

IN THE SOUTH CAROLINA COURT OF APPEALS

In Re Terron Dizzley

Case No. 2024-001176

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SC Court of Appeals

**EMERGENCY PETITION FOR WRIT OF MANDAMUS IN AID OF
APPELLATE COURT JURISDICTION**

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Questions Presented

1. Whether the trial judge's ruling in Petitioner's first trial of 2012, discharging Petitioner's jury on the grounds that the state failed to meet their "burden of proof" to convict him was a "judgment of acquittal" for purposes of double jeopardy which barred Petitioner's second trial of 2014?
2. Whether the Circuit Court Judge Benjamin H. Culbertson stated an error of law in his ruling pursuant Petitioner's November 17, 2022 hearing and acquitted Petitioner again when he stated that the Honorable Judge Baxley's ruling in Petitioner's first trial of 2012, which was a jury trial, discharging his jury on the grounds that the prosecution failed to meet their "burden of proof" to convict him "was" a judgment of acquittal for purposes of double jeopardy, "but," it would have only been an acquittal for double jeopardy purposes if Petitioner's trial was a bench trial, and because Petitioner had a jury trial the Honorable Judge Baxley's ruling was not an acquittal?
3. Whether Judge Baxley's sua sponte declaration of a mistrial in Petitioner's first trial of 2012 was not dictated by a manifest necessity or ends of public justice and therefore, Petitioner's second trial of 2014 for the same offense violated Petitioner's Fifth Amendment rights under the Double Jeopardy Clause?
4. Whether the trial court exceeded its jurisdiction by holding Petitioner to answer for an infamous crime and sentencing Petitioner to imprisonment pursuant to an indictment that was null and void. Therefore, both Petitioner's first trial of 2012, and his second trial of 2014 was without jurisdiction?
5. Whether 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 Petitioner's Confrontation Clause rights because of a state evidentiary exception to the hearsay rule?
6. Whether trial court erred by denying Petitioner's directed verdict motion, because the state failed to introduce substantial evidence that Petitioner was guilty of murder? Petitioner contends that he is innocent of the crime of murder in which he is charged.

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JURISDICTIONAL STATEMENT

Petitioner Terron Gerhard Dizzley moves before this Honorable Court with a Emergency Petition for Writ of Mandamus In Aid of Appellate Court Jurisdiction. The jurisdiction of this petition is invoked by SCRCF, Rule 65; and 28 U.S.C.A. 1651, All Writs Acts, SC ST § 14-8-200; Court of Appeals, Jurisdiction of Court; limitation, states in part: “ **This Jurisdiction is appellate only, and court shall apply the same scope of review that The Supreme Court would apply in similar case. The Court has the same authority to issue writs of supersede, grant stays, and grant petitions for bail as The Supreme Court would have in a similar case, the court, to the extent The Supreme Court may by rule provide for it to do so, has the jurisdiction to entertain petitions for writ of certiorari in post-conviction matters pursuant to Section 17-27-100.**”

Petitioner demands that the Honorable Judge Edward Lockemy cease from turning a “**blind eye**” to his illegal incarceration and issues an order to the South Carolina Department of Corrections to immediately release him from being held illegally incarcerated for ten years and counting pursuant to a sentence imposed on him without any legal nor jurisdictional authority in violation of the Fifth Amendment’s Double Jeopardy Clause and pursuant to an indictment that was null and void. See: Anderson v. State, 338 S.C. 629 (2000), “**Even though inmate convicted of murder did not raise issue of subject matter jurisdiction on appeal, he could raise it in his ensuing petition for writ of mandamus.**”

Petitioner contends that he has exhausted all other remedies and the normal appeal process is an inadequate remedy to challenge a sentence imposed on him in violation of the Double Jeopardy Clause, and to challenge subject matter jurisdiction

because Petitioner would suffer further “**irreparable harm**” from such undue delay of the normal appeal process in seeking immediate release from being held illegally incarcerated which would further violate Petitioner's Eighth Amendment rights to be free from “cruel and unusual punishment;” Thirteenth Amendment rights to be free from an “unlawful subjection to slavery;” and Fourteenth Amendment rights to Due Process and Equal Protection of Laws. State v. Rearick, 417 S.C. 391 (2016), “A defendant may still challenge the denial of a motion to dismiss on double jeopardy grounds via (1) a petition for federal habeas corpus relief, or (2) a petition for this Court to issue an extraordinary writ; citing Livingston v. Murdaugh, 183 F. 3d 300, 301 (4th Cir. 1999); Gilliam v. Foster, 63 F.3d 287, 291 (4th Cir. 1995).

Ex parte 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. Where probable ground is shown that the party is in custody under or by color of authority of the United States, and is imprisoned without just cause, and, therefore, has a right to be delivered, “the writ of habeas corpus then becomes a writ of right which may not be denied,” as it ought to be granted to every man who is unlawfully committed or detained in prison or otherwise restrained of his liberty. 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."

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." State v. Guthrie, 358 S.C. 102 (2002), "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. State v. Funderburk, 259 S.C. 256 (1972), "It is elementary that lack of jurisdiction of the court or subject matter can be raised at any time, including for the first time on appeal in this Court. Accordingly, it is immaterial that the defendant failed to appeal from the earlier ruling of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be assumed that he had the right to." Tatnal v. Gardner, 350 S.C. 135 (2002), "Issue of subject matter jurisdiction may be raised at anytime including when raised for first time on appeal to an appellate court. Subject matter jurisdiction may not be waived even with consent of parties. An appellate court **must**, on its own motion, raise issue of subject matter jurisdiction to ensure orderly administration of justice." State v. Castleman, 219 S.C. 136 (1951), "we should raise the question of jurisdiction on our own motion, so as to preserve the orderly administration of justice and to prevent the punishment of the defendant under the present sentence." Key v. Currie, 305 S.C. 115 (1991), "this Court will exercise its original jurisdiction where there is an extraordinary reason such as a question of significant public interest or an emergency."

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STATEMENT OF ISSUES
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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 to 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. **Although retrial is sometimes permissible after a mistrial is declared but no verdict or judgment has been entered, the verdict of acquittal foreclosed retrial and thus barred appellate review.**" 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 Mistrial Would Violate Double Jeopardy Rights

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

Statement of Facts

It has been established by the Supreme Court of the United States for over "**one hundred and fifty (150) 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: *Ex parte Lange*, 85 U.S. 163 (1873), "**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.**"

Petitioner 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, Krystal 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, after stating the following: See: Transcript of 2012 trial (by Court Reporter, Grace Hurley). Ruling of the Honorable Judge Michael Baxley. Pages 314, L. 1 – 18 through Pages 315, L.1 – 8. “....I’ve received a message that tells me that the jury is still deadlocked and unable to reach a decision in this case and **I want to, first of all, tell you one or two things that I have on my mind and heart about this matter.** 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 all 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.

Now, the way this process actually works is it is up to the Solicitor as to whether they will dismiss the charges or whether they will retry this case or perhaps redevelop the charge in some way and bring a separate charge of some kind and try that. It’s a - the decision rests with the

Solicitor. It's not within the control of the Defendant, but what's going to happen here is the Court is going to declare a "mistrial," but I don't want you believe in any way, zero way, that somehow you are responsible for that, because you are not. You're given a set of "facts" that were the best that a state could adduce from what happened and what they were able to determine, they put that up to you and you brought back a wise, common-sense decision that you simply could not agree upon it. There is a message in that and so you've accomplished your purpose."

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 Petitioner, 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 Petitioner, and, according to clearly established state and federal law, that ruling was a "judgment of acquittal."

Petitioner contends that after the Honorable Judge Baxley had determined that **"the prosecution that they are unable to meet the "burden of proof" to the extent that they can bring back a unanimous verdict,"** in his comments leading up to declaring a mistrial stating that: "Now, the way this process actually works is it is up to the Solicitor as to whether they will dismiss the charge or whether they will retry this case or perhaps redevelop the charge in some way and bring a separate charge of some kind and try that. It's a – the decision rests with the Solicitor," was contrary to U.S. Supreme Court law, and is **"not"** how the process actually works after the trial court has determined that the prosecution has failed to meet the **"burden of proof."**

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 Petitioner'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 declaring a mistrial and affording the prosecution another opportunity to try Petitioner again for the same offense after finding that the prosecution failed to meet their "**burden of proof**" to convict him, violated his Fifth Amendment rights under the 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 similar to Judge Baxley's ruling in Petitioner'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 Petitioner'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 his 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 mistrial 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.

SUBSTANCE OF TRIAL JUDGE’S STATEMENTS WAS AN ACQUITTAL

Freer v. Dugger, 935 F. 2d 213 (1991, 11th Cir), “In determining whether the trial judge’s ruling was an acquittal based on insufficiency of evidence as the district court held, this Court must focus on the substance of the ruling not its form. The court must consider whether the ruling in defendant’s favor was actually an acquittal even though the trial court characterized it otherwise. If the trial court “evaluated the Government’s evidence and determined that it was legally insufficient to sustain a conviction, “double jeopardy” is triggered. The question, then, is whether the substance of the court’s judgment was an acquittal, even though in form the court granted a new trial.”

Petitioner contends that *Freer v. Dugger*, 935 F. 2d 213 (1991, 11th Cir.); *Burks v. U.S.*, 437 U.S. 1 (1978); *Hudson v. Louisiana*, 450 U. S. 40 (1981); *U. S. v. Martin Linen Supply Co.*, 430 U. S. 40 (1981); and *U. S. v. Scott*, 437 U. S. 82 (1978), is particularly instructive pursuant to his case on “**judgments of acquittals,**” the meaning of “**insufficiency**” and “**substance over form,**” for purposes of double jeopardy.

In *Freer v. Dugger*, 935 F. 2d 213 (1991, 11th Cir.), “Appellee Albert Herman Freer was indicted on charges of first degree murder and armed robbery in the circuit Court of Escambia County, Florida. At the end of the first trial the jury returned a verdict of guilty to a lesser included offense of second degree murder and grand theft At a hearing held on defendant’s motion for a judgment of acquittal, **defense counsel argued that the state failed to prove its case beyond a reasonable doubt.** The trial judge after hearing arguments on both sides, ruled that he would set aside the verdict. At this time the state responded, “**If the court is in consideration of setting aside the verdict can I ask the court to treat it in the nature of a motion for a new trial so that the State can appeal the decision.**” The judge agreed, stating: “**I will grant the motion for a new trial because I am not satisfied the evidence proves guilt beyond a reasonable doubt and grant a new trial on the issue-that will give the State a chance to appeal and we’ll see what the appellate court has to say.**” On appeal to the Florida First District Court of Appeals, two judges agreed to affirm the granting of a new trial. On retrial, after hearing additional evidence that was not presented in the first trial, the jury returned a verdict identical to that in the first trial. On habeas corpus the district court held that, “**the Double Jeopardy Clause barred Freer’s retrial and subsequent conviction.**” The district court held that: “**The trial judge’s statement in ultimately concluding that he would instead grant the state’s motion for a new trial-the judge said that he was not satisfied the evidence**

proved guilt beyond a reasonable doubt -also indicated that he was basing his ruling on the sufficiency of the evidence. As to the trial judge's comment that granting the motion for a new trial will give the State a chance to appeal, "the district court concluded that the judge was attempting "to put form over substance" in an attempt to mollify the effect of overturning the guilty verdict." The district court concluded that because the judge had determined that the state had failed to prove guilt beyond a reasonable doubt the state cannot then ask for, and get, another bite at the apple."

Petitioner contends that *Freer's* case is so similar to his case both factually and legally that the Due Process and Equal Protection of Laws Clause under the U.S. Const. Amend. Fourteen, sec. 1; S.C. Const., art. 1, sec. 3, requires that he is afforded the same protections under the Fifth Amendment Double Jeopardy Clause. Petitioner contends that, as in *Freer*, the Honorable Judge Baxley, in his case, after stating that the, "the prosecution that they are unable to meet the "burden of proof" to the extent that they can bring back a unanimous verdict," and then stating that it was up to the prosecution whether they would retry the case and declaring a mistrial, Judge Baxley was attempting to "put form over substance," in an attempt to "mollify" the effect of his "judgment of acquittal." Judge Baxley, after establishing that "the prosecution that they are unable to meet the "burden of proof" to the extent that they can bring back a unanimous verdict," could not then afford the prosecution "another bite at the apple."

Green v. Massey, 437 U.S. 19 (1978), "On appeal of the first degree murder convictions of petitioner and another, the Florida Supreme Court reversed by a *per curiam* opinion and ordered a new trial. That opinion, which a majority of the justices joined stated, "the evidence was definitely lacking in establishing beyond a reasonable doubt that the defendants committed murder in the first degree," and that the "interest of justice require a new trial..." Before

the second trial defendants unsuccessfully contended in the state courts that the trial court's *per curiam* opinion was tantamount to a finding that the trial court should have directed a verdict of not guilty and a second trial for first-degree murder would constitute double jeopardy; and defendants were retried and convicted of first-degree murder. The U.S. Supreme Court held that: If we were confronted only with the *per curiam* opinion of the Florida Supreme Court, reversal in this case would follow. The *per curiam* disposition, standing by itself, leaves no room for interpretation by us other than that a majority of the State Supreme Court was **"of the view that the evidence was definitely lacking in establishing beyond a reasonable doubt that the defendants committed murder in the first degree..."** By using the precise terminology **"lacking in establishing guilt beyond a reasonable doubt,"** the highest court in Florida seems to have clearly said that there was insufficient evidence to permit the jury to convict petitioner at his first trial.... Viewed in the manner, the reasoning enunciated in *Burks*, would obviously compel the conclusion that *Green's* second trial violated the Double Jeopardy Clause."

Petitioner contends that his case is the same as *Green's*, the Honorable Judge Baxley, by using the precise terminology that **"the prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict,"** was clearly saying that there was insufficient evidence to convict him in his first trial, therefore, Petitioner's second trial violated the Double Jeopardy Clause.

According to clearly established United States Supreme Court law, the Honorable Judge Baxley's ruling discharging Petitioner'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. 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 to 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. **Although retrial is sometimes permissible after a mistrial is declared but no verdict or judgment has been entered, the verdict of acquittal foreclosed retrial and thus barred appellate review.”**

Mannes v. Gillespie, 967 F.2d 1310 (1992), "(1) District Court was not required to abstain from hearing habeas petition; (2) state trial judge's dismissal of murder charges in furtherance of justice based on finding that evidence at trial was insufficient to convict, was a acquittal for double jeopardy purposes; (3) and judgment of acquittal entered after deadlocked jury is dismissed terminates jeopardy and prevents retrial. 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 retrial 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.**"

Petitioner contends that the record proves that Judge Baxley's comments in reference to declaring a mistrial, Judge Baxley made no comments that he: (1) reconsidered his "**strong message**" to the prosecution that they were unable to meet the "**burden of proof**" to convict him. See: Smith v. Massachusetts, 543 U.S. 462 (2005); (2) Judge Baxley made no comments that his decision to declare a mistrial was pursuant to any "procedural" reasons on questions unrelated to factual "guilt" or "innocence," that would justify declaring a mistrial. See: Evans v. Michigan, 568 U.S. 313 (2013), quoting U.S. v. Scott, 437 U.S. 82 (1978), "**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.” Petitioner contends that, as in *Evans*, in his case, the Honorable Judge Baxley’s ruling was a determination that, “the State had failed to prove its case.” Therefore, under U.S. Supreme Court precedents, then, Petitioner was acquitted; and (3) Nor, does the record reflect that there was a “manifest necessity” to declare a mistrial. (See: Ground 3).

As a matter of fact, the record proves that after declaring a mistrial, the Honorable Judge Baxley made additional comments that he evaluated the “set of facts” presented to the jury, and reiterated his view that his decision to declare a mistrial was based on a “strong message” to the prosecution that were unable to meet the “burden of proof” to convict Petitioner.

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).

Petitioner contends that his case is the same as *Gregorie*, on the merits, the issue is “simple.” In Petitioner'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. Petitioner 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)."

LACK OF TRIAL COURT'S JURISDICTION TO IMPOSE SENTENCE
PURSUANT VIOLATION OF FIFTH AMENDMENT DOUBLE JEOPARDY
CLAUSE

Petitioner 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: *Horry County v. Parbel*, 378 S.C. 253 (2008), "A criminal trial was held in magistrate's court, and Appellants requested jury trial. After Horry County rested it's case, Appellants moved for a dismissal of all charges. The magistrate granted Appellant's motion for dismissal and inculcated "**the County has not met the allegations of this zoning ordinance in proving 1303.**" Horry County appealed the magistrate's ruling to circuit court after Appellant's acquittal on March 8, 2005. Though the magistrate prayed for the circuit court to dismiss Horry County's appeal with prejudice, the circuit court found it had both subject matter jurisdiction over the issues raised on appeal and personal jurisdiction over Appellants. Appellants maintain the circuit court violated the Double Jeopardy Clause by ruling on Horry County's appeal after they were acquitted in magistrate's court. We agree. **The United States has a long history of this constitutional protection. "If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. And though there have been nice questions in the application of this rule to**

cases in which the act charged was such as to come within the definition of more than one statutory offence, or to bring the party within the jurisdiction of more than one court, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence. *Exparte Lange*, 18 Wall. 163, 85 U.S. 163, 168, 21 L. Ed. 872 (1873). The Supreme Court explicated: "Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that '(a) verdict of acquittal... could not be reviewed on error or otherwise, without putting (a defendant) twice in jeopardy, and thereby violating the Constitution." *U.S. v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977).

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."

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 Benjamin H. Culbertson stated an error of law in his ruling pursuant Petitioner's November 17, 2022 hearing and acquitted Petitioner again when he stated that the Honorable Judge Baxley's ruling in Petitioner's first trial of 2012, which was a jury trial, discharging his jury on the grounds that the prosecution failed to meet their "burden of proof" to convict him "was" a judgment of acquittal for purposes of double jeopardy, "but," it would have only been an acquittal for double jeopardy purposes if Petitioner's trial was a bench trial, and because Petitioner had a jury trial the Honorable Judge Baxley's ruling was not an acquittal.

Statement of Facts

Petitioner 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 Petitioner's trial had been a bench trial, and that because Petitioner had a jury trial, it was not an acquittal.

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

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

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

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

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

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

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

14 **since he was retried has filed motions over and over**

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

16 **try me that second time....**

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 the

Fifth Amendment Double Jeopardy Clause, ruling that the Honorable Judge Baxley's ruling in Petitioner's first trial of 2012 that the prosecution failed to meet their **"burden of proof"** **"was"** an acquittal for Double Jeopardy purposes if Petitioner's trial was bench trial, and because Petitioner had a jury trial it was not an acquittal, was also an acquittal despite the **"label"** that he placed on his ruling of a "denial" of Petitioner's "Emergency Motion For Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence."

Therefore, Petitioner was acquitted **"twice,"** receiving two "favorable terminations" of his case, (1) in Petitioner's first trial of 2012, when the Honorable Judge Baxley discharged his jury on the grounds that the prosecution failed to meet the **"burden of proof"** to convict Petitioner; and (2) when the Honorable Judge Culbertson, at the November 17, 2022 hearing admitted that Judge Baxley's ruling was an acquittal.

GROUND 3

DOUBLE JEOPARDY

"MANIFEST NECESSITY OR ENDS OF PUBLIC JUSTICE"

III. Judge Baxley's sua sponte declaration of a mistrial in Petitioner's first trial of 2012 was not dictated by a manifest necessity or ends of public justice and therefore, Petitioner's second trial of 2014 for the same offense violated Petitioner'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

Petitioner contends that the Honorable Judge Baxley’s ruling of “acquittal” resulted from an improvidently granted mistrial after only three to four hours of deliberations, portions of that time was consumed by several questions from the jury and time for answering these questions. Judge Baxley, with no consideration to any alternative, without giving any advance warning or notice to the defense counsel nor the court, and without polling the jury, spontaneously declared a mistrial. See: Transcript of 2012 by Court Reporter, Krystal Smith, Tr. P. 116 – 125. See also: Transcript of Court Reporter, Grace Hurley, Tr. P. 308, L6 – 316.

On August 29, 2012, at 1:07 p.m., the jury began deliberations. Shortly after deliberations began, the jury sent a message asking to hear the testimonies of

Petitioner'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 Petitioner'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.**"

Petitioner 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.”

Petitioner 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 Petitioner'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, Petitioner's case is distinguished from *Robinson*. In Petitioner'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.

Petitioner 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).

Petitioner 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 Katzmman 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."

Petitioner 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, Petitioner'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, in Petitioner's first trial of 2012, was not dictated by a manifest necessity or ends of public justice, and therefore, Petitioner's second trial of 2014 was barred by double jeopardy.

GROUND 4

INDICTMENT

IV. The trial court exceeded its jurisdiction by holding Petitioner to answer for an infamous crime and sentencing him to imprisonment pursuant to an indictment that was null and void. Therefore, both Petitioner's first trial of 2012, and his second trial of 2014 was without jurisdiction.

Statement of Facts

Petitioner 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.”

Petitioner 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 Petitioner, 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 Petitioner's

arrest. Thus, according to the Fourth Amendment of the U.S. Constitution, Petitioner'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.

Petitioner 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 Petitioner's arrest warrant affidavit only cites no more than elements of the crime charged, and only states that Petitioner 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."

Petitioner 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".

Petitioner 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 Petitioner's arrest warrant is constitutionally deficient, which resulted in an unlawful arrest, unlawful pre-trial detainment, 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

Petitioner 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 Petitioner'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 the 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.”**

Petitioner 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 Sheriff’s Department. Therefore, Petitioner's arrest warrant was invalid, and The Georgetown County Sheriff’s Department had no legal nor jurisdictional authority to deprive him of his liberty.

Petitioner contends that the record proves that he requested and had a preliminary hearing. Petitioner 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."

Petitioner 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 Petitioner's case over to a criminal court for an "**otherwise unconstitutional**" restraint of Petitioner'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. See: *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), "Warrant for search of automobile was invalid because it was not issued by a "neutral and detached magistrate" where determination of probable cause was made by chief enforcement agent of the state, the Attorney General, who was actively in charge of criminal investigation and later was to be chief prosecutor at trial."

Petitioner 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 obtained pursuant to an affidavit that didn't establish any probable cause, and was constitutionally deficient, and , therefore, "**void**," and that Petitioner was being held unlawfully. Therefore, the magistrate had no jurisdictional nor legal authority to even conduct a preliminary

hearing (**Note:** Petitioner 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 Petitioner be immediately released from being held unlawfully.

Instead, the magistrate at Petitioner's preliminary hearing, unlawfully, and without probable cause nor jurisdiction, bound Petitioner'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 there was probable cause for the arrest, and if the arrest warrant's affidavit doesn't establish any probable cause, 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 Petitioner's preliminary hearing had no legal nor jurisdictional authority to issue an order to bound Petitioner's case over to criminal court pursuant to a constitutionally deficient, as a result, was “null and void.” 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 Petitioner pursuant to such order. Therefore, according to South Carolina law, Petitioner's indictment is also “null and void.” According to U.S. Supreme Court law, because Petitioner'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 Petitioner without jurisdiction pursuant to an indictment that was null and void, Petitioner'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 Petitioner'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 Petitioner's in his first nor second trial.

Petitioner 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 regards."

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 Petitioner's Confrontation Clause rights because of a state evidentiary exception to the hearsay rule.

Petitioner 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). Petitioner 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 identify anyone, and allowing the statement to be admitted, and then allow the nicknames to be attributed to Petitioner, would violate his Sixth Amendment rights under the Confrontation Clause to cross-examine 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 Petitioner.

Petitioner 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 admissible 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 declarant 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."

Petitioner contends that *Crawford* had been established for eight years prior to his 2012 trial. Petitioner 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 Petitioner's Confrontation Clause rights, the Georgetown County Solicitor's Office still prosecuted Petitioner's case, and once the trial judge committed an error of law, not in one, but in both trials, 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 Petitioner to obtain an unlawful conviction. (See GROUND 7).

GROUND 6

ACTUAL INNOCENCE

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

Trial court denied Petitioner's directed verdict motion, although, at no time throughout the course of his 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 Petitioner at the scene of the crime or in Georgetown County at the time that the crime occurred. Petitioner 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.

Petitioner 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 Petitioner'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.

Petitioner 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."**

Petitioner contends that the prosecution failed to disprove his alibi defense, which is that Petitioner 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 thereon." *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);

Petitioner 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.

Petitioner 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.

Petitioner contends that both Gary Gibson and Jamison Wright testified that the shooter was "**taller**" than him, therefore, making it impossible to have been him. 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 Petitioner. Petitioner 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 him. 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."**

Petitioner contends that these physical descriptions of the shooter by Gibson and Wright makes it impossible to have been him 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.

Petitioner 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.

Petitioner 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 Petitioner. 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.

Petitioner 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. Petitioner 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.

Petitioner 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.

Petitioner 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 Petitioner's directed verdict motion, and Petitioner was unconstitutionally 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

Statement of Facts

Petitioner 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 him, 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 Petitioner's first and second trials that he knew Petitioner by the nickname "D" and that he believed victim was speaking of Petitioner.

Petitioner 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 Petitioner prior to both trials. This was the sole issue of the prosecution's case, and the only reason Petitioner was unlawfully convicted. This evidence was withheld from Petitioner during both trials by his trial attorney. Petitioner 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 Petitioner's identity being that of "D," and "Little D," to obtain an unlawful conviction. See: Napue v. Illinois, 360 U.S. 264 (1959).

WHEREFORE, the Petitioner demands that the court award him the following relief:

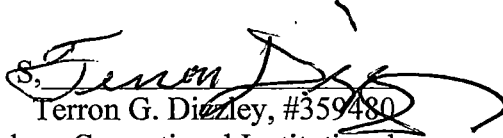
1. That the Honorable Chief Judge, Edward Lockermey issues a writ of mandamus to the SCDC to immediately release Petitioner, Terron Gerhard Dizzley from being held illegally incarcerated.
2. Grant such other and further relief in favor of the Petitioner the court seems just and appropriate.

CONCLUSION

For the foregoing reasons, Petitioner's Writ of Mandamus must be granted, and the Court must issue an order to the SCDC to immediately release Petitioner from being held illegally incarcerated.

Date. 9-11-24

Respectfully submitted,


Terron G. Dizzle, #359480

Kershaw Correctional Institutional
4848 Goldmine Highway
Kershaw, SC 29067

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

STATE V TERRON DIZZLEY

Case No. 2009-GS-22-00778

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

5 OFF THE RECORD

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

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

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

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

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

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

22 MR. HIXSON: I concur, Your Honor.

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

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

1 MR. THOMPSON: It was close.

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

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

14 (No response.)

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

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

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

1 client for just a second.

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

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

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

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

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

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

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

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

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

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

23 MR. THOMPSON: No, no.

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

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

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

3 Now, let's talk about what happens if you do not agree or

4 cannot agree on a verdict. If that happens and the Court

5 declares a mistrial and what that means is that nobody wins,

6 neither the State nor the Defendant. It just means that at

7 some future time this case will be tried again with some other

8 jury sitting where, where you sit today. The same

9 participants will come in, same witnesses, most likely give

10 the same testimony, the same lawyers will basically ask the

11 same questions and we'll go through the entire process of the

12 trial again.

13 Now, you were selected in the same manner and from the

14 same jury pool really, the community, as any future jury will

15 be and there's no reason for me to suppose or expect that the

16 case would ever be submitted to 12 more intelligent and

17 capable, that is capable, impartial and conscientious and

18 competent jurors than you are and that some greater evidence

19 or more or clear evidence will be adduced on one side or the

20 other.

21 So, ladies and gentlemen, I'm going to ask you to return

22 to your deliberations one more time. If you're unable to

23 reach a verdict please advise me of that, but I ask you in

24 compliance with the instructions that I've given you to go

25 back and try again and out of respect for you and your efforts

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

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

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

9 MR. HIXSON: No, Your Honor.

10 MR. BARR: No, Judge..

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

14 OFF THE RECORD

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

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

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

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

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

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

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

1 but I don't want you to believe in any way, zero way that that
2 somehow you are responsible for that because you are not.

3 You're given a set of facts that were the best that the State

4 ~~could adduce from what happened and what they were able to~~

5 ~~determine, they put that up to you and you brought back a wise~~

6 and common sense decision that you simply could not agree upon
7 it. There's a message in that and so you've accomplished your
8 purpose.

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

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

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

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

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

Grace L Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

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

STATE V TERRON DIZZLEY

Case No. 2009-GS-22-00778

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

2 THE COURT: All right and ---

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

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

11 MR. HIXSON: Thank you, Your Honor.

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

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

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

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

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

1 is to respond to them that this will take approximately an
2 hour and if they wish for it to be played, then we will bring
3 them in and play it. Is that satisfactory, Mr. Barr?

4 MR. BARR: Yes, sir.

5 THE COURT: All right. Here's the response back, Mr.
6 Bailiff, if you would take that in to them, please. Thank
7 you. And we'll just wait for a reply. I asked them if they
8 wished to hear all four and advised them of the collective
9 time it will take.

10 (Whereupon, there is a pause in the proceedings.)

11 THE BAILIFF: They want to hear it.

12 THE COURT: All right. Let's bring our two alternate
13 jurors in and have them seated in the alternate seats. We've
14 retained the alternates in sequestration while the jury has
15 been deliberating.

16 (Whereupon, there is a pause in the proceedings until the
17 alternate jurors enter the courtroom.)

18 THE COURT: All right. We now have our two alternates
19 back in the courtroom. Please come in and be seated. The
20 jury has asked that we replay some testimony. Thank you for
21 your courtesy and patience in waiting for us and we want to
22 bring you out first to let you know what it is we're going to
23 hear, and we'll bring the rest of the jury out and begin the
24 process. The jury has asked that we hear four defense
25 witnesses on the issue of alibi and we are going to bring the

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

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

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

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

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

22 (Whereupon, a sound test is performed.)

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

25 (Whereupon, the jurors indicate positively.)

1 THE COURT: Good.

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

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

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

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

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

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

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

9 MR. HIXSON: No, Your Honor.

10 THE COURT: And from the defense?

11 MR. BARR: No, sir.

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

18 (Whereupon, the alternate jurors enter the courtroom at

19 5:26 p.m.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5
6 --- END REQUESTED TRANSCRIPT ---
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1 STATE OF SOUTH CAROLINA)

) CERTIFICATE

2
3 COUNTY OF FLORENCE)

4
5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Georgetown County, South Carolina, on the
12 29th day of August 2012.

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

15 Krystal J. Smith

16 Court Reporter

17
18
19 Florence, South Carolina

20 October 26, 2013

21
22
23
24
25

Ex. 1

U-525436

GCSO

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Personally appeared before me the affiant Melvin Garrett whobeing duly sworn deposes and says that defendant Terron Gerhard Dizzleydid within this county and state on or about 12/01/2008

violate the criminal laws of the

THE STATE

against

Terron Gerhard Dizzley

the following particulars:

DESCRIPTION OF OFFENSE Murder / MurderWARRANTS
ALMA Y. WHITE
CLERK OF COURT

Address:

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 5 Weight: 165

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: SC0220000Prosecuting Agency: Georgetown County SheriffProsecuting Officer: Melvin Garrett - 0018Offense: Murder / MurderOffense Code: 0116Code/Ordinance Sec: 16-03-0010, 0020This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

(Signature of Judge)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Terron Gerhard Dizzley12-12-08

(Signature of Constable/Law Enforcement Officer)

RETURN WARRANT TO:

General Sessions

P. O. Drawer 421270

129 Screven Street, Room 221

Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Georgetown

Signature of Affiant

Affiant's Address 430 N. Fraser StreetGeorgetown, SC 29440-Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/1/2008 defendant Terron Gerhard Dizzley

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Georgetown as set forth belowDESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/11/2008(Signature of Issuing Judge) Elaine C. Elliott (L.S.)

Elaine C. Elliott

Judge Code: 7018Judge's Address Magistrate's OfficeHemingway, SC 29554-3841Judge's Telephone (843)545-3637Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

Ex. 2

August 14, 2018

Investigative Report

To: Attorney Ellen Cleary

From: Benny L. Webb, Private Investigator

RE: Post Conviction Relief (PCR)

Terron Gerhard Dizzley, Petitioner

Charles Barr, Esquire, Respondent

County: Georgetown County

Introduction:

On April 4, 2014, Terron Gerrhard Dizzley was convicted of the murder of Nathaniel Evans, Jr., by a jury in general session court in Georgetown County. Mr. Dizzley was sentenced on the murder charge to thirty five (35) years confinement at the South Carolina Department of Corrections.

Summary:

On April 2, 2018, I was retained by the family of TerronDizzley to investigate the above claims by Mr. Dizzley that his Attorney Charles Barr was ineffective in representation of him during his trial in April of 2014.

On April 2, 2018, I met with Ms. Gwendolyn Frasier, the mother of TerronDizzley, and she advised me of all relevant information that she had concerning the ineffectiveness of Attorney Barr during his son's trial. Ms. Frasier told me of her concerns of how distracted Attorney Barr appeared to be during the trial and that he also appeared to be disinterested in performing his duties as an attorney representing her son during the trial. Ms. Frasier told me that Attorney Barr fell asleep several times during the hearing.

Ms. Frasier also gave me all relevant documents that she had at the time in reference to the case against her son.

On April 2, 2018, I read and reviewed all relevant documents given to me by Ms. Frasier including a partial transcript, incident reports by the Georgetown County Sheriff's Office, an investigative report conducted by Focal Point Investigations, LLC of Charleston, South Carolina, witness statements, and a list of jurors on this trial.

On April 26, 2018, I spoke with Investigator Melvin Garrett of the Georgetown County Sheriff's Office. Investigator Garrett indicated to me that he was the case investigators assigned to the death of Nathaniel Evans, Jr. Investigator Garrett told me that he spoke with Nathaniel Evans, Sr. at the hospital

on the night of the incident and he asked Mr. Evans if his son, Nathaniel Evans, Jr. (Victim) told him who shot him. Investigator Garrett stated that initially, Mr. Evans, Sr. told him that his son did not tell him who shot him. Investigator Garrett told me that in a subsequent interview that Mr. Evans, Sr. told him that Terron Dizzley shot him. Investigator Garrett told me with the statement by Mr. Evans, Sr. and a subsequent state by Naomi Austin stating that Mr. Evans, Jr. told her that Terron Dizzley shot him, that he was able to obtain an arrest warrant for Terron Gerhard Dizzley for the murder of Nathaniel Evans, Jr.

On April 26, 2018, I was able to ascertain from Investigator Garrett and medical officials at Georgetown Memorial Hospital the fact that none of them recall observing Naomi Austin speak to Nathaniel Evans, Jr. during his ambulatory care at the hospital. There is no evidence, information, or proof that Naomi Austin spoke with Nathaniel Evans, Jr. at the hospital or that he gave her the name of Terron Dizzley as the person who shot him at the Paradise Club in the Oatland Community of Georgetown County on December 1, 2008.

On April 26, 2018, I spoke with juror number 189 from the trial of State vs. Dizzley, 2014. Juror 189 told me that in her opinion the attorney for Mr. Dizzley was inattentive, not focus, and did not do a good job representing Mr. Dizzley. Juror 189 told me that she thought that the attorney for Mr. Dizzley was a public defender, but she later found out that he was a paid attorney. Juror 189 told me that she then thought that he was just working for the money and not for his client.

Juror 189 also told me that Juror 332 told the bailiff and the rest of them on the jury that she saw Mr. Dizzley drove himself to court and that she was concern why he was not in jail on this charge.

On April 26, 2018, I spoke with Mr. Dizzley via telephone after he had contacted his mother, Gwendolyn Frasier, from the Department of Corrections. Mr. Dizzley indicated that Attorney Barr was sleep or sleepy during portions of the trial.

On April 26, 2018, I spoke with Ms. Gwendolyn Frasier about the information that juror 189 had given me. Ms. Frasier told me that during the trial, she and her family became aware of the bias of juror 332. Ms. Frasier told me that they pleaded with Attorney Barr to argue for her removal from the jury. Ms. Frasier told me that Attorney Barr refused to argue for juror 332 to be removed instead Attorney Barr told them that he would rather have her, even with her biasness toward Mr. Dizzley, then the white/male alternate juror. Ms. Frasier told me that she and Terron disagreed with Attorney Barr's decision to keep juror 332 on the jury.

He was then asked if he, Aundry Evans, Jr., says Little D or D, who did he think he was referring to? And the answer given by Douglas was Terron

2

This again is in direct contradiction to his statement given on December 1, 2008 to investigators when Morris was asked if he knew who D was, he replied "NO."

On May 7, 2018, spoke with Autarus Dizzley, who is the brother of, Terron Gerhard Dizzley. A. Dizzley indicated that his brother has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Sherrie Frasier, who is the sister of Terron Gerhard Dizzley. Sherrie Frasier indicated that her brother has never gone by the name "Little D" at home or in the community. Ms. Frasier stated that he either went by the name "Dizz" or "Rhard."

On May 7, 2018, spoke with Deputy James Elmore who has known Mr. Dizzley over fifteen years. Deputy Elmore stated that his Mr. Terron Dizzley has never gone by the name "Little D" at home or in the community. Deputy Elmore stated that he has never anyone call Mr. Dizzley by the name "Little D."

On May 7, 2018, spoke with Juwee Collins who is the former girlfriend of Terron Gerhard Dizzley. Ms. Collins indicated Mr. Dizzley has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Carlos Wineglass who is a friend of Terron Gerhard Dizzley. Mr. Wineglass indicated that Mr. Dizzley has never gone by the name "Little D" at home or in the community.

On May 7, 2018, spoke with Grover Gasque who is a friend of Terron Gerhard Dizzley. Mr. Gasque indicated that Terron Dizzley has never gone by the name "Little D" at home or in the community.

On August 9, 2018, I spoke with Marvin in Orangeburg, South Carolina. Mr. Riley stated that he first met Terron Dizzley around 2006 when both of them were living in Orangeburg. Mr. Riley stated that he and other that they associated with called Terron Dizzley "Shard."

Mr. Riley stated that he started doing Dee Jay work for Shard approximately two weeks before the incident happened at Club Paradise in the Oatland Community of Georgetown County on December 1, 2008.

Mr. Riley stated that Naomi Alston was the girlfriend of Audrey Evans, Jr., the victim in this incident. Riley stated that Audrey Evans, Jr., and Shard were partners in Club Paradise as far as he knew at the time. Riley stated that during the time that he was at the club, he never heard anyone referred to Terron Dizzley as anything other than Shard.

Riley stated that he did not hear anyone called Shard "Little D" until after the incident when the cook (chef) at the club had spoken to the investigator, he also referred to Shard as "Little D" during the investigation.

Mr. Riley stated that prior to speaking to the investigator, the cook, referred to Shard as "Your Boy" or "Old Boy."

Benny L. Webb

Private Investigator

SLED PI # 2724

A copy of this report will be retained by Private Investigator Benny L. Webb for his file.



THE PALMETTO CENTER FOR LAW AND JUSTICE



710 Windrow Drive
Sumter, South Carolina 29150
(803) 972-3613

May 7, 2018

Benny L Webb
CEO and Executive Advocate
"A Not for Profit Organization"
Private Investigator and Consultant

In accordance with South Carolina Code of Laws 1976 annotated, Section 30-4-30, The Palmetto Center for law and Justice, under the Freedom of Information Act, request the following information:

- 1) To inspect and/ Or copy of any run sheets, or any other other investigative documents pertaining to the case of Terron Gerhard Dizzley, Georgetown County Case number 12080088, the decedent in this case being Aundry Nathaniel Evans. This incident occurred at the paradise club located at in the Oatland Community on December 1, 2008.

I understand that there will be a reasonable cost for research and copying this material and that this cost will be consistent with the Laws of the State of South Carolina.

Please make the requested items available within fifteen days (except Saturdays, Sundays, and Legal Holidays) in accordance with South Carolina Code of Law 1976 annotated Section 30-4-40 ©.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Benny L Webb
Private Investigator/Consultant
Palmetto Center for Law and Justice.

C: Attorney Leah Moody

~~Ex. 7~~ 4

Ex. 3

550

Melvyn Garrett - Cross by Defense

1 girlfriend. Yes.

2 Q All right. So you took, you took it to the two
3 girlfriends, and, of course, you knew that he had a
4 relationship with both of the women?

5 A Yes.

6 Q And in terms of why, you were, you were trying to find
7 Terron Dizzley. You had, you had already heard, at least,
8 that Naomi Alston claimed that Terron Dizzley, that he
9 identified Terron Dizzley as the person that shot him? You
10 knew that; right?

11 A No. What I heard was that he identified a person by the
12 name of Little D that shot him.

13 Q Well, Little D, but then you said that Little D you
14 wanted somebody to confirm that Little D was Terron Dizzley?

15 A That's correct.

16 Q All right. Now, you, you, you were aware of the
17 statement that had been given by Gary Gibson?

18 A Yes.

19 Q And --

20 MS. BAILEY: Your Honor, just to clarify, Gary Gibson
21 gave several statements. Which one are we referring to?

22 MR. BARR: I'm talking about the statement that he gave
23 dated the 20th of August of 2012 that he gave Steven Brown.

24 A No. I'm not aware of that statement.

25 Q You were not aware of that statement? So as far as you

ADDITIONAL NARRATIVE

Ex. 4 4

Agency Name: Georgetown County Sheriff	ORI #: SC0220000	Report Date/Time: 12/12/08 11:20:00 PM	OCA #: 12080088
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SUPPLEMENT CASE # 12080088 NELSON

2/1/08 / 2340 - RESPONDED TO 899 OATLAND RD (PARADISE CLUB) IN RESPONSE TO A SHOOTING. UPON ARRIVAL MET WITH SGT SMITH WHO STATED ON THIS DATE AT APPROXIMATELY 2330 HRS THE VICTIM (EVANS) WAS SHOT BY AN UNKNOWN ASSAILANT. SMITH STATED THE SUSPECT IS DESCRIBED AS A BLACK MALE, APPROXIMATELY 505 IN HEIGHT WEARING A BLACK COLOR HAT WITH HIS FACE OBSCURED BY SOME SORT OF MATERIAL. THE SUSPECT ENTERED THE ESTABLISHMENT HANDING A SEMIAUTOMATIC HANDGUN, MADE A LINE DIRECTLY TOWARDS THE VICTIM AND BEGAN TO FIRE THE WEAPON TOWARDS AND STRIKING THE VICTIM AN UNKNOWN NUMBER OF TIMES ABOUT THE LOWER TORSO AND UPPER EXTREMITY AREA. THE SUSPECT THEN LEFT THE SCENE BY AN UNKNOWN MEANS. ACCORDING TO SGT SMITH THERE WERE APPROXIMATELY FOUR INDIVIDUALS IN THE CLUB DURING THE SHOOTING. THE NAMES INCLUDED MAURICE GILES, JAMES TANLEY, LARRY COOPER AND THE VICTIM. ONLY GILES WOULD PROVIDE A WRITTEN STATEMENT. THE OTHERS INDICATED THEY HAD NOT OBSERVED THE EVENT.

UPON ENTERING THE ESTABLISHMENT, THE ROOM WAS DEVOID OF ANY PERSONS. INSIDE THE MAIN BAR AREA WERE TWO POOL TABLES. THE LEFT MOST POOL TABLE APPEARED TO BE THE CENTER OF THE INCIDENT. AS BLOOD WAS LOCATED TO THE LEFT OF THIS TABLE, AS WERE SOME SPENT 40 CALIBER BRASS.

THE FOLLOWING ITEMS WERE LOCATED AND COLLECTED:

- ITEM 1 - ONE (1) SHELL CASING MARKED 40 S&W CBC. THIS ITEM WAS LOCATED ON THE RIGHT SIDE OF THE POOL TABLE ON THE GROUND.
- ITEM 2 - ONE (1) SHELL CASING MARKED 40 S&W CBC. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE ON THE GROUND.
- ITEM 3 - ONE (1) SPENT BULLET. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE TOP BETWEEN THE CORNER AND CENTER POCKET.
- ITEM 4 - ONE (1) SHELL CASING MARKED 40 S&W RP. THIS ITEM WAS LOCATED ON THE LEFT SIDE OF THE POOL TABLE TOP REAR REAR CORNER POCKET.
- ITEM 5 - TWO (2) SWABS OF VICTIM'S SUSPECTED BLOOD FROM LEFT SIDE OF POOL TABLE FLOOR.

NO OTHER ITEMS WERE LOCATED AT THE ESTABLISHMENT. PHOTOGRAPHS WERE OBTAINED.

Ex. 4

2/2/08 / 0100 - ARRIVED AT THE GEORGETOWN EMERGENCY ROOM AND LOCATED THE VICTIM IN ROOM #5. VICTIM WAS BEING STABILIZED AND WAS LUCID AND ABLE TO SPEAK. WHEN ASKED WHO SHOT HIM, THE VICTIM RESPONDED HE WAS SPEAKING WITH HIS FATHER AND DID NOT WISH TO SPEAK WITH ME. WHEN ASKED AGAIN, VICTIM STATED SOMEONE JUST CAME IN AND SHOT HIM AND ASKED ME TO LEAVE. WHILE WAITING FOR THE VICTIM'S FATHER, EVANS SR, I WAS ADVISED BY MEDICAL STAFF HE VICTIM HAD SEVERAL WOUNDS ON HIS BODY. ONE WAS OBSERVED ON HIS LEFT SIDE LOWER TORSO, ONE WAS OBSERVED ON HIS LEFT SIDE UPPER THIGH, ONE WAS OBSERVED ON HIS LEFT SIDE REAR UPPER LEG AND AN ADDITIONAL WOUND WAS LOCATED ON HIS RIGHT SIDE LOWER TORSO. AT THIS TIME MEDICAL STAFF COULD NOT DETERMINE ENTRY VERSUS EXIT OR THE EXACT NUMBER OF WOUNDS. VICTIM'S CLOTHES HAD BEEN REMOVED BY MEDICAL STAFF AND UPON REMOVING THE PANTS AN ADDITIONAL SPENT BULLET FELL FROM THE PANTS. THIS BULLET WAS FLATTENED PARTIALLY AND DID NOT APPEAR TO HAVE BLOOD OR TISSUE ATTACHED. THIS ITEM TOO WAS COLLECTED AND PLACED INTO EVIDENCE, LONG WITH THE VICTIM'S CLOTHING. VICTIM'S FATHER THEN EXITED THE ROOM. I INQUIRED IF HIS SON HAD DISCLOSED ANY INFORMATION TO HIM, TO WHICH MR. EVANS SR STATED HE HAD NOT. I THEN ASKED IF HIS SON HAD DISCLOSED INFORMATION, WOULD HE TELL ME. MR. EVANS SR THEN STATED HE WAS UNSURE IF HE WOULD TELL ME OR NOT AS HE WANTED TO UNDERSTAND WHAT HAD HAPPENED PRIOR TO ANY DISCLOSURE. I PROVIDED MR. EVANS SR WITH MY BUSINESS CARD AND WAITED HELICOPTER TRANSPORT FOR THE VICTIM. AS THE VICTIM WAS BEING PREPARED FOR DEPARTURE, MS. NAOMI AUSTIN, THE VICTIM'S FIANCE STATED THE INDIVIDUAL RESPONSIBLE FOR THE SHOOTING WAS SOMEONE SHE KNOWS AS "LITTLE D". MS. AUSTIN ADVISED SHE BELIEVES "LITTLE D" IS A TYRON DIBSLY. VICTIM HAD INFORMED MS. AUSTIN OF THIS INFORMATION PRIOR TO HIS DEPARTURE. VICTIM HE WAS LOADED ON THE MEDEVAC HELICOPTER AND TRANSPORTED TO MUSC. 1 UNITS CLEARED THE GEORGETOWN HOSPITAL.

1 EVIDENCE WAS DROPPED AT THE SHERIFF'S OFFICE.

ATTEMPT TO LOCATE TYRON DIBSLY VIA VISIONS, DMV ONLINE, JAIL VISIONS WERE UNSUCCESSFUL. VARIOUS SPELLINGS WERE ATTEMPTED WITH THE SAME RESULTS.

2/08 / 0300 - WAS ADVISED BY SGT SMITH THE VICTIM HAS SUCCEEDED TO HIS INJURIES SHORTLY AFTER HIS ARRIVAL IN ARLESTON.

ADDITIONAL NARRATIVE

~~2~~
~~Ex. 5~~
Ex. 5

Agency Name	Georgetown County Sheriff	ORI #	SC0220000	Report Date/Time:	OCA #	12080088
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STANDING APPROX. 5FT 5IN IN HEIGHT. THE UNKNOWN MALE THEN POINTED THE GUN AT THE VICTIM AND BEGAN SHOOTING AT HIM, THE VICTIM FELL TO THE FLOOR AND THE UNKNOWN MALE LEFT. THE WITNESS WAS UNABLE TO GIVE A VEHICLE DESCRIPTION OR A DIRECTION OF TRAVEL.

WE SPOKE TO SEVERAL WITNESSES THAT WERE OUTSIDE THE CLUB AND THEY WOULD NOT PROVIDE A VEHICLE DESCRIPTION. E.M.S. RESPONDED ON SCENE AND TRANSPORTED THE VICTIM TO THE GEORGETOWN E.R. I THEN RESPONDED TO THE E.R. WHERE I ATTEMPTED TO SPEAK TO THE VICTIM AND HE WOULD NOT COOPERATE AND WOULD NOT PROVIDE ANY INFORMATION.

I THEN WENT TO THE WAITING ROOM WHERE THE VICTIM'S FIANCEE WAS LOCATED AND SPOKE TO HER. THE VICTIM'S FIANCEE NAOMI AUSTIN PROVIDED ME WITH THE VICTIM'S INFORMATION AND ALSO STATED THAT THE VICTIM TOLD HER THAT THE MALE THAT SHOT HIM WAS CALLED LITTLE D. AUSTIN STATED THAT SHE BELIEVED THE SUSPECT'S NAME WAS TYRON DIBSLY BUT SHE KNEW HE WAS CALLED LITTLE D.

INV. NELSON THEN ARRIVED AT THE E.R. AND SCENE WAS TURNED OVER TO HIM.

ADDITIONAL NARRATIVE

~~Ex-6~~ ³
Ex-6

Agency Name: Georgetown County Sheriff	ORI #: SC0220000	Report Date/Time: 12/1/2008 11:20:00 PM	DCA #: 12080068
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SUPPLEMENT CASE # 12080068 NELSON

2/2/08 / 0330 MADE CONTACT WITH MR GILES AND REQUESTED HE MEET WITH ME.

2/2/08 / 0400 - MET WITH MR GILES HE PROVIDED A REVISED STATEMENT WITH INFORMATION HE PREVIOUSLY FORGOT. MR GILES STATED THE INDIVIDUAL RESPONSIBLE FOR THE SHOOTING WAS KNOWN TO HIM AS "LITTLE D". MR GILES WAS ADVISED TO THINK ABOUT ALL THE DETAILS AND TAKE HIS TIME. MR GILES COULD NOT RECALL ANY ADDITIONAL INFORMATION OR INDIVIDUALS PRESENT AT THE TIME OF THE EVENT.

2/2/08 / 0500 - SPOKE WITH MR EVANS SR. MR EVANS SR STATED HIS SON HAD INFORMED HIM IN THE GEORGETOWN HOSPITAL "LITTLE D" WAS THE INDIVIDUAL WHO SHOT HIM. MR EVANS SR DID NOT KNOW WHO "LITTLE D" WAS.

2/2/08 / 0645 - OBTAINED A SEARCH WARRANT FROM JUDGE DUNN FOR THE PROPERTY AND BUILDING LOCATED AT 899 OATLAND RD.

2/2/08 / 0800 RECEIVED INFORMATION REGARDING ADDITIONAL PARTY ON SCENE AT 899 OATLAND RD. A SONJA JONES STATED HER SON, DOUGLAS MORRIS WAS PRESENT DURING THE SHOOTING. CONTACT WAS MADE WITH MS. JONES REQUESTING SHE AND HER SON MEET AT THE SHERIFF'S OFFICE FOR AN INTERVIEW. MS JONES STATED SHE WOULD ARRIVE AT APPROXIMATELY 1000 HRS WITH HER SON.

2/8/08 / 0900 - MET WITH MR GILES AT THE SHERIFF'S OFFICE. MR GILES PROVIDED ADDITIONAL NAMES OF INDIVIDUALS WHO WERE PRESENT AT THE LOCATION SOMETIME DURING THE COURSE OF THE EVENING. THE LIST IS COMPRISED OF MOSTLY FONIKERS AND WILL BE DECIPHERED.

2/8/08 / 1000 - OBTAINED BLOOD SAMPLES FROM THE GEORGETOWN HOSPITAL COLLECTED FROM THE VICTIM. SAMPLES WILL BE SENT TO MUSC ALONG WITH CLOTHING FOR AUTOPSY

~~Ex. 9~~ 6
Ex. 7

Jarred Bardon - Cross by Defense

463

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q The victim kept asking for Mo?

5 A Yes. Mo.

6 Q Did Mo show up during the time that you were attending
7 the victim?

8 A I, I, I don't remember meeting a Mo. There was nobody in
9 there by that name that I could recall.

10 Q Did you have on officer, did you have on, did you have on
11 a police uniform or were you dressed in street clothes at that
12 time?

13 A Police uniform.

14 Q You got a police uniform on?

15 A Yes.

16 Q Badge and gun and everything?

17 A Everything.

18 Q Yeah. Did the victim make any statements to you
19 regarding who he thought shot him?

20 A He did not.

21 Q Just kept asking for Mo?

22 A Yes.

23 Q Now, did you assist in setting up the crime scene?

24 A As far as keeping everyone out of the crime scene, yes.

25 Q And you put up tape?

Gary Gibson - Direct by State

404

1 the incident happened. She was there fast, but she wasn't
2 there time the incident happened. Whatever he said to Mo, no,
3 I did not hear it.

4 Q And but did Naomi get there before law enforcement? Do
5 you remember?

6 A I believe she did. Yeah. Because I didn't even have her
7 number. I don't even know who called her.

8 Q Do you know Mr. Dizzley?

9 A No. I do not.

10 Q Can you -- I know it happened fast, but the person who
11 came into that club with a mask, can you give us any further
12 description of that person?

13 A Not really. I mean, all I can -- I mean, somebody comes
14 in a club shooting and they got a ski mask and a hoody on,
15 what is, what is your reactions? To hide for cover, and
16 that's what I did.

17 Q Could you tell if that person was white, black or
18 Hispanic?

19 A You really couldn't tell because, I mean, you got a hoody
20 on with a ski mask and the eye and the mouth, I mean, and
21 they're shooting you ain't going to sit there, look to try to
22 see, you know, if they're white, black, Puerto-Rican or what,
23 Indian or what. You're going to try get out the way.

24 Q All right. Were you able to tell how tall that person
25 was?

Ex. 9

Gary Gibson - Cross by Defense

406

1 THE COURT: Mr. Barr, your witness.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q Stand up. Didn't you tell the police officers that the
5 man you saw came into the club, the shooter, was taller than
6 Terron Dizzley?

7 MS. BAILEY: Objection, Your Honor. He didn't -- there's
8 no information. That's -- that would be a misstatement of the
9 facts is my objection.

10 THE COURT: Well, again, if you could, you need to
11 identify the time and the place of the statement. Let's
12 follow the rule concerning out-of-court statements.

13 BY MR. BARR:

14 Q On August 20th of 2012, you spoke with -- you spoke with
15 the investigators with the Georgetown County Sheriff
16 Department. Do you have a recollection of that?

17 A Yes.

18 Q Did not you tell them at that time that you thought the
19 man that you saw come in the club, the shooter, was too tall
20 to be Terron Dizzley?

21 A I said five-six, five-seven. How tall is Mr. Dizzley?

22 Q Well, didn't you tell them that you looked at Mr. Dizzley
23 or you thought about it and that you believed that he was too
24 short to shoot over the bar?

25 A I just said he was five-six or five-seven. That's taller

Ex. 10

Jameson Wright - Direct by State

418

1 A It was long.
2 Q One was long?
3 A Yeah.
4 Q What about the other one?
5 A I ain't see the other one.
6 Q You didn't see the other one?
7 A Huh-uh, huh-uh.
8 Q Okay. What happened next? Anybody get out of the car?
9 A Yeah.
10 Q Who got out of the car?
11 A A tall fellow.
12 Q Okay. Was that out of the back seat or the front seat?
13 A The front seat.
14 Q Front driver or passenger?
15 A Passenger side.
16 Q And what did that person do who got out of the passenger
17 side?
18 A Go on inside the club.
19 Q He went inside the club?
20 A Yeah.
21 Q And did anybody get out of the back of the car?
22 A No, ma'am.
23 Q Did anybody point a gun at you?
24 A Yes, ma'am.
25 Q I'm sorry?

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2009GS2200778⁴

The State of South Carolina

County of Georgetown

Scott R. Hixson

08G00972

COURT OF GENERAL SESSIONS

JULY, 2009 TERM

REST WARRANT NUMBER

J525436

CDR: 0116 §16-03-0010, 0020

DOI: December 1, 2008

THE STATE

vs.

TERRON GERHARD DIZZLEY

ACTION OF GRAND JURY

N/M

TRUE BILL

ATTORNEY: Barr, Charles D.

Foreperson of Grand Jury

Date: 7-8-09

VERDICT

Indictment for

MURDER

Foreperson of Petit Jury

Date: 4/3/2014

J. Gregory Hembree, Solicitor

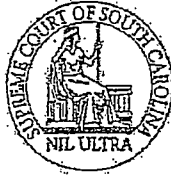
July ▾ 2009 ▾ Go To Date

Ex. 169 12

**Terms of Circuit and Family Court
July 2009**

Holiday:
Fri Jul 03, Independence Day (Observed) (Observed)

Circuit Number	7/6/2009	7/13/2009	7/20/2009	7/27/2009
15	Common Pleas Horry Hyman, Larry MCCALL 6, 7, 8 am NO CR NEEDED 8 pm, 9, 10 Administrative Week John, Steven EUBANK	Common Pleas Non-Jury Culbertson, Benjamin HURLEY General Sessions Horry Hyman, Larry BABB General Sessions Horry John, Steven EUBANK	General Sessions Horry Culbertson, Benjamin BUCKNER General Sessions Horry Hyman, Larry BABB Common Pleas Horry John, Steven EUBANK	General Sessions Georgetown Culbertson, Benjamin HURLEY Common Pleas Non-Jury/PCR Hyman, Larry MCCALL 27, 28, 29 NO CR NEEDED 30, 31 Common Pleas Horry John, Steven EUBANK Common Pleas Horry Russo, Thomas BUCKNER 27, 28, 29 NO CR NEEDED 30, 31
	Family Court Horry Caldwell, Wylie H. BABB 6, 7, 8 HURLEY 9 BABB 10 Family Court Horry Bromell Holmes, Jan B. WRIGHT	Family Court Horry Kinon, Lisa A. ALLEN 13, 14, 15, 16 NO CR NEEDED 17 Family Court Georgetown Bromell Holmes, Jan B. WRIGHT Family Court	Family Court Horry Spruill, James A. MCCALL 20, 21, 22, 23 HURLEY 24 Family Court Horry Kinon, Lisa A. ALLEN Family Court	Family Court Horry Kinon, Lisa A. ALLEN Family Court Georgetown Bromell Holmes, Jan B. WRIGHT Family Court Horry



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355

August 15, 2017

Mr. Terron Dizzley, #359480
McCormick Corr. Inst.
386 Redemption Way
McCormick, South Carolina 29899

Re: Your correspondence received August 11, 2017

Dear Mr. Dizzley:

Your recent request for information has been received by this office and forwarded to this section for response. You requested information relating to special terms of court pursuant to S.C. Code of Laws, §14-5-910. Please be advised that with the adoption of the amendments to Article V of the South Carolina Constitution in 1973, the Chief Justice has the authority to set the terms of the Court of General Sessions. Article V, §4 of the South Carolina Constitution states in part that "[t]he Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system." Therefore, under the current constitutional provision, all terms of the circuit court are set by the Chief Justice and there are no special terms.

Please be further advised that this office is not the custodian of records relating to the county grand juries. You may contact the Georgetown County Clerk of Court or the Solicitor's Office to request information relating to the convening of the Georgetown County grand jury.

All terms of court, dating back to 2002, are available on the South Carolina Judicial Department Website at www.sccourts.org/calendar/scmapimg.cfm. If you do not have access to the internet, you may wish to have a friend or family member download and print this information for you.

Sincerely,

Staff Attorney Section/tr

INDEX OF TRANSCRIPTION OF CD'S

Morris

Tr. P. 4, L 1 – 14 Morris states the shooter was "kind of dark skinned". ID exculpatory tr. P. 4, L 24 – 25 through P.S. L1

Inv. 24. This guy that you saw come in, did he remind you
Inv. L 25. of anybody that you may have seen before?

Morris p. 5
Line 1 No, Sir. Not really. ID exculpatory
Tr. P. 6, L25, P7., L1 – 2

Inv. L 25 Did he get in a fight with anybody that you know
p. 7. L 1 of?

Morris L2 No, sir.
Tr. P. 7, L13 – 14.

Inv. 13. Do you know who Dee is?
M 14. No, Sir. ID exculpatory

Sonia Jones

Tr. P. 8, L 10 – 21 Sonia says that Aundry and D had words on Saturday (Nov. 29, 2008) and Aundry had police to escort Dee of the property. Petitioner contends Dee is not his nickname or legal name, and Aundry was never present at the Club Paradise on November 29, 2008. Aundry and I never had any words. (Speak to officers).

Tr. p. 10, L 6 – 8. Sonia Jones stated that Naomi has got some serious issues.

Tr. p. 13, L 11 – 20. Sonia Jones states that Aundry told her Dee was on the run from the FBI. Sonia states she overheard Aundry on the phone talking to Dee about his kids.

(Petitioner never had kids, never on the run from FBI ID exculpatory.

Sonia Jones Re: Transcription of CD

Interview taken by Investigator Garrett on December 2, 2008, Page 13, Lines 11—20

Lines: 11 Sonia Jones They actually had words on the cell
12 phone and stuff, him trying to talk some sense into
13 Dee and telling Dee , you don't need to be doing
14 This, you don't need to be doing that, It was told to
15 Us that Dee was supposedly wanted by the FBI
16 I don't know that, but it was just him telling
17 Dee you need to chill, you need to stop doing
18 All this stupid stuff, Man, you've got babies out there and
19 You need to stop acting stupid and it escalated
20 A most men don't want to be told what to do.

Proof: This is proof that who ever Sonia Jones heard Aundry talking to on the cell phone, supposedly, was not Terron Dizzley because I never was wanted by the FBI, nor did I have any children at that time. All of this information could have been used to prove my innocence by my defense. This also proves that there was a very serious identity issue that needed to be cleared up.

Sonia Jones

Exculpatory

Tr. p.16, L 11 – 23 Sonia, picked Number 4, out of the line-up as who she knows as

D photo-line-up suggestive (miss ID)

Gerletha Jones

Tr. p.19, L 6 – 13 Gerletha picks Number 5 out of the line-up as who she knew as “D”. ID exculpatory.

Willie Stanley

Tr, p. 7, L 6 – 16 Stanley “claims: that he heard the name Little D from Aundry, in reference that the “Little D” likes racing cars. (Petitioner contends that he has never owned a race car and was living in Orangeburg, SC for the past five years, it would have been impossible for that person whom Stanley “claims: Aundry made reference, to have been the Petitioner.) Tr. p. 2, L 17 – 20, Stanley stated

Aundry was not the only person that the shooter shot at , that the shooter ran after Aundry’s uncle also shooting at him. Tr. p. 3, L 6 – 7 Stanley stated that there Was shooting outside also. Also See p. 5, L 7 – 11. L 14 – 16 Stanley says his friend got stuck up (robbed) p. 6, L 6 – p. 7, L 1 – 4 Stanley say there were at least 3 or 4 other all wearing masks. * P. 9, L 2, P. 10, L 1 – 5 Stanley states that Aundry was speaking to him saying that he, Aundry, said he needed to change his lifestyle, and he couldn’t live like that any more. Stanley stated that he had heard Aundry was a “jackboy” that he robbed drug dealers.

Willie Stanley

Tr. P. 19, L 3 – 18 Stanley states his friend, T.I. told him there were three more individuals with guns outside. L, 19 – 24, Stanley says T. I. told him that the individuals outside stuck him up, told him to empty everything out of his pocket. (robbery which would change the whole motive of the Solicitor's theory). P. 32, L 4 – 7, Stanley states, again, that the shooter saw Aundry's uncle and ran after and shot at him.

Larry Cooper

Tr. 6, L 11 – 12. Cooper states as he ran outside there was another person with a gun. (Also, See P. 7, Tr. P. 8, L 21 – 25 Cooper says he heard Aundry had a argument with someone on Thursday also See P. 9 , P. 10, L. 1 – 6, Tr. P 11 – P. 12, L 1 -14 Cooper states the individuals shot the cars up outside, Honda Civic. (Note: Solicitor stated in closing arguments that didn't know how Mack's car got shot up, when, and that it could have happened before Aundry got shot or afterward, while Aundry was in the hospital. Misstatements of truth of truth not supported by the record.) Tr. p. 16, L 25 – P. 17, L 1. Cooper said that Aundry never said who he thought shot him. Tr. P. 28, L 17 – 19.. Cooper said he never heard the name "Little D" even mentioned that night. Tr. P 29, L 1 – 5, 25 throughout p. 30 Cooper continues to tell Investigators that he didn't hear the name "Little D" mentioned. Exculpatory

ANDREA R. KELLY
401 WITHERSPOON DRIVE
KINGSTREE, S. C. 29556
PHONE: 843-354-7169

August 28, 2012

Mr. Charles David Barr
Barr and Barr
Kingstree, S. C. 29556

Re: Transcription of three CD's in Georgetown murder trial

Willie Stanley	\$120.00
Larry Cooper	\$ 90.00
Douglas Morris, Sonia	
Jones, Toni Jones	\$ 66.00
Total	\$276.00

Thank you

SS# 248-80-5058

Willie Stanley

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1 Inves. Garrett This Investigator Garrett and the date is
2 December 2, 2008 at 5:03 p.m. I'm here at 23
3 Esther Drive in Deerwood Estate speaking with?

4 Douglas Morris Douglas Morris.

5 Investigator Garrett And his mother?

6 Sonia Jones Sonia Jones.

7 (From this point forward questions will be posed
8 by Investigator Garrett and questions will be answered by Douglas
9 Morris and Sonia Jones, unless otherwise noted.)

10 Q Sonia Jones is present. The first thing I'm going
11 to do is read your rights to you, okay. You have
12 the right to remain silent. Anything you say can
13 and will be used against you in a court of law.
14 You have the right to talk to a lawyer and have
15 him present with you while you are being
16 questioned. If you cannot afford to hire a lawyer,
17 one will be appointed to represent you before any
18 questioning if you wish. If you desire to make a
19 statement, or answer any questions you have the
20 right to stop at anytime during the statement of
21 questioning. Do you understand your rights?

22 A Yes, sir.

23 Q Ma'am, do you understand that?

24 Sonia Jones Yes.

25 Q Just sign here for me.

1 A Right here?

2 Q Yes, please. Ms. Jones, if you don't mind just

3 witnessing that for me.

4 Sonia Jones Yes, sir.

5 Q Dustin, you know what I'm here to talk to you

6 about, correct?

7 A Yes, sir.

8 Q Okay, what is it?

9 A About the shooting and killing that happened last

10 night.

11 Q Speak up for me.

12 A The shooting and killing that happened last night.

13 Q At?

14 A At the club, but I can't remember, Sports Bar.

15 Q Sports Bar, Club Paradise is it?

16 A Yes, sir.

17 Q In Oakland?

18 A Yes, sir.

19 Q What can you tell me about what?

20 A Well, I originally went there to cook and after I

21 got finished cooking, I went and I was sitting

22 behind the bar watching the game. Then

23 everybody left the bar, and they started playing

24 pool. While they were playing pool you know

25 they were out there having fun and two other

1 dudes were sitting at the bar with me watching the
2 game.

3 Q What other two dudes?

4 A I don't know their names.

5 Q Okay.

6 A While we were watching the game I just happened
7 to hear the door fly open, and when I looked I
8 seen this man running and he had a black
9 bandanna across his face and his nose, and he had
10 something going across his head where you could
11 only see his eyes. He said something about didn't
12 I tell you this wasn't over, and then that's when
13 he started shooting at my brother.

14 Q Your brother who?

15 A Andre' Evans.

16 Q So Andre' Evans is your brother?

17 A My brother-in-law.

18 Q Your brother-in-law. So he's married to your
19 sister?

20 A Not quite married, but you know.

21 Q What's your sister's name, which sister?

22 A Jerletha Jones.

23 Q Jerletha Jones?

24 A Yes, sir.

25 Q Does he stay here from time to time?

1 A No, sir.

2 Q No. What else can you tell me about this guy that

3 ran in with the mask on. When he came in which

4 door did he come in. There are two doors there.

5 A He came in through the side door.

6 Q Side door.

7 A Like next to where the bar is.

8 Q Where the bar is, and that's where you were

9 sitting?

10 A Yes, sir.

11 Q Can you tell me anything about him or what he

12 looked like other than he had the mask on. What

13 was he wearing?

14 A He was like kind of dark skinned, and I think he

15 had on a gray hoodie, a black T-shirt and a pair of

16 blue jeans. I didn't get to see the sneakers. He

17 was about 5'4, and that's all I really got to see

18 before he started shooting, and I ducked down

19 behind the bar.

20 Q So he was a pretty short guy?

21 A Yes, sir.

22 Q Okay, was this your first time at the bar?

23 A Yes, sir.

24 Q This guy that you saw come in, did he remind you

25 of anybody that you may have seen before?

- 1 A No, sir, not really.
- 2 Q Do you remember what kind of gun he had, what
3 it looks like?
- 4 A It was a 9 millimeter, black.
- 5 Q It was black?
- 6 A Yes.
- 7 Q And he came in and he shot at who?
- 8 A Andre' Evans.
- 9 Q And you were ducked down behind the bar when
10 that happened?
- 11 A Yes, sir.
- 12 Q What happened after he shot?
- 13 A He ran out, and he got in a black Taurus and he
14 flee the scene.
- 15 Q Okay, a black Taurus.
- 16 A Yes, sir.
- 17 Q Was there anybody else with him?
- 18 A From what other people said there were another
19 dude standing at the door and three more outside.
- 20 Q Right, but what did you see?
- 21 A All I saw was him when he came storming in.
- 22 Q You just saw him, okay. When he jumped into
23 this black Taurus did he get in the driver's side or
24 the back seat?
- 25 A He got in the passenger side.

1 Q Passenger side. Where was the car parked, do
2 you remember that he jumped in?
3 A It was parked in the driveway so when he got
4 through he could have just hopped in and ride off.
5 Q When you say it was parked in the driveway, was
6 the front of the car facing the building or was it
7 backed in?
8 A It was like sideways.
9 Q It was sideways?
10 A Yes, ir.
11 Q Which door was facing the club?
12 A The passenger door was facing the club.
13 Q Passenger door. Now, Andre' how long have you
14 know him?
15 A I've known him for about two or three years.
16 Q About two or three years.
17 A Yes, sir.
18 Q Did you hang with him a lot?
19 A Yes, sir.
20 Q You did. How often?
21 A About three times a week.
22 Q Three times a week. Did he have problems with
23 anybody that you know of?
24 A No, sir.
25 Q Did he get in a fight with anybody that you know

1 off?

2 A No, sir.

3 Q Is there anything else about last night that you
4 want to tell me that maybe you forgot or anything
5 like that?

6 A No, sir.

7 Sonia Jones What did Andre' say to y'all in the club after he
8 got shot?

9 A He told us that Dee was the one who shot him.

10 Q Dee?

11 A Yes, he said he recognized the voice and Dee was
12 the one who shot him.

13 Q Do you know who Dee is?

14 A No, sir.

15 Sonia Jones I've seen him a couple of times.

16 Q You've seen Dee?

17 Sonia Jones I've seen him. I have actually picked him up from
18 the airport in Charleston when they came back off
19 of a trip.

20 Q When who came back?

21 Sonia Jones Him and Andre' they went out of town. This has
22 about three months ago, and when they came back
23 we had to go pick Andre' up from the airport my
24 daughter and I. He was with Andre' then, and he

1 Georgetown but he lives in the Orangeburg area

2 now.

3 Q Okay.

4 Sonia Jones He has a brother named Devon or something that
5 also lives in the Orangeburg area. I saw him then
6 and he's been here to my house numerous times.

7 His last time he actually was here at my house
8 was one day this past week.

9 Q Okay.

10 Sonia Jones On this past Saturday, and the Sheriff's
11 Department was actually called out to Club
12 Paradise because this young man, Dee was on the
13 property and Andre' wanted him off the property.
14 I don't know exactly what all took place, but I
15 know it was just basically words being exchanged
16 between them two. That's why I don't understand
17 why it would lead up to this shooting, but I know
18 it was words but I didn't think it was anything this
19 serious. Andre' had officers come out there
20 Saturday afternoon or evening, and escort Dee off
21 the property. As you can tell this is the result of
22 it, the shooting last night. When we were at the
23 hospital, Georgetown Memorial, last night, there
24 were three gentleman that came in there, as
25 myself, my daughter and one of his baby's

1 mother's Naomi, we all were inside the waiting
2 room trying to hear what the doctors were doing
3 as far as Andre' and they were saying that the
4 club was locked up. They were like you know
5 who did it, you know who did it. He said some
6 dude named Dee, he said some dude named Dee
7 did it like that. They were talking and they were
8 stating just what Andre' said to them because they
9 were inside the club when the shooting took
10 place. Dee is about, actually he's not 5'4, he's
11 about my height. He's about 5'5", or roughly 5'6".
12 He's not like heavy but he's not real chunky,
13 medium build. The ex-girlfriend Naomi actually
14 knows his real name, because when I spoke with
15 her earlier today she was on the phone with
16 someone else, and I heard her when she was
17 calling out his real name, what his biological
18 name is. Then when I asked her she was like she
19 couldn't remember it right off hand, she had it
20 written at home on a piece of a paper. I'm not to
21 be funny but I was saying to myself, and she was
22 like well the police should have this stuff, because
23 they just were called out to the club Saturday
24 night, so they should have his name on file. A lot
25 of cops don't take reports, they just come and

1 escort people off the property.

2 Q Un-huh.

3 A I don't know if there's a report on it or not, and
4 she's like I've got it written down on a piece of
5 paper and I've got to find the paper and get my
6 papers together. I'm not going to call her what I
7 want to call her, but this chick has got some
8 serious issues. My thing is my son is sitting here,
9 and he really don't get too deep involved but like
10 I told him it's better for y'all to get this young
11 man than the rest of the crew. There are some hurt
12 feelings out here today, a lot of tempers are
13 flaring and everything else, and all I want him to
14 do is meet court. Because of the seriousness, and I
15 don't exactly know how y'all do it, but to me he should
16 be charged and stuff. Like everybody that was
17 actually was inside that club to put the murder on
18 all those people like a bullet doesn't have
19 nobody's name on it.

20 Q I've got a question to ask you, you were telling
21 me about this incident Saturday night who told
22 you about that?

23 Sonia Jones Andre' did.

24 Q Oh, he came home and told you.

25 Sonia Jones Andre' did.

1 Q Was he here or did he call you.

2 Sonia Jones No, he was here. I didn't hear everything my son
3 was talking about because Andre' actually stayed
4 here a couple of nights out of the week. This was
5 mainly like home for him.

6 Q Okay.

7 Sonia Jones It was like after the incident happened Saturday
8 night, he came home and he was talking to me
9 and my husband and he was like let me tell you
10 about what Dee did. Then he told us about Dee
11 showing up at the shop and basically wanting to
12 create a scene so they had to call the police out
13 there to escort him off the property. He was like I
14 know Dee, and I know how he is, so I'm not
15 going out to the shop tonight. I'm going to sit
16 home and I'm going to chill. He stayed home.

17 Q That was last Saturday.

18 Sonia Jones That was just this Saturday.

19 Q This past Saturday.

20 Sonia Jones Thanksgiving weekend, the 29th or the 30th. That
21 was this Saturday, and he was like I'm going to
22 stay in and I'm going to chill. We all were in here
23 on the computer and watching TV doing our own
24 thing. We were picking at each other like we
25 normally do all night, and Sunday he was home.

1 He was here all day Sunday, except when they left
2 to go to the store. Then on Monday he was like
3 we're going to watch the game and he said D. J.
4 do you want to go and stuff. He was like his big
5 brother

6 Q Is it D. J.?

7 Sonia Jones His name is Douglas but his nickname is D. J.

8 Q D. J.

9 Sonia Jones He was like Sonia, I'm going to D. J. with me,
10 we're going to watch the game and I was like
11 okay, cool not knowing something was going to
12 happen. If I had even had any inkling of this, I
13 would have made both of them stay. Me and
14 Andre' would have cursed each other out, but I
15 would have made him stay.

16 Q Right, you would have made him stay.

17 Sonia Jones Yes.

18 Q Do you have any idea what him and this guy
19 name Dee, what the problem was between the
20 two?

21 Sonia Jones I have no clue. I'm hearing different people say it
22 was a money issue. Dee was supposed to have
23 invested in the club, and after he ran into some
24 problems and stuff, they decided to boot him out
25 of there. We were hearing some say other things.

1 Like I tell people it's like you hear one story and
2 then another, but until you actually know and
3 unfortunately Andre's not here to tell you. The
4 only other person who can tell you is Dee.

5 Q Okay, so Andre' never mentioned any problems
6 that he was having, just that Saturday night he
7 said I'm not going to go to the club.

8 Sonia Jones We knew about the words back and forth between
9 him and Dee.

10 Q When did they have words?

11 Sonia Jones They actually had words on the cell phone and
12 stuff, him trying to talk some sense into Dee and
13 telling Dee you don't need to be doing this, you
14 don't need to be doing that. It was told to us that
15 Dee was supposedly wanted by the FBI. I don't
16 know that, but it was just him telling Dee you
17 need to chill, you need to stop doing all this
18 stupid stuff. Man, you've got babies out here and
19 you need to stop acting stupid and it escalated. As
20 most men don't want to be told what to do.

21 Q That's right.

22 Sonia Jones The only thing that really hurts is that these two
23 up until about two or three weeks ago they were
24 real tight like brothers. This is real senseless.

25 Q D. J., let me get back to you for a minute. After

1 the shooting took place, the guy with the mask ran
2 out, and you went over to Andre'?

3 A After I looked out the door and I saw him jump in
4 the passenger seat, I went over to Andre' and he
5 was telling us to stand him up, stand up, and we
6 were like no. They were getting ready to stand
7 him up, and I said no, don't stand him up. We
8 need to apply pressure on there like the people
9 from the office said. So we started applying
10 pressure on there, and that's when the sheriff and
11 the investigator showed up, and they blocked
12 everything off.

13 Q Your mom mentioned that somebody heard him
14 say - - -

15 Sonia Jones What he wants to know Douglas, is after the
16 shooting took place and y'all were on the floor
17 with Andy - - -

18 A He did mentioned it was Dee.

19 Q Who mentioned that?

20 A Andre'.

21 Sonia Jones He wants to know exactly what Andre' said.

22 Q What exactly did he say?

23 Sonia Jones You can't be evasive about it, he wants to know
24 as close to it as possible. Stop beating around the
25 bush and tell this gentleman just what Andy said.

1 Q And Andy is Andre'

2 Sonia Jones Yes, that's his nickname.

3 Q His nickname is Andy.

4 A We were all around him, and we were like man,

5 who could that be, who could that be, and he just

6 said I know who it was, I recognized the voice. It

7 was Dee. Then after that he wouldn't talk to us no

8 more. We were trying to talk to him, and that's

9 when he said just go ahead and stand me up, go

10 ahead and stand me up. I wouldn't let them stand

11 him up.

12 Q Right. If I asked you to write a statement on just

13 what you told me from the time you got to the

14 club to the time you left, could you do that?

15 A I can't remember all that.

16 Q What you just told me.

17 Sonia Jones You can't remember it.

18 Q Can you write down what happened just as you

19 remember.

20 A Ah ---

21 Q Or do you want to tell your mom, and have her

22 write it down.

23 A Yeah.

24 Q You would rather do that.

25 A Yes.

1 Q Before we get to that, you said you picked Dee up
2 from the airport with Andy, how long ago was
3 that?

4 Sonia Jones This was like about two or three months ago.

5 Q Two or three months ago.

6 Sonia Jones I'm trying to remember right now because I had
7 the airplane ticket things at one time, and I'm
8 trying to remember if I still have them. I know
9 that would be a big help to actually know who
10 was on the plane with him.

11 Q Well, I guess what I'm trying to get to is, if you
12 saw Dee, you would know who he was?

13 Sonia Jones Un-huh.

14 Q Okay, so if I let you look at a lineup, could you
15 pick him out?

16 Sonia Jones Un-huh.

17 Q I want to let you know that Dee may or may not
18 be in this lineup.

19 Sonia Jones He looks just like this one. He favors this one
20 right here. If you want, I'll get my daughter out
21 the room so she can make a definite ID because
22 she knows him even better. He favors this one.

23 Q This guy here, number 4.

24 Sonia Jones Un-huh. As a matter of fact I hate to bring her
25 out, but I'm going to bring her out to make sure. I

1 want you to look pictures for me and tell me if
2 one of them is - - -
3 Q What's your name?
4 Toni Toni.
5 Q Toni?
6 Toni Jones Toni Jones.
7 Sonia Jones Toni Gerletha Jones.
8 Q And do you know anything about this incident at
9 all?
10 Toni Jones Just a little bit.
11 Q Just a little bit.
12 Toni Jones Yes.
13 Q Do you fell like talking to me right now about
14 what happened?
15 Toni Jones Not too much but I guess. I'll take a look at these.
16 Q If you don't mind, your name is Gerletha Jones
17 Toni Jones Un-huh.
18 Q And you go by Toni?
19 Toni Jones Yes.
20 Q Okay, tell me what happened. Tell me what you
21 know about it?
22 Toni Jones All I know is him and the guy got into it.
23 Q Who is him?
24 Toni Jones Andy.
25 Q Andy and?

1 Toni Jones And Dee got into their little disagreement as far as
2 the club situation.
3 Q Un-huh.
4 Toni Jones Because Dee was supposed to be in business with
5 him. I know they got into an argument that was
6 Friday, and he was like he just think his and Dee's
7 friendship was really over this time. I was like
8 okay, and he was here mostly all weekend like
9 normal. Yesterday he decided to go to the club
10 like he does on Monday for Monday night
11 football. I don't even know what to say after that.
12 Q When you said that there friendship is really over
13 this time, had they had arguments before?
14 A They had like normal. Anybody who knows
15 Andy you're going to have an argument or two
16 with him, but he can't hold a grudge with him just
17 like he can't hold a grudge with you.
18 Q Okay, now this guy Little Dee, do you know what
19 he looks like?
20 A I have seen him.
21 Q You've seen him.
22 A Un-huh.
23 Q How many times?
24 A A couple of times.
25 Q A couple of times. If I showed you a lineup do

1 you think that you would be able to pick him out?

2 A Un-huh.

3 Q All right.

4 Sonia Jones She's actually one of the ones who could actually

5 take the police to his home.

6 Q Okay. Now, he may or may not be in this lineup,

7 but take your time and look and let me know if

8 you see him.

9 A This is him right here.

10 Q What number is that?

11 A Five.

12 Q Number five is who you picked.

13 A Yes.

14 Q Let me sign this, and I need you to sign it too.

15 A (Witness complies)

16 Sonia Jones Officer Garrett could bring pictures of all them

17 other brothers.

18 Q They just don't happen to be in this lineup. I'm

19 sorry. If you would sign there, and write the

20 number beside it who you think.

21 A (Witness complies)

22 Q I really hate to trouble but can I just get you to

23 just me a brief statement of what you told me?

24 A Okay.

25 Q Ms. Jones, could I also get you to write me a

1 ~~statement of what you know?~~

2 Sonia Jones I don't know English. No comprenda.

3 Q You speak a little bit of Spanish, do you?

4 Sonia Jones Se.

5 Q Mucho peketo.

6 Sonia Jones We have some Mexicans that live next door to us

7 and they enjoy trying to teach us Spanish. The

8 baby girl actually picked up English really good.

9 If you say something to her, and say shut up Mia,

10 she'll say f - - k you.

11 Q Huh-un.

12 Sonia Jones She's only two, actually she turned three.

13 Q Douglas, you're fifteen, correct?

14 A Yes, sir.

15 Q What's your date of birth?

16 A 11/22/93.

17 Q And you just had a birthday not to long ago, huh.

18 A Yes, sir.

19 Q Happy belated birthday?

20 A Thank you.

21 Sonia Jones So you're Investigator Garrett, correct?

22 Q Yes, ma'am.

23 Sonia Jones I wanted to make sure because I've talked to you,

24 Nelson, Todd.

25 Q I'm going to leave my card with you, and if you

1 remember anything else, I'm actually the lead
2 investigator on this. If you need anything else,
3 you can just call me.
4 Sonia Jones Okay. Did Kevin Wates actually leave out of
5 OCD and took over the City Department?
6 Q Yes, he's working with the city now.
7 Sonia Jones I've seen his car at his house.
8 Q Yes, and if I could get you to sign here and write
9 that number beside it.
10 Sonia Jones (Witness complies) Suppose we don't want to put
11 the number.
12 Q You have to put the number you identified.
13 Sonia Jones Let me make sure I've got the right one.
14 Q Four is the one you identified, correct?
15 Sonia Jones Yes, but I don't want to put the wrong one on
16 there. I'm thinking he looked like this and they
17 are all similar to the way he looks.
18 Toni Jones I could always tell his little eyes because he's got
19 a little thing. He's got a disease or something.
20 Sonia Jones He's sick from what they say. He's got some sort
21 of disease. It's like he ain't got long to be here
22 anyway. This is a lot of writing and I don't do
23 writing.
24 Q I understand.
25 Sonia Jones Douglas' or whose?

1 Q Yours. Do you want me to move this table out so
2 you could sit down.
3 Sonia Jones No.
4 Q You don't look comfortable.
5 Sonia Jones Trust me if I sit right now, I'm liable to fall asleep
6 on you.
7 Toni Jones What time is it?
8 Q It's 5:34. I will fill that part in for you.
9 Toni Jones Yes, if you would.
10 Q That's no problem. If I could get you to initial on
11 this line, saying that this is the end of your
12 statement?
13 Toni Jones (Witness complies)
14 Q And sign the top line here.
15 Toni Jones (Witness complies)
16 Q Okay, thank you.
17 Sonia Jones - - - talk to him. Every time I get stressed out this
18 knot come back and it gets bigger. I don't even
19 know where to start with this. I'll sit down and
20 help you write out yours tonight, and drop it off in
21 Georgetown.
22 A That ain't leave me no time to go outside.
23 Sonia Jones It would be nice if you asked Investigator Garrett
24 is finished with you.
25 A Investigator Garrett, are you finished with me?

1 Q You don't feel like writing this statement for me
2 today?
3 A No, sir.
4 Q Okay.
5 Sonia Jones Like I said I'll have it tomorrow.
6 Q Okay, Douglas I certainly appreciate it. I'm done
7 with you.
8 A Thank you sir.
9 Q Yes, sir.
10 Sonia Jones I don't even know where to start.
11 Q Just whatever you know about the incident. If you
12 personally know of any problems that Dee and
13 Andre' have had or if you know of any problems
14 that Andre' has had with anybody, just put it
15 down.
16 Sonia Jones Okay.
17 (Statement was concluded.)

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

3 **MOTION**

4 -----
5 November 17, 2022

6 **BEFORE:** The Honorable Benjamin Culbertson

7 -----
8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 TERRON DIZZLEY,

12 Defendant.
13 -----

14
15 **APPEARANCES:**

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

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

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

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

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

6 P.O. Box 762

7 Conway, SC 29526

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

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

17 You are Mr. Barr?

18 MR. YARBOROUGH: Mr. Yarborough.

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

21 MR. YARBOROUGH: I do, Your Honor.

22 THE COURT: I apologize; your first name?

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

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

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

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

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

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

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

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

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

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

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

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

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

13 THE COURT: Exactly.

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

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

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

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

8 THE COURT: Let me ask you, and I apologize for
9 interrupting and I'll let you fully argue your motion,
10 but was this a jury trial?

11 MR. YARBOROUGH: It was.

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

13 MR. YARBOROUGH: Mr. Dizzley, for years, since --
14 since he was retried has filed motions over and over
15 saying, look, you all did not have the authority to
16 try me that second time.

17 THE COURT: I understand that argument, but I'm
18 talking about the first trial. Because the law is
19 clear: If you have a hung jury, the judge declares a
20 mistrial, and then they can try him a second time if
21 it is a hung jury where the jury could not reach a
22 unanimous decision. Now, after a second hung trial,
23 they can't try him a third time.

24 Now, if this was a bench trial and the judge said
25 they have not carried their burden of proof, then I

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

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

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

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

25 THE COURT: That is an important issue.

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

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

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

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

5 (A brief pause in the proceedings.)

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

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

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

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

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

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

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

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

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

11 THE COURT: All right.

12 State's position?

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

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

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

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

25 THE COURT: All right.

1 (A brief pause in the proceedings.)

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

6 THE COURT: What does that case say?

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

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

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

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

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

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

10 THE COURT: Exactly.

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

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

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

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

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

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

9 THE COURT: All right.

10 Anything else?

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

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

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

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

19 THE COURT: No; that is hybrid representation.

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

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

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

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

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

9 MR. YARBOROUGH: Thank you, Your Honor.

10 THE COURT: All right.

11 State's position?

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

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

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

25 THE COURT: Is Gwendolyn Frazier here?

1 MS. FRAZIER: Yes, sir.

2 THE COURT: You are Ms. Frazier?

3 MS. FRAZIER: I am.

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

6 MS. FRAZIER: No, but we --

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

8 MS. FRAZIER: No, sir.

9 THE COURT: Is Laquetia Felder here?

10 Ms. Felder -- you are Laquetia Felder?

11 MS. FELDER: Yes, sir.

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

14 MS. FELDER: No, sir.

15 THE COURT: Thank you very much.

16 Ms. Richardson, go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: No, sir.

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

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

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

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

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

1 THE COURT: We are done for --

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

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

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

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

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

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

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

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

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

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

10 MR. DIZZLEY: Your Honor --

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

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

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

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

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

1 here today. We've argued that.

2 THE COURT: All right.

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

4 THE COURT: I did a Form 4.

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

12 DEPUTY: Sir, get your things.

13 .(Whereupon, the hearing concluded.)
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1
2
3 CERTIFICATE OF REPORTER

4 State of South Carolina)

5 County of Georgetown)
6

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

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

17

18 December 18, 2022
19

20 _____
21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

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SEP 11 2024

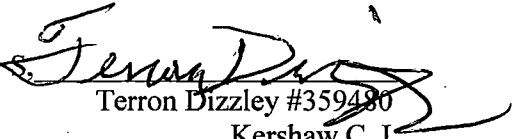
Certificate of Service

SC Court of Appeals

I, Terron Gerhard Dizzley, certify that on this _____ day of _____
2024, filed an Emergency Petition For Writ of Mandamus In Aid of Appellate Court
Jurisdiction, and summons, pursuant Case No. 2024-001176, by placing in U.S. Mail,
postage pre-paid sent to address below:

S.C. Court of Appeals
P.O. Box 11629
Columbia S.C., 29211

Attorney General Office
Attorney General, Alan Wilson
P.O. Box 11549
Columbia S.C. 29211


Terron Dizzley #359480
Kershaw C. I.
4848 Goldmine HW
Kershaw, SC 29067

Notice

S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: In re Terron Dizzley
Case No. 2024-001176

Dear Clerk:

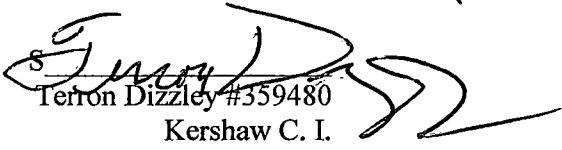
Enclosed, please find one original and one copy of Emergency Petition For
Writ of Mandamus In Aid of Appellate Court Jurisdiction and summons, stamp file
please send copy to me.

Date: 9-11-24

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SEP 11 2024

SC Court of Appeals


Terron Dizzley #359480
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4848 Goldmine HWY
Kershaw S.C., 29067