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Oct 27 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2023 OCT 23 PM 4:55 NINTH JUDICIAL CIRCUIT

JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
vs.  
JOHN JOSEPH ERB,  
DEFENDANT.

**ORDER DENYING DEFENSE'S PETITION FOR  
HABEAS CORPUS OR IN THE ALTERNATIVE  
MOTION FOR ENTRY OF VERDICT  
PURSUANT TO RULE 29, SCRCrimP**

Arrest Warrant #2020A1021000355

Indictment #2023-GS-10-03932

THIS MATTER came before the Court on October 12, 2023, for the purpose of hearing the Defense's Petition for a Writ of Habeas Corpus or in the Alternative Motion for Verdict Pursuant to Rule 29, SCRCrimP. The Petition/Motion also prayed for a finding that Jeopardy had attached to the above referenced charge.

The Defendant's motion follows the declaration of a mistrial by the Court after jury deliberations were deemed futile by the Court. The Defendant trial for the above referenced charge in the Charleston County Court of General Sessions commenced September 18, 2023.

After two days of testimony and presentation of the State and Defendant's cases, the jury was charged on the law, including the lesser-included offense of voluntary manslaughter, and the Court explained the verdict form to the foreman. The verdict form had the following options for "Guilty" or "Not Guilty." The Jury was then instructed to go to the jury room and begin deliberations and return when there was a unanimous verdict. The jury began deliberations in the afternoon of Wednesday, September 20, 2023. Unable to reach a verdict, the jury was sent home to reconvene the next day to continue deliberations. On Thursday, September 21, 2023, the jury resumed deliberations in their jury room per the Court's instruction.

After several hours, the jury announced that it had reached a verdict in the case and returned to the Courtroom. The foreman of the jury delivered the verdict form and the indictment to the clerk who then presented it to the Court. The Court published the verdict as not guilty as to Murder and guilty as to Voluntary Manslaughter. The Court then asked the foreman to amend the indictment to reflect the verdict.

At the request of the Defense the jury was polled on its verdict. Each juror affirmed the verdict until the clerk reached the 11<sup>th</sup> juror, Juror #16. Juror #16 initially stated that it was her verdict when asked, but when asked to confirm, she stated that it was not her verdict.

The Court then sent the jury back to its jury room to continue deliberations toward reaching a unanimous verdict. After the jury retired to its room, the parties discussed next steps with the Court and defense objected to an Allen charge pursuant to *State v. Taylor*, 427 S.C. 208, as the split in the jury was known.

After approximately 14 minutes from the time the jury was sent back to deliberate, the Court asked that Juror #16 be brought before the Court to be examined on the utility of continued deliberation. Once before the Court, the Court asked Juror #16 if she could continue to deliberate or if the effort was futile. Juror #16 immediately and forcefully expressed that continued deliberation would be futile, stating, "Yes, sir. [My verdict] was always not guilty, and I just wanted to get it over with because they were in there screaming and yelling at me and I just – I'll never change my – like, it's not guilty. I'm sorry."

The Court, being in the best position to judge the credibility of Juror #16, determined that the jury would not be able to reach a unanimous verdict under the circumstances expressed by Juror #16. Further, based on Juror #16's statements, further deliberation would have been futile.

As the alternate jurors had been released, it was the Court's determination that there was no other choice than to declare a mistrial. The Defense did not object to the Court's declaration of a mistrial. The jury was then released from its service with the thanks of the Court.

The Defense then filed a "Petition for a Writ of Habeas Corpus or in the Alternative Motion for Entry of Verdict Pursuant to Rule 29, SCRCrimP" on October 5, 2023. The Court set a hearing on the matter for 10:00 a.m. October 12, 2023.

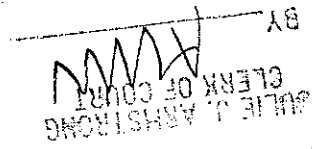
At the October 12 hearing, the following attorney appeared on behalf of the Defendant: Benjamin A. Mack, Esq. and the State was represented by Timothy Finch, Esq. of the Solicitor's Office.

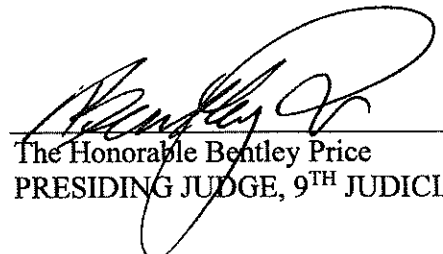
The Court being well acquainted with the case, heard argument regarding the propriety of granting a Writ, determining if jeopardy had attached to the above charge, or entering a verdict on the above charge.

After hearing from the Defendant and the State and reviewing the applicable law and applying it to the facts of the present case, the Court finds it appropriate, and it is therefore **ORDERED, ADJUDGED, AND DECREED** that:

**The Petition for a Writ of Habeas Corpus is DENIED, Jeopardy has NOT attached to the above referenced charge leaving the State in a position to retry the Defendant for Murder and the Court DENIED the request to enter a judgment on the above charge.**

**AND IT IS SO ORDERED!**

BY   
JULIE T. ARSHRONG  
CLERK OF COURT  
Charleston, South Carolina  
DATE: 2023 OCT 23 10:53 AM

  
The Honorable Bentley Price  
PRESIDING JUDGE, 9<sup>TH</sup> JUDICIAL CIRCUIT

FILED

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FOR THE NINTH JUDICIAL CIRCUIT

Warrant No(s): 2020A.102I000355

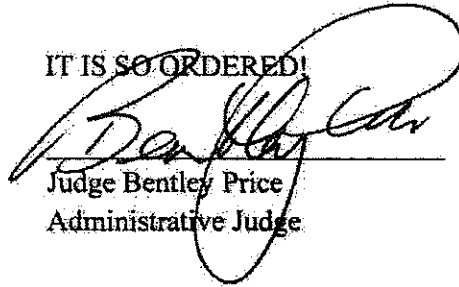
COURT ORDER

FILED  
 2023 OCT 19 PM 2:30  
 JULIE A. ARBUSTIANO  
 CLERK OF COURT  
 BY \_\_\_\_\_  
 M.S.S.

**RE: Defense's Motion to Reconsider Petition of for Habeas Corpus/Judgement under Rule 29, or in the Alternative Set a Personal Recognizance Bond and/or Grant a Trial Continuance**

This Order is a response to the Defense's Motion to Reconsider filed in Charleston County on October 18, 2023. In the Motion, John Erb requested that the Court reconsider its order denying his Petition for a Writ of Habeas Corpus/Judgement under Rule 29. He also requested, in the alternative, in the Motion to Reconsider, that the Court grant him a personal recognizance bond, under Rule 4, SCRCrimP and S.C. Code Ann. § 17-15-55, and a continuance of his trial date on November 6, 2023, for "good sufficient cause" under Rule 7(c), SCRCrimP. Specifically, the request for a continuance was based on John Erb's plans to take supersedeas action in his case with an appeal of the General Sessions Court's order denying his Petition for a Writ of Habeas Corpus/Judgement under Rule 29 to the South Carolina Court of Appeals under S.C. Code Ann. § 17-17-140, and Rule 241, SCACR. The Court did not conduct a hearing on the Defense's Motion to Reconsider, and the State did not file a response to it. Nevertheless, the Defense's requests for reconsideration, a personal recognizance bond, and a trial continuance are hereby denied by the Court.

IT IS SO ORDERED!



Judge Bentley Price  
Administrative Judge

Dated: 10-18-23  
 Charleston, South Carolina