State of South Carolina County of Georgetown	)	In The Court of Common Pleas Fifteenth Judicial Circuit
Terron Dizzley Plaintiff,	)	C/A No. 2024-CP-22-00105
v.	)	**Emergency Motion To Alter, Amend, Correct, And Reconsideration Pursuant to Order Denying Permanent Injunction For Immediate Double Jeopardy, False Imprisonment**
Jimmy Richardson, et . al Defendants,	)	

Petitioner, Terron Gerhard Dizzley has initiated a hunger strike protesting apparent retaliation, assault and lock-up by the Department of Corrections for filing a lawsuit and a Permanent Injunction for Immediate Double Jeopardy, False imprisonment. In ten years of incarceration, no judge has ruled on the merits of his case even when remanded back by the SC Appeals Court.

The Plaintiff, Terron Gerhard Dizzley, moves the court with an EMERGENCY MOTION TO ALTER, AMEND, CORRECT, AND RECONSIDERATION PURSUANT TO ORDER DENYING PERMANENT INJUNCTION FOR IMMEDIATE RELEASE, DOUBLE JEOPARDY, FALSE IMPRISONMENT, on the grounds that:

Plaintiff contends that the record proves that on February 9, 2024, he filed a Motion For Permanent Injunction for his immediate release from being held kidnapped/falsely imprisoned in the SCDC for ten years and counting without any legal nor jurisdictional authority pursuant to a sentence imposed on him pursuant to an indictment that was null and void and which violated his Fifth Amendment rights under Double Jeopardy Clause.

Plaintiff contends that the record proves that, on April 15, 2024, he amended the Permanent Injunction adding the Double Jeopardy issue of "manifest necessity," and also clarified the record that the Permanent Injunction was not only addressed to the the Georgetown County Solicitor's Office, but, that the Injunction was addressed to the Court for the purpose of, stated as follows: "Plaintiff respectfully amends this injunction, demanding that the Courts cease from turning a "blind eye" to his false imprisonment, and issues an order to the SCDC to immediately release Plaintiff from

being held illegally inincarcerated, in violation of his Eighth, Thirteenth, and Fourteenth Amendment rights. In support of the motion, the Plaintiff shows the following to the court." See April 15, 2024 Motion to Alter and Amend Permanent Injunction.

Plaintiff contends that the record proves that Plaintiff had a hearing pursuant to his Permanent Injunction on April 18, 2024, which was supposed to be heard by the Honorable Judge McFadden. At the hearing the judge, on several occasions kept cutting Plaintiff off and would not allow Plaintiff a full and fair opportunity to be heard and fully and fairly present his case, ultimately depriving Plaintiff entirely of the opportunity to present his case and stated that he was denying Plaintiff's Motion For Permanent Injunction.

Plaintiff contends that when he got back to the institution he was informed by his mother that the judge that had presided over the hearing was not Judge McFadden; that one of bailiffs informed her that Judge McFadden got "caught up in traffic " and that no one, not even the bailiff knew who the judge was because when he entered the courtroom, the court never announced his name. Plaintiff's mother later found out that the judge that presided over the hearing name was Judge Bentley Price, and that he was disqualified as judge.

Plaintiff contends Judge Price was allegedly filling in a the last minute for Judge McFadden, and, therefore, had never even read Plaintiff's case, but, yet deprived Plaintiff from presenting his case and issued an order at the hearing denying his Permanent Injunction and told the Defendants lawyers to draw up a proposed order.

On March 2, 2024, Plaintiff received the order denying his Permanent Injunction which consisted of a Form 4 only stating, pursuant to the Injunction: "Motion for Permanent Injunction by Pro se Denied." Plaintiff contends that the Form 4 order fails to state specifically and specially any "findings of facts and state expressly conclusions of law," pursuant to the merits of Plaintiff's issues raised which proves that he is being held falsely imprisoned.

Plaintiff contends on May 15, 2024 he received another order from Judge Price which is the same exact proposed order prepared by Defendants, in which the record proves that

Judge Price simply "cut and paste" the Defendants proposed order and signed off on it without addressing any of Plaintiff's issues. Plaintiff contends that each order from Judge Price fails to comply with the requirements of SCRCP, Rule 52(a). See: *McCullough v. State*, 320 S.C. 270 (1995). "Court was required to vacate and remand order denying inmate's second application for postconviction relief where PCR judge ruled that withdrawal of inmate's first application was voluntary, dismissed second application as successive and signed order prepared by Attorney General's office, but where that order failed to address judge's decision to dismiss second application as successive, and instead addressed issues that were decided at first PCR hearing, but which were not presented to or ruled upon by second PCR judge. The PCR court is required to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." In *Pruitt v. State*, 310 S.C. 256 (1991), we expressed concerns with orders and PCR proceedings that do not address the merits of issues raised." See: *McCray v. State*, 305 S.C. 329 (1991); *Fishburne v. State*, 427 S.C. 505 (2019).

Plaintiff contends that in the proposed order issued by Judge Price, Judge Price indicates that he agrees with the Solicitor Defendants, who argued that it was not necessary for Judge Price to discuss the "merits" of Plaintiff's Permanent Injunction nor apply the legal standards pursuant to Plaintiff's illegal incarceration, and that "even if" Plaintiff's arguments are true, Plaintiff cannot obtain injunctive relief, pursuant to SCACR, Rule 407 3.8, by stating the following: "In response, council for the Solicitor Defendants argued that a discussion of the merits of Plaintiff's allegations and the legal standards applicable to a motion for permanent injunction was not necessary because Plaintiff cannot demonstrate sufficient standing to seek injunctive relief based on an alleged violation of SCACR rules applicable to the conduct of a prosecutor. Upon consideration of the arguments presented, this court agrees with the Solicitor Defendants that an alleged violation of Rule 407 SCACR, even if true, does not give Plaintiff standing to pursue injunctive relief in this case."

Plaintiff contends that Judge Price intentionally misrepresented the truth in his order that Plaintiff requested relief solely pursuant SCACR, Rule 3.8. Plaintiff contends that the record proves that he demanded immediate release from ten years and counting of being held illegally incarcerated on the grounds that his illegal incarceration violates his Fourteenth Amendment rights to due process, Thirteenth Amendment rights to be free from an unlawful subjection to "slavery," and his Eighth Amendment rights to be free from "cruel and unusual punishment." Plaintiff contends that record proves that, as far as his demands for relief pursuant to a particular statute or court rule, he demanded injunctive relief pursuant to SCRCP, Rule 65, which is the appropriate rule for requesting injunctive relief.

Plaintiff contends that Judge Price's contentions that he has the authority to authorize the kidnapping/false imprisonment of him and refuse to adjudicate Plaintiff's Permanent Injunction on merits, **"even if true"** Plaintiff is being held falsely imprisoned/kidnapped, because Plaintiff "allegedly" cited the wrong statute for relief is contrary to S.C., Fourth Circuit, and U.S. Supreme Court laws. See: *Conley v. Ryan*, 92 F. Supp. 3d 502 (4th Cir. 2015), citing *Topchian v. J. P. Morgan Chase Bank*, N A., 760 F. 3d 843 (2014), "The well-pleaded facts alleged in the complaint, not the legal theories of recovery or legal conclusions identified therein, must be viewed to determine whether the pleading party has stated a claim. **The failure in complaint to cite a statute or cite the correct one, in no way affects the merits of the claim. Factual allegations alone are what matters. Accordingly, a complaint should not be dismissed merely because a plaintiff's allegation do not support the particular legal theory he advances, for the court is under the duty to examine the complaint to determine if the allegations provide for relief on any possible theory."** *Spence v. Spence*, 368 S.C. 106 (2006), "Under Rule 12(b)(6), SCRCP, a defendant may move to dismissed a complaint based on a failure to state facts

sufficient to constitute a cause of action. In considering such motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then grant of the motion to dismiss for failure to state a claim is improper. *Baird v. Charleston County*, 333 S. C. 519 (1999); *Gentry v. Yonce*, 337 S.C. 1 (1999)." *Bell Atlantic Corp., v. Twombly*, 550 U.S. 544 (2007).

Plaintiff contends that according South Carolina's own laws, the fact alone that Judge Price's order fails to address the **"merits"** of case proves bias and **"judicial prejudice,"** therefore, violates Plaintiff's right to due process, which is grounds to vacate Judge Price's order and for reconsideration. *Ellis v. Procter and Gamble Distributing Co.*, 315 S.C. 283 (1993), "The Supreme Court, Moore, J., held that record did not support trial judge's factual finding on **"merits"** of counterclaim was evidence of **"judicial prejudice."**

Plaintiff only ask that a neutral and detached and impartial judge thoroughly evaluate his case, alters, amends, and corrects Judge Bentley Price's order and "make specific findings of fact, and state expressly its conclusions of law," as required by SCRCP, 52(a) relating to each issue presented in his original Permanent Injunction filed on February 9, 2024 and his Amended Permanent Injunction filed on April 15, 2024, and reconsider and vacate the denial of Plaintiff's Permanent Injunction and issue an order for Plaintiff's immediate release pursuant to the following issues:

DOUBLE JEOPARDY

Standard for Evaluating Judgments of Acquittals for Purposes of Double Jeopardy

The controlling U.S. Supreme Court cases which establishes the standard that **"must"** be followed by a reviewing court when evaluating a judge's ruling to determine whether it is a judgment of acquittal are: *United States 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." *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. Here we know that trial court acquitted 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." Quoting *U. S. v. Martin Linen Supply Co.*, 430 U.S. 564 (1977)." See *Burks v. United States*, 437 U.S. 1 (1978); *Hudson v. Louisiana*, 450 U.S. 40 (1981).

Standard for Distinguishing Between Mistrials and Judgments of Acquittals for Purposes of Double Jeopardy

The U.S. Supreme Court case which establishes the standard that **"must"** be followed by a reviewing court for distinguishing between a mistrial and a judgment of acquittal for purposes of double jeopardy is, *U.S. v. Scott*, 437 U.S. 82 (1978). See: *Evans v. Michigan*, 568 U.S. 313 (2013), quoting *Scott*, "an acquittal includes" a ruling by the court that the evidence is insufficient to convict," a "factual finding that necessarily establishes the criminal defendant's lack of criminal culpability," and any other "ruling which relates to the ultimate question of guilt or innocence." *Scott*, 437 U.S., at 91, 98, and n. 11, 98 S. Ct. 2186. These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial. Which we generally refer to as dismissals or mistrials. Procedural dismissals include rulings on questions that "are unrelated to factual guilt or innocence," but "which serve other purposes," including "a legal judgment that a defendant, although criminally culpable, may not be punished" because of some problem like an error with the indictment. **This ruling was not a dismissal on procedural grounds "unrelated to factual guilt or innocence," like the question in Scott, but rather a determination that the State had failed to prove its case. Under our precedents, then, Evans was acquitted."** *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."**

Standard for Evaluating Whether a Retrial After a Ruling Declaring a Hung Jury/ Mistrial Would Violate Double Jeopardy Rights

A ruling from a judge declaring a mistrial/hung jury, sua sponte, without the defendant's consent, does not automatically take away the defendant's rights under the Double Jeopardy Clause, and allow the State to retry the case. The controlling cases which set forth the standard that **"must"** be applied when determining whether a retrial following a ruling declaring a hung jury/mistrial would violate a defendants Fifth Amendment rights under the Double Jeopardy Clause, establishes that, such rulings **"must"** be evaluated pursuant to the **"manifest necessity"** test. See: *U.S. v. Perez*, 22 U.S. 579 (1824); *U.S. v. Jorn*, 400 U.S. 470 (1971): *United States v. Sanford*, 429 U.S. 14 (1976); *State v. Bilton*, 156 S.C. 324 (1930, **"Discharging 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."** *State v. Prince*, 279 S.C. 30 (1983); *State v. Robinson*, 360 S.C. 187 (2004); *Buff v. S.C. Dep't of Transp.*, 342 S.C. 416 (2000); *State v. Rowlands*, 343 S.C. 454 (2000); *U.S. v. Horn*, 583 F. 2d 1124 (1978).

GROUND 1

JUDGMENT OF ACQUITTAL, DOUBLE JEOPARDY

I. Trial judge's ruling at Plaintiff 's first trial of 2012, discharging Plaintiff 's jury on the grounds that the state failed to meet their "burden of proof" to convict Plaintiff was a "judgment of acquittal" for purposes of double jeopardy which barred Plaintiff 's second trial of 2014. Therefore, the Georgetown County Solicitor's Office had no jurisdiction to try Plaintiff again in 2014 for the same offense, and, therefore, the sentence imposed on Plaintiff was without jurisdiction and holds no legal authority for the SCDC to hold Plaintiff in prison, which is false imprisonment.

Statement of Facts

It has been established by the Supreme Court of the United States for **"one hundred and sixty (160) years"** that a sentence imposed on a person which violates the Fifth Amendment Double Jeopardy Clause is **"void for want of power"** to hold the party a prisoner and he must be discharged. See: *Exparte Lange*, 85 U.S. 163 (1863), **"A second judgment of the same verdict is, under such circumstances, "void for want of power," and holds no authority to hold the party a prisoner, and he must be discharged."**

Plaintiff contends that after the prosecution rested its case in his first unlawful trial of 2012, the Honorable Judge Baxley gave the following jury charge. See: Trial Transcript of 2012, Court Reporter, Crystal Smith, Tr. P. 74, L. 8 – 25, citing from 20 – 25). **"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 the following: 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."

See also Pages 315, L 1 - 8.

"I don't want to 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."

Therefore, according to Judge Baxley's own charge on the law to the jury, if the prosecution failed to meet their **"burden of proof"** to convict Plaintiff, he was entitled to an acquittal. Moreover, according to Judge Baxley's own ruling, that the prosecution failed to meet the "burden of proof" to convict Plaintiff, and, according to clearly established state and federal law, that ruling was a "judgment of acquittal."

It has been established by the U.S. Supreme Court for over **"forty-five (45) years,"** in *Burks v. U.S.*, 437 U.S. 1 (1978), that such rulings as Judge Baxley's, in Plaintiff's first trial, discharging his jury on the grounds that the prosecution failed to meet their **"burden of proof"** was an acquittal which established his **"innocence"** and **"lack of criminal culpability"** to have committed the offense charged, and by granting a new trial after finding that the prosecution failed to meet their "burden of proof" to convict, violates the Fifth Amendment Double Jeopardy Clause. *Burks*, overruled prior decisions in *Bryan v. U.S.*, 338 U.S. 552 (1960); *Yates v. U.S.*, 354 U.S. 298 (1957); and *Forman v. U.S.*, 361 U.S. 416 (1960), which were the same as Judge Baxley's ruling in Plaintiff's case. These cases established that a judge had the discretion, after establishing that the prosecution failed to meet their "burden of proof," or that there was "insufficient evidence" to convict, to either enter a verdict of acquittal, or order a new trial. *Burks* overruled these cases establishing that once a reviewing court has found that the evidence is legally insufficient,

the **"only"** just remedy is to enter a verdict of acquittal. See: *Burks v. United States*, 437 U.S. 1 (1978), "It is unquestionably true that the Court of Appeals' decision "represent[d] a resolution, correct or not, of some or all of the factual elements of the offense charged." *United State v. Martin Linen Supply Co.*, 430 U.S. 564 (1977). By deciding that the Government had failed to come forward with sufficient **"proof"** of petitioner's capacity to be responsible for criminal acts, that court was clearly saying that Burks' criminal culpability had not been established. If the District Court had so held in the first instance, as the reviewing court said it should have done, a judgment of acquittal would have been entered and, of course petitioner could not be tried again for the same offense. 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. 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."

The Honorable Judge Baxley, after making a ruling in Plaintiff's first trial of 2012, that the Georgetown County Solicitor's Office failed to meet the "burden of proof" to the extent that they could bring back a unanimous verdict as the grounds for discharging Plaintiff'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 Georgetown County Solicitor's Office 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.

According to clearly established United States Supreme Court law, the Honorable Judge Baxley's ruling discharging Plaintiff's jury on the grounds that the state failed to meet their "burden of proof" to convict him was an acquittal despite the label the

Honorable Judge Baxley placed on the ruling as a mistrial/hung jury. See: *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 also: *Evans v. Michigan*, 568 U.S. 313 (2013), **"Here we know that trial court acquitted 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. 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." 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."**

South Carolina Law

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).

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

In *State v. Clifford*, 335 S.C. 129 (1999), "the conviction was reversed 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)"

Plaintiff contends that his second trial, judgment, and sentence, poses no legal nor jurisdictional authority for the South Carolina Department of Corrections to hold him in

prison for the same offense of which he was acquitted. See: *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."**

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 Plaintiff's case and may not be appealed. *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."

GROUND 2

JUDGMENT OF ACQUITTAL, DOUBLE JEOPARDY, NOVEMBER 17, 2022 HEARING

II. The Circuit Court Judge stated an error of law in his ruling at Plaintiff's November 17, 2022 hearing and acquitted Plaintiff again when he stated that the trial judge's ruling in Plaintiff's first trial of 2012, which was a jury trial, discharging Plaintiff 's jury on the grounds that the prosecution failed to meet

their "burden of proof" to convict him was a judgment of acquittal, but, judgments of acquittals only applies to bench trials and not jury trials.

Statement of Facts

Plaintiff contends that the record shows that at the November 17, 2022, hearing, pursuant to his Emergency Motion For Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, the Honorable Judge Culbertson admitted that the Honorable Judge Baxley's ruling in his 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 Plaintiff's trial had been a bench trial, and that because Plaintiff 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....
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.

The above ruling by Judge Culbertson is contrary to clearly established United States Supreme Court law. The U.S. Supreme Court determined in, *United States v. Morrison*, 429 U.S. 1, 3 (1976), **"Double Jeopardy Clause treats bench and jury trials alike."** The U.S. Supreme Court controlling case 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 is a jury trial case. The controlling case on "judgments of acquittals" pursuant to bench trials is, *Smalis v. Pennsylvania*, 476 U.S. 140 (1986), and *Smalis* supports its decision using *Martin* and other jury trial cases. See: *Smalis 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 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 U.S. Supreme law: (1) The Honorable Judge Culbertson's ruling was an acquittal despite his intentional misinterpretation of the law that "judgments acquittals" pursuant to a prosecution's "failure to meet their burden of proof," or "insufficient evidence" to convict only applies to 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); and (2) Therefore, according to clearly established U.S. Supreme Court law, the Honorable Judge Culbertson's misinterpretation of Fifth Amendment Double Jeopardy Clause, ruling that the Honorable Judge Baxley's ruling in Plaintiff's first trial of 2012 that the prosecution failed to meet their **"burden of proof" "was"** an acquittal for Double Jeopardy purposes if Plaintiff's trial was bench trial, and because Plaintiff had jury trial it was not an acquittal, was also an acquittal despite the **"label"** that he placed on his ruling of a "denial" of Plaintiff's "Emergency Motion For Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence."

Therefore, Plaintiff was acquitted **"twice,"** receiving two "favorable terminations" of his case, of which the Georgetown County Solicitor's Office never had jurisdiction to try him, and the trial court had no jurisdiction to sentence him.

GROUND 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 Plaintiff's Fifth Amendment rights under the Double Jeopardy Clause.

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 favor 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."**

Statement of Facts

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 Plaintiff '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

Plaintiff '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 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 foreman sent another note indicating that they were still unable to reach a verdict. Trial judge then, spontaneously called the jury in court room, and in the presence of the jury, with no advance warning or notice to the defense counsel or the prosecution, 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 unanimous verdict, but that his decision was based on **"a strong message to prosecution that they are unable to meet the burden of proof" to the extent that they could bring back a unanimous verdict."**

Plaintiff contends that *U.S. v. Horn*, 583 F. 2d 1124 (1978 10th Cir.), is identical to his case, "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."

Plaintiff contends that the record shows that there was no manifest necessity to declare a mistrial sua sponte 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 existed 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 Plaintiff '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, Plaintiff 's case is distinguished from *Robinson*. In Plaintiff '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.

Plaintiff 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 (1906), 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).

Plaintiff 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). *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 no manifest necessity to declare a mistrial after only 15 hours of deliberations on grounds that jury was too exhausted to reach an impartial verdict. Defence 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 defence 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."

Plaintiff contends that the record shows that Judge Baxley's sua 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, Plaintiff '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 Plaintiff 's first trial of 2012, was not dictated by a manifest necessity or ends of public justice, and therefore, Plaintiff 's second trial of 2014 was barred by double jeopardy.

Plaintiff contends that according to clearly established United States Supreme Court law, he is being held kidnapped/falsely imprisoned, pursuant to a sentence imposed on him in violation of the Fifth Amendment Double Jeopardy Clause, which under such circumstances holds no legal nor jurisdictional authority for the South Carolina Department of Corrections to hold Plaintiff in prison. See: *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."

GROUND 4

INDICTMENT

IV. The trial court exceeded its jurisdiction by holding Plaintiff to answer for an infamous crime and sentencing Plaintiff to imprisonment pursuant to an indictment that was null and void.

Statement of Facts

Plaintiff contends that according to the Fourth Amendment of the United States Constitution, and Art. I sec. 10 of the South Carolina Constitution the only variable that separates the crime of kidnapping, from a lawful arrest is "probable cause." Plaintiff 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.

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: 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 Sheriff's Department applied for an arrest warrant for Plaintiff, for murder, and went before the magistrate to obtain the arrest warrant and prepared an affidavit in the arrest warrant that did not provide any information at all that would enable the

magistrate to determine probable cause to issue the arrest warrant. Despite this, the magistrate issued the arrest warrant for Plaintiff's arrest. Thus, according to the Fourth Amendment of the U.S. Constitution, Plaintiff's arrest warrant is constitutionally deficient, and held no legal nor jurisdictional authority for the Georgetown County Sheriff's Department to arrest and restrain him of his personal liberty.

Plaintiff contends that an evaluation of his arrest warrant, compared to South Carolina Constitution, Article I, Section 10, and The Fourth Amendment of The United States Constitution, and clearly established South Carolina and The United States Supreme Court laws proves that his arrest warrant is constitutionally deficient. Whereas Plaintiff's arrest warrant affidavit only cites no more than elements of the crime charged, and only states that Plaintiff allegedly committed the crime charged without any personal knowledge of the complaining Officer, Investigator Garrett. See : Exhibits.

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."

In *State v. Weston*, 329 S.C. 287 (1997), The Supreme Court held: "Search warrant affidavit which failed to set forth any facts as to why police believed defendant committed crime alleged in affidavit was insufficient to support finding of probable cause to search defendant's car."

AFFIDAVIT IN WARRANT IN STATE V. WESTON

"On March 18, 1994, at approx. 2245 hours the victim (Claude Crumlin) was the victim of an armed robbery and assault with intent to kill at 5126 Farrow Rd. The defendant in this incident is a Kevin Weston, by S.C. highway depts., is the registered owner of the above listed vehicle. Also, investigation revealed through witnesses in this matter that defendant was driving above vehicle at the time of incident. The search for the above items are needed to fully complete this investigation."

Plaintiff contends that The United States Supreme Court, in *Giordenello v. U.S.*, 357 U.S. 480 (1958), held 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, 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.

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 Aundrey 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".

Plaintiff contends that a comparison of his affidavit in his warrant with the affidavits in the warrants in *Smith, Weston,* and *Giordenello* proves that they are identical on the grounds that they provide no sufficient basis for which a magistrate could've found probable cause to issue an arrest warrant, and only states that crimes were allegedly committed. Therefore, The South Carolina and The United States Supreme Court has held that such affidavits, as in Plaintiff's arrest warrant is constitutionally deficient, which resulted in an unlawful arrest, unlawful pre-trial detainment, malicious prosecution, and false imprisonment. See: *State v. McKnight,* 291 S.C. 110 (1987), " (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 against whom State sought to admit evidence has standing to challenge legality of

search under warrant statute. Code 1976, sec. 17-13-140; Const. Art. 1, sec. 10; U.S.C.A. Const. Amend. 4." *State v. Sachs*, 264 S.C. 541 (1975), "Exclusion of evidence is not the only means available to ensure that search warrants are properly issued, disciplinary action or an indictment, if proper may follow against an officer who recites the erroneous facts in an affidavit leading to issuance of search warrant." *Illinois v. Gates*, 462 U.S. 239 (1983), "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his actions cannot be a mere ratification of the bare conclusions of others." *Whiteley v. Warden, Wyo. State Pen.*, 401 U.S. 560 (1971), "Complaint signed by county sheriff which recited that defendant, and another did and there unlawfully break and enter particular locked and sealed building was not sufficient to support independent judgment of disinterested magistrate and was not sufficient showing of probable cause for issuance of arrest warrant. Before warrant for either arrest or search warrant can be issued, judicial officer must be supplied with sufficient information to support independent judgment that probable cause exists for the warrant."

Jurisdiction, Arrest Warrant, Indictment, Malicious Prosecution

Plaintiff 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 nor 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 Plaintiff's liberty without legal nor jurisdictional authority pursuant to an arrest warrant that was "null and void." 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 warrant abandoned his judicial function and was not neutral and detached when he led police in search." *U.S. v. Leon*, 468 U.S. 897 (1984), "Deference to a magistrate in search warrant matters is not boundless and deference accorded finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based and a magistrate must purport to perform his neutral and detached function and not serve merely as a rubber stamp for the police. A magistrate failing to manifest that neutrality and detachment demanded of a judicial officer when presented with a search warrant application and who acts instead as an adjunct law enforcement officer cannot provide valid authorization for an otherwise unconstitutional search."

Plaintiff contends that according to *Dunbar*, *Lo-Ji*, and *Leon*, Magistrate Elliott, 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, Plaintiff's arrest warrant was invalid, and The Georgetown County Sheriff's Department had no legal nor jurisdictional authority to deprive him of his liberty.

Plaintiff contends that the record proves that he requested, and had a preliminary hearing. Plaintiff contends that he had a right to, and did not waive that right, to rely on the magistrate at his preliminary hearing to ensure that he was not being held in absence of a finding of probable cause that he committed the offense charged. *State v. McClure*, 277 S C. 432 (1982) "In a preliminary hearing, the State must show that

there was "probable cause" to arrest the defendant for the commission of a crime. Absent this showing, the charge must be dismissed." *State v. Weston*, 329 S.C. 287 (1997), "The duty of the reviewing court is simply to assure that the magistrate had a substantial basis for concluding that probable cause existed." See: *Giorodenello v. U.S.*, 357 U.S. 480 (1958), "By waiving preliminary hearing examination, a defendant waives no more than the right which this examination was intended to secure him, namely, the right to not be held in the absence of a finding by the United States Commissioner of probable cause that he has committed an offense."

Plaintiff contends that *Dubar*, *LoJi,* and *Leon*, also applies to the magistrate at his preliminary hearing, who is also supposed to be neutral and detached, and by "failing to manifest that neutrality and detachment demanded of a judicial officer cannot provide valid authorization" to bound Plaintiff's case over a criminal court for an "otherwise unconstitutional" restraint of Plaintiff's personal liberty. Therefore, such order was null and void, and the magistrate essentially performed a prosecutorial function by serving merely as a rubber stamp for the prosecution. Plaintiff contends that the magistrate, at his preliminary hearing, which is the reviewing court, by simply looking at his arrest warrant's affidavit, knew that the arrest warrant was invalid, and "void," and that Plaintiff was being held unlawfully. Therefore, the magistrate had no jurisdictional nor legal authority to even conduct a preliminary hearing (**Note**: Plaintiff was literally being held kidnapped at the preliminary hearing because the Georgetown County Sheriff's Department had no legal nor jurisdictional authority to restrain him of his liberty and have him brought to a preliminary hearing pursuant to an invalid arrest warrant. **Note also:** This was not a warrantless arrest) and, should have ordered that Plaintiff be immediately released from being held unlawfully.

Instead, the magistrate at Plaintiff's preliminary hearing, unlawfully, and without probable cause nor jurisdiction, bound Plaintiff's case over to criminal court despite the fact that he was being held unlawfully pursuant to an invalid arrest warrant.

According to the laws of South Carolina, when a person request a preliminary hearing, the state lacks jurisdiction to indict that person because the jurisdiction of the case is within the magistrate court, and the preliminary hearing magistrate's duty is to determine whether the arrest warrant is valid and whether there was probable cause for the arrest, and if the arrest warrant is not valid, the magistrate must dismiss the charges because the restraint is unlawful.

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 *Franks 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 Plaintiff's preliminary hearing had no legal nor jurisdictional authority to issue an order to bound Plaintiff'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 Plaintiff pursuant to such order. Therefore, according to South Carolina law, Plaintiff's indictment is also "null and void." According to U.S. Supreme Court law, because Plaintiff's indictment is null and void, a conviction and sentence under such circumstances exceeds the jurisdiction of the court and holds no authority for the South Carolina Dep't of Corrections to hold him imprisoned under such sentence and he must be discharged. See: *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... exceeds the jurisdiction of that court," and, "there is no authority to hold the prisoner under the sentence."

It was held in *Kaptur v. Kapture* (1934) 50 Ohio App 91, 197 NE 496, "where the petition disclosed that the affidavit sworn to by such affiant before the justice charged plaintiff with breaking into the house where plaintiff and her husband lived and taking property belonging to plaintiff's husband, all of which was known by the defendant justice of the peace and was shown on the hearing, and that with this knowledge the defendant justice issued a warrant for her arrest, bound her over to the grand jury and imprisoned her in the county jail, and that the grand jury thereafter return no indictment against her. The court said that if the allegations in the petition were true, the affidavit clearly contained no charge of the commission of a criminal offense by anyone, and under such facts the justice had no authority to issue a warrant of arrest or to bind plaintiff's case over to the grand jury." See also: *Tracy v. Williams*, 4 Conn. 107 (1821); *Clark v. Hampton*, 163 Ky. 698 (1915). See: *Dynes v. Hover*, 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 court." *Elliott v. Peirsol's Lessee*, 26 U.S. 328 (1928)," A judgment rendered by a court which does not have jurisdiction constitutes no justification and persons concerned in executing such judgment are considered in law trespassers. If the court acts without authority, it's judgments and orders are regarded as nulities and form no bar to recovery, "even prior to reversal."

False Imprisonment

According to U.S. Supreme Court law, the moment that the Georgetown County Solicitor's Office made a conscious decision to try Plaintiff without jurisdiction pursuant to an indictment that was null and void, Plaintiff 's case became a criminal matter on behalf of The Georgetown County Solicitor's Office for false imprisonment malicious prosecution, and anyone who participated in Plaintiff 's unlawful incarceration became "trespassers of the law." *Dynes v. Hoover, supra*, 61 U.S. 65, (1857). Which means that the Georgetown County Solicitor's Office had no jurisdiction to try Plaintiff in first nor second trial.

Plaintiff further contends that according to U.S. 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, any **"alleged"** 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). *Exparte Lange, supra*, 85 U. S. 163 (1873).

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.

GROUND 5

CRAWFORD V. WASHINGTON, CONFRONTATION CLAUSE

Trial Court erred by the admission of an alleged hearsay statement by deceased involving the vague nicknames "D" and "Little D" as the person who shot him, ruling that the alleged hearsay statement did not violate Plaintiff 's Confrontation Clause rights because of a state evidentiary exception to the hearsay rule.

Plaintiff contends that the state's entire case rested solely on an alleged inadmissible hearsay statement from the victim (deceased), pursuant to the vague nicknames "D" or "Little D" shot him, according to witnesses was wearing a mask and could not be identified. Witnesses that alleged that the statement was made stated that the victim never established who this person was allegedly mentioned by nickname(s). Plaintiff contends that he has never been known by these nicknames. The record proves that the alleged hearsay statement was allowed in over trial counsel's objections, that: the hearsay statement involved a vague nickname(s) which did not indentify anyone, and allowing the statement to be admitted, and then allow the nicknames to be attributed to Plaintiff, would violate Plaintiff 's Sixth Amendment rights under the Confrontation Clause to cross-examaine the deceased as to whether he made the alleged statement, and who he was referring to by nickname(s). Despite this, the judge allowed the statement to be admitted, and although the victim never established who this person was "allegedly" mentioned by nickname(s), the state attributed the nickname(s) to Plaintiff.

Plaintiff contends that this was an error of law which violated his Sixth Amend. rights under the Confrontation Clause. See: *Crawford v. Washington*, 541 U.S. 36 (2004); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). The Georgetown County Solicitor's Office argued that the hearsay statement was admissable under the excited utterance exception to the hearsay rule, and because it was firmly rooted in South Carolina law, it satisfied the requirements of the Confrontation Clause, citing *State v. Burdett*, 335 S.C. 34 (1999). However, *Burdett*, was no longer good law, because the foundation of *Burdett* is, *Ohio v. Roberts*, 448 U.S. 56 (1980), which was overruled by *Crawford v. Washington*, 541 U.S. 36 (2004), "The Confrontation Clause, providing that accused has right to confront and cross-examine witnesses against him, applies not only to in-court testimony, but also to out-of-court statements introduced at trial, regardless of admissibility of statements under law of evidence, abrogating *Ohio v. Roberts*, 448 U.S. 56 (1980)." *Crawford*, establishes that no state evidentiary rule, or laws, no matter how firmly rooted, can ever override the U.S. Constitution Confrontation Clause, and therefore, the *Roberts* "firmly rooted" test to determine whether hearsay statements violates the Confrontation Clause departed from the "historical principals" of the guarantees under Sixth Amendment Confrontation Clause. See also: **EXPERT TESTIMONY AND CRAWFORD. 34-MAR S.C. LAW. 42, South Carolina Lawyer, March. 2023, Copyright 2023 by South Carolina Bar; Daniel Coble.** "In *Crawford v. Washington*, the Supreme Court held that the Sixth Amendment forbids hearsay testimony that is testimonial in nature, and thus overruled parts of *Ohio v. Roberts* that allow for hearsay as long as it was reliable. *Crawford* held that if a statement was testimonial in nature, and there was no meaningful opportunity for cross-examination, then the statement would be excluded unless the declaration testified at trial. Generally, the admission or exclusion of testimonial statements is straightforward. The court determines if the statement is testimonial, if it is, then the declarant of that statement must

testify (or there must have been a prior opportunity to cross-examine). Otherwise, a defendant's rights under the Confrontation Clause would be violated."

Plaintiff contends that *Crawford* had been established for eight years prior to his 2012 trial. Plaintiff contends that as professionals of the law, the Georgetown County Solicitor's Office knew that *Burdett* was no longer good law for the admission of testimonial hearsay statements despite any state exceptions to the hearsay rules. However, without any regards for Plaintiff's Confrontation Clause rights, the Georgetown County Solicitor's Office still prosecuted Plaintiff's case, and once the the trial judge committed an error of law, not in one, but in both tials, and allowed the statement in, the Georgetown County Solicitor's Office knowingly presented false testimony in both trials to falsely "pin" the "alleged" "vague" nicknames "D" and "Little D," "allegedly" mentioned by the victim on Plaintiff to obtain an unlawful conviction. (See GROUND 7).

GROUND 6

ACTUAL INNOCENCE

Trial court erred by denying Plaintiff's directed verdict motion, because the state failed to introduce substantial evidence that Plaintiff's was guilty of murder. Plaintiff contends that he is innocent of the crime of murder in which he is charged.

Trial court denied Plaintiff's directed verdict motion, although, at no time throughout the course of Plaintiff 's trial, was he ever identified by anyone as the person who committed the murder of Aundry Evans, Jr. There was no forensics, DNA, weapons, or any eyewitnesses that placed Plaintiff at the scene of the crime or in Georgetown County at the time that the crime occurred. Plaintiff also presented alibi witnesses who gave an account for his whereabouts during the entire time in which the crime occurred such that it would be physically impossible for the him to have committed the crime.

Plaintiff contends that he was acquitted of these charges in his first trial of 2012, by receiving a judgment of **"acquittal"** from the Honorable Judge Baxley, who discharged his jury on the grounds that **"the prosecution they are unable to meet the "burden of**

proof" to the extent that they could bring back a unanimous verdict." According to clearly established United State Supreme Court law, such a ruling was a "judgment of acquittal" which established Plaintiff 's **"lack of criminal culpability"** and his **"innocence."** (See: Grounds 1-3, also: *Burks v. United States*, 437 U.S. 1 (1978); U.S. v. Scott, 437 U.S. 82 (1978).

Alibi, Actual Innocence, Renewed Directed Verdict

See: Tr. P. 661 – P. 690, Alibi witnesses, LaQuesha Felder, Daniel Robinson, Leon Dizzley.

See: Tr. P. 690, L 24 – P. 691, L1 – 6.

Plaintiff contends that throughout the entire time that the crime occurred, his alibi witnesses gave an account for his whereabouts that makes it impossible for him to have committed the crime for which he is charged.

Alibi – Blacks Law Dictionary – "a defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The quality, state, or condition of having been elsewhere when an offense was committed."

See: Charge on The Law to the jury on defense of alibi. Trial of 2012, transcript pages 741, Line 23 – P. 742, Lines 1–10. Citing from Page 742, L. 9–10. **"The state has the burden to disprove the alibi defense."**

Plaintiff contends that the prosecution failed to disprove his alibi defense, which is that Plaintiff was in Orangeburg, S.C., where he lived at that time that the crime occurred, which was in Georgetown, S.C., which is three hours away, which was established by his alibi witnesses. See: *State v. Bealin*, 201 S.C. 490 (1943), "Where presence of accused at time and place of crime is necessary to responsibility there of, State **"must"** prove such presence beyond a reasonable doubt, and hence alibi is not affirmative defense in since that accused has burden of proof theron." *Schlup v. Delo*, 513 U.S. 331 (1995), "Sworn statements of two people that cast doubt on whether Petitioner could have participated in

the murder in light of his whereabouts around the time of the crime would support the Petitioners actual innocence claim if found to be reliable." *House v. Bell*, 547 U. S. 518 (2006). *Patterson v. New York*, 432 U.S. 197 (1970), "A state must prove every ingredient of an offense beyond a reasonable doubt and may not shift the burden of proof to the defendant by presuming an ingredient upon proof of the other elements of the offense." *Mullaney v. Wilbur*, 421 U.S. 684 (1975), "Protection of Due Process Clause against conviction except upon proof beyond a reasonable doubt is not limited to those facts which if not proved, would wholly exonerate the defendant." *Burks v. U.S.*, 437 U.S. 1 (1978), "Once Court of Appeals determined that Government had failed to rebut Petitioner's proof as to insanity, the resolution of factual issues, double jeopardy clause prohibited a second trial." See: *In re Winship*, 397 U.S. 358 (1970);

Plaintiff contends that the state's entire case rested solely on identification which revolved around an "alleged" hearsay statement by victim involving vague nicknames, "D or "Little D" as the person who shot him. According to the alleged witnesses, victim never established to them who he was referring to in reference to these nicknames, no physical descriptions, whether this individual was black, white, hispanic, female or male, etc. **Witnesses testified that the shooter wore a mask and hoodie and that they could not identify the shooter.**

Plaintiff contends that police officers testified that they questioned victim several times and they asked him did he know who shot him and the victim did not provide them with any information. See (Lt. Michael Nelson) Tr.p, 482, L13-P, 483, L1-1-4; (Officer Jarred Brandon) Tr.p. 463, L18-20.

Plaintiff contends that both Gary Gibson and Jamison Wright testified that the shooter was **"taller"** than Plaintiff, therefore, making it impossible to have been Plaintiff. Gibson: The record shows that Gibson gave the statements on August 20, 2012, to Investigator Steven Brown, that the shooter was **"too tall"** to have been Plaintiff. Plaintiff also stood up in court, as requested by trial counsel during cross-examination of

Gibson, and Gibson testified that the shooter, he witnessed enter the club, was taller than Plaintiff. Thus, Gibson's trial testimony corroborated his statement given to Investigator Brown on August 20, 2012. Gibson also testified that the shooter walked with a limp: See Tr.p. 405. L5-P. 408. L1-19. Gibson also testified that he could not tell if the shooter was white, "black, Puerto Rican, or Indians." Tr.p. 404, L17-24. Jamison Wright: See Tr.p. 418, L 8-11; in reference to shooter: **Q: Okay. What happened next? Anybody get out of the car? A: Yeah. Q: Who got out of the car? A: "A tall fellow."**

Plaintiff contends that these physical descriptions of the shooter by Gibson and Wright makes it impossible to have been Plaintiff who committed the crime. Larry Cooper: Cooper testified that he could not tell if the shooter was male or female, because the shooter was wearing a mask. Tr.p. 360, L. 5-18.

Plaintiff contends that Larry Cooper and Gary Gibson testified that they never heard the victim or anyone mention the nickname "Little D" the night of the shooting or heard anyone mention anything as to who they believed shot victim. See Tr.p. 367, L14-12 also Tr.p. 409, L25-P. 410, L1.

Plaintiff contends that the solicitor admitted, in her closing arguments, that the state failed to prove the identity of the shooter beyond a reasonable doubt, that the shooter was Plaintiff . See Tr.p. 722, L2-12. "Do spent bullets prove that Terron Dizzley committed this murder? Absolutely not, and if all I had to show you was some spent bullets, and some ballistics with no gun, I would understand if you return a not guilty, but that's not all. Folks, this physical evidence corroborates witness testimony, corroborates what they have to say. The physical evidence is consistent with **"someone"** who came in the bar, who ran straight up to Mr. Evans, who's standing by the pool table by all accounts and pulled the trigger somewhere between three and five times." See Tr.p. 722, L2-12.

Plaintiff contends that this statement alone by the solicitor proves that the state failed to prove beyond a reasonable doubt that Petitioner was this **"someone"** who

committed the crime. Plaintiff contends that the state presented witnesses to testify as to who they "believed" victim was talking about in reference to the alleged hearsay statement pursuant to the nicknames allegedly mentioned "D" or "Little D," which was pure speculation. *Galloway v. U.S*, 319 U.S 372 (1943), "The Constitutional amendment relating to jury trials does not deprive federal court of power to direct verdict for insufficiency of evidence. The essential requirement in determining whether evidence is sufficient for jury is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all reasonably possible inferences favoring party whose case is attacked, and mere difference in labels used to describe this method, whether applied under demure to evidence or motion of directed verdict, cannot constitute departure from the rules of common law required to be followed by constitutional amendments relating to jury trial." *Pennsylvania R. Co. v. Chamberlin*, 288 U.S 333 (1933). "Verdict may not be permitted to rest on mere speculation and conjecture. Jury's verdict cannot be predicated on conjecture, surmise or speculation." *U.S v. Martin Linen Supply Co.*, 430 U.S 564 (1977); *Gunning v. Cooley*, 281 U.S. 90 (1930), "Court should direct verdict where evidence with all inferences justifiably deductible there from, does not constitute sufficient basis for verdict for party producing it." *Evans v. Michigan*, 568 U.S. 313 (2013). See motion for directed verdict, Tr.p. 654, L8-P 655, L1-17.

Plaintiff contends that trial judge's reasons for denying directed verdict, based on the solicitor's arguments, were clearly contrary to federal law supported by the United States Supreme Court. See Tr.p. 655, L8-10 "There are two people who have picked Mr. Dizzley out of a lineup as being "the one" that the victim called "Little D," "D," or "Diz." The solicitor's entire case and the judge's ruling denying directed verdict rested solely on the hearsay statement allegedly made by the victim that "D" or "Little D" shot him. (Note: The solicitor added the nickname "Diz," which was never a nickname allegedly mentioned by the victim pursuant to the alleged hearsay

statement) and presentation of such highly prejudicial testimony and evidence, such as witnesses who did not witness the crime, who allegedly picked Petitioner out of photo-lineup as who they say victim called by nickname "D" or "Little D," not as the shooter. The solicitor then misleadingly use this evidence to "speculate" to the jury that the victim was referring to the Petitioner, which is unsupported by the record.

Plaintiff contends that after viewing the evidence in light most favorable to prosecution, any rational trier of fact could have found the essential element of the crime beyond a reasonable doubt was not proven by the prosecution in his case. Therefore, trial judge erred by denying Plaintiff's directed verdict motion, and Plaintiff was unconstitutionality convicted of a crime he is innocent of. See: *Jackson v. Virginia*, 443 U.S. 307 (1979), "Due process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offense."

GROUND 7

AFTER-DISCOVERED EVIDENCE, PROSECUTORIAL MISCONDUCT

Plaintiff also has after-discovered evidence which proves that the Georgetown County Solicitor's Office knowingly presented false testimony from their key witness Douglas Morris to falsely identify Plaintiff, not as the shooter, but, by the nickname "D," "Little D," pursuant to the alleged "vague" nicknames "allegedly" mentioned by the victim pursuant to the "alleged" hearsay statement.

On December 2, 2008, the day after the shooting, in an interview with Investigator Garrett and Dustin Morris of the Georgetown County Sheriff's Dep't, Douglas Morris stated that after the shooting, victim allegedly stated that "D" shot him. When Investigator Garrett asked Douglas did he know who this "D" was, Douglas responded, "**No Sir.**" However, Solicitor's Scott Hixson and Erin Bailey

knowingly presented false testimony from Douglas Morris in both of Plaintiff's first and second trials that he knew Plaintiff by the nickname "D" and that he believed victim was speaking of Plaintiff.

Plaintiff contends that he has never been known by the nicknames "D" nor "Little D," and did not know, nor had he ever met, nor seen Douglas Morris prior to both trials, nor did Douglas Morris know, nor ever met, nor seen Plaintiff prior to both trials. This was the sole issue of the prosecution's case, and the only reason Plaintiff was unlawfully convicted. This evidence was withheld from Plaintiff during both trials by his trial attorney. Plaintiff discovered this information after incarcerated. This evidence proves "prosecutorial misconduct," that the Georgetown County Solicitor's Office knowingly presented false testimony from Douglas Morris as to Plaintiff's indentity being that of "D," and "Little D," to obtain an unlawful conviction. See: Napue v. Illinois, 360 U.S. 264 (1959;

These issues are **"Acual Innocence"** issues, and others, whereas, the record proves that the Georgetown County Solicitor's never presented any evidence to refute this evidence. Therefore, according to clearly established United States Supreme Court law, under such circumstances, the Georgetown County Solicitor's Office never should have prosecuted Plaintiff's case, let alone, prosecute Plaintiff twice, especially after the Honorable Judge Baxley's discharged Plaintiff's jury in his first trial on the grounds that the Georgetown County Solicitor's Office failed to meet their **"burden of proof"** to convict him.

Instead, the Georgetown County Solicitor's Office unlawfully prosecuted Plaintiff without probable cause, without jursidiction, based solely on an inadmissible hearsay statement involving the vague nicknames "D" and "Little D," which did not identify anyone; argued that the hearsay statement should be admitted using law that was no longer good law; and then once the hearsay was admitted in clear error of the

v. Virginia, 443 U.S. 307 (1979), "Due process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offense."

GROUND 7

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Plaintiff contends that he has never been known by the nicknames "D" nor "Little D," and did not know, nor had he ever met, nor seen Douglas Morris prior to both trials, nor did Douglas Morris know, nor ever met, nor seen Plaintiff prior to both trials. This was the sole issue of the prosecution's case, and the only reason Plaintiff was unlawfully convicted. This evidence was withheld from Plaintiff during both trials by his trial attorney. Plaintiff discovered this information after incarcerated. This

evidence proves "prosecutorial misconduct," that the Georgetown County Solicitor's Office knowingly presented false testimony from Douglas Morris as to Plaintiff's indentity being that of "D," and "Little D," to obtain an unlawful conviction. See: Napue v. Illinois, 360 U.S. 264 (1959;

These issues are **"Acual Innocence"** issues, and others, whereas, the record proves that the Georgetown County Solicitor's never presented any evidence to refute this evidence. Therefore, according to clearly established United States Supreme Court law, under such circumstances, the Georgetown County Solicitor's Office never should have prosecuted Plaintiff's case, let alone, prosecute Plaintiff twice, especially after the Honorable Judge Baxley's discharged Plaintiff's jury in his first trial on the grounds that the Georgetown County Solicitor's Office failed to meet their **"burden of proof"** to convict him.

Instead, the Georgetown County Solicitor's Office unlawfully prosecuted Plaintiff without probable cause, without jursidiction, based solely on an inadmissible hearsay statement involving the vague nicknames "D" and "Little D," which did not identify anyone; argued that the hearsay statement should be admitted using law that was no longer good law; and then once the hearsay was admitted in clear error of the law, the Georgetown County Solicitor's Office then knowingly presented false testimony from Douglas Morris to falsely testify that he knew Plaintiff by the same nickname, and then used this false testimony, along with others, to mislead the jury that Plaintiff was the same person "allegedly" mentioned by victim by the nickname "D" as to who shot victim, without any proof. And once the Honorable Judge Baxley discharged Plaintiff's jury in his first unlawful trial on the grounds that this decision was 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," which has been established for over **"fourty five years,"** in *Burks v. U.S, supra*, 437 U.S. 1 (1978), is aquittal, which established Plaintiff's **"innocence,"** dispite the **"label"** placed on the ruling as a mistrial/hung jury, see also *U.S. v. Martin Linen Supply Co., supra*, 430 U.S. 564 (1977). The record proves that the Georgetown County Solicitor's Office didn't stop there, they unlawfully prosecuted Plaintiff again for the same offense, not stopping until they obtained an unlawful conviction at "all" cost.

For the foregoing reasons the Motion should be granted and the Court must Enter a Permanent Injunction to the SCDC to immediately release Plaintiff from being held illegally incarcerated.

Date: May 21, 2024

With kind regards,

S/ Terron Dizzley

Georgetown Court of Common Pleas
401 Cleland Street
Georgetown, S.C. 29440

Terron G. Dizzley, #359480
ACI
1057 Revolutionary Trail
Fairfax, S.C. 29827

Original

Alma Y. White
Georgetown County Clerk of Court

P. O. Box 479 • 401 Cleland St.
Georgetown, SC 29442

Date: May 28, 2024

TO: Terron Dizzley #359480
ACI
1057 Revolutionary Trail
Allendale, SC 29827

In response to your request regarding:

____ A *PCR Form*. Enclosed is a PCR form.

__ __ *Legal advice*. The Clerk of Court is prohibited from providing *legal advice*. Contact your attorney for assistance.

____ *Information from your file(s).* Records in this office are open to the public. Please contact a relative, friend or your attorney to research your case(s) and make copies at a minimum cost. Office hours are 8:30 a.m. – 5:00 p.m. Monday through Friday. Copy fees are $ 0.50 per page, if a clerk makes the copies.

__ __ Being *relieved from your attorney*. The Clerk of Court has no authority to *relieve* a Defendant of an attorney. A Circuit Court Judge must address this request.

_____ Correction(s) on *Sentencing Sheet*. The Clerk of Court has no authority to adjust or change information on a sentencing sheet. Please contact your attorney for legal advice.

_____ *Forwarding information* to the Solicitor/attorneys/judges/etc. Your documents are being returned. The Clerk's office accepts no responsibility for forwarding information to a third party.

____ *Clocking and filing motions/documents etc.* Contact your attorney to properly file motions/documents/etc.

_____ *A copy of a deposition*(s). Contact the attorney(s) involved in the case for copies.

_____ *The status of your pending case(s).* Contact your attorney

_____ E*xpungement* information/application. Contact the Solicitor's Office.

_____ A *detainer*. Contact the Solicitor's Office.

__ __ Information on the following *warrants(s);* _____.
At this time, this office has no record of the warrant(s) in question. Contact the arresting agency.

_____ A copy of a transcript(s). You will need to contact the Court Reporter.

__X__ **Other : I am returning the Motion for Extension of Time to File Motion to Alter Amend Correct Reconsideration and the Certificate of Service. Per the Order of Dismissal filed on May 8, 2024, "the Georgetown County Clerk of Court is hereby instructed not to accept any pleadings or other documents from Plaintiff or anyone else on Plaintiff's behalf that are not compliant with the terms of this Order." Since this case was dismissed by Court, this case cannot be reopened. Thank you.**

-Clerk of Court

State of South Carolina County of Georgetown Terron Dizzley Plaintiff V. Jimmy Richardson, et al Defendants	In The Court of Common Pleas Fifteenth Judicial Circuit CIA No. 2024-CP-22-00105 Motion For Extension of Time To File Motion To Alter Amend, Correct, Reconsideration

Plaintiff Terron Dizzley moves before the Honorable Court with a Motion For Extension of Time To File Motion To Alter, Amend, Correct, Reconsideration pursuant to Order Denying Permanent Injunction, signed by Judge Bentby Price.

1. Plaintiff recieved notice of order denying Motion For Permanent Injunction on May 16, 2024.

2. Because of the circumstances of Plaintiff's incarceration and limited resources to obtain discovey needed to effectively prepare the Motion To Alter, Amend..., Plaintiff needs additional time.

For the foregoing reasons, Plaintiff request that this motion is granted.

Date: May 21, 2024

Respectfully submitted,

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

Notice

Georgetown Court of Common Pleas
401 Cleland Street
Georgetown, S.C. 29440

RE: Terron Dizzley v. Jimmy Richardson, et al
2024-CP-22-00105

Dear Clerk:

Enclosed please find Motion For Extension of Time To File Motion To Alter, Amend, Correct, Reconsideration Stamp file please send copy to me.

Date: 5-21-2024

With Kind regards,
Terron
Terron Dizzley #359480
ACI 1057 Revolutionary Trail
Fairfax, S.C. 29827

Certificate of Service

RE: Terron Dizzley v. Jimmy Richardson, et al
2024-CP-22-00105

I Terron Dizzley Certify that on this ~~13th~~ 21st day of May 2024 filed a Motion For Extension of Time To File Motion To Alter, Amend, Correct, Reconsideration Pursuant To Order Denying Permanent Injunction by placing in U.S. Mail, postage prepaid sent to address below:

Georgetown Court of Common Pleas
401 Cleland Street
Georgetown, S.C. 29440

Attorney General of South Carolina
Alan Wilson
P.O. Box 11549
Columbia, S.C. 29211

Terron Dizzley #359480
ACF, 1057 Revolutionary Trail
Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA,
COUNTY OF Georgetown

IN THE COURT OF COMMON PLEAS

15th JUDICIAL CIRCUIT

Terron Dizzley
Plaintiff

vs.

Erin Bailey, et al.
Defendant.

MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

FILE NO. 2024-CP-22-00105

I, _____ being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me this _____ day of _____, 2 _____

_____
Notary Public for South Carolina

My Commission expires _____

_____
Signature of Plaintiff or Person Filing Complaint on Behalf of Plaintiff

ORDER

☐ Leave is *granted* to proceed in forma pauperis without payment of the filing fee.

☐ Leave is granted to proceed in forma pauperis without payment of the service cost.

☑ Leave is *denied* to proceed in forma pauperis.

Case was dismissed per order of Judge Price on May 8, 2024. It was dismissed with prejudice.

Dated: 5/17/2024

Georgetown, South Carolina

_____
JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

SCCA 405CP (10/10)