordered that Appellant's motion filed in the South Court of Appeals be held in abeyance. Appellants then hired Attorney William G. Yarborough to represent them in this case. The hearing was set for November 17, 2022, and at the hearing, the Honorable Judge Culbertson denied Appellants motion to alter and amend. Appellants then, through Attorney Yarbrough filed a timely motion of appeal.

ARGUMENT 1

JUDGMENT OF ACQUITTAL, DOUBLE JEOPARDY, Trial of 2012

I. The Circuit Court Judge erred in his ruling at the November 17, 2022, hearing that trial judge's ruling at Appellant's first trial of 2012, discharging Appellant's jury on the grounds that the state failed to meet their burden of proof to convict Appellant was not a judgment of acquittal for purposes of double jeopardy which barred Appellant's second trial of 2014 because of the label place on trial court's ruling as a mistrial.

Appellant contends that the Honorable Judge Culbertson's order indicates that he merely looked at the "label" of the Honorable Judge Baxley's ruling of Appellant's first trial of 2012, which indicates that Judge Baxley declared a mistrial/hung jury, and, therefore, determined that such "label" automatically prevents Appellant from exercising his constitutional guarantees under the Fifth Amendment Double Clause. However, according to clearly established United States Supreme Court laws, when evaluating a ruling to determine if it is a judgment of acquittal, for determining whether a decision dismissing a criminal case bars retrial under the Double Jeopardy Clause, may not be determined simply by the label, form, caption, or the judge's characterization of his/her own actions, rather, this determination must be based on the substance of the court's decision. This determination requires the reviewing court to determine whether the court's ruling, "whatever it's label" is based on insufficient evidence to convict. See: Evans v. Michigan, 568 U. S. 313 (2013). "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. 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. Most relevant here, an “acquittal encompasses any ruling that the prosecution’s proof is insufficient to establish criminal liability for an offence.” Quoting U.S. v. Martin Linen Supply Co., 430 U.S. 564 (1977).

STATEMENT OF CASE

The constitutional guarantees of the Fifth Amendment Double Jeopardy Clause which was violated against Appellant 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 Appellant's first trial of 2012, Appellant'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 evidence that identified Appellant 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 Appellant's alibi witnesses. See also: 2012 Transcript (of Court Reporter, Krystal Smith), P. 66, L. 15 – 17. See: Transcript of 2012 trial (of Court Reporter Grace Hurley), P. 299, L. 19 – P. 300, L 1 – 4.

In "The Charge on the Law," by the Honorable Judge Baxley, to the 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, after stating that it was not a failure on the jury's part that they could not reach a unanimous decision, but, that this was "a strong message to the prosecution that they are unable to meet the "burden of proof" to the extent that they could bring back a unanimous verdict."

By deciding that the prosecution failed to meet their burden of proof convict, the Court was clearly saying that Appellate criminal culpability had not been established, which was related to Appellant's innocence. See: Burks v. United States, 437, U. S. 1 (1978).

Appellant 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."

Therefore, according to the Honorable Judge Baxley's own charge to the jury, that if the state failed to meet their 'burden of proof "to convict Appellant, that he is entitled to an acquittal. Therefore, pursuant to Judge Baxley's own ruling that the prosecution failed to meet the "burden of proof" to convict Appellant, that ruling was a "judgment of acquittal."

In The South Carolina Supreme Court, it was established in State v. Gregorie, 339 S. C. 2 (2000) that, "On the merits, this issue is "simple". The Circuit Court found the State failed at trial to meet its "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." Citing Burks v. United States, 437 U. S. 1 (1978).

Appellant contends that his case is the same as Gregorie, on the merits, the issue is "simple." In Appellant's first trial of 2012, the Honorable Judge Baxley found that the State failed, at trial, to meet its "burden of proof" and ordered a new trial. Appellant also makes the same argument as Gregorie, that under such circumstances, his second trial of 2014, violated his double jeopardy Rights.

In State v. Rearick, 417 S.C. 391 (2016), "The Court overruled State v. Gregorie, 339 S.C. 2 (2000), and other related decisions in which the Court of Appeals erroneously created an exception to the rule established in *Miller* that a "criminal defendant claiming a

double jeopardy violation is not exempt from regular appealability requirements." Gregorie, 339 S.C. at 4 n. 1, 528 S.E. 2d at 78 n. 1. The Court clarified that the test for appealability is not whether the appeal involves a double jeopardy claim. . . but whether the party bringing the appeal is aggrieved." Id. at 4, 528 S.E. 2d at 78. Applying this rule, the Court found Gregory's appeal was "immediately" appealable not because it involved a double jeopardy claim but because Gregory was otherwise aggrieved by the new trial remedy ordered by the Circuit Court. Id. The Court noted that the Circuit Court for the state failed to meet its "burden of proof" and the State's failure to appeal that finding became the law of the case. Ultimately the Court found Gregory correctly asserted that under the circumstances the second trial in magistrate court would violate his double jeopardy rights. A defendant may still challenge the denial of a motion to dismiss on double jeopardy grounds via (1) a petition for federal habeas corpus relief, or (2) a petition for this Court to issue an extraordinary writ."

Appellant contends that, his case is the exact same as *Rearick* and *Gregorie*. However, Appellant's case is more extraordinary because Appellant was also aggrieved by the Honorable Judge Baxley's new trial remedy after discharging his jury on the grounds that the prosecution was unable to meet the "burden of proof" to convict him. However, Appellant suffered, and is still suffering from Judge Baxley's new trial remedy which resulted in going on nine years and counting of being held kidnapped/falsey imprisoned in the South Carolina Department of Corrections without any legal nor jurisdictional authority in violation of the Fifth Amendment Double Jeopardy Clause. Therefore, Appellant's case is also "immediately" appealable. See also: Gilliam v. Foster, 63 F.3d 287 (4th Cir. 1995); Livingston v. Murdaugh, 183 F.3d 300 (4th Cir. 1999).

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. The controlling authority is Burks v. United States, 437 U. S. 1 (1978), In that case, 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 proceeding.” *Id.*, 437 U. S. at 11. Overruling prior decisions to the contrary, the Court held that “The Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient, and the “only” just remedy available for that court is the direction of a judgment of acquittal.”

Appellant contends that his case is also the same as Clifford. The Honorable Judge Baxley, after making a ruling in Appellant's first trial of 2012, that the State failed to meet the “burden of proof” to the extent that they could bring back a unanimous verdict as the grounds for discharging Appellant's jury, the “only” just remedy available according to The United States Supreme Court in Burks, was for the Honorable Judge Baxley to direct a judgment of acquittal, not a new trial to afford the prosecution to another opportunity to attempt to meet their burden of proof. Therefore, the Honorable Judge Baxley’s ruling was an acquittal despite his mistaken understanding of the “only” legal remedy required when the reviewing court has found that the state failed to meet their burden of proof, which is, to enter a verdict of acquittal.

The United States Supreme Court’s precedent cases on judgments of acquittals, establishes that “A mistaken acquittal is an acquittal nonetheless.” See: Fong Foo v. U. S., 369 U. S. 141 (1962); Sanabria v. U. S., 437 U. S. 54 (1978); Evans v. Michigan, 568 U. S. 313 (2013). However, in Appellant's case, it was not a mistaken acquittal, but a

mistaken declaration of a mistrial, after the recitation by the Honorable Judge Baxley of the legal standard for an acquittal.

In our Fourth Circuit, it was determined in ” U. S. v Alvarez, 351 F. 3d. 126 (2003 4th 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 Appellant's case, the Honorable Judge Baxley clearly, expressively stated that he 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 the “burden of proof” to the extent that they could reach a unanimous verdict.” Therefore, the Honorable Judge Baxley'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: 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." 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 be controlled by the form of the 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 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." 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." 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 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); Smith v. Massachusetts, 534 U. S. 462 (2005).
2. Terminated the jurisdiction of Appellant'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 a 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. Provisions 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 legal nor jurisdictional authority for the South Carolina Department of Corrections to hold Appellant 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”.

For the foregoing reasons, according to clearly established United States Supreme Court law, the Honorable Judge Baxley’s ruling in Appellant's first trial of 2012 was an acquittal. Therefore, double jeopardy barred Appellant's retrial of 2014, in which he was unlawfully convicted and sentenced. Therefore, Appellant must be immediately discharged from almost nine years and counting of being held falsely imprisoned.

ARGUMENT 2

JUDGMENT OF ACQUITTAL, DOUBLE JEOPARDY, NOVEMBER 17, 2022

HEARING

II. The Circuit Court Judge stated an error of law in his ruling at the November 17, 2022 hearing and acquitted Appellant again when he stated that the trial judge’s ruling in Appellant's first trial of 2012, which was a jury trial, discharging Appellant's jury on the grounds that the prosecution failed to meet their burden of proof to convict Appellant was a judgment of acquittal, but judgments of acquittals only applies to bench trials and not jury trials.

STATEMENT OF CASE

The purpose of the November 17, 2022, hearing in Georgetown, S.C. was for the Honorable Judge Culbertson to determine whether the Honorable Judge Baxley’s ruling in Appellant's first trial of 2012 was an acquittal for purposes of double jeopardy.

Appellant contends that the record shows that at the November 17, 2022, hearing, the Honorable Judge Culbertson admitted that the Honorable Judge Baxley’s ruling in Appellant's

first trial 2012 was an acquittal. However, Judge Culbertson, after admitting this, then stated an error of law by saying that it was only an acquittal if Appellant's trial had been a bench trial, and that because Appellant had a jury trial, it was not an acquittal.

See: Transcript of November 17, 2022 Hearing, Tr. P. 5, L. 8 – 25, - P. 6, L. 1 – 6.

8 **THE COURT : Let me ask you, and I apologize for**

9 **interrupting and I'll let you fully argue your motion ,**

10 **but was this a jury trial?**

11 **MR. YARBOROUGH : It was.**

12 THE COURT : And it resulted in a hung jury?

13 MR YARBOROUGH : Mr. Dizzley, for years, since --

14 since he was retried has filed motions over and over

15 saying, look, you all did not have the authority to

16 try me that second time.

17 THE COURT : I understand that argument, but I'm

18 talking about the first trial. Because the law is

19 clear: If you have a hung jury, the judge declares a

20 mistrial, and then they can try him a second time if

21 it was a hung jury where the jury could not reach a

22 unanimous decision. Now, after a second hung trial,

23 they can't try him a third time.

24 **Now, if this was a bench trial and the judge said**

25 **they have not carried their burden of proof, then I**

Page 6, L 1-6.

- 1 **agree with you, double jeopardy.** So I'm trying to
- 2 figure out what happened in that first trial to
- 3 determine whether or not jeopardy attached. Was the
- 4 mistrial granted from the finding by the Court, or
- 5 because the jury could not reach a unanimous verdict
- 6 of guilt or innocence?

The above ruling by Judge Culbertson is contrary to clearly established United States Supreme Court law. Appellant contends that The United States Supreme Court controlling cases pursuant to “judgments of acquittals” based on “insufficient evidence to convict,” is United States v. Martin Linen Supply Co., 430 U. S. 564 (1977), which was a jury trial case. The controlling case on “judgments of acquittals” pursuant to bench trials is Smallis v. Pennsylvania, 476 U. S. 140 (1986), and Smallis supports its decision using *Martin* and other jury trial cases. See: Smallis 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. Whether the trial is to a jury or, as here, to the bench, subjecting the defendant to post acquittal proceedings going to guilt or innocence violates The Double Jeopardy Clause.” 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.” Evans v Michigan, 568 U. S. 313 (2013), “An acquittal, is unreviewable on retrial, under The Double Jeopardy Clause, whether the judge directs the jury to return a verdict of acquittal or foregoes that formality by entering a judgment of acquittal herself.”

Therefore, according to clearly established United States Supreme law: (1) The Honorable Judge Culbertson's ruling was an acquittal despite his mistaken understanding of the law that "judgments acquittals" pursuant to "insufficient evidence" to convict applies to jury trials as well as bench trials. See: Evans v Michigan, 568 U. S. 313 (2013), "A mistaken acquittal is an acquittal nonetheless, even if the acquittal is "based upon an egregiously erroneous foundation", Fong Foo v United States, 369 U. S. 141, such as an erroneous decision to exclude evidence, Sanabria v United States, 437 U. S. 54, a mistaken understanding of what evidence would suffice to sustain a conviction, Smith v Massachusetts, 543 U. S. 462; or a "misconstruction of the statute" defining the requirements to convict, Arizona v Rumsey, 467 U. S. 203 (1984)." (2) The Honorable Judge Culbertson's label that he placed on his ruling of a "denial" of Appellant's Motion for Alteration, Modification, Amend, Reconsideration, Rescission of Order," do not control the analysis of whether his determination of the Honorable Judge Baxley's ruling in Appellant's first trial of 2012 was an acquittal, rather, it is substance of the Honorable Judge Culbertson's ruling that proves that he also acquitted Appellant. See: United States v. Martin Linen Supply Co., *supra*, 430 U. S. 564 (1977); Evans v. Michigan, *supra*, 568 U. S. 313 (2013).

For the foregoing reasons, Appellant was acquitted again, by the Honorable Judge Culbertson at Appellant's November 17, 2022, hearing in Georgetown, S.C., despite his error of law and mistaken understanding that judgment of acquittals based on "insufficient evidence" to convict applies to jury trials as well as bench trials and despite the "label" he placed on Appellant's Motion for Reconsideration as a "denial." Therefore, Appellant must be immediately discharged from almost nine years and counting of being held falsely imprisonment.

ARGUMENT 3

DOUBLE JEOPARDY

“MANIFEST NECESSITY OR ENDS OF PUBLIC JUSTICE”

III. The trial judge's sua sponte declaration of a mistrial was not dictated by a manifest necessity or ends of public justice and violated Appellants Fifth Amendment rights under the Double Jeopardy Clause.

Appellant contends that the Honorable Judge Culbertson's order also fails to address Appellant's issue that there was no “manifest necessity” for Judge Baxley to declare a mistrial/hung jury. By failing to address this issue also implies that Judge Culbertson relied solely on Judge Baxley’s “label” as a determination that the characterization of Judge Baxley’s own actions is what determines whether double jeopardy bars retrial.

However, this is contrary to clearly established United States Supreme Court law and South Carolina Supreme Court laws. According to clearly established federal law, when a judge declares a mistrial, sua sponte, without defendant’s consent, a “manifest necessity determination” is the appropriate test for determining whether a defendant may be retried without violating double jeopardy principles. See: U. S. v Perez, 22 U. S. 579 (1824), “Mr. Justice STORY delivered the opinion of the Court. In criminal prosecutions, courts have authority to discharge jury from giving any verdict when in their opinion taking all circumstances into consideration there was a manifest necessity for the act or the ends of public justice would be defeated. In discharging jury in criminal prosecutions, courts are to exercise sound discretion, but the power should be used with the greatest caution under urgent circumstances and for very plain and obvious causes; and in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favour of the prisoner.” U. S. v. Jorn, 400 U.S. 470 (1971). See: Washington v. Jarvis, 137 Fed. Appx. 543 (2005 4th Cir.), “Under Supreme Court

law, a finding of “manifest necessity” must be based on the totality of the circumstances. United States v Sanford, 429 U.S. 14 (1976). This clearly established standard generally requires an investigation of whether less drastic alternatives to mistrial are available.” State v. Bilton, 156 S. C. 324 (1930), “Discharge of jury without defendant’s consent for reason legally insufficient and without absolute necessity, is equivalent to acquittal, and bars subsequent indictment for same offense.”

Appellant contends that Judge Culbertson’s order does not indicate that he evaluated the record in Appellant's first trial to determine if there was a “manifest necessity” for the Honorable Judge Baxley to declare, sua sponte, a mistrial in Appellant's case.

STATEMENT OF CASE

Appellant 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 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 nor the court, and without polling the jury, spontaneously declared a mistrial/hung jury. See: Transcript of 2012 by Court Reporter, Crystal Smith, trial pages 116 – 125. See also: Transcript of Court Reporter, Grace Hurley, transcript p. 308, L6 – 316.

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 Appellant'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 deliberated

only three hours and four minutes before entering the courtroom to listen to the testimonies of the four alibi witnesses. Instead of the trial judge giving an Allen charge and directing the jury to continue deliberations, at 5:26 p.m., the trial judge called the jury back into the courtroom and sent them home early that day, without any consideration as to Appellant's "valued right" under The Fifth Amendment Double Jeopardy Clause of the United States Constitution to have his trial completed by a particular tribunal.

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."

Appellant 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 reflects that the trial judge, after receiving a second note from the jury, shortly after an Allen charge indicating that they were unable to agree, did not inquire whether more time would help facilitate unanimity or whether more deliberations would be beneficial to the jury. (2) 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; (3) the trial record does not reflect that the trial judge delicately balanced Appellant’s “valued right to have his trial completed by a particular tribunal.”

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 prosecution 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 amounted to a “failure of proof”, and, therefore, the trial court granted mistrial was not dictated by manifest necessity or ends of public justice.”

In State v. Robinson, 360 S. C. 187 (2004), It was ruled that there was a manifest necessity for declaration of mistrial where: “record indicated that deliberations for a two-day criminal trial lasted an entire day, that upon receiving notification of jury deadlock, trial judge administered an Allen charge, and that when judge received further notice of deadlock, he inquired whether more time would help facilitate unanimity and jury responded with unequivocal answer that additional time would not break the deadlock. At the second indication of deadlock,

courts typically inquire as to whether more deliberations would be beneficial to the jury, and the issue of consent is determined from the jury's response."

However, Appellant's case is distinguished from *Robinson*. In Appellant's case the Honorable Judge Baxley did not inquire as to whether more time would help facilitate unanimity although the jury had deliberated for such a short amount of time.

Appellant also contends that the trial record does not indicate any unwillingness on the part of the jury to deliberate further. See: Buff v. S. C. Dep't. of Transp. 342 S. C. 416 (2000), "When a jury has twice indicated it is deadlocked, the judge should diplomatically discuss with the jury whether further deliberations could be beneficial. The jury's consent to resume or to discontinue deliberations is determined either expressly or impliedly, by its response to the trial judge's comments." In State v. Rowell, 75 S. C. 494, the jury twice stated that it was unable to reach a unanimous verdict. The trial court sent the jury back to deliberate for a third time; it did not inform the jury its consent was necessary in order to pursue further deliberations. The Court held that there was no abuse of discretion in returning the jury to deliberate a third time where there was no indication of unwillingness on the part of the jury to retire. See also: State v. Drakeford, 120 S. C. 400 (1922); Edwards v. Edwards, 342 S. C. 416 (2000).

Appellant contends that based on the totality of the circumstances of his case and clearly established law, the Honorable Judge Baxley could have considered the alternative of inquiring to the jury whether more time would help facilitate unanimity, especially after such short deliberations and the fact that he allowed the jury to go home early the day before for no sufficient reason. Instead of considering any other alternatives, the record shows that the Honorable Judge Baxley, after receiving a second note from the jury foreman that the jury could not reach a verdict, called the jury in the courtroom and abruptly declared a mistrial in the

presence of the jury without notifying counsel nor the prosecution. See: 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 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); See also: U. S. v. Horn, 583 f. 2d 1124 (1978 10th 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 3rd Cir.), “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 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 3rd Cir.), “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: U.S. v. Razmilovic, 507 F. 3d 130 (2007 2nd Cir.), "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 Katzmann 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 (5th 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."

Appellant contends that the record shows that Judge Baxley's *dua sponte* 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, Appellant'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).

For the foregoing reasons, the Honorable Judge Baxley’s sua sponte declaration of a mistrial/hung jury, in Appellant's first trial of 2012, was not dictated by a manifest necessity or ends of public justice, and therefore, Appellant's second trial of 2014 was barred by double jeopardy.

FALSE IMPRISONMENT

Appellant contends that according to United States Supreme Court Law, the moment that the Honorable Judge Baxley made his ruling that the prosecution failed to meet its burden of proof to the extent that they could bring back a unanimous verdict, and then discharged his jury, the jurisdiction terminated upon his case. See: U. S. v. Scott, supra, 437 U.S. 82 (1978); U. S. v. Wilson, supra, 420 U.S. 332 (1975).

According to United States Supreme Court Law, the moment that the Georgetown County Solicitor's Office made a conscious decision to try Appellant again for the same offense and sentenced him to imprisonment without jurisdiction, Appellant's case became a criminal matter on behalf of The Georgetown County Solicitor's Office for false imprisonment, and anyone who participated in Appellant's unlawful incarceration became "trespassers of the law." Dynes v. Hoover, 61 U. S. 65, (1857), "Where the Court has no jurisdiction or disregards rules of procedure for its exercise, all parties to illegal trials and imprisonment are trespassers on party aggrieved thereby, and he may recover in proper suit in civil courts." Exparte Lange, 85 U. S. 163 (1873), "The Court initiated what has been described as a long process of expansion of the concept of the lack of jurisdiction. Lange contended that he had been twice sentence for the same offence, in violating the Fifth Amendment's Double Jeopardy Clause, when he had been re-sentenced to a term of imprisonment after having paid the fine originally imposed. Carefully disclaiming the use of habeas, as a writ of error, the Supreme Court ordered Lange released from imprisonment because the lower Court's jurisdiction terminated upon the satisfaction of the original sentence. 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 must be discharged."

Whirl v. Kern, 407 F. 2d 781 (1968), "On November 4, 1962, the indictment pending against Whirl were dismissed by nolle prosequi on the grounds that the evidence against Whirl was "insufficient to obtain and sustain a conviction." Despite the dismissal, "Whirl languished in jail for almost nine months after all charges against him were dismissed and was not restored to his freedom until July 25, 1963. The central issue in this case is one of privilege, not of fact. The tort of false imprisonment is an intentional tort. It is committed when a man intentionally

deprives another of his liberty without the other's consent and without adequate legal justification. Failure to know of a court proceeding terminating all charges against one held in custody is not, as a matter of law, adequate legal justification for an unauthorized restraint. Were the law otherwise, Whirls' nine months could easily be nine years, and those nine years, ninety-nine years, and still as a matter of law no redress would follow. The law does not hold the value of a man's freedom in such low regard."

For the foregoing reasons, Appellant's second trial of 2014 was barred by the Fifth Amendment Double Jeopardy Clause. Therefore, Appellant must be immediately released from being held falsely imprisoned for almost nine years and counting.

ARGUMENT 4

ARREST WARRANT, FALSE IMPRISONMENT, FOURTH AND FOURTEENTH

AMENDMENT VIOLATION

IV. The affidavit in Appellant's arrest warrant provided by arresting officer, Investigator, Melvin Garrett, which does not provide any information to enable a magistrate to determine probable cause, and made false declarations to the magistrate to obtain Appellant's arrest warrant result in a constitutionally deficient arrest warrant which violated Appellant's Fourth and Fourteenth Amendment rights to due process, resulted in an unlawful seizure, false imprisonment, and tainted the entire judicial process, and resulted in an unlawful prosecution and conviction without jurisdiction.

Appellant contends that the Honorable Judge Culbertson's order fails to address this issue.

STATEMENT OF CASE

Appellant contends that according to the Fourth Amendment of the United States Constitution, and The S.C. Const. Art. 1, § 10, the only variable that separates the crime of kidnapping from a lawful arrest is "probable cause".

Appellant 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 Appellant turned himself in under and claimed his innocence, however, not knowing that his arrest was unlawful.

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 also: The S.C. Const. Art. 1, § 10.

See: S C. Code § 16 -3-910, Kidnapping. "The crime of false imprisonment has been incorporated into § 16-3-910 as one method of proving kidnapping. State v. Berntsen, 295 S.C. 52 (1988)."

On December 11, 2008, Investigator Melvin Garrett of the Georgetown, South Carolina Police Department applied for an arrest warrant for Appellant, 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, Appellant'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 Appellant's arrest warrant. See: Exhibits.

Appellant contends that an evaluation of his arrest warrant's affidavit, compared to the requirements of the Fourth Amendment of The United States Constitution, and The S.C. Const. Art. 1, § 10, and clearly established law proves that his arrest warrant is constitutionally deficient. Whereas, Appellant's arrest warrant only recites no more than elements of the crime charged, and only states that, Appellant allegedly committed the crime charged, without any personal knowledge of the complaining officer, Investigator Garrett.

In State v. Smith, 301 S.C. 371 (1990), "The Supreme Court, held that the affidavit submitted to the magistrate in support of a search warrant application contained no facts for which the magistrate could determine why the police officers believed that defendant robbed a motel."

ARREST WARRANT AFFIDAVIT IN STATE V SMITH

"That on May 12, at approximately 12:45 p.m. Reginald Jerome Smith went into The Master Inn located at 1468 Savannah Hwy., Charleston, S.C. and he then robbed the manager at knife point. Smith had been staying at The Host of America Room 216 since Jan. 1, 1988, and there is every reason to believe the weapon and clothes used in the robbery will be located in the room. This information was confirmed in person by Sgt. Sherman on 05/13/88."

Appellant contends that The United States Supreme Court in Giordenello v. U. S., 357 U.S. 480 (1958), determined that Giordenello's affidavit in his arrest warrant was constitutionally deficient.

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.”

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. Appellant contends that a comparison of his affidavit in his arrest warrant with the affidavit in the arrest warrant in Smith and Giordenello proves that they are identical and provide no sufficient basis for which a finding of probable cause could be made.

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 Aundry 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”.

Therefore, The South Carolina Supreme Court and The United States Supreme Court have determined that such affidavit as in Appellant's arrest warrant is constitutionally deficient under The Fourth Amendment, which results in an unlawful seizure, false imprisonment and unlawful pre-trial detainment. State v. McKnight, 291 S.C. 110(187), (1) “Search warrant was defective as a result of officers’ failure to comply with affidavit requirement in warrant statute; (2) suppression was appropriate remedy for failure to comply with warrant statute; and (3) all defendants of whom State sought to admit evidence had standing to challenge legality of search under warrant statute.” See: Illinois v. Gates, 462 U. S. 239 (1983); Whiteley v. Warden, Wyo. State Pen., 401 U.S. 560 (1971); 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

Appellant 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.

Appellant 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 Appellant's second trial of 2014. Therefore, Investigator Garrett intentionally made "false declarations" to the magistrate, which was used to obtain Appellant'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, Aundry Evans, Sr. gives another statement. 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 Mr. Evans, Sr. statements stated that his son told him that "Terron Dizzley" shot him. (2)

Evans, Sr. gave two statements that are inconsistent as to material points; (3) Aundry Evans, Sr.'s statements clearly reveals 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. ^a him down and speak with him.

Investigator Nelson, (2014, Tr. P. 482, L6 – P. 483, L1 – 4); Investigator Nelson testified in Appellant'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.”

Appellant 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 still be constitutionally deficient. U.S. v. Doe, 703 F. 2d. 745 (1983, 3rd 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, there, must be thousands of "Ed" in the Pittsburg 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, Appellant has never gone by the nicknames "D" nor "Little D," and there must be thousands of individuals with the nickname "D." See: State v. Jones, 331 S.C. 228 (1998), "(1) The search warrant affidavit was insufficient to establish probable cause without affiant's false statement that a confidential informant was an "agent", and (2) although truthful oral information may substitute for false information in a search warrant affidavit, it may not do so if the affiant knowingly and intentionally, or recklessly, provides false information in the initial search warrant affidavit."

Appellant contends that because his 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); Therefore, Appellant's arrest is constitutionally deficient held no legal nor jurisdictional authority for the Georgetown County Sheriff's Department to arrest Appellant which is kidnapping.

JURISDICTION, ARREST WARRANT, INDICTMENT

Appellant contends that the entire process that led up to his “alleged” indictment is not only illegal and without jurisdiction but was based on information that was fabricated by the Georgetown County Sherriff’s Department and the Georgetown County Solicitor’s Office.

Appellant contends that in affecting his unlawful arrest and detention pursuant to an unlawful arrest warrant in which the affidavit did not conform to the requirement of the Fourth Amendment of The United States Constitution and The South Carolina Constitution, Art. 1 § 10, and was obtained by knowingly making false declarations to the magistrate, resulted in kidnapping and an unlawful deprivation of Appellant’s liberty without legal nor jurisdictional authority pursuant to an arrest warrant that was “null and void.” State v. Jones, 331 S.C. 228, (1998), citing Franks v. Delaware, 438 U.S. 154 (1998), “Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, The Fourth Amendment requires that a hearing be held at the defendant’s request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of evidence and with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause, a search warrant must be “void sand the fruits of the searched excluded to the same extent as if probable cause was lacking on the face of the affidavit.” See: State v. Dunbar, 361 S.C. 240 (2004), “ The Fourth Amendment requires that magistrates be impartial and severed from and disengaged from the activities of law enforcement such as that independent determination is not distorted in issuing a search warrant; In reviewing an application for a search warrant, a magistrate must make an independent determination of probable cause and not serve as a rubber stamp for police; A magistrate must not wholly abandon his or her judicial function and

essentially perform a police function in issuing a search warrant.” Lo-Ji Sales, Inc., v. York, 442 U.S. 319, 326-27 (1979), “Holding that judge who issued a search abandoned his judicial function and was not neutral and detached when he led police in search.”

Appellant contends that according to *Dunbar*, the magistrate, by issuing an arrest warrant without probable cause, abandoned her judicial function as a neutral and detached magistrate and essentially performed a police function and merely served as a rubber stamp for The Georgetown County Sherriff’s Department. Therefore, Appellant's arrest warrant was invalid, and The Georgetown County Sheriff’s Department had no legal nor jurisdictional authority to deprive Appellant of his liberty.

Appellant contends that the magistrate, at his preliminary hearing, which is the reviewing court, by simply looking at Appellant's arrest warrant’s affidavit, knew that the arrest warrant was invalid, and “void,” and that Appellant was being held unlawfully. See : State v. Weston, 329 U.S. 287 (1997), " The duty of the reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." Therefore, the magistrate had no jurisdictional nor legal authority to conduct a preliminary hearing (Note: Appellant is literally being held kidnapped at the preliminary hearing) and, should have ordered that Appellant be immediately released from being held unlawfully. Instead, the magistrate, at Appellant's preliminary hearing, unlawfully and without jurisdiction bound Appellant's case over to criminal court despite the fact that Appellant was being held unlawfully. Appellant contends that *Dunbar* also applies to the magistrate at his preliminary hearing, who is also supposed to be neutral and detached. Therefore, by bounding Appellant's case over to criminal court knowing that Appellant was being held unlawfully pursuant to an invalid arrest warrant, also abandoned her judicial function as a neutral and detached magistrate and essentially performed a prosecutorial function by serving merely as a rubber stamp for the prosecution.

In State v. Funderburk, 259 S.C. 256 (1972), The South Carolina Supreme Court established that: “Where demand for a preliminary hearing following arrest on two warrants issued by magistrate charging offenses of grand larceny and receiving stolen goods, was made ten days before convening of next term of Court of General Sessions but such hearing was not held until after indictment was submitted to grand

jury and true bill returned, the Court was without jurisdiction and, the jurisdiction of the grand jury being coextensive with the criminal jurisdiction of the Court, the indictment was a “nulity” and conviction was required to be vacated. Code 1962, § 43-232; Const. Art. 1, § 11. Acts of a court with respect to a matter as to which it has no jurisdiction is “void”. See: Carter v Bryant, 429 S.C. 298 (2020), “Drawing on 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.”

Therefore, the magistrate at Appellant's preliminary hearing had no legal nor jurisdictional authority to issue an order to bound Appellant's case over to criminal court pursuant to an invalid “void” arrest warrant. Therefore, such order was “ null and void,” and because the grand jury is coextensive with the criminal jurisdiction of the Court, the Georgetown County Solicitor's Office had no jurisdiction to indict Appellant pursuant to such order. Therefore, according to South Carolina law, Appellant's indictment is also “null and void,” and Appellant's unlawful conviction must be vacated.

Appellant contends that this argument does not fall within the scope of State v. Gentry, 363 S.C. 93 (2005). Whereas, Appellant is not challenging The Court of General Sessions jurisdiction to hear and adjudicate a criminal case, but Appellant is challenging The Georgetown County Court of General Sessions jurisdiction to hear and adjudicate a criminal case pursuant to an invalid indictment which is according to clearly established law, “null and void,” which resulted from an alleged grand jury proceeding that was “not legally” constituted. 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.”

PERJURY BEFORE ALLEGED GRAND JURY

Appellant contends that The Georgetown County Solicitor's Office, by simply looking at his arrest warrant affidavit also knew that the entire process leading up to Appellant's "alleged" grand jury proceedings was not only illegal and without jurisdiction but was based on information that was fabricated by The Georgetown County Sheriff's Department pursuant an unlawful arrest warrant. Yet, and still, The Georgetown County Solicitor's Office unlawfully prosecuted Appellant without legal nor jurisdictional authority.

Appellant contends that the face of his indictment specifically makes reference to his arrest warrant, which according to S.C. Const., Art. 1 § 10 and The Fourth Amendment of The U.S. Constitution, is constitutionally deficient, "void," and, therefore, a false document. Appellant contends that on the face of his indictment, also indicates that The Georgetown County Sheriff Department was the only witness that testified at his "alleged" grand jury, which was the same sheriff department that provided the deficient affidavit in his arrest warrant and made false declarations to the magistrate to obtain his arrest warrant which led to Appellant's unlawful arrest. Appellant contends that this proves that The Georgetown County Solicitor's Office knowingly committed perjury by using a false document, which is Appellant's arrest warrant, which was material to the decision-making body as the only evidence, along with the testimony of The Georgetown Sheriff's Department, to present false evidence at Appellant's alleged grand jury. Appellant contends that the conduct of The Georgetown County Solicitor's Office violated The South Carolina statute for perjury: 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."

State v. Harrison, 432 S.C. 448 (2021) "Solicitor's unauthorized exercise of authority by investigating defendant for his involvement in illegal official conduct, where his authority was

limited to investigation of legislators did not nullify indictment on charge against defendant for perjury based on false testimony before a grand jury. Citing United States v. Williams, 341 U.S. 58, 68, (1951); State v. Byrd, 28 S.C. 18, 21-22 (1888); People v. Skibinoki, 55 A. A. 2d 48 (1976).”

See also: U. S. v. Sarihifard, 155 F. 3d 301 (1998, 4th Circuit), “A defendant is guilty of grand jury perjury when the government proves: (1) that the defendant gave false testimony to the grand jury under oath; (2) that the testimony was false; (3) that the false testimony was given knowingly; and (4) that the subject matter of the testimony was material to grand jury’s investigation. U. S. v. Friedhaber, 856 F. 2d 640, 642 (1988, 4th Cir.). A person is guilty of making false statement to a government agency when the government proves that: the defendant made a false statement to a government agency or concealed a fact from it or use a false document knowing that is to be false; (2) the defendant acted knowingly or willfully; (3) the false statement or concealed fact or false document was material to a matter within the jurisdiction of the agency. An essential element in both grand jury perjury and the crime of making false statements is materiality. See: United States v. Gaudin, 515 U.S. 506 (1995) “A statement is material if it has a natural tendency to influence or is capable of influencing the decision-making body to which it was addressed.” It is irrelevant whether the false statement actually influenced or affected the decision-making process of the agency or fact-finding body. See also: United States v. Paolicelli, 505 F. 2d 971, 973 (1974, 4th Cir.); United States v. Bailey, 769 F. 2d 203 (1985, 4th Cir.); U. S. v. Dickerson, 114 F 3d 464 (1997, 4th Cir.).”

Appellant's contends that by presenting the same false information to the alleged grand jury of testimony from The Georgetown County Sherriff’s Department that The Sheriff’s Department had statements from victim’s finance,’ Naomi Alston, and victim’s father, Aundry Evans, Sr., that victim allegedly told them that Terron Dizzley shot him, which is the same false declarations made by The Georgetown Sherriff’s Department, to the magistrate to obtain his unlawful arrest warrant, according to

Private Investigator, Bennie L. Webb Investigative Report, was clearly material and had a substantial influence on the alleged grand jury decision to indict which prejudiced Appellant and was not harmless.

Appellant contends that The United States Supreme Court established in Bank of Nova Scotia v. U.S., 487 U.S. 250 (1988), that an indictment may be dismissed because of prosecutorial misconduct in grand jury proceedings if such misconduct prejudiced defendant and was a significant infringement on grand jury's ability to exercise independent judgment. See also: U. S. v. Mechanik, 475 U.S. 66 (1986); Kotteakos v. U. S., 328 U.S. 750 (1946). See: Berger v. U.S., 295 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).

Appellant contends that his arrest warrant tainted the entire judicial process which led to his false imprisonment for almost nine 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), "Fourth Amendment prohibits government officials from detaining a person in the absence of probable which can happen when the police holds someone without any reason before the formal onset of a criminal proceeding or when legal process itself goes wrong, such as when judge's probable-cause determination is predicated solely on a police officer's false statements. The Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process." Elills v. U. S., 356 U.S. 674 (1958), "The Supreme Court held that an issue on appeal as to probable cause for an arrest

could not be necessarily characterized as frivolous and application for leave to appeal in forma pauperis should have been granted.”

FRUIT OF THE POISONOUS TREE, DUE PROCESS VIOLATION

Appellant 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 Appellant'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 Appellant out of a photo lineup not as the person who committed the crime, but, as the person they allegedly knew by the nickname(s), “D” or “Little D” and that they believed that the victim was speaking of Appellant when he allegedly made the “hearsay” statement.

Appellant 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 Appellant as the shooter. Whereas, when the trial judge 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 D” 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 misleading 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.

Appellant 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.

PROSECUTORIAL MISCONDUCT

Appellant 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 Appellant, to intentionally make false statements for the state, testifying falsely in both of Appellant's trials, that he knew Appellant by the nickname, "Little D," or "D." Appellant 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 Appellant was charged, gave statements to Investigators Garrett and Investigator Dustin Morris in the presence of his mother, Sonia 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 and 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."**

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.

FALSE TESTIMONY OF DOUGLAS MORRIS PRESENTED BY SOLICITOR, SCOTT

HIXON IN PETITIONER'S FIRST TRIAL OF 2012

Appellant contends that the record proves that Solicitor Scott Hixon, in the first of 2012, knew that Douglas Morris gave statements to Investigator Garrett and Dustin rrt5tMorris stating that he did not know who this "D" was, allegedly mentioned by the victim. Yet, Solicitor Hixon, knowingly presented Douglas Morris' false testimony that he knew Appellant by the nickname, "D," which is a direct connection to Investigator Garrett's botched investigation, and false declarations made to the magistrate to obtain Appellant's unlawful arrest warrant.

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 as 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 is proof that Solicitor Hixon, in Appellant's first trial, 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).

This is also proof that Solicitor, Erin Bailey, in Appellant's second trial of 2014, knew that Solicitor Hixon knowingly presented Douglas Morris' false testimony in Appellant's first trial of 2012 that he knew Appellant by the nickname, "D, "which is contrary to his initial

statements given to Investigator Garrett given on December 2, 2008. However, the record shows that Solicitor Bailey deliberately compromised the integrity of the fact-finding and truth-seeking process by knowingly introducing Douglas Morris' false testimony, again, in Appellant's second trial of 2014, as to Appellant's identity being that of "D" or "Little D" to obtain an unlawful conviction.

FALSE TESTIMONY OF DOUGLAS PRESENTED BY SOLICITOR BAILY IN

SECOND TRIAL OF 2014

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.

Appellant contends 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 Appellant'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 Appellant 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.

It is clear from the record that The Solicitor Bailey 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. However, Solicitor Bailey neither Trial Counsel Barr mentioned that Douglas Morris had stated in his initial

statement that he did not know who this alleged "D" was, nor did Solicitor Bailey correct Douglas Morris's false testimony.

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.”

Appellant contends that it is clearly established that a conviction obtained through knowingly use of false testimony is a denial of due process. Riddle v. Ozmint, 369 S.C. 39 (2006); Gibson v. State, 334 S.C. 515 (1999); Washington v. State, 324 S.C. 232 (1996); Napue v. Illinois, supra, 360 U.S. 264 (1959); 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); Berger v. U.S., supra, 295 U.S. 78 (1935).

Appellant 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 Appellant by the nickname “D” or “Little D”, and eliciting testimony from Douglas Morris that the victim was speaking of Appellant 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 Appellant'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 4th 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 cause.” 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 possesses knowledge of and ability to reconstruct prior criminal occurrence and identify 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 to 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); Brown v. Illinois, 422 U.S. 590 (1975).

Appellant 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 Appellant as being "the one" victim was allegedly speaking of as to who shot him pursuant to the alleged hearsay statement, is a causal connection between the same false declarations that Investigator Garrett made to the magistrate to obtain Appellant's arrest warrant.

The record shows that the state also presented Investigator Garrett and Investigator Dustin Morris as witnesses to testify about their investigation and what lead them to obtain an arrest warrant for Appellant, 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 Appellant by nickname pursuant to obtaining Appellant's deficient arrest warrant. Wong Sun v. U.S., supra, 371 U.S. 471 (1963) ; U. S. v. Ceccolini, supra, 435 U.S. 268 (1978).

For these reasons, according to clearly established United States 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 Appellant 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 Appellant'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. P. 105 – 116; 175 – 234; Jerilether Jones, Tr. P. 245 – 263; Douglas Morris,

Tr. P. 124 – 130; 264 – 285; Maurice Giles, Tr. P. 189 – 103; 288 – 297; Willie Stanley, Tr. P. 75 – 86; 312 – 355; Investigator Melvin Garrett, Tr. P. 538 – 566; Investigator Dustin Morris, Tr. P. 582 – 626.

Appellant contends that for the foregoing reasons, his unlawful seizure, false imprisonment pursuant to an invalid arrest 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 Appellant's arrest warrant, violated Appellant's Fourth Amendment Rights and tainted the entire legal process, resulting in a Fourteenth Amendment Due Process Violation, therefore, resulting in a conviction based on evidence pursuant to "fruit of the poisonous tree", which should have been suppressed, and resulted in a confinement contrary to the constitution and fundamental law and was without jurisdiction. Therefore, Appellant's unlawful conviction should be vacated and set aside.

ARGUMENT 5

INDICTMENT

V. The trial court exceeded its jurisdiction by holding Appellant to answer for an infamous crime and sentencing Appellant to imprisonment without indictment or presentment by a grand jury.

Appellant contends that the Honorable Judge Culbertson's order fails to address his issue pursuant to his indictment.

STATEMENT OF CASE

Appellant'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 General Sessions Court held during the week of July 8, 2009.

Also, according to the South Carolina Court Administration, there is no longer special terms of court held. Additionally, Appellant's indictment has no signature from the clerk of court or clerk of court stamp on it, or any endorsement by the clerk which proves the indictment was publicly presented in open court, and that it had been duly returned by a grand jury. See: Exhibits enclosed.

PRESENTMENT OR INDICTMENT BY A GRAND JURY

The record shows that it is impossible for Appellant to have been indicted by a grand jury Court of General Sessions on July 8, 2009, as his indictments alleges, whereas there were no term of General Sessions Court held during the week of July 6-13, 2009. This violates The Fifth Amendment of the U.S. Constitution, and The S.C. Constitution, Art. 1 § 11. 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.”

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. 29 (1896).

The circumstances surrounding Appellant's indictment proves that there was no Court of General Sessions held the week of July 6-13, 2009, which supports the piece of paper purporting to be Appellant's indictment. Therefore, according to clearly established South Carolina Supreme Court law, because county grand juries are not recorded, the court must hold a hearing pursuant to this matter and the state has the burden of presenting the jury foreman, clerk, and witnesses that testified at this "alleged" grand jury to prove that Appellant was indicted by a legally constituted grand jury, and so that Appellant can make sure that the Georgetown County Sheriff's Department did not make the same "false declaration" to any "alleged" grand jury that Investigator Melvin Garrett made to the magistrate to obtain Appellant's arrest warrant or Appellant's indictment must be quashed and he must be discharged. See: Anderson v. State, 348 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). Appellant contends that the trial court exceeded its jurisdiction by holding him to answer for an infamous crime and sentencing Appellant without presentment or indictment by a grand jury in violation of the Fifth Amendment of The United States Constitution and The South Carolina Constitution, Art. 1 § 11.

THE VALIDITY AND REGULARITY OF INDICTMENT

Appellant contends that his indictment has no signature from the clerk of court or clerk of court stamp on it, or any endorsement by the clerk which proves the indictment was publicly presented in open court, and that it had been duly returned by a grand jury. Appellant contends that although State v. Gentry, 363 S.C. 93 (2005) held that defects in indictments does not deprive the court of jurisdiction, this decision did not affect the decision in Pringle v. State, 287 S. C. 409 (1986). According to *Pringle*, the only thing that is “essential” to the validity of an indictment is whether it was published by the clerk. See: 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.” See also: State v. Jones, 211 S.C. 319 (1947), “Where indictment charging assault with intent to kill was regularly signed by circuit solicitor, was properly signed and indorsed by foreman of grand jury and signature of clerk of court of general sessions appeared on back of indictment beneath certification to county court, indictment would be presumed to have been duly returned by grand jury in open court.”

Appellant contends that according to clearly established law, when a defendant challenges the validity of an indictment, the state bears the burden of proving that the grand jury was legally constituted and hearing is required. Anderson v. State, supra, 338 S.C. 629 (2000); State v. Bultron, 318 S.C. 323 (1995).

For the foregoing reasons, Appellant's indictment is invalid and, the record shows that its impossible for him to have been indicted by a grand jury by a court of general sessions on July 8, 2009, and any “alleged” grand jury proceedings was without jurisdiction and not legally constituted; See and incorporate Argument 4. Arrest Warrant and Indictment.

Appellant 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. Therefore, according to clearly established state and federal law, the South Carolina Department of Corrections has no legal nor jurisdictional authority to hold Appellant in prison under such a sentence, and he must be discharged.

ARGUMENT 6

FIRST AND FOURTEENTH RIGHT TO FAMILIAL ASSOCIATION

Gwendolyn B. Frasier and LaQuesha Felder

IV. The Circuit Court Judge and the Attorney General's false accusations made at the November 17, 2022 hearing that Appellants Gwendolyn B. Frasier and LaQuesha Felder were 'individuals practicing law without a license' for exercising their First and Fourteenth Amendment rights to familial association, to prevent Appellants from prosecuting their case and testifying amount to intimidation and threatening Appellants and result in prosecutorial misconduct and an abuse of discretion and violated their right to due process.

STATEMENT OF CASE

On October 28, 2021, Appellants Gwendolyn B. Frasier, and LaQuesha Felder filed an Exparte and Proposed Motion for The Immediate Release of their family member, Terron Dizzley pursuant to their Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence.

In the jurisdictional statement of Appellants Exparte Motion, it clearly states the following: "Petitioners Frasier and Felder's jurisdiction is evoked by their Fourteenth Amendment Right to life, liberty, and the pursuit of happiness in their household, family

integrity, and familial and intimate association, pursuant to Terron Dizzley's false imprisonment for over seven years and counting, without any legal or jurisdictional authority.”

Appellants contend that the record shows that they are not attempting to practice law without a license on behalf of Terron Dizzley, but are pro se litigants exercising their First and Fourteenth Amendment right to familial association with Appellant, Terron Dizzley, without interference by the government without any legal justification. Appellants contend that the record is clear that Terron Dizzley, is being held unlawfully, falsely imprisoned, without any legal nor jurisdictional authority. See: Arguments 1-5. Therefore, the State of South Carolina's conduct of falsely imprisoning Terron Dizzley is an unlawful interference with Appellants, Gwendolyn B. Frasier and LaQuesha Felder's First and Fourteenth Amendment right to familial and intimate association with Terron Dizzley, which shocks the conscience and offends communities' sense on fair play and decency. See: Disabato v. South Carolina Ass'n of Schools Adm'rs, 404 S.C. 433 (2013), “The freedom of association implicit in The First Amendment is a fundamental right, and thus, like the freedom of speech, the First Amendment Protection against the abridgement of the freedom of association applies against the state through the Fourteenth Amendment.” See: Lee v. City of Los Angeles, 250 F. 3d 668 (2000), “Mentally disabled resident of California City and resident's mother individually and as resident's conservator, sued city, city police officers, and New York Officials for federal and state-law claims based on resident's wrongful arrest, and incarceration for two years in New York. The Court of Appeals held that: Allegations supported claims for alleged Fourteenth Amendment Due Process Familial Association and Fourth Amendment violations. It is well established that a parent has a “fundamental liberty interest” in the companionship and society of his/her child and that State's interference with that liberty without due process of law is remediable under 42 U.S.C.A. § 1983.

Santosky v. Kramer, 455 U.S. 745, 753 (1982), “This constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationship with their parents.” Board of Directors v. Rotary Club, 481 U.S. 537, 545 (1987); Roberts v. Jaysees, 468 U.S. 609 (1984). See: Curnow by and through Curnow v. Ridge Crest Police, 952 F. 2d 321 (1991), “Shooting victim’s parents and children had due process liberty interest in relationship with victim who was fatally shot by police officers.” Rueda Vidal v. Department of Homeland Security, 536 F. Supp. 3d 604 (2021), “Under The Fourteenth Amendment children have cognizable interest in associating with their parents free from official deprivation; this right to familial association also applies to relationship to adult children and their parents.” See: Deskovic v. Peetskil, 894 F. Supp. 2d 443 (2012); McGarr v. City of Peetskil, 975 F. Supp. 2d. 377 (2013). “Mother of Juvenile who had been convicted and later exonerated of rape and murder brought action against city police officers and other officials pursuant to Section 1983, alleging that county sheriff department investigators conducted polygraph examinations of suspect that preceded suspect’s false confession to rape and murder in 1990...Investigator’s actions with respect to suspect’s prosecution led to her separation from him following his conviction, violated her constitutional right to familial association. The right to familial association under the First and Fourteenth Amendment is also called intimate association.” Patel v. Searles, 305 F. 3d. 130 (2002);

FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS VIOLATION

Appellants contend that at the November 17, 2022, hearing, they were entitled to the greatest degree of protection in determining the amount of “constitutional protection” to be afforded them pursuant to their and First and Fourteenth right to familial association with Terron Dizzley. However, the records shows that the Honorable Judge Culbertson deprived Appellants,

Gwendolyn B. Frasier and LaQuesha Felder, of their constitutional right to due process under the Fourteenth Amendment by depriving them of the opportunity to be heard and fully and fairly exhibit their case. Patel v. Searles, 305 F. 3d. 130 (2002), "At the motion-to-dismiss stage of suspect's 1983 action for violation of his due process right of intimate association, suspect's familial relationships that allegedly were impaired by wrongful conduct of police chief and detective in investigating murders of suspect's mother and sister, including those between suspect and his father, siblings wife, and children, were entitled to the greatest degree of protection on sliding scale for determining amount of constitutional protection to be afforded to particular association, in as much as they were among the most intimate of relationships. Allegations that police detectives gave murder suspect's wife false and defamatory information."

PROSECUTORIAL MISCONDUCT

Appellants contend that the transcript of the November 17, 2022, hearing proves that the Attorney General initiated false accusations against Appellants Gwendolyn B. Frasier and LaQuesha Felder by stating that they were "individuals practicing law without a license" and also told the judge not to file anymore documents from Appellants. The record also shows that Judge Culbertson issued an order pursuant to these false allegations that Appellants were "individuals practicing law without a license," without any findings of facts or conclusions of law on the merits of Appellants Exparte Motion that supported such ruling. The record also proves that when Gwendolyn B. Frasier tried to explain to the court that this was not the case, that she was not attempting to practice law without a license, Judge Culbertson refused to allow her to speak. See: November 17, 2022, hearing transcript P. 14, L 12- P. 15, L 1-20.

The Attorney General's accusations were false and resulted in prosecutorial misconduct and intimidating Appellants to prevent them from testifying and to prevent them from exercising

their First and Fourteenth Amendment rights to familial association with Terron Dizzley, of which they have a right to without government interference pursuant to Terron's false imprisonment for going on nine years and counting. Appellants contend that the same exact thing happened in State v. Inman, 395 S.C. 539 (2011), "manner in which State conducted *void dire* of defense expert concerning her licensure status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation. A prosecutor may not "lob baseless threats or charges at a potential defense witness in effort to prevent the witness from testifying." State v. Williams, 326 S.C. 130 (1997), "State's improper intimidation of potential defense witness resulting in witness refusal to be interviewed by defense counsel was not harmless error. Governmental intimidation of witness can be deemed harmless error where witness nonetheless testifies, but fact that witness does not testify does not automatically result in reversal, and, in order to obtain relief, defendant instead must demonstrate both substantial interference and prejudice."

Appellants contend that the record of the November 17, 2022, hearing proves substantial interference with their right to "free and unhampered" choice to prosecute their case. Appellants contends that, clearly, they were prejudice by such deprivation of their rights to due process. State v. Williams, 326 S.C. 130 (1997),"Improper intimidation of a witness may violate a defendants due process right to present his defense witness freely if the intimidation amounts to 'substantial government interference with the defense witness free and unhampered choice to testify." See: Berger v. United States, 295 U.S. 78, 88 (1935), " A prosecutor may prosecute with earnestness and vigor-indeed, he should so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Appellants also contends that the Honorable Judge Culbertson's actions of issuing such an order also amounted to intimidating and threatening Appellants Gwendolyn B. Frasier and LaQuesha Felder to prevent them from prosecuting their case and pursuing an appeal. Therefore, the Honorable Judge Culbertson's conduct amounted to an abuse of discretion and a "usurpation of judicial power." See also: **SC ST s 40-5-80 Citizens may prosecute or defend own cause;** which states in pertinent part: "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."

Appellants also contend that the courts deprived them of their Fourteenth Amendment Right to Procedural Due Process. Appellants contend that it is clearly established by the United States Supreme Court and by the South Carolina Supreme Court that when a person files a petition for an order of protection pursuant to deprivation of life, liberty or property, a hearing is required.

Appellants contend that the record shows they filed their Emergency Petition on October 28, 2021, under the Emergency statute S.C. Code § 20-4-50, which requires that a hearing be scheduled within 24 hours of the court receiving the motion. Despite this, the courts waited six months, failed to schedule Appellants Emergency Petition for a hearing, and on April 12, 2022, the Honorable Judge Culbertson denied Appellants Emergency Petition for Immediate Release, without ruling on the merits of their case. See: Moore v. Moore, 376 S.C. 467 (2008), "Emergency Hearing within 24 hours for protection from abuse order did not violate procedural due process. No person shall be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV. § 1; S.C. Const. art.1 § 3. Procedural Due Process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) Right to introduce evidence and (4) Right to confront and cross-examine witnesses. See: S.C. Code § 20- 4-50. Morrissey v. Brewer, 408 U.S. 471 (1972), "Whether any procedural protections are due depends not on whether governmental

benefit is characterized as “right” or as “privilege”, but whether individual will be condemned to suffer grievous loss, and question is not merely weight of individual’s interest, but whether nature of interest is one within contemplation, “liberty” or “property” language of Fourteenth Amendment”.

Appellants contend that it is clear that false imprisonment, kidnapping, and the First and Fourteenth right to familial association is of the nature of the interest within the contemplation of “life, liberty and property” within the Fourteenth Amendment which requires a hearing, opportunity to be heard, and fully and fairly present and argue their cases. Goldberg v. Kelly, U.S. 254 (1970), “Procedural due process requires that pretermination evidentiary hearing be held when public assistance payments to welfare recipient are discontinued.” Fuentes v. Shevin, 407 U.S. 67 (1972), “Right to prior hearing attaches only to deprivation of interest encompassed within Fourteenth Amendment Protection.” 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’s protection of liberty and property, and when protected interests are indicated, the right to some kind of prior hearing is paramount.”

For the foregoing reasons, the Honorable Judge Culbertson abused his discretion, resulting in a due process violation, by depriving Appellants Gwendolyn B. Frasier, and LaQuesha Felder, of the opportunity to be heard at their November 17, 2022 hearing in Georgetown, S.C. on their Emergency Petitions pursuant to violations of their First and Fourteenth Amendment rights to familial association with their family member, Terron Dizzley, pursuant to Terron’s false imprisonment, by falsely alleging that Appellants were “individuals practicing law without a license,” without providing any findings of facts and conclusions of law on the merits of Appellants motion which supports the Honorable Judge Culbertson’s ruling.

Appellants Gwendolyn B. Frasier, r and LaQuesha Felder respectfully request that this Honorable Court issues an order instructing the Government of South Carolina, which is the South Department of Corrections, to cease from violating their First and Fourth Amendment Right to familial and intimate association with Terron Gerhard Dizzley, by releasing him from being held falsely imprisoned for eight years and counting, away from his family, without any legal nor jurisdictional authority.

ARGUMENT 7

RIGHT TO TESTIFY AND RIGHT TO SELF-REPRESENTATION

VII. The Circuit Court Judge erred by refusing to allow Appellant to testify in his defense and denying him his right to self-representation at Appellant's November 17, 2022 hearing, pursuant to Appellant's Emergency Exparte and Proposed Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence.

STATEMENT Of CASE

Appellant contends that the record from the November 17, 2022, hearing shows that after Attorney Yarborough finished arguing Double Jeopardy, he addressed to Judge Culbertson that Appellant desired to testify in his defense, and the Attorney General objected, alleging "hybrid representation," and Judge Culbertson also denied Attorney Yarborough 's request to allow Appellant to testify in his defense, also alleging " hybrid representation." After this, Appellant immediately addressed to the court himself that he wished to exercise his constitutional rights to testify in his defense, and he was still denied. See : Transcript from November 17, 2022, Hearing in Georgetown S.C., Tr. P. 13, L 11- P. 14, L 1-8.

Appellant contends that the record shows that after Judge Culbertson denied his motion, Appellant immediately addressed to the court again that he wished to exercise his right to testify in his defense and explained that he had relevant facts which proves that he was being held falsely imprisoned/kidnapped. The Honorable Judge Culbertson without any reason that served a legitimate interest denied Appellant again of his constitutional right to testify in his defense. The record also shows that Appellant even

requested to fire his lawyer and then requested to exercise his right to self-representation in order exercise his right to testify in his defense, and Judge Culbertson still denied Appellant's request. See : Tr. P. 19, L 11- 23.

The record proves that Appellant still pleaded with the courts and explain that this was a " miscarriage of justice," and that the laws and circumstances of his case proves that he's being held kidnapped/falsey imprisoned and pleaded with the courts to at least look at these laws and reconsider the judgment.

Appellant also addressed to the court that he also had other issues that were not addressed. However, Appellant's petitions and pleas to the trial court in regard to his life and liberty and right to testify in his defense were arbitrarily and capriciously characterize by Judge Culbertson as "rambling." See : Tr. P. 19, L 24- P.24.

Appellant contends that the courts, throughout eight and a half years of appealing his unlawful conviction, has refused to file his motions or adjudicate his case and intentionally kept him away from the court to cover up his false imprisonment and has always also used his counsel to violate his right to testify in his defense, by inappropriately alleging "hybrid representation," to keep Appellant silent.

RIGHT TO TESTIFY

Appellant contends that the Honorable Judge Culbertson abused his discretion and violated Appellant's constitutional right to testify in his defense, and inappropriately invoked the prohibition against hybrid representation for arbitrary, capricious, and disproportionate reasons in order to silence Appellant to cover up his false imprisonment. Appellant contends that Judge Culbertson's errors were not harmless, and this issue is preserved for appellate review. See : State v. Rivera, 402 S.C. 225 (2013), " trial court violated defendant's constitutional right to testify in his defense at trial, and ; deprivation of a defendant's constitutional right to testify in his or her defense at trial cannot be harmless and, as such, is structural error. Defendant preserved for direct appellate review, his claim that trial court erred in a death-penalty case in refusing to honor his request to testify in his own defense at the guilt phase of trial, even though defendant and his guardian adlitem, not defense counsel, objected to trial courts ruling, and the state argued that issue was not preserved based on the prohibition against hybrid representation ; defense

counsel acknowledged to trial court defendant's wishes to testify yet expressly refused to comply with those wishes, defendant directly and through the guardian objected to trial courts ruling, and the state urged trial court to honor defendant's request to testify. We find it inappropriate to invoke the prohibition against hybrid representation here based on the absence of an objection by counsel, particularly since counsel acknowledged to the trial court Appellant's desire to testify yet expressly refused to comply with those wishes.

The right of a criminally accused to testify or not testify is fundamental. Rock v Arkansas, 483 U.S. 222, 230 (1971); Faretta v. California, 422 U.S. 806 (1975); Washington v. Texas, 388 U.S. 14 (1967); Chambers v. Mississippi, 410 U.S. 284 (1973). " But restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purpose they are designed to serve," I'd. at 55-56, 107 S. Ct. 2704. " In applying it's evidentiary rules a state must evaluate whether the interest served by a rule justify the limitation imposed on the defendant's constitutional right to testify." I'd. at 56, 107 S. Ct. 2704.

Evidence rules which " infringe upon a weighty interest of the accused" but fail to serve any legitimate interest are arbitrary. Homes v. South Carolina, 547 U.S. 319, 324-26 (2006) (quoting United States v. Scheffer, 523 U.S. 303, 308 (1998)).

RIGHT TO SELF-REPRESENTATION

Appellant contends that the Judge Culbertson also violated his Constitutional Rights under the Sixth Amendment of the United States Constitution to self-representation, when Appellant requested to fire his lawyer and proceed pro se in order to protect his right to testify in his defense. See : Faretta v. California, 422 U.S. 806 (1975) ; McKaskle v. Wiggins, 465 U.S. 168 (1984).

Appellant contends that his case is so strikingly similar to Rivera, both factually and legally, that Appellant must be granted the same relief pursuant to the laws Equal Protection guaranteed under The Fourteenth Amendment of the United States Constitution.

ARGUMENT 8

DOUBLE JEOPARDY

VIII. Circuit Court Judge abused his discretion by allowing the Attorney General to argue at Appellant's November 17, 2022, hearing challenging the trial court's jurisdiction to sentence him because his sentence violated the Fifth Amendment Double Jeopardy Clause.

Appellant contends that at his November 17, 2022, hearing, which was a sentencing hearing challenging the trial court's jurisdiction to sentence him for the crime of murder because his sentence violated the Fifth Amendment Double Jeopardy Clause. According to clearly established state and federal law supported by United States Supreme, the Honorable Judge Baxley's ruling in Appellant's first trial of 2012, discharging his jury on the grounds that the prosecution failed to meet the "burden of proof" to convict him, was a "judgment of acquittal."

Appellant contends that the sole purpose of this hearing was for the Honorable Judge Culbertson to make a ruling based on findings of facts and conclusions of law as to whether Judge Baxley's ruling in Appellant's first trial of 2012 was a judgment of acquittal for purposes of double jeopardy which barred his second trial of 2014 for the same offense. Appellant contends that the record shows the at the hearing, his attorney addressed to the court that according to the United States Supreme Court, the State is not allowed to argue against a ruling from a judge in favor of Appellant that the prosecution failed to meet their "burden of proof" to convict him because it would further place him jeopardy. Despite clearly established United States Supreme Court law, the Honorable Judge Culbertson still allowed the Attorney General to argue against what is clearly established by the United States Supreme Court a "court decreed acquittal." Appellant contends that this was an error of law.

Appellant contends that it is clearly established by the United States Supreme Court that a defendant cannot be subjected to post-acquittal fact-finding proceedings compared to a trial going to guilt or innocence, which allows the prosecution to re-examine a "court decreed acquittal," or persuade a second trier of fact of defendant's guilt after having failed with the first, or subject defendant to any type of proceedings devoted to resolution of factual issues going to elements of offense charged.

Arizona v. Rumsey, 467 U.S. 203 (1984), the United States Supreme Court established that, "Since Arizona capital sentencing proceedings are comparable to a trial; double jeopardy clause prohibited Arizona from sentencing defendant to death after life sentence which he had initially received on conviction of felony- murder was set aside on appeal. This case is controlled by Bullington v. Missouri, 451 U.S. 403 (1981), which held that the Double Jeopardy Clause applied to Missouri's capital sentencing proceeding barring imposition of the death penalty upon reconviction after an initial conviction, set aside on appeal, had resulted in rejection of the death sentence- because that proceeding was comparable to a trial on the issue of guilt and the initial sentence of life imprisonment in effect acquitted the defendant of the death penalty."

Appellant contends that just like *Arizona v. Rumsey* and *Bullington v. Missouri*, his case was also a sentencing hearing. Therefore, allowing the Attorney General to argue against such a ruling that the state failed to meet their "burden of proof," to convict Appellant resulted in a hearing that was adversarial in nature, which is forbidden because it allows the state to persuade a second trier of fact of Appellant's guilt after the Honorable Judge Baxley clearly stated that the state failed to meet their "burden of proof" to convict Appellant in his first trial.

Appellant contends that in Fong Foo v. United States, 369 U.S. 141 (1962), and Will v. U.S., 389 U.S. 90 (1967), the government even attempted to use a writ of mandamus as an avenue to argue against a "court decreed acquittal," to vacate the acquittal on the grounds that it was based on an erroneous decision. The United States Supreme Court ruled that because the law does not allow appeals against any type of acquittal, whether by jury verdict of not guilty or a "court decreed acquittal," nor allows the state to argue against an acquittal, the state was without a remedy, and, therefore, mandamus was the appropriate remedy. However, the United States Supreme Court ruled that they could not address the states argument without placing defendant in jeopardy again, despite the fact that these cases were filed under extraordinary writs. See also Smith v. Massachusetts, 543 U.S. 462 (2005), "Subjecting defendant to post-acquittal fact-finding proceedings going to guilt or innocence violates the Double Jeopardy Clause. Double Jeopardy Clause prohibits re-examination of court the decreed acquittal with the same

extent that it prohibits re-examination of acquittal by jury verdict." Smalis v. Pennsylvania, 476 U.S. 140 (1986), "Double Jeopardy Clause bars post-acquittal appeal by prosecution not only when it might result in a second trial but also if reversal would translate into further proceedings of some sort, devoted to resolution of factual issues going to elements of offense charged."

U.S. v. Wilson, 420 U.S. 332 (1975), "Constitutional protection against government appeals attaches only where there is a danger of subjecting the defendant to a second trial for the same offense. Provisions 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 defendant was to assure that the statute would not conflict with the principles of the double jeopardy clause." Policies underlying the double jeopardy clause militate against permitting the Government to appeal after a verdict of acquittal... granting the Government broad right to appeal after verdict of acquittal would allow the prosecution to seek to persuade a second trier of fact of defendant's guilt after having failed with the first, would permit the prosecutor to re-examine the weaknesses in the first presentation in order to strengthen it in the second and would disserve defendants legitimate interest in finality of a verdict of acquittal."

Arizona v. Rumsey, 467 U.S. 203 (1975), "United States v. Wilson, 420 U.S. 332 (1975), held that the prosecution could appeal from a judgement of acquittal entered by the trial judge after the jury had returned a verdict of guilty. But that holding has no application to this case. No double jeopardy problem was presented in *Wilson* because the appellate court, upon reviewing asserted legal errors of the trial judge, could simply order the jury's guilty verdict reinstated, no new fact finding would be necessary, the defendant therefore would not be twice placed in jeopardy. By contrast, in respondent's initial capital sentencing, there was only one decision maker and only one set of findings of fact, all favorable to respondent. The trial court "acquitted" respondent of the death penalty, and there was no verdict of guilty for the appellate court to reinstate. The Supreme Court of Arizona accordingly "remanded for redetermination of aggravating and mitigating circumstances and resentencing," that is, for a second sentencing proceeding similar to the first. Whereas the defendant in *Wilson* was not to be subjected to a second trial after an acquittal at this first, that is precisely what happened to respondent."

Appellant contends that as stated in *Arizona*, "by contrast," in his initial trial of 2012, there was only one set of finding of fact, all favorable to him. The Honorable Judge Baxley's ruling discharging his jury on the grounds that the prosecution was unable to meet their "burden of proof" to convict Appellant, according to clearly established United States Supreme Court Law was an "acquittal." This Court must take judicial notice that, according to clearly established United States Supreme Court Law, the jurisdiction of Appellant's case does not terminate when an Appellate Court or reviewing court decides to stop turning a "blind eye" to Appellant's acquittal in his first trial of 2012 and reverse his case. According to clearly established United States Supreme Law, the moment that the Honorable Judge Baxley discharged Appellant's jury on the grounds that the prosecution failed to meet their "burden of proof" to convict him, the jurisdiction terminated against his case. See: U. S. v. Scott, supra, 437 U.S. 82 (1978); Exparte Lange, supra, 85 U.S 163 (1873).

Therefore, at Appellant's November 17, 2022, hearing, which was a sentencing hearing challenging the trial court's jurisdiction to sentence him after receiving a "judgment of acquittal." According to United States Supreme Court Law, there could only be one decision maker at the hearing, and one set of finding of facts, and, to allow the Attorney General to argue against a "court-decreed" acquittal, resulted in a second decision maker, thus, affording the state another opportunity to persuade a second trier of fact of Appellant's guilt. Therefore, placing Appellant not twice in jeopardy, but three times in jeopardy. See also Kepner v. U.S., 195 U.S. 100 (1904); U.S v. Sisson, 399 U.S. 267 (1970), "District court's decision that Free Exercise and Establishment Clause of First Amendment and Due Process Clause of Fifth Amendment did not permit criminal conviction of one who refused induction into armed forces because he was conscientiously opposed Vietnam was "directed acquittal" and was not such "arrest of judgment" as would be appealable to the Supreme Court under Criminal Appeals Act where decision was not bottomed on factual conclusions found in indictment but instead was made on basis of evidence adduced at trial."

Appellant contends that, it is clearly established by the United States Supreme Court Laws that, a "judgment of acquittal" or any ruling in favor of defendant cannot be re-examined or argued against by the state in "any" type of post-acquittal proceeding.

Therefore, the Honorable Judge Culbertson abused his discretion by allowing the Attorney General to argue against the Honorable Judge Baxley's ruling in his first trial of 2012, at Appellant's November 17, 2022, hearing, challenging the trial court's jurisdiction to sentence him pursuant to Double Jeopardy. Appellant contends that clearly this was not a harmless error. Because despite the fact that the law establishes that under such circumstances Appellant is literally being held kidnapped /falsely imprisoned, the November 17, 2022, hearing resulted in a "trial like" post- acquittal proceeding which lead to the Attorney General persuading the Honorable Judge Culbertson to continue to subject Appellate to being kidnapped/ falsely imprisoned.

Therefore, this court must not consider any of the Attorney General's arguments made at the November 17, 2022 hearing pursuant to this appeal and must not allow the Attorney General to submit arguments against such a ruling in Appellant's favor that the prosecution failed to meet their "burden of proof" to convict Appellant, nor should this court allow the Attorney General to participate in any oral arguments in this appeal pursuant to Appellant's double jeopardy issues, should an oral argument be necessary.

CONCLUSION

For the foregoing reasons, pursuant to Arguments 1 – 8, Appellant, Terron Gerhard Dizzley, must be immediately released from the South Carolina Department of Corrections.

Date: March 28, 2023

Respectfully submitted,

S. Terron Dizzley
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

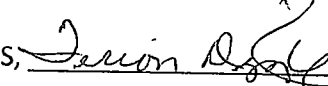
CERTIFICATE OF SERVICE

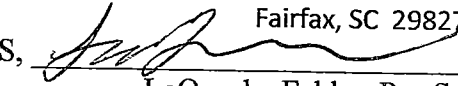
I, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Felder hereby certify on this 28 day of March, 2023, filed an Initial Appellant Brief in the above matter by placing in U. S. mail, postage prepaid, sent to the address below:

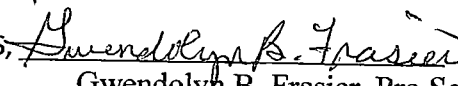
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

NOTICE

Dear Honorable Clerk:

Enclosed, please find an original and two copies of Initial Brief of Appellants and Designation of Matter in Support of. Stamped filed. Please send copy back to me.

Date: March 28, 2023

With kind regards,

s. Terron Dizzley
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