

STATE OF SOUTH CAROLINA  
in the  
Supreme Court

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**RECEIVED**

**Jun 27 2024**

**S.C. SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY  
General Sessions Court

Bentley J. Price, Circuit Court Judge

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Case No. 2024-000762  
(S.C. Ct. App. filed Oct. 27, 2023)

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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JOHN JOSEPH ERB,

PETITIONER.

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Exhibit 1

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State of South Carolina )  
 )  
County of Charleston ) Circuit Court  
 ) 202A1021000355

State of South Carolina )  
 )  
 vs. ) Second Amended  
 ) Transcript of Record  
 )  
John Joseph Erb )

September 21, 2023  
Charleston, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge; and a jury.

A P P E A R A N C E S:

Timmy Finch, Solicitor  
Attorney for the State

Benjamin A. Mack, Public Defender  
Attorney for the Defendant

Kelly Borngen  
Transcriber



1 THE BAILIFF: All jurors sitting present.

2 THE COURT: Thank you very much.

3 Mr. Foreman, it's my understanding you all have a  
4 verdict.

5 THE FOREPERSON: We do.

6 THE COURT: Is it unanimous?

7 THE FOREPERSON: It is unanimous, Your Honor.

8 THE COURT: You'll hand it to the bailiff please. Thank  
9 you, sir.

10 All right. As to indictment number 2023GS103932, as to  
11 the charge of murder, we the jury unanimously find the  
12 defendant not guilty.

13 As to the charge of voluntary manslaughter, we the jury  
14 unanimously find the defendant guilty. Signed the foreperson,  
15 dated September 21st, 2023.

16 Mr. Foreman, this indictment isn't for murder, and you  
17 put guilty. Will you -- will you write the word manslaughter  
18 on there please.

19 THE FOREPERSON: Yes.

20 THE COURT: All right. Thank you very much.

21 Any further polling from the State?

22 MR. FINCH: Not from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. MACK: Judge, will you please poll the jury?

25 THE COURT: Absolutely. Ms. Ray (phonetic)?

1 THE DEPUTY CLERK: Ladies and gentlemen of the jury, I  
2 will call out your juror number. And when I do, please raise  
3 your hand. I will then ask you each two questions. Please  
4 answer yes or no.

5 Juror No. 189? Is this your verdict?

6 JUROR NO. 189: It is.

7 THE DEPUTY CLERK: Is it still your verdict?

8 JUROR NO. 189: It is.

9 THE DEPUTY CLERK: Juror No. 283? Is this your verdict?

10 JUROR NO. 283: Yes.

11 THE DEPUTY CLERK: Is it still your verdict?

12 JUROR NO. 283: Yes.

13 THE DEPUTY CLERK: Juror No. 131? Is this your verdict?

14 JUROR NO. 131: Yes.

15 THE DEPUTY CLERK: Is it still your verdict?

16 JUROR NO. 131: Yes.

17 THE DEPUTY CLERK: Juror No. 59? Is this your verdict?

18 JUROR NO. 59: Yes.

19 THE DEPUTY CLERK: Is it still your verdict?

20 JUROR NO. 59: Yes.

21 THE DEPUTY CLERK: Juror No. 91? Is this your verdict?

22 JUROR NO. 91: Yes.

23 THE DEPUTY CLERK: Is it still your verdict?

24 JUROR NO. 91: Yes.

25 THE DEPUTY CLERK: Juror No. 268? Is this your verdict?

1 JUROR NO. 268: Yes.

2 THE DEPUTY CLERK: Is it still your verdict?

3 JUROR NO. 268: Yes.

4 THE DEPUTY CLERK: Juror No. 271? Is this your verdict?

5 JUROR NO. 271: Yes.

6 THE DEPUTY CLERK: Is it still your verdict?

7 JUROR NO. 271: Yes.

8 THE DEPUTY CLERK: Juror No. 67? Is this your verdict?

9 JUROR NO. 67: Yes.

10 THE DEPUTY CLERK: Is it still your verdict?

11 JUROR NO. 67: Yes.

12 THE DEPUTY CLERK: Juror No. 22? Is this your verdict?

13 JUROR NO. 22: Yes.

14 THE DEPUTY CLERK: Is it still your verdict?

15 JUROR NO. 22: Yes.

16 THE DEPUTY CLERK: Juror No. 290? Is this your verdict?

17 JUROR NO. 290: Yes.

18 THE DEPUTY CLERK: Is it still your verdict?

19 JUROR NO. 290: Yes.

20 THE DEPUTY CLERK: Juror No. 16? Is this your verdict?

21 JUROR NO. 16: Yes.

22 THE DEPUTY CLERK: Is it still your verdict?

23 JUROR NO. 16: No.

24 THE COURT: All right, ladies and gentlemen, you'll have

25 to return to the -- to the jury room.

1 (Whereupon, the jury exited the courtroom at 12:40 p.m.)

2 THE COURT: All right. Well, do we want to read him an  
3 Allen charge?

4 MR. MACK: Judge, the difficulty here is now we've done a  
5 split of the jury.

6 THE COURT: I know. That's what happens when you do the  
7 polling. All right. Hang tight.

8 (Recess from 12:40:50 p.m. to 12:54:46 p.m.)

9 THE COURT: I ask to clear the courtroom. The only  
10 people I need in here is the court reporter, the clerk, and  
11 the lawyers.

12 We have to do that because I can't take you back there  
13 because you'd have -- you have to stay in here. So that's why  
14 I cleared them out.

15 All right. Where'd the bailiff go?

16 Will you go get the juror for me? The female?

17 THE BAILIFF: Yes, sir.

18 THE COURT: Please.

19 THE BAILIFF: Mm-hmm.

20 MR. MACK: Judge, may I ask what the plan is here?

21 THE COURT: I'm just going to ask her what she wants to  
22 do. I mean, if she thinks it's futile and to continue to  
23 deliberate, I'm going to declare a mistrial. If she says I  
24 just lost it, I think I can talk to my friends, I just got to  
25 see what she needs to do before I make a decision.

1 MR. MACK: Can I respectfully object to this?

2 THE COURT: Sure.

3 MR. MACK: I feel like it would be coercive of you  
4 speaking to her and making her --

5 THE COURT: Well, have you --

6 MR. MACK: -- make a decision.

7 THE COURT: -- ever seen this before?

8 MR. MACK: Sorry?

9 THE COURT: I said, well, have you ever seen this before?

10 MR. MACK: I have not, Judge.

11 THE COURT: Okay then, neither have I. So we're all in  
12 this together. Okay?

13 MR. MACK: Right. And the objection I'm making comes  
14 under State v. Taylor, which recently was handed down by the  
15 Court of Appeals, 427 S.C. 208.

16 THE COURT: All right.

17 MR. MACK: Where they discourage giving Allen charges  
18 once -- when we know the breakdown of the jury.

19 MR. FINCH: And Your Honor, for the State's position, I  
20 was anecdotally told that this happened -- when this happened  
21 previously, the justice sent them back and see if they can  
22 deliberate. If it deadlocks after that and --

23 THE COURT: Yeah. That's what I'm going to see if it's  
24 even -- if it's even worth it.

25 MR. FINCH: I think the State's position is if they are

1 just sent back to go and then give them some time to see if  
2 there's a deadlock or bring them all in and say continued,  
3 perhaps everybody from the jury, and they're all told to work  
4 together sort of, not an Allen charge specifically, but just  
5 that we're sending them back to deliberate and that if they  
6 reach an impasse then to just let us know it's a hung jury.  
7 And then I -- I will just say, my concern is if it's just the  
8 one juror.

9 THE COURT: All right. So you indicated that it was your  
10 verdict and then that it was not your verdict. Only one  
11 question is that is me allowing you a little bit more time to  
12 deliberate that it'd be futile.

13 JUROR NO. 16: Yes, sir. It was always not guilty, and I  
14 just wanted to get it over with because they were all in there  
15 screaming and yelling at me and I just -- I'll never change  
16 my -- like, it's not guilty. I'm sorry.

17 THE COURT: Bring them out.

18 THE BAILIFF: You just can stay here.

19 JUROR NO. 16: Yes, sir.

20 THE BAILIFF: I'll bring everybody else back.

21 THE COURT: You don't stay here. You can stand out  
22 there. You don't have to --

23 JUROR NO. 16: Okay. Thank you.

24 THE COURT: Yeah.

25 (Whereupon, the jury came into open court at

1 approximately 12:59 p.m.)

2 THE BAILIFF: All jurors present.

3 THE COURT: All right. Thank you so very much. Ladies  
4 and gentlemen of the jury, I want to thank you for your time  
5 and your effort and commend you for the effort that you've put  
6 into this case. You all deliberated, as you're fully aware,  
7 for five hours and 12 minutes, so that's a lot of work, a lot  
8 of effort. But this is why we have a jury system. We have to  
9 get 12 people to agree, and we weren't able to, so I'm going  
10 to declare a mistrial.

11 So you all are free to go. I hope you have a wonderful  
12 rest of your day. All right.

13 (Whereupon, the jury exited the courtroom at 1:00 p.m.)

14 THE COURT: All right. Thank you all for everything.  
15 You all just need anything, just let us know.

16 MR. FINCH: Thanks, Judge.

17 THE COURT: All right. Have a good day.

18 (End of Transcript of Record)

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