STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEVY ERNEST DUNN,

APPELLANT

APPELLATE CASE NO. 2024-001413

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to rule on the mistrial motion based on prejudicial premature deliberations among three jury members and instead offering the Hobson's choice of proceeding with the three biased jurors in question or removing the three jurors, replacing them with the two alternate jurors, and proceeding with a jury of only eleven members pursuant to Rule 14 of the South Carolina Rules of Criminal Procedure?

STATEMENT OF THE CASE

In May of 2022,[1] the Greenville County Grand Jury indicted Appellant, Levy Ernest Dunn, for domestic violence of a high and aggravated nature [DVHAN]. (R. pp. ** - indictment). On August 19, 2024, Appellant proceeded to jury trial before the Honorable G.D. Morgan, Jr. Seth Holcomb and Mindy Lipinski represented Appellant at trial. Brittany Scott and Elterrice Westfield prosecuted the case. The jury found Appellant guilty. Judge Morgan sentenced Appellant to eighteen (18) years. (R. p. ** - sentencing sheet) A timely notice of intent to appeal was served on August 22, 2024. This appeal follows.

[1] The indictment number is 2021-GS-23-08129 but where the year is listed below the 2021 is scratched out and 2022 is handwritten. In the body of the indictment May 17, 2022, is stamped as the date when the Grand Jury convened. (R. pp. ** - Indictment).

STANDARD OF REVIEW

A trial judge's decision denying a mistrial will be reversed on appeal if the denial amounts to an abuse of discretion. State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). "Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." Id. at 457–58, 539 S.E.2d at 719 (internal quotations and citations omitted). Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013) (citing State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010).

ARGUMENT

The trial judge erred in failing to rule on the mistrial motion based on prejudicial premature deliberations among three jury members and instead offering the Hobson's choice of proceeding with the three biased jurors or removing the three jurors, replacing them with the two alternate jurors, and proceeding with a jury of only eleven members pursuant to Rule 14 of the South Carolina Rules of Criminal Procedure.

Relevant Facts

The jury found Appellant guilty of domestic violence of a high and aggravated nature against his wife, Nneka Rita Dunn, who is also known as Nneka Rita Chidibere Okeke. (Tr. p. 285, lines 19-24). Rita testified that she and Appellant argued over the car keys and when she did not give the keys to him, Appellant began to punch and stab her. (Tr. p. 289, lines 9-24). Rita ran out of the apartment and downstairs where neighbors helped her. (Tr. p. 305, lines 10-21).

On the third day of trial, August 21, 2024, the State and the Defense rested and the jury was excused for lunch at approximately 12:48 PM. (Tr. p. 520, lines 1-14). The judge instructed the jury, "So again, please don't discuss the case." (Tr. p. 520, lines 10-11). While eating lunch at the Society Sandwich Shop two employees of the Public Defender Office who were not involved in the case overheard three jury members discussing the case. (Tr. p. 520, line 23 – p. 521, lines 1-6). The matter was brought to the attention of the judge and the lawyers involved in the case.

When the jury returned from lunch the judge asked if anyone ate lunch at the Society Sandwich Shop. (Tr. p. 521, line 7 – p. 522, lines 1-7). Three jurors raised their hands indicating they ate lunch at the sandwich shop. (Tr. p. 522, lines 8-10). The judge excused the

jury but questioned the three jurors individually[2]. Juror number forty (#40) denied discussing the case. (Tr. p. 522, line 19 – p. 523, lines 1-25). Juror number twenty-nine (#29) did not recall discussing the case. (Tr. p. 524, line 2 – p. 525, lines 1-15). Juror number forty-nine (#49) did not recall speaking about the case. (Tr. p. 525, line 16 – p. 526, lines 1-20).

Counsel for Appellant moved for a mistrial. (Tr. p. 526, line 24 – p. 527, lines 1-23). Counsel for Appellant noted that two of the jurors curiously could not recall the recent lunch conversations, one juror looked at the ceiling and did not make direct eye contact when being questioned and another juror looked away or down when being questioned. (Tr. p. 527, lines 6-14). Counsel for Appellant also noted the juror's possible reason for not being candid was concern that they had done something wrong and did not want to get in trouble. (Tr. p. 527, lines 14-17). Counsel told the judge, "But you, also, now the situation of putting them back in the jury and allowing them to decide and does that impact his ability to get a fair and impartial trial? So The Defense still feels that a mistrial is warranted giving the circumstances and memorialize the testimony to protect the record." (Tr. p. 527, lines 17-23).

The judge then questioned the employees from the Public Defender Office[3]. One employee, Ms. Burkette, told the judge, "So the girl and the guy with the goatee, their backs were to me, so I heard more the first guy who came. He had said – he joked about not guilty and started laughing. He said something about 20 years. And somebody said, No, I think it's five. When they were asking for the check, he said, What are they going to do fire us? Then they got up and left." (Tr. p. 528, lies 15-22). Ms. Walker, an attorney with the Public Defender Office, told the judge, "I was sitting with my back to the individuals behind us, I heard the phrase, not

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[2] The jurors were not placed under oath.

[3] The employees were not placed under oath but as noted, one was an attorney and as such, an officer of the court.

guilty and then loud laughter from a man's voice. I heard 20 years. And then I heard, I think it's five. I don't know if it was a man or woman that said those things, but 20 years was a man. I can't remember who, if it was a man or woman. Then I heard, I think we're going to be late and what are they going to do about it. That was exactly the things that I could hear and decipher." (Tr. p. 531, lines 6-15).

Appellant again moved for a mistrial. Counsel for Appellant argued:

> Just quickly, I would note, Your Honor, they texted me leaving the restaurant. They came to me afterwards. They said we have concerns, this is what we overheard. Ms. Walker is an officer of the court. I don't see any reason why she would have to say this. I find it very curious that the 20 years they're talking about is what the potential crime carries.
>
> So my concern is that they're investigating this, they're investigating the length of it. They're concerned about the potential penalty, how it may impact their decision, whether they would consider the CDV-HAN or lesser included offense, that they would be concerned it doesn't carry enough time and that might impact their decision.
>
> I understand they said that, but obviously, it's in the Court's discretion. But my concern is that my client is now – You know, I think there is prima facie evidence that they were deliberating during lunch and discussing the case, that there may have been more overheard and they were just less than candid with the court. For that reason, the Defense feels a mistrial is the only possible outcome.

(Tr. p. 531, line 19 – p. 532, lines 1-16).

The judge responded:

> All right. One thing I – I obviously heard the discussion and I don't doubt the credibility of Ms. Burkette and Ms. Walker at all. And what they say they heard is five years and 20 years. Looking at it from both sides – and I understand The Defense's position. I certainly am taking that into consideration. First of all, the jurors said they did not talk about this case. And certainly, five years, 20 years could be about something else. They both – or all three of them denied having any discussion about guilty or not guilty. But it is certainly possible that a decision of five years or 20 years could have been something else. I do recognize the coincidence, for lack of a better word, in that discussion. So certainly, there is the appearance that they may have been discussing it, but they have denied it.

(Tr. p. 532, line 17 – p. 533, lines 1-8). Counsel for Appellant again moved for a mistrial arguing:

> I understand that, but I think when you hear that [laughing about finding my client not guilty] coupled with the five and 20 coupled with the fact that they're jurors in the particular case getting ready to begin deliberations, I think it's not a stretch to say that that's what they were laughing about. So my concern is that prejudice, that there is some predetermined prejudice against my client and they feel like a not guilty verdict is a laughable matter. I mean, I don't how more prejudicial you could get in terms of categorizing my client's ability to get a fair trial.
>
> For that reason, I do believe prejudice has been shown. I don't think it's just some innocuous comment. I think, overall, it appears they were discussing the case in general. And I think for that reason it would be – I think a mistrial is warranted.

(Tr. p. 534, lines 8-24).

The trial judge did not rule on the mistrial motion. Instead, he asked, "Let me ask you this, and I'm deciding in a minute what I'm going to do. Is there any party that would agree to go to 11 under Rule 14? Rule 14 certainly allows the parties, if they agree in writing, for a jury verdict to go with a jury of less than 12." (Tr. p. 534, line 25 – p. 535, lines 1-5). The judge then gave counsel for Appellant an opportunity to discuss the options with her client as well as time for the attorneys for the State to discuss the situation among themselves. (Tr. p. 535 lines 6-13).

After the break the attorney for the State told the judge, "Your Honor, we find that there is not prejudice to the Defense and we'd ask that the jury remain. However, given the way that you've ruled and offered up the Rule 14, if that choice is that the prejudice you believe is an issue and we know the Defendant objects to that, we would then want to do Rule 14 as opposed to a mistrial. And we would do what's required, which is the writing through the criminal court that we both agree to 11." (Tr. p. 535, lines 17-25). Counsel for Appellant told the judge, "I think our position, obviously, we would continue with our motion for a mistrial, but

understanding The Court's not inclined that motion – is not inclined to grant that motion, the alternative – the way I presented it to my client, to be clear on the record, is go forward and have those three jurors return, but have 12. Or go forward and have those three jurors removed, but only have 11 and put the two alternates in to fill that gap, we would proceed with 11." (Tr. p. 536, lines 3-12).

The judge stated, "So you are – what I'm hearing is both of you are ok if – well, obviously, I hadn't ruled on the prejudice motion part of it, but you may or may not have an idea the way I am going to rule. But you would be fine if I excuse all three and we go forward with 11, is that what I'm hearing?" (Tr. p. 536, lines 13-18). Counsel for Appellant answered:

> Yes. The way I presented it is if the Court doesn't grant the mistrial, the options presented to The Defendant was that those three jurors, still realizing from being questioned or otherwise, there may still be some prejudice that exist even if it – or some bias, but doesn't rise to the level of prejudice. But some less that deliberations still occurred, that I believe that that option would be that he could go forward not with those three, they would be excused, but that he could go forward with 11 and two alternates would step in to fill the gap, we would opt for 11.

(Tr. p. 536, line 19 – p. 537, lines 1-5). The State continued to argue no prejudice resulted warranting a mistrial but preferred the option of proceeding with eleven rather than a mistrial. (Tr. p. 537, lines 8-16).

The judge made findings stating:

> All right. For the record, the parties agree to condense it to writing going forward. I think based on what I have heard from the jurors and what I've heard from both Ms. Burkette and Ms. Walker, certainly, there was some discussions there. It is some concern to me that there were discussions among the three that did mention five years, 20 years, not guilty, reference to that does give me some concern. And I think in exploring and analyzing the situation, I think from a due process standpoint is to excuse the three that were brought before me, both parties agree to go forward with 11. I will move the two alternates into the jury as regular jury members now and go forward with those 11.

> It is some concern that there is some information, again, from Ms. Walker and Ms. Burkette, if there was some discussion. Flip side of that is the prejudice argument made from the State, also, is persuasive. However, there could be some prejudice there. It's believing Ms. Walker or Ms. Burkette, which certainly they're very credible, and believing these three jurors saying they didn't discuss it. So to me, I think the better option here is to go forward with 11 jurors. We'll excuse those three, move the two into the regular jury and that will be memorialized in writing. The parties agree to do that after closing and charge.

(Tr. p. 537, line 24 – p. 538, 539, line 1).

The judge excused the three jurors and the trial continued. (Tr. p. 539, line 7 – p. 540, lines 1-13). After the jury found Appellant guilty, counsel for Appellant renewed the motion for a mistrial. (Tr. p. 598, lines 8-15). The motion was again denied. (Tr. p. 598, lines 16-20). The Rule 14 agreement was marked as Court's Exhibit #2. (R. p. **).

Discussion

In State v. Aldret, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999) (n. #6 omitted), the South Carolina Supreme Court established the procedure trial courts should follow upon an allegation of premature deliberations writing:

> Accordingly, we hold the burden is on the party alleging premature deliberations to establish prejudice. Further, to assist the trial courts of this state, we set forth the following suggested procedure to follow in cases in which an allegation of premature deliberations arises.
>
> If such an allegation arises during trial, the trial court should conduct a hearing to ascertain if, in fact, such premature deliberations occurred, and if the deliberations were prejudicial. If requested by the moving party, the court may *voir dire* the jurors and, if practicable, "tailor a cautionary instruction to correct the ascertained damage." United States v. Resko, 3 F.3d at 695. If the trial court determines the deliberations were prejudicial, such findings should be set forth on the record, and a new trial ordered.

The trial judge in the present case erred in failing to find that premature deliberations occurred, failing to find prejudice, and failing to order a new trial. The mistrial motion should have been granted.

Premature Jury Deliberations

The evidence supports that the three jurors in question were improperly discussing the case at lunch, contrary to their testimony otherwise. The judge found "very credible" the testimony of both Ms. Burkette and Ms. Walker about what they overheard the jurors discussing – laughing at the possibility of a not guilty verdict and the mention of the numbers five and twenty. (Tr. p. 538, lines 19-20) Appellant was charged with DVHAN which happened to carry a maximum sentence of twenty years pursuant to S.C. Code Ann. § 16-25-65(B). The judge stated, "I think based on what I have heard from the jurors and what I've heard from both Ms. Burkette and Ms. Walker, certainly, there was some discussions there. It is some concern to me that there were discussions among the three that did mention five years, 20 years, not guilty, reference to that does give me some concern. And I think in exploring and analyzing the situation, I think from a due process standpoint is to excuse the three that were brought before me, both parties agree to go forward with 11." (Tr. p. 538, lines 1-13). The trial judge erred in failing to find that the three jury members prematurely discussed the case at lunch.

In State v. Aldret, 333 S.C. 307, 311–12, 509 S.E.2d 811, 813 (1999), the South Carolina Supreme Court wrote:

> The rationale for prohibiting premature jury deliberations was set forth in McGuire, supra[4], in which we stated:

[4] State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979).

> [A] jury should not begin discussing a case, nor deciding the issues, until all of the evidence, the argument of counsel, and the charge of the law is completed.... The reason for the rule is apparent. The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation. Similarly, other courts have recognized premature deliberations may affect the fundamental fairness of a trial. See United States v. Resko, 3 F.3d 684 (3d Cir.1993), *cert. denied,* 510 U.S. 1205, 114 S.Ct. 1326, 127 L.Ed.2d 674 (1994)(prohibition against premature deliberations protects defendant's right to a fair trial as well as his or her due process right to place burden on the government to prove its case). Accordingly, we hold premature jury deliberations may affect "fundamental fairness" of a trial such that the trial court may inquire into such allegations and may consider affidavits in support of such allegations.

The discussions in the present case between the three jurors at lunch took place before the arguments of counsel and before the judge's charge on the law. As premature discussions may affect the fundamental fairness of the trial, the judge correctly questioned the three jurors[5]. Although the jurors denied or did not recall discussing the case, the judge believed the three jurors prematurely discussed the case as evidenced by the judge's suggestion he excuse the three jurors in question and allow the trial to proceed with eleven instead of twelve jurors. The judge erred in failing to make a finding with regard to the premature deliberations pursuant to the procedure established by Aldret.

Prejudice

Appellant established prejudice resulting from the premature discussions. Based on the discussions overheard, these three jurors believed that a not guilty verdict was laughable. As argued by trial counsel:

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[5]Trial counsel failed to request that the judge question the remaining eleven jurors about whether they overheard comments by the three excused jurors.

> I understand that, but I think when you hear that [laughing about finding my client not guilty] coupled with the five and 20 coupled with the fact that they're jurors in the particular case getting ready to begin deliberations, I think it's not a stretch to say that that's what they were laughing about. So my concern is that prejudice, that there is some predetermined prejudice against my client and they feel like a not guilty verdict is a laughable matter. I mean, I don't how more prejudicial you could get in terms of categorizing my client's ability to get a fair trial. For that reason, I do believe prejudice has been shown.

(Tr. p. 534, lines 8-24). Trial counsel additionally argued, "So my concern is that they're investigating this, they're investigating the length of it. They're concerned about the potential penalty, how it may impact their decision, whether they would consider the CDV-HAN or lesser included offense, that they would be concerned it doesn't carry enough time and that might impact their decision." (Tr. p. 532, lines 2-8).

In Ethier v. Fairfield Mem'l Hosp., 429 S.C. 649, 657, 842 S.E.2d 355, 359 (2020), the South Carolina Supreme Court wrote, "The trial court found Killian engaged in premature deliberations, but it concluded the Ethiers failed to prove the requisite prejudice in order to grant a new trial. While we commend the trial court for its thorough post-trial evidentiary hearing, it is clear Killian's conduct severely hampered the fundamental fairness of the trial, and that the circumstances here demonstrate prejudice. Carmichael testified that Killian's comments directly affected her vote, as she initially believed Bibeau was more negligent." While this Court does not have the benefit of testimony from any of the remaining eleven jurors that they overheard the three excused jurors discussing the case and those discussions changed their vote as in Ethier v. Fairfield Mem'l Hosp., this Court has evidence that the three excused jurors were unable to consider a not guilty verdict because to them a not guilty verdict was laughable. As noted by the Court, "Because *Vestry* stands for the principle that less than twelve fair and impartial jurors is perfectly acceptable and is an anomaly in our jurisprudence, we overrule it." Ethier v.

Fairfield Mem'l Hosp., 429 S.C. at 656, 842 S.E.2d at 359. The premature deliberations in the present case affected the fundamental fairness of the trial resulting in prejudice. The trial judge erred in failing to find premature discussions resulting in prejudice that required a mistrial. The trial judge erred in refusing to grant the mistrial motion.

In United States v. Resko, 3 F.3d 684, 689–90 (3d Cir. 1993), cited in the Aldret opinion, the Third Circuit wrote:

> There are a number of reasons for this prohibition on premature deliberations in a criminal case. *See generally* Lillian B. Hardwick & B. Lee Ware, *Juror Misconduct* § 7.04, at 7–27 (1988). First, since the prosecution presents its evidence first, any premature discussions are likely to occur before the defendant has a chance to present all of his or her evidence, and it is likely that any initial opinions formed by the jurors, which will likely influence other jurors, will be unfavorable to the defendant for this reason. See Commonwealth v. Kerpan, 508 Pa. 418, 498 A.2d 829 (1985). Second, once a juror expresses his or her views in the presence of other jurors, he or she is likely to continue to adhere to that opinion and to pay greater attention to evidence presented that comports with that opinion. Consequently, the mere act of openly expressing his or her views may tend to cause the juror to approach the case with less than a fully open mind and to adhere to the publicly expressed viewpoint. See Winebrenner v. United States, 147 F.2d 322, 328 (8th Cir.1945); State v. Joyner, 289 S.C. 436, 346 S.E.2d 711, 712 (1986).
>
> Third, the jury system is meant to involve decisionmaking as a collective, deliberative process and premature discussions among individual jurors may thwart that goal. See Winebrenner, 147 F.2d at 329; Kerpan, 498 A.2d at 831. Fourth, because the court provides the jury with legal instructions only after all the evidence has been presented, jurors who engage in premature deliberations do so without the benefit of the court's instructions on the reasonable doubt standard. See Winebrenner, 147 F.2d at 327. Fifth, if premature deliberations occur before the defendant has had an opportunity to present all of his or her evidence (as occurred here) and jurors form premature conclusions about the case, the burden of proof will have been, in effect, shifted from the government to the defendant, who has "the burden of changing by evidence the opinion thus formed." Id. at 328.
>
> Finally, requiring the jury to refrain from prematurely discussing the case with fellow jurors in a criminal case helps protect a defendant's Sixth Amendment right to a fair trial as well as his or her due process right to place the burden on the government to prove its case beyond a reasonable doubt. See In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970).

Appellant established that the premature discussions in the present case resulted in prejudice. The three jurors engaged in premature discussions about the case without the benefit of closing argument and the judge's instructions, including the instruction on reasonable doubt. The premature discussions indicating that the jurors could not consider a not guilty verdict resulted in a violation of Appellant's Sixth Amendment right to a fair trial and his due process right to place the burden on the State to prove its case beyond a reasonable doubt. The trial judge erred in failing to find prejudicial premature discussions and erred in refusing to grant a mistrial.

The Hobson's choice of proceeding with twelve jurors, three of whom were biased against Appellant, or proceeding with eleven unbiased jurors does not cure the error in refusing to grant the mistrial.

Instead of declaring a mistrial as warranted by the prejudicial premature discussions by three jurors, the judge suggested that he excuse the three jurors in question, add the two alternates, and proceed with only eleven jurors as provided by Rule 14 SCRCrimP. (Tr. p. 534, line 25 – p. 535, lines 1-5). Rule 14 provides, "A jury shall be composed of twelve members, but at any time before verdict, the parties may agree in writing with the approval of the court that the jury shall consist of any number less than twelve or that a valid verdict may be returned by a jury of less than twelve should the court find it necessary to excuse one or more jurors for any just cause after trial commences." SCRCrimP 14. Appellant agreed to proceed with only eleven jurors based on the advice from defense counsel that the only other option was to proceed with the jurors who were unable to consider a not guilty verdict.

Defense counsel told the judge, "I think our position, obviously, we would continue with our motion for a mistrial, but understanding The Court's not inclined that motion – is not

inclined to grant that motion, the alternative – the way I presented it to my client, to be clear on the record, is go forward and have those three jurors return, but have 12. Or go forward and have those three jurors removed, but only have 11 and put the two alternates in to fill that gap, we would proceed with 11." (Tr. p. 536, lines 3-12). Appellant was entitled to a jury of twelve unbiased jury members. Instead, Appellant was forced to either proceed with twelve jurors, three of whom were biased against him, or proceed with eleven jurors – a Hobson's choice for Appellant. The Rule 14 agreement does not cure the error of the judge refusing to declare a mistrial or waive the issue for appellate review.

Defense counsel reasonably believed the judge was not inclined to grant a mistrial. Defense counsel told the judge, "I think our position, obviously, we would continue with our motion for a mistrial, but understanding The Court's not inclined that motion – is not inclined to grant that motion, ... " (Tr. p. 536, lines 3-6). At the end of the case defense counsel renewed the motion for a mistrial. (Tr. p. 598, lines 8-15). The judge's failure to rule on the mistrial motion and instead offering to proceed with only eleven jurors should be considered a final ruling to deny the motion for a mistrial.

The situation is similar to the challenge to a prior conviction discussed in State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct.App.1995). In Mueller the South Carolina Court of Appeals wrote:

> Mueller raises a single issue on appeal. She contends the trial court erred by admitting evidence of the 1980 conviction for the purpose of impeaching the credibility of her husband, a crucial defense witness.
>
> Before we address the merits of Mueller's argument, we must first determine whether the issue is properly before us. The State contends the issue is not preserved for appeal because Mueller herself elicited the challenged evidence through direct examination. Mueller argues the trial court made a final ruling on the admissibility of the conviction, and that she properly introduced evidence of the conviction herself to minimize its impact on the jury. She contends an attorney

> "should not be given the Hobson's choice of either mitigating the damage to his witness by introducing impeachment evidence on direct examination, or preserving for review on appeal the error of a ruling already made." We agree.

Mueller, 319 S.C. at 268, 460 S.E.2d at 410. In the same way the attorney in Mueller should not have been given the Hobson's choice of either mitigating the damage to his witness by introducing impeachment evidence on direct examination, or preserving for review on appeal the error of a ruling already made, the attorney in the present case should not have been given the Hobson's choice of, in order to preserve the denial of the mistrial motion for appellate review, proceeding with twelve jurors knowing that three of the jurors thought a not guilty verdict was laughable, or proceeding with only eleven jurors. The trial judge abused his discretion in refusing to grant the mistrial motion.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial.

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ATTORNEY FOR APPELLANT

This 6th day of August, 2025.