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MAY 16 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

The State of South Carolina.....Respondent

v.

Terron Dizzley..... Petitioner

**EXPARTE EMERGENCY MOTION FOR IMMEDIATE RELEASE, DOUBLE
JEOPARY, FALSE IMPRISONMENT, LACK OF TRIAL COURT JURISDICTION TO
IMPOSE SENTENCE**

Petitioner moves before this The Honorable Judge James E. Lockemy with The Exparte
Emergency Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial
Court Jurisdiction to Impose Sentence.

STATEMENT OF CASE

Petitioner, Terron Gerhard Dizzley, is being held kidnapped/falsely imprisoned in the South Carolina Department of Corrections, for nine years and counting. Terron was tried for the crime of murder in a trial by jury in 2012 in Georgetown S.C. After only 3 to 4 hours of deliberations, the jury informed the Honorable Judge Baxley that they could not reach a decision. Judge Baxley then called the jury in the courtroom and stated the following: See Ruling of The Honorable Judge Michael Baxley, transcript of 2012 Trial (by Court Reporter, Grace Hurley), Page. 314, Lines 4 – 18 – Page 315, Lines 1 – 8.

"Now what you told us is that you can't reach a unanimous decision, and I would say 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."

After stating this, the Honorable Judge Baxley declared a mistrial.

The U.S. Supreme in U.S. v. Martin Linen Supply Co., 430 U.S. 564 (1977), which is the precedent case on "judgments of acquittals," established that anytime a judge makes a ruling that the prosecution failed to meet their "burden of proof," or that there was "insufficient evidence" to convict, that ruling is an "**acquittal**" despite whatever "label" the judge placed on the ruling, whether the judge labels the ruling a mistrial, hung jury, dismissal or whatever, and Double Jeopardy bars a retrial. However, Petitioner was unlawfully tried again 2 years later, in 2014, for the same offense and unlawfully convicted and sentenced to 35 years in prison.

The landmark, U.S. Supreme Court precedent cases on double jeopardy, are Exparte Lange, 85 U.S. 163 (1863), and U. S. v. Scott, 437 U.S. 82 (1978). *Scott*

establishes that, under such circumstances as in Petitioner's case, the moment that the Honorable Judge Baxley stated in Petitioner's first trial, that the prosecution failed to meet their "**burden of proof**" to convict him, that the prosecution, and jurisdiction terminated upon Petitioner's case, may not be appealed, and double jeopardy barred retrial. *Scott* also established that such rulings based on "insufficient evidence" to convict, establishes a person's "**innocence**" and "lack of criminal culpability" to have committed the offense charged. *Lange*, has established since 1863, that a sentence imposed on a person in violation of the Double Jeopardy Clause, such as Petitioner's, is without jurisdiction, and, therefore, is " void for want of power" and affords no legal nor jurisdictional authority for the South Carolina Department of Corrections to hold Petitioner in prison and he must be released.

In two South Carolina Supreme Court cases State v. Gregorie, 339 S.C. 2 (2000), and State v. Clifford, 335 S.C. 129 (1999), the same exact thing happened. In *Gregorie* and *Clifford's* case the Circuit Court found that the State failed at trial to meet it's "**burden of proof**" and ordered a new trial. *Gregorie* and *Clifford* appealed, arguing that after dismissing their case on the grounds that the State failed to meet their "**burden of proof**," a new trial would violate their double jeopardy rights. The S.C. Supreme Court agreed, citing Burks v. United States, 437 U.S. 1 (1978), "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; and the "**only**" just remedy available for the court is the direction of a judgment of acquittal." State v. Rearick, 417 S.C. 391 (2016), goes on to say that *Gregorie's* case was "*immediately appealable*," because *Gregorie* was "aggrieved" by trial court's new trial remedy after finding that the State failed to meet their "**burden of proof**." Petitioner was also "aggrieved" by the Honorable Judge Baxley's new trial

remedy after finding that the State failed to meet their "burden of proof" to convict him, which has resulted in nine years and counting of being held kidnapped/falsely imprisoned.

Petitioner contends that this case was remanded from the S. C. Court of Appeals on August 11, 2022 back to the circuit court for a ruling on Petitioner's Motion for Alteration, Modification, Amend, Reconsideration and Rescission of Order pursuant to Petitioner's Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court' Jurisdiction. According to State v. Clifford, 335 S.C. 129 (1999) and Burks v. United States, 437 U.S. 1 (1978), after the S. C. Court of Appeals reviewed The Honorable Judge Baxley's ruling, stating that the prosecution failed to it's "burden of proof" to convict Petitioner, the only reason that the S. C; Court of Appeals could have remanded Petitioner's case back to the circuit court was "with instructions to enter a verdict of Acquittal".

Petitioner contends that as a result of The South Carolina Court of Appeals remanded the case back to the circuit court, there was a hearing held on November 17, 2022. Petitioner 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 Petitioner '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 Petitioner 's trial had been a bench trial, and that because Petitioner 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?

Petitioner contends that the above ruling by Judge Culbertson is contrary to clearly established United States Supreme Court law. Petitioner 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 Petitioner '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 Petitioner 's first trial of 2012 was an acquittal, rather, it is the substance of the Honorable Judge Culbertson’s ruling that proves that he also acquitted Petitioner. See: United States v. Martin Linen Supply Co., *supra*, 430 U. S. 564 (1977); Evans v. Michigan, *supra*, 568 U. S. 313 (2013).

Petitioner contends that The South Carolina Court of Appeals August 11, 2022, Order remanding Petitioner’s back to the Circuit Court, also in this Order, The South Carolina Court of Appeals held Petitioner’s Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment and Lack of Trial Court’s Jurisdiction in abeyance pursuant to a request from the Attorney General. According to The United States Supreme Court and to clearly established South Carolina Supreme Court law and federal law, this was an error of law which caused Petitioner “irreparable harm” by granting the Attorney General’s request for “stay” under such extraordinary circumstances.

Gilliam v. Foster, 63 F. 3d 287 (4th Cir. 1995), "Balance of harm with respect to state's request for stay pending appeal of order granting writ of habeas corpus precluding State from proceeding with retrial tipped decidedly in favor of petitioner, even though State claimed irreparable harm from delay in completing the trial, which had already started, as petitioners' loss of right not to be placed twice in

jeopardy would be irreparable and, in view of likelihood of petitioners' success, as indicated by district Court's grant of the writ, stay would be denied." Livingston v. Murdaugh, 183 F. 3d 300 (4th Cir. 1999), "state-court defendant, whose prior conviction for felony driving under the influence had been reversed on appeal, 488 S.E. 313, sought federal habeas corpus relief, contending that his retrial on reckless homicide charge violated double jeopardy. The district court found that Livingston had exhausted his state remedies. See 28 U.S.C.A s 2254 (1)(A). We are mindful of the deference that is owed to the state court's adjudication of Livingston's claim. Given the circumstances in this case, however, we have no choice but to respect the constitutional protection a defendant enjoys against being "twice put in jeopardy" for the same offense."

See: State v. Rearick, 417 S.C. 391 (2016), "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."

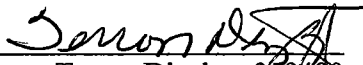
Petitioner contends that he has already suffered from being held falsely imprisoned for nine years and counting because The Honorable Judge Baxley made an error of law by ordering a new trial after stating that The Georgetown County Solicitor's Office "failed to meet their "burden of proof" to convict Petitioner in this first trial of 2012. Petitioner contends that he has also suffered irreparable harm by the Honorable Judge Culberton's error of law when he admitted at the November 17, 2022, hearing that The Honorable Judge Baxley's ruling was a acquittal, but did not apply to Petitioner because he had jury trial and The Honorable Judge Baxley's ruling would have been a bench trial; and, therefore, acquitted Petitioner again.

Petitioner contends that he and his family should not have to suffer any more violations his constitutional rights by held falsely imprisoned pursuant errors of law which are clear and can be corrected immediately by the Appellate Court.

For the foregoing reasons, this Exparte Emergency Motion for Immediate Release, Double Jeopardy, Lack of Trial Court's Jurisdiction to Impose Sentence must be granted.

Date: May 5, 2023

Respectfully submitted,

s. 
Terron Dizzley, 359480
ACI
1057 Revolutionary Trail
Fairfax, SC 29827

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MAY 16 2023

SC Court of Appeals

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

STATE V. TERRON DIZZLEY

Case No. 2009-GS-2-00778

Pages 308 – 316

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COURT REPORTER, GRACE HURLEY

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

5 OFF THE RECORD

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

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

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

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

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

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

22 MR. HIXSON: I concur, Your Honor.

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

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

1 client for just a second.

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

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

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

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

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

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

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

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

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

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

23 MR. THOMPSON: No, no.

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

1 MR. THOMPSON: It was close.

2 THE COURT: Very good. Well, I, I appreciate your
3 willingness to be back today and when we had such adverse
4 weather conditions yesterday. We're going to wait just one
5 moment for our alternate and we have at least one of our
6 alternates is still remaining with us.

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

14 (No response.)

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

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

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

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

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

3 Now, let's talk about what happens if you do not agree or
4 cannot agree on a verdict. If that happens and the Court
5 declares a mistrial and what that means is that nobody wins,

6 neither the State nor the Defendant. It just means that at
7 some future time this case will be tried again with some other
8 jury sitting where, where you sit today. The same
9 participants will come in, same witnesses, most likely give
10 the same testimony, the same lawyers will basically ask the
11 same questions and we'll go through the entire process of the
12 trial again.

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

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

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

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

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

9 MR. HIXSON: No, Your Honor.

10 MR. BARR: No, Judge..

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

14 OFF THE RECORD

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

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

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

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

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

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

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

1 but I don't want you to believe in any way, zero way that that
2 somehow you are responsible for that because you are not.
3 You're given a set of facts that were the best that the State
4 ~~could adduce from what happened and what they were able to~~
5 ~~determine, they put that up to you and you brought back a wise~~
6 and common sense decision that you simply could not agree upon
7 it. There's a message in that and so you've accomplished your
8 purpose.

9 (Instructions for juror payment given and jury
10 dismissed.)

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~~I, the undersigned, Grace L. Hurley, Official Court~~

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

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

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

Grace L. Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

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SC Court of Appeals

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

STATE V TERRON DIZZLEY

Case No. 2009-GS-22-00778

Pages 116 – 125

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COURT REPORTER, KRYSTAL SMITH

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

2 THE COURT: All right and ---

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

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

11 MR. HIXSON: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

22 (Whereupon, a sound test is performed.)

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

25 (Whereupon, the jurors indicate positively.)

1 THE COURT: Good.

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

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

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

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

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

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

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

9 MR. HIXSON: No, Your Honor.

10 THE COURT: And from the defense?

11 MR. BARR: No, sir.

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

18 (Whereupon, the alternate jurors enter the courtroom at

19 5:26 p.m.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF FLORENCE)

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

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

Krystal J. Smith
Court Reporter

Florence, South Carolina

October 26, 2013

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
 2 COUNTY OF GEORGETOWN) CASE NO.:2009-GS-22-0078
 3 **MOTION**

4 -----
 5 November 17, 2022

6 **BEFORE:** The Honorable Benjamin Culbertson

7 -----
 8 STATE OF SOUTH CAROLINA,
 9 Plaintiff,
 10 vs.
 11 TERRON DIZZLEY,
 12 Defendant.
 13 -----

RECEIVED
 MAY 16 2023
 SC Court of Appeals

14
 15 **APPEARANCES:**

16
 17 Alicia Richardson, Esq.
 18 Appearing for the Plaintiff/State.

19 William G. Yarborough, Esq.
 20 Appearing for the Defendant.

21 Official Court Reporter
 22 Natalie Dahl, RPR
 23
 24
 25

1 NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A COURT
2 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
3 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."

4 All requests for a copy of the enclosed transcript
5 shall be sent to: Natalie Dahl, RPR

6 P.O. Box 762

7 Conway, SC 29526

8 P-R-O-C-E-E-D-I-N-G-S

9 THE COURT: This is State versus Terron Dizzley
10 before the Court regarding Case No. 2009-GS-22-0078.
11 The Court received a pro se emergency motion for
12 alterations, modification, amend, reconsideration and
13 rescission of order in support of proposed of ex parte
14 motions for emergency petition for immediate release
15 of Terron Dizzley persuant to double jeopardy, lack of
16 trial court's jurisdiction to impose sentence.

17 You are Mr. Barr?

18 MR. YARBOROUGH: Mr. Yarborough.

19 THE COURT: I apologize. You represent
20 Mr. Dizzley?

21 MR. YARBOROUGH: I do, Your Honor.

22 THE COURT: I apologize; your first name?

23 MR. YARBOROUGH: William, Bill, either way,
24 Yarborough.

25 THE COURT: We are here today -- what is this?

MR. YARBOROUGH: Your Honor, the South Carolina
Court of Appeals sent this back down to develop a
record and discuss -- the petition would say a

1 judgment, a judgment of acquittal. I think it is an
2 argument under a double jeopardy standard, and so that
3 motion was raised post-trial, but before the appeal
4 was perfected. Then, when the appeal was sent to the
5 supreme court for the first time, the supreme court --
6 Mr. Dizzley filed a motion saying, whoa, wait a
7 second, I filed a motion for an acquittal, and they
8 sent it back for a record.

9 Judge, I think you signed an order, which goes
10 into that, saying this was already ruled on and the
11 Court has to have the record more developed.

12 THE COURT: Oh, all right. So what is before me
13 now? What are you asking me to do?

14 MR. YARBOROUGH: What we're asking you to do is
15 to -- Mr. Dizzley would explain it as an emergency
16 petition to have him released from prison because he's
17 being held under a double jeopardy standard.

18 THE COURT: All right. What is the crime that he
19 says he's already been sentenced and served his time
20 under or has already been acquitted for?

21 MR. YARBOROUGH: He believes he was already
22 acquitted of a 2009 murder.

23 THE COURT: Okay. As I understand the transcript
24 from that trial -- is this the one where there was a
25 mistrial?

1 MR. YARBOROUGH: That is correct, Your Honor.

2 THE COURT: So it is not an acquittal; it was a
3 mistrial.

4 MR. YARBOROUGH: Well, that is where -- when
5 Mr. Dizzley filed his motion, he cited to the record
6 where -- during the hearing, before there was a
7 mistrial that was granted, Judge Baxley goes into a
8 relatively long statement that at that point -- and it
9 is on Page 314 of the transcript -- but at that point
10 Judge Baxley says that State's -- there is a strong
11 message that the State has not met their burden of
12 proof.

13 THE COURT: Exactly.

14 MR. YARBOROUGH: After I first looked at this,
15 Your Honor, I thought that probably is not correct;
16 but as I reviewed the transcript, that was a pretty
17 direct statement on the strength of the State's case.

18 THE COURT: Yeah, but he goes on to say the way
19 this process actually works is up to the Solicitor as
20 to whether they will dismiss the charge, or whether
21 they will retry this case, or perhaps redevelop the
22 charge in some way.

23 MR. YARBOROUGH: Your Honor, I think once he says
24 that the State has not met their burden, it's over.
25 The case is over. Anything after that, double

1 jeopardy attaches. That is what Mr. Dizzley has been
2 filing motions about for years, and I think at this
3 point the supreme court has asked this Court to make a
4 record to determine if that ruling was correct or not.
5 So I think that there is a couple of standards here:
6 One, did Judge Baxley make that ruling? Did he say
7 that?

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 is 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

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?

7 MR. YARBOROUGH: Exactly, Your Honor. And that
8 is where the second part of Mr. Dizzley's argument --
9 it somewhat bounces around a little bit, but you came
10 to the exact place that I came to: Was there a
11 manifest necessity at that point to declare a
12 mistrial? At that point, there is nothing in the
13 record. I've gone through it and there is nothing on
14 the record that shows that Judge Baxley polled the
15 jury, talked to the jury, anything. What happened is
16 they came in -- the jury was out a couple of hours.
17 They give the Allen charge. He brings them back the
18 next morning, they are here for a little while, and
19 all the sudden, on the record, Judge Baxley declared a
20 mistrial.

21 THE COURT: So the jury never came back out the
22 second time as a hung jury after the Allen charge?

23 MR. YARBOROUGH: I don't want to mislead the
24 Court --

25 THE COURT: That is an important issue.

1 MR. YARBOROUGH: Yes. Okay. I think what your
2 statement is, is correct. But I would have to go
3 back. It is on Page 319. If you will give me a
4 second, because I don't want to misstate something to
5 the Court.

6 THE COURT: Typically, the jury comes out, they
7 say we cannot reach a unanimous decision, the judge
8 gives them an Allen charge, send them back out. If
9 they come back out a second time saying they can't
10 reach a unanimous decision, then the judge is
11 compelled by law to issue a mistrial, and then the
12 State can retry the case, if the State chooses to; is
13 my understanding.

14 MR. YARBOROUGH: Your Honor, I think that your
15 interpretation of what you just said is correct, but I
16 think there is more -- and the supreme court has been
17 looking at Allen charges over and over and the
18 procedure, so I think that is partially what we have
19 going on here. First, we're not arguing that the
20 Allen charge was not a good Allen charge; so we're not
21 there. What we're arguing is that when the Allen
22 charge was made, and then the -- Judge Baxley
23 dismissed the jury, was there a manifest necessity at
24 that point to dismiss the jury? I think -- there is
25 nothing in the record. I'm looking. It is a Page

1 313, 314 of the transcript. He brings them back out,
2 but there is nothing -- if you look, there is nothing
3 on the record at that point. He just -- he says they
4 received a message.

5 (A brief pause in the proceedings.)

6 MR. YARBOROUGH: Yes, Your Honor, South Carolina
7 Code Section 14-7-1330 gives a suggestion and an
8 outline where Allen charges have been made and what
9 they are, is to ask the jury whether they believe
10 further deliberations would allow them to come to an
11 unanimous verdict. I think the judge has to do more
12 than what is in that section. I mean, I know you just
13 read it, but I think there is more to it. I think the
14 judge -- maybe the question is: Do they poll the
15 jury? Whatever it is, I don't think there was enough,
16 and I think the record is clear there wasn't enough.

17 I think it is interesting, and I want to go back
18 to the original argument where I think Mr. Dizzley is
19 correct when he says if the judge made a ruling on the
20 record that the State had not met their burden --
21 which I think that is what he said -- and there had
22 been previous directed verdict motions made -- there
23 had been -- I think at that point there is a strong
24 indication that he's not guilty.

25 Second, we're still in this Allen charge argument

1 mode, and at that point he needs to do more than just
2 come in and do an Allen charge and say, okay, I've
3 given you an Allen charge, go back and deliberate.
4 Bring them back in, because this is Mr. Dizzley's
5 first chance at having a chance to have his case
6 presented. First one is usually the best bite at the
7 apple. That's the case. That's where everyone comes
8 in. So, at that point, I think that the case was over
9 and double jeopardy attached.

10 THE COURT: So what should Judge Baxley have done
11 that he didn't do?

12 MR. YARBOROUGH: I believe he should have polled
13 the jury.

14 THE COURT: About what? They said they didn't
15 have an unanimous decision. You can't poll them and
16 say who votes guilty and who votes not guilty.

17 MR. YARBOROUGH: No. You can say, look, is there
18 anything else I can do? That is -- the first thing
19 you would do on an Allen charge -- clearly, they come
20 back in and say they are hopefully deadlock. You give
21 them the Allen charge, then he comes in and says, Is
22 there anything I can do for you today that would help
23 you reach a verdict? That is the question. You make
24 a record at that point. Then you send them back in
25 one more time, and you give them another shot.

1 I just don't think -- and you also have to look
2 at, Your Honor, really, in deliberation time, you are
3 talking about two-and-a-half, three hours, maybe
4 three-hours-and-15-minutes; it is hard to tell because
5 there is breaks and stuff. You have the transcript
6 from the afternoon saying it was three hours, but a
7 lot of that is questions going back and forth. Then,
8 the next morning, I don't think that they are long at
9 all. I think that Mr. Dizzley's case needed more
10 determination than that at that point.

11 THE COURT: All right.

12 State's position?

13 MR. YARBOROUGH: Can I say one more thing?

14 Mr. Dizzley asked me to argue that the State does not
15 have the right to address the Court in this matter, so
16 I'm putting that on the record. He thinks that double
17 jeopardy is attached, and that he's being held
18 illegally; so I made my motion.

19 THE COURT: What supports that argument? Give me
20 the law or the case law or what says that the State
21 cannot participate in this motion.

22 MR. YARBOROUGH: I think that there is a number
23 of cases out there -- can I have one moment with him,
24 Your Honor?

25 THE COURT: All right.

1 (A brief pause in the proceedings.)

2 MR. YARBOROUGH: Mr. Dizzley had thought about
3 that argument before and he has given me several cases
4 that he wanted to argue: *Farm Food versus United*
5 *States, 369 U.S. 141.*

6 THE COURT: What does that case say?

7 MR. YARBOROUGH: A verdict of acquittal was a
8 final and could not be reviewed or error otherwise
9 without putting the defendant twice in jeopardy. It's
10 just a number of double jeopardy cases.

11 THE COURT: Do any of them say that the State
12 cannot participate in a motion hearing?

13 MR. YARBOROUGH: Your Honor, I think
14 Mr. Dizzley's position is that at that point jeopardy
15 had attached.

16 THE COURT: I understand. Forgive me for
17 interrupting. The problem is I think he thinks he
18 knows the law and he's getting you to argue his
19 position when it is contrary to what the law says. I
20 think he thinks that he's been subjected to double
21 jeopardy and, therefore, the State cannot participate
22 in any post-trial motions, that they cannot offer any
23 counter arguments, and that I'm just to release him
24 from jail because he thinks he's been put in double
25 jeopardy. I think he misunderstands what the law is

1 and he's getting you to put that misunderstanding in
2 the record, which, quite frankly, as an attorney, you
3 cannot mislead the Court and argue points of law that
4 are legitimate arguments.

5 MR. YARBOROUGH: Your Honor, none of the
6 arguments I made previously were not legitimate
7 arguments. As I stated, my argument about her being
8 able to argue this motion, I said that was
9 Mr. Dizzley's position.

10 THE COURT: Exactly.

11 MR. YARBOROUGH: I don't mean to offend the
12 Court. That is what I was trying to explain the Court
13 and leading the Court to know why I was making that
14 argument.

15 THE COURT: But you acknowledge that the State
16 can participate in this motion here?

17 MR. YARBOROUGH: Your Honor, I have been
18 practicing law for 35 years, I know the answer to that
19 question, but Mr. Dizzley wants me to say no.

20 THE COURT: I know he wants you to say that,
21 because he doesn't know the law. Someone needs to
22 explain to your client that you are no different than
23 a lawyer (sic) that performs surgery. You know how to
24 perform the surgery, and you can't do something that
25 you know is going to kill the patient even if the

1 patient is saying this is how you are supposed to do
2 it. As a surgeon, you are to do it the proper way.
3 As a lawyer, you follow the law and do what is proper,
4 and if your client is mistaken, because he's not
5 educated in the law and doesn't know the law, that
6 doesn't mean that he still gets to argue contrary to
7 the law.

8 MR. YARBOROUGH: Yes, sir, Your Honor.

9 THE COURT: All right.

10 Anything else?

11 MR. YARBOROUGH: He was asking me, Your Honor, if
12 he could argue his case.

13 MS. RICHARDSON: We're talking about hybrid
14 representation here. We do have a letter of
15 representation.

16 THE COURT: Mr. Yarbrough, how did you get on the
17 case? Appointed?

18 MR. YARBOROUGH: No, sir; it is family.

19 THE COURT: No; that is hybrid representation.

20 MR. DIZZLEY: Excuse me, Your Honor. The United
21 States Supreme Court --

22 THE COURT: No, sir. No, sir.

23 MR. DIZZLEY: -- versus Johnson says that I'm
24 allowed any time I make an allegation or a motion that
25 I'm illegally incarcerated and I have a right to argue

1 my case; that is a United States Supreme Court case
2 called --

3 THE COURT: And South Carolina Supreme Court says
4 you are not entitled to hybrid representation. You
5 can represent yourself or you can have an attorney.
6 An attorney was hired to represent you. You can't do
7 hybrid representation. So only Mr. Yarbrough can
8 argue your case.

9 MR. YARBOROUGH: Thank you, Your Honor.

10 THE COURT: All right.

11 State's position?

12 MS. RICHARDSON: Your Honor, first of all, there
13 is another issue of representation. We have what
14 appears to be non-lawyers who are also signing as
15 petitioners on this case: Gwendolyn Frazier
16 (phonetic) and Laquetia Felder (phonetic) have signed
17 some of the legal pleadings and motions in this case,
18 and I would ask the Court to inquire whether --

19 THE COURT: Are any of them licensed to practice
20 law in the State of South Carolina, Mr. Yarborough?

21 MR. YARBOROUGH: When I became involved in the
22 case no one filed anything, that I'm aware of, Your
23 Honor. I don't know anything about any of the other
24 stuff.

25 THE COURT: Is Gwendolyn Frazier here?

1 MS. FRAZIER: Yes, sir.

2 THE COURT: You are Ms. Frazier?

3 MS. FRAZIER: I am.

4 THE COURT: Are you licensed to practice law in
5 the State of South Carolina?

6 MS. FRAZIER: No, but we --

7 THE COURT: That is all I need to know.

8 MS. FRAZIER: No, sir.

9 THE COURT: Is Laquetia Felder here?

10 Ms. Felder -- you are Laquetia Felder?

11 MS. FELDER: Yes, sir.

12 THE COURT: Are you licensed to practice law in
13 the State of South Carolina?

14 MS. FELDER: No, sir.

15 THE COURT: Thank you very much.

16 Ms. Richardson, go ahead.

17 MS. RICHARDSON: We ask that the clerk not accept
18 filings that are made. Now, Mr. Dizzley did sign some
19 of these, but there are things that are filed with
20 just their signatures.

21 THE COURT: All right. Anything further
22 regarding this double jeopardy motion?

23 MS. RICHARDSON: Your Honor, I'm assuming this is
24 probably why the State was not served on a lot of
25 these pro se motions, that they feel that the State

1 didn't have a right to be involved, but, Your Honor --
2 what happened, Your Honor is correct. The case was
3 tried, there was a hung jury with an Allen charge, the
4 jury came back and said they were deadlocked, and a
5 mistrial was declared. What we have attached from the
6 defendant in his pro se motion are portions of the
7 record. It is not a complete record of what happened.
8 They are actually -- you will have pages -- in that
9 portion, there are a couple of pages that are missing.
10 But, Your Honor, what it appears to me is they are
11 taking what happened out of context and just using one
12 statement by the Court in saying it is a ruling, when
13 clearly that was not a ruling by Judge Baxley if you
14 look at the record as a whole.

15 There were discussions. The jury was out on one
16 day. They came back the next day and deliberated, it
17 appears, until after lunch when they came back and
18 said they were deadlocked. The judge denied the
19 motion for directed verdict.

20 What it appears the judge did was sort of just a
21 conciliatory statement to the jury; like, don't feel
22 bad about what happened. He did make that statement
23 saying, "That's a strong message to the prosecution
24 that they are unable to meet their burden of proof to
25 the extent that they can bring back a unanimous

1 verdict," which is not the same standard as a directed
2 verdict or saying there is no evidence that the jury
3 could find. This is more of a
4 taken-out-of-context-conciliatory speech to the jury,
5 pretty much like you did your job. It is not a
6 finding that there was insufficient evidence for it to
7 go to the jury. It was not a finding that a directed
8 verdict should be reached or even if they come back
9 with a guilty verdict that there should be some sort
10 of post-trial verdict that there was not sufficient
11 evidence. So it's just taking that statement out of
12 context when the judge clearly ruled that it was not a
13 situation of directed verdict, and that the State
14 would have the ability to retry.

15 What we don't have is the second trial transcript
16 to see if this issue was raised then. I'm learning
17 today there were multiple post-trial motions. I don't
18 know if this was raised in PCR or ruled on previously
19 by the Court as well; but, clearly, this is just a
20 statement, one statement, taken out of context.

21 The reason we're here today is he filed this ex
22 parte motion. Your Honor ruled on it and issued an
23 order. He filed a motion to reconsider your denial of
24 his motion. Then he filed an appeal, which was not
25 timely, but Your Honor denied -- basically said I

1 don't have jurisdiction to hear your motion to
2 consider because you filed an appeal. The Court has
3 sent it back saying you would have jurisdiction to
4 hear his motion to reconsider your denial of his
5 post-trial double jeopardy motion. So what we're here
6 for today is a motion to reconsider your denial of his
7 previous motion.

8 THE COURT: Mr. Yarbrough, anything in reply?

9 MR. YARBOROUGH: Your Honor, I get back and say
10 that reading the record, if the acquittal appears to
11 be -- and I would make an argument it is double
12 jeopardy -- that at that point everything stops and it
13 is insufficient to convict the defendant. So this is
14 before the Court arguing that -- and we're asking for
15 a factual finding that a necessity is established that
16 there was no criminal culpability based on the record
17 that we see.

18 Judge, there are a number of cases all through
19 South Carolina and the United States Supreme Court
20 that talk about double jeopardy; so that is the first
21 part of the argument. We disagree with the State's
22 position. The second part is that there was no
23 manifest necessity to declare a mistrial at that
24 point. Your Honor, I think those are pretty strong
25 arguments, and I think what the -- I'm confident the

1 court of appeals is asking this Court to make a record
2 and determine whether or not those issues were
3 developed properly for trial.

4 THE COURT: I'm going to deny the motion. I find
5 that the defendant's first trial ended in a mistrial;
6 therefore, double jeopardy did not attach. Further,
7 the current motion is filed by individuals not
8 licensed to practice law in the State of South
9 Carolina. On both of those grounds, I'm denying the
10 motion.

11 MR. DIZZLEY: Your Honor, can I -- can I ask --

12 THE COURT: No, sir.

13 MR. DIZZLEY: I have a right to argue my case,
14 Your Honor.

15 THE COURT: No, sir. We're done.

16 MR. DIZZLEY: So if I was to relieve my lawyer
17 right now, can I argue my case?

18 THE COURT: Not right now. It was heard and
19 ruled on; you can't go back. See, I think that is
20 where you misunderstand, Mr. Dizzley. You think that
21 because the outcome isn't what you want, then you can
22 keep litigating like this, and you can't do that.
23 Your argument --

24 MR. DIZZLEY: This is mischaracter (sic) of
25 justice has gone on.

1 THE COURT: We are done for --

2 MR. DIZZLEY: United States versus Martin Supply
3 that labels do not control the analysis of whether a
4 judge's verdict is a judgment of acquittal or not.
5 The record clearly shows you are looking at this label
6 that you declared a mistrial. The law specifically
7 states that -- here, we know the trial court acquitted
8 evidence, not because it came with the word "acquit",
9 but because it acted on the view that the prosecution
10 failed to prove its case. The law specifically states
11 that a judgment of acquittal encompasses any ruling
12 when prosecution failed to prove its case. At that
13 point, the jury terminates upon my case. U.S. versus
14 Scott, which specifically states that a judgment of
15 acquittal, whether based on a jury verdict of not
16 guilty or on a ruling that the evidence is
17 insufficient to convict, or that the State failed to
18 meet the burden of proof, terminates the prosecution
19 and the jurisdiction of my case. The landlock
20 precedent case on double jeopardy is ex parte which
21 explains that once the judge made a ruling that the
22 State failed to meet their burden of proof, that the
23 jurisdiction terminated upon my case and that any
24 second trial was without jurisdiction, and any
25 sentence imposed to me pursuant to the second trial

1 was void for power and holds no legal authority to
2 hold me in prison.

3 You are simply looking at the label. And Lee
4 versus United States also states that whether the
5 judge labels this ruling a mistrial, a declaration of
6 a mistrial, a hung jury, a continuance, it does not
7 matter. What matters is when you evaluate whether a
8 judgment of acquittal is the substance of a ruling.
9 It specifically says that labels do not control the
10 analysis of whether the decision of dismissing a
11 criminal case bars retrial under double jeopardy
12 clause; rather, the surface of the decision does.
13 United States Supreme Court, which is the highest
14 court in this land, determined that -- held that a
15 mistrial directed verdict based on a trial court's
16 requirements an extra element of defense, most
17 relevant here, an acquittal encompasses any ruling
18 that the prosecution's proof is insufficient to
19 establish criminal liability.

20 This is a South Carolina Supreme Court case:
21 State versus Gregory. The judge ruled that on the
22 merits of this issue it is civil. He said it's civil.
23 The circuit court found the State failed at trial to
24 meet its burden of proof and ordered a new trial.
25 Petitioner contends correctly that under these

1 circumstances, a second trial in magistrate would
2 violate a double jeopardy clause. This is the same
3 issue I'm raising. In Gregory, he says it is simple:
4 The review of Court determined that the State failed
5 to meet their burden of proof; therefore, a second
6 trial will violate my double jeopardy rights.

7 State versus Clifford, United States Supreme
8 Court case, reversal conviction based on legal
9 insufficiency of evidence. This matter is remanded to
10 the Court for instruction to enter a verdict of
11 acquittal, citing the United States Supreme Court case
12 Burks versus United States.

13 In that case, the Court ruled that double
14 jeopardy clause for a second trial for the purpose of
15 affording the prosecution another opportunity to
16 supply evidence, which it failed to in the first
17 proceeding, overruling the prior decisions. The Court
18 held that the double jeopardy clause precludes a
19 second trial once the reviewing Court found evidence
20 was legally insufficient, and the only just remedy
21 available is for the Court to direct an order of
22 acquittal -- the only just remedy.

23 When Judge Baxley made a ruling and stopped my
24 trial and said that -- he did not stop my trial. He
25 said it three times. He said I'm not stopping your

1 trial because it is your fault of the jury that you
2 can't reach a unanimous verdict. He said he's
3 stopping the trial because this is a strong message to
4 the prosecution that they are unable to meet their
5 burden of proof to the extent they can bring back an
6 unanimous verdict of guilty. That is a judgment of
7 acquittal.

8 MR. YARBOROUGH: We have it all on the record.
9 We've argued it.

10 MR. DIZZLEY: Your Honor --

11 MS. RICHARDSON: Your Honor, at this point, I
12 would object. You've already made your ruling and
13 given him sufficient time.

14 THE COURT: I've made my ruling. I mean, he's
15 just rambling on, but I'm --

16 MR. DIZZLEY: I'm just rambling on? The law
17 specifically states that any time a judge makes a
18 ruling that the State failed to meet their burden of
19 proof, that the jury determines upon my case, that's a
20 judgment of acquittal, sir. You are not giving me an
21 opportunity to argue the rest of my issues.

22 The law states that I have a right -- United
23 States Supreme Court, Private (phonetic) versus
24 Johnson says I have a right to argue my case.

25 MR. YARBOROUGH: We've argued the motion that was

1 here today. We've argued that.

2 THE COURT: All right.

3 MS. RICHARDSON: Do we need to prepare an order?

4 THE COURT: I did a Form 4.

5 MR. DIZZLEY: This Court is holding me. The
6 South Carolina Department of Corrections has no legal
7 authority to hold me in prison, sir, which is
8 kidnapping and false imprisonment -- kidnapping and
9 false imprisonment. The law is clear that the
10 jurisdiction terminated upon my case, United States
11 versus Scott, U.S. versus Martin Linda Supply --

12 DEPUTY: Sir, get your things.

13 (Whereupon, the hearing concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Georgetown County, South Carolina, on the 17th day of November, 2022.

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

December 18, 2022

Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 16 2023

SC Court of Appeals

Appeal from Georgetown County
Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley

Appellant

=

CERTIFICATE OF SERVICE

I, Terron Dizzley, hereby certify on this 5th day of May, 2023, filed an Exparte Emergency Motion for Immediate Release, Double Jeopardy, Lack of Trial Court's Jurisdiction to Impose Sentence in the above matter by placing in U. S. mail, postage prepaid, sent to the address below:

Chief Judge, James Edward Lockemy
P. O. Box 750
Dillions, South Carolina 29536

S. Terron Dizzley
Terron Dizzley, 359480
ACI
1057 Revolutionary Trail
Fairfax, SE 29827



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Terron Dizzley, 359480,
ACI
1057 Revolutionary Trail
Fairfax, SC 29827

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MAY 16 2023

SC Court of Appeals

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