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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Frank R. Addy, Circuit Court Judge

TYRONE LORENZA ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001540

APPENDIX

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2 Nd Element "allegeing" victim K.S. [redacted] death is The proximate result of Tyrone Robinson commiteing a ongoing gun battle an inherantly dangerious felony

From The crime of felony murder by The felony murder rule Theory. That I was Tried on before The jury at Trial on indictment # 2012-GS-07-01935. For proof I quote The Trial proceedings from The Trial Transcript as follows

State of South Carolina

vs.

Tyrone Robinson

"Quoteing" from page 672 paragraph 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of Trial Judge Thomas Cooper decision from Trial Transcript "Quoteing" my point was That from The stand point of a motion for directed verdict. That The inclusion of The words while engaged in a ongoing gun battle an inherantly dangerious felony which I Thought was put There more appropriately when They were dealing with Three defendants in This particular case. That Those words could be taken out of This particular charge as indicted and There would be no question about whether or not They would have a right to go to a jury on The charge of murder against Mr. Robinson

1st

COLLATERAL ESTOPPEL

The state of South Carolina did not object and did not disagree with attorney Arie david Bax arguement. On motion for direct verdict of acquittal when attorney Arie david bax argued That his client Tyrone Robinson was entitled to a directed verdict of acquittal. Because The State of South Carolina failed to meet Their burdon of proof, to prove That I was guilty of commiteing an inherantly dangerious felony, which is the essential and factual element and criminal conduct. That indictment # 2012-GS-07-01935 charge and allege, is The one and only criminal conduct and essential and factual element. That caused victim K.S. [redacted] to be shot and killed and

deprived out of his life. Therefor The state of South Carolina is collateral Estopped from argueing against These facts

2Nd COLLATERAL ESTOPPEL

As a matter of law The state of South Carolina failed to object and failed to disagree, with The trial Judge and Trial court resolution correct or not. That resulted in The trial Judge and Trial court dismissing The essential and factual element and criminal conduct "allegeing" while engaged in a ongoing gun battle an inherantly dangerious felony

because The evidence The state of South Carolina submited at Trial was insufficient to convict on. which as a matter of law constituted a "dismissal" of The 1st Element "allegeing" Tyrone Robinson was in The commission of commiteing a ongoing gun battle an inherantly dangerious felony

from The crime of felony murder by The felony murder rule theory That I was indicted on and Tried on before The jury at Trial on indictment# 2012-GS-07-01935

which also as a matter of law constituted a "dismissal" of The 2nd Element "allegeing" death is The victim K.S. [redacted] Tyrone Robinson proximate result of I commiteing a ongoing gun battle an inherantly dangerious felony

from The crime of felony murder by The felony murder rule Theory, That I was indicted on and Tried on before The jury at Trial on indictment#2012-GS-07-01935 Therefore The state of South Carolina is collateral Estopped from argueing against These facts.

The fact That The Trial Judge and Trial court upon There Error may deny a person There motion for directed verdict of acquittal,

OR GRANT A PERSON THERE MOTION FOR DIRECTED VERDICT OF ACQUITTAL, OR DISMISS THE INDICTMENT ETC. IS NOT THE CONTROLLING LAW TO DETERMINE RATHER A PERSON WAS OR WAS NOT ACQUITTED ON THE CRIME CHARGED IN THE INDICTMENT, THAT THEY WERE TRIED ON BEFORE THE JURY AT TRIAL FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT CASE LAW OF.
U.S. VS. HUNT 212 F.3RD 539
WHAT CONSTITUTES A "ACQUITTAL" IS NOT TO BE CONTROLLED BY THE FORM OF THE JUDGE ACTION

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF.
UNITED STATE VS. SCHWARTZ 785 F.2D 673 (9TH CIR 1986)
IN DETERMINEING WHETHER AN APPEAL IS BARRED BY THE CLAUSE THE SUPREME COURT HAS INSTRUCT-ED THAT THE LABEL APPLIED BY THE DISTRICT COURT, WHETHER "ACQUITTAL" IS NOT DISPOSIT-IVE THE TRIAL JUDGE CHARACTERIZATION OF HIS OWN ACTION CAN NOT CONTROL THE CLASS-IFICATION OF THE ACTION

WHAT CONSTITUTES A "ACQUITTAL ON THE CRIME THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF THE INDICTMENT. THAT A DEFENDANT IS TRIED ON BEFORE THE JURY AT TRIAL IS AS FOLLOWS. A DEFENDANT IS "ACQUITTED" ON THE CRIME THATS CHARGED AND ALLEGED INSIDE OF THE INDICTMENT THAT THEY ARE TRIED ON BEFORE THE JURY AT TRIAL. IF AT TRIAL THE DEFENDANT OBTAINS FROM THE TRIAL JUDGE AND TRIAL COURT. A RESOLUTION RATHER ITS CORRECT OR NOT. OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED AND ALLEGED INSIDE OF THE INDICTMENT, THAT THE PERSON IS TRIED ON BEFORE THE JURY AT TRIAL. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE UNITED STATES OF AMERICA CASE LAW OF.
SANABRIA VS. U.S. 98 S.CT 2170 "QUOTEING"
WE HAVE RECENTLY DEFINED ACQUITTAL AS A RESOLUTION CORRECT OR NOT OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED

CASE LAW MERITS

UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT CASE LAW OF.

U.S. VS. HUNT 212 F.3d 539 "QUOTEING" IS NOT TO BE
WHAT CONSTITUTES A "ACQUITTAL" IS NOT TO BE
CONTROLLED BY THE FORM OF THE JUDGES ACTION.
INSTEAD WE MUST DETERMINE WHETHER THE
RULEING OF THE JUDGE WHATEVER ITS LABEL,
ACTUALLY REPRESENTS A RESOLUTION CORRECT
OR NOT OF SOME OR ALL OF THE FACTUAL ELEMENTS
OF THE OFFENSE CHARGED

INSIDE OF THE CASE OF U.S. VS. HUNT 212 F.3rd 539 -
THE TENTH CIRCUIT COURT OF APPEALS EXPLAINED
THAT INSIDE OF THE CASE OF UNITED STATES VS.
SCHWARTZ 785 F.2d 673 (9th CIR 1986)

THE NINTH CIRCUIT COURT OF APPEALS EXPLAINED
THAT, BECAUSE ON MOTION FOR DIRECTED VERDICT
OF ACQUITTAL, CERTAIN PARTS OF THE INDICTMENT
WAS DISMISSED FOR LACK OF EVIDENCE. THOSE PARTS
OF THE INDICTMENT THAT WAS DISMISSED FOR LACK OF
EVIDENCE, CONSTITUTED A ACQUITTAL ON THE PARTS
OF THE INDICTMENT THAT WAS DISMISSED FOR LACK
OF EVIDENCE WHICH THE GOVERNMENT ADMITTED
THAT IT AMOUNTED TO A ACQUITTAL ON THE PARTS
OF THE INDICTMENT THAT WAS DISMISSED FOR LACK
OF EVIDENCE, FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR
THE TENTH CIRCUIT CASE LAW OF:
U.S. VS HUNT 212 F.3rd 539 "QUOTEING"
THE NINTH CIRCUIT REACHED THE SAME CONCLUSSION
IN UNITED STATES VS. SCHWARTZ 785 F.2d 673 (9th CIR
1986 "QUOTEING"
FOR ITS PART THE GOVERNMENT READILY ADMITS THAT
CERTAIN PARTS OF THE INDICTMENT WERE SPECIF-
-ICLY DISMISSED FOR LACK OF EVIDENCE THERE BY
AMOUNTING TO AN ACQUITTAL AS TO THOSE PARTS, THE
GOVERNMENT DOES NOT APPEAL THOSE SPECIFIC
FINDINGS

INSIDE OF THE CASE OF U.S. VS. HUNT 212 F.3rd 539
THE TENTH CIRCUIT COURT OF APPEALS EXPLAINED, THAT
INSIDE OF THE CASE OF UNITED STATES VS. SCHWARTZ
785 F.2d 673. THE NINTH CIRCUIT COURT OF APPEALS
EXPLAINED. THAT THE GOVERNMENT COULD NOT APPEAL
AGAINST THE DEFENDANT AND THE GOVERNMENT COULD
NOT RETRY THE DEFENDANT IN A RETRIAL, ON THE
REMAINING PARTS OF THE INDICTMENT THAT THE DISTRICT
COURT DID NOT SPECIFICLY REJECT FOR LACK OF SUFFICIENT
EVIDENCE.
BECAUSE THE FACT THAT ON MOTION FOR DIRECTED VERDICT
OF ACQUITTAL, THE DISTRICT COURTS DISMISSAL OF CERTAIN
PARTS OF THE INDICTMENT FOR LACK OF EVIDENCE.
CONSTITUTED A "ACQUITTAL" ON THE PARTS OF THE
INDICTMENT THAT WAS DISMISSED FOR LACK OF SUFFICI-
-ENT EVIDENCE.
THE ACQUITTAL ON THE PARTS OF THE INDICTMENT THAT
WAS DISMISSED FOR LACK OF SUFFICIENT EVIDENCE.
CONSTITUTED A ACQUITTAL ON THE WHOLE CRIME THAT

was charged and alleged inside of the written write up of the indictment that the defendant was tried on before the jury at trial.
As a result the federal 5th Amendment right of double jeopardy barred the government from appealing against the defendant.
Also the federal 5th Amendment right of double jeopardy barred the government from retrieing the defendant in a retrial. Even if the district court based the acquittal on an erroneous interpr-etation of governing legal principles or upon legal principles which are themselves subsequently over turned. For proof review

case law merits

United States of America Court of Appeals for the Tenth Circuit case law of:
U.S. vs. Hunt 212 F.3rd 539 "Quoteing"
The Ninth Circuit reached the same conclussion in United States vs. Schwartz 785 F.2d 673 (9th Cir 1986) "Quoteing"
There the government made the same arguement that it makes here.
That the government readily admits that for its part the indictment were specific-certain parts of the indictment were specific-ally dismissed for lack of evidence there by amounting to an acquittal as to those parts. The government does not appeal those specific findings. government does not appeal those specific findings. However the crux of the governments arguement, however the crux of the government is that despite the label of "acquittal" used by the courts, the judgement on counts one through twelve was in fact partly "a dismissal based on the ruleing of law that there was an imperm-issable variance. The government opines, there-fore, that it is not barred from appealing or seeking a retrial on the individual parts of the scheme which the district court did not specificly reject for lack of sufficient evidence. The Ninth Circuit rejected the governments arguement in Schwartz, in as much as we find the judgement below to be a true acquittal, the double jeopardy clause bars appeal even if the district court based the acquittal on an erron-eous interpretation of governing legal principles or upon legal principles which are themselves subsequently overturned

Inside of this case The State of South Carolina vs. Tyrone Robinson. on indictment # 2012-GS-07-01935. because on motion for directed verdict of acquittal, after reviewing the evidence, The trial judge and trial court resolution, correct or not, of the trial judge and trial court takeing out, the words, terminateing, disposeing and dismissing. The essential and factual element "allegeing" while engaged in a ongoing gun battle an inherantly dangerious felony

In response to attorney Arie David Bax arguement

That his client Tyrone Robinson is entitled to a directed verdict of acquittal, because the evidence that the State of South Carolina submitted at trial was insufficient to convict on the essential and factual element and criminal conduct "allegeing" while engaged in a ongoing gun battle an inherantly dangerious felony

Which constitutes a "Dismissal" of the 1st Element "allegeing" Tyrone Robinson was in the commission of commiteing a ongoing gun battle an inherantly dangerious felony

From the crime of felony murder by the felony murder rule theory. That I was indicted on and tried on before the jury at trial on indictment #2012-GS-07-01935

Which also constitutes a "Dismissal" of the 2nd Element "allegeing" death is the victim K.S. [redacted] Tyrone Robinson proximate result of commiteing a ongoing gun battle an inherantly dangerious felony

From the crime of felony murder by the felony murder rule theory. That I was indicted on and tried on before the jury at trial, on indictment #2012-GS-07-01935. The dismissal represents a finding by the trial judge and trial court, that the evidence the State of South Carolina submitted at trial, was insufficient to convict on the 1st Element "allegeing" Tyrone Robinson was in the commission of commiteing a ongoing gun battle an inherantly dangerious felony

From the crime of felony murder by the felony murder rule theory. That I was indicted on and tried on before the jury at trial on indictment #2012-GS-07-01935

Also the dismissal represents a finding by the trial judge and trial court, that the evidence the State of South Carolina submitted at trial, was insufficient to convict on the 2nd Element "allegeing" death is the proximate victim K.S. [redacted] Tyrone Robinson commiteing a result of ongoing gun battle an inherantly dangerious felony

From the crime of felony murder by the felony murder rule theory That I was indicted on and tried on before the jury at trial on indictment # 2012-GS-07-01935

There for The Trial Judge and Trial court resolution correct or not. of The Trial Judge and Trial court takeing out the words and "dismissing" The essential and factual element "allegeing"

while engaged in a ongoing gun battle an inherantly dangerious felony

because The evidence The state of South Carolina submited at Trial, was insufficient to convict on The essential and factual element "allegeing"

while engaged in a ongoing gun battle an inherantly dangerious felony

As a matter of law constitutes a "ACQUITTAL" on The 1st Element "allegeing"

Tyrone Robinson was in The commission of commiteing a ongoing gun battle an inherantly dangerious felony

from The crime of felony murder by The felony murder rule Theory. That I was indicted on and Tried on before The Jury at Trial on Indictment # 2012-GS-07-01935

Also as a matter of law constitutes a "ACQUITTAL" on The 2nd Element "allegeing"

victim K.S. death is The proximate result of I Tyrone Robinson commiteing a ongoing gun battle an inherantly dangerious felony

from The crime of felony murder by The felony murder rule Theory. That I was indicted on and Tried on before The Jury at Trial on Indictment # 2012-GS-07-01935 for proof review

case law merits

United States of America court of Appeals for The Tenth circuit case law of.

U.S. vs. Hunt 212 F.3d 539 "Quoteing"

In United States vs. Schwartz 785 F.2d 673 (9th Cir 1986) "Quoteing"

For its part, The government readily admits That certain parts of The indictment were specificly dismissed for lack of evidence there by amounting ~~to~~ an acquittal as to Those parts, The government does not appeal Those specific findings

As a matter of law The ACQUITTAL That The Trial Judge and Trial court actions constituted - on The 1st Element "allegeing"

Tyrone Robinson was in The commission of commiteing a ongoing gun battle an inherantly dangerious felony

FROM THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY. THAT I WAS INDICTED ON AND TRIED ON BEFORE THE JURY AT TRIAL, ON INDICTMENT#2012-GS-07-01935.

AND THE ACQUITTAL THAT THE TRIAL JUDGE AND TRIAL COURT ACTIONS CONSTITUTED ON THE 2ND ELEMENT "ALLEGEING" [REDACTED] death IS THE VICTIM K.S. [REDACTED] OF I TYRONE ROBINSON PROXIMATE RESULT OF COMMITEING A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY

FROM THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY. THAT I WAS INDICTED ON AND TRIED ON BEFORE THE JURY AT TRIAL, ON INDICTMENT#2012-GS-07-01935

CONSTITUTES A ACQUITTAL ON THE WHOLE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER THE 7ST 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [REDACTED] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AVEN ROAD ON HILTON HEAD ISLAND AND THAT K.S. [REDACTED] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT#2012-GS-07-01935.
AS A RESULT THE FEDERAL 5TH AMENDMENT RIGHT OF DOUBLE JEOPARDY. BARRS THE STATE OF SOUTH CAROLINA FROM RETRIEING I TYRONE ROBINSON IN A RETRIAL FOR THE DEATH OF VICTIM K.S. [REDACTED]

ALSO THE FEDERAL 5TH AMENDMENT RIGHT OF DOUBLE JEOPARDY. BARS THE STATE OF SOUTH CAROLINA FROM APPEALING AGAINST I TYRONE ROBINSON AND OR ARGUEING AGAINST I TYRONE ROBINSON ON THE "ACQUITTAL", EVEN IF THE "ACQUITTAL" THAT I OBTAINED ON THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY THAT I WAS INDICTED ON AND TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT#2012-GS-07-01935. WAS BASED ON AN ERRONEOUS INTERPRETATION OF GOVERNING LEGAL PRINCIPLES OR UPON LEGAL PRINCIPLES WHICH ARE THEMSELVES SUBSEQUENTLY OVERTURNED. FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS
FOR THE TENTH CIRCUIT CASE LAW OF:
U.S. VS. HUNT 212 F.3RD 539 "QUOTEING"
THE NINTH CIRCUIT REACHED THE SAME CONCLUSSION
IN UNITED STATES VS. SCHWARTZ 785 F.2D 673
(9TH CIR 1986) "QUOTEING"
THERE THE GOVERNMENT MADE THE SAME ARGUEMENT
THAT IT MAKES HERE.
FOR ITS PART THE GOVERNMENT READILY ADMITS
THAT CERTAIN PARTS OF THE INDICTMENT
WERE SPECIFICALLY DISMISSED FOR LACK OF EVID-
-ENCE THERE BY AMOUNTING TO AN ACQUITTAL AS
TO THOSE PARTS. THE GOVERNMENT DOES NOT APPEAL
THOSE SPECIFIC FINDINGS. THE CRUX OF THE GOVERN-
-MENTS ARGUEMENT, HOWEVER IS THAT DESPITE
THE LABEL OF ACQUITTAL USED BY THE COURTS, THE
JUDGEMENT ON COUNTS ONE THROUGH TWELVE WAS IN
FACT PARTLY A "DISMISSAL" BASED ON THE RULEING
OF LAW THAT THERE WAS AN IMPERMISSIBLE VARIA-
-NCE. THE GOVERNMENT OPINES THEREFOR, THAT IT IS
NOT BARRED FROM APPEALING OR SEEKING A RETRIAL
ON THE INDIVIDUAL PARTS OF THE SCHEME WHICH
THE DISTRICT COURT DID NOT SPECIFICALLY REJECT
FOR LACK OF SUFFICIENT EVIDENCE.
THE NINTH CIRCUIT REJECTED THE GOVERNMENTS
ARGUEMENT IN SCHWARTZ IN AS MUCH AS WE
FIND THE JUDGEMENT BELOW TO BE A TRUE ACQUITTAL,
THE DOUBLE JEOPARDY CLAUSE BARRS APPEAL EVEN
IF THE DISTRICT COURT BASED THE ACQUITTAL ON
AN ERRONEOUS INTERPRETATION OF GOVERNING
LEGAL PRINCIPLES OR UPON LEGAL PRINCIPLES WHICH
ARE THEMSELVES SUBSEQUENTLY OVERTURNED

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR
THE NINTH CIRCUIT CASE LAW OF:
UNITED STATES OF AMERICA VS. SOL C. SCHWARTZ,
RAYMOND F. LANE FRANK C. MAROLDA, AND ABLE
CHAPMAN 785 F.2D 673 (1886) "QUOTEING"
IN DETERMINING WHETHER AN APPEAL IS BARRED
BY THE CLAUSE. THE SUPREME COURT HAS INSTRUCTED
THAT THE LABEL APPLIED BY THE DISTRICT COURT,
WHETHER "ACQUITTAL" IS NOT DISPOSITIVE. THE
TRIAL JUDGE CHARACTERIZATION OF HIS OWN ACTION
CAN NOT CONTROL THE CLASSIFICATION OF THE ACTION.
THUS APPLYING SUBSTANCE OVER FORM TO A DISTRICT
COURTS JUDGEMENT OF ACQUITTAL, APPEAL IS BARRED
IF THE COURT "EVALUATED THE GOVERNMENTS EVIDENCE
AND DETERMINED THAT IT WAS LEGALLY INSUFFICIENT
TO SUSTAIN A CONVICTION "FURTHER QUOTEING"
THE RULE MILLER BASED ON THE FIFTH AMENDMENT
GRAND JURY GUARANTEE, WAS THAT A CONVICTION
COULD NOT STAND WHERE THE TRIAL PROOF SHOWED

a fraudulent scheme much narrower than, even though wholly included within the scheme indicted by the grand jury. The reasoning was that the grand jury's willingness to indict someone for a broad wire fraud scheme does not establish the same grand jury would have indicted the person for a substantial narrower scheme. The district court recognized this peculiar rule and from the beginning, exhibited an understand--ing as well as an intention to hold the govern--ment to its directive the government was specifically warned before trial that it was required to comply. when the government did not comply, the court explained to the jury, in terms of the ninth circuit case law. why it was granting defendants motion for acquittal. The court explained in lack of evidence on severasal elements of The broad scheme "a reason--able jurror could not find beyond a reason--able doubt that the defendant had participated in a unitary scheme to defraud as charged in the indictment. There after, the court entered an order granting judgement of acquittal. The action" and "word" of the district court clearly show that it evaluated the governments evidence under the prevailing legal standards and determined that, that evidence was legally insufficient to sustain a wire fraud conviction as indicted. This can only amount to an acquittal on all thirt--een counts that went to trial "further quote--ing"

In as much as we find the judgement below to be a acquittal, the Double Jeopardy clause barrs appeal even if the district court based the acquittal on an erroneous interpretation of governing legal principle or upon legal principles which are themselves subsequently overturned.

when the trial judge and trial court instructed The jury on the crime of murder to decide on. The trial judge and trial court instructed The jury to decide on. The third unindicted crime of murder "allegeing" That I killed The victim with malice and aforethought 1,

That There is not any indictment chargeing me with and There is not any indictment putting me on notice That I had to defend against.

ELEMENTS

The Elements Requzred to prove The Third unind-
The Elements Required to prove The Third Unind-
-icted alleged crime of murder "allegeing
I killed The victim with malice and aforethou,

The elements required to constitute The
crime of murder by The crime "allegeing"
I killed The victim with malice and aforeth-
-ought is as follows

1St Element for crime of murder allegeing
I killed The victim with malice and afore-
-Thought is:
That The accused unlawfully killed another

2Nd Element for crime of murder allegeing
I killed The victim with malice and aforethought
is:
That The killing was commited with malice
aforethought

for proof That The trial judge and trial court
charged and instructed The jury to decide on
This Third unindicted crime of murder
"allegeing"
I killed The victim with malice and aforethought
I quote The following from The trial transcript
as follows

State of South Carolina
vs.
Tyrone Robinson

"quoteing" from page 993 paragraph 4,5,6,7,8,9,10,11,
12,13,14, and 15 of trial transcript, from The trial
judge and trial court (AKA) trial judge cooper
stateing "quoteing"
I now instruct you to what The law is on The
charge in This particular case. As you know
The defendant is charged with The crime of
murder, murder is defined in The law as
The killing of any person with malice aforeth-
-ought either expressed or implied.
And so in order for the state to prove The defend-
-ant guilty of murder it must be prove beyond
a reasonable doubt That The defendant killed
The victim

and That The killing was done with malice
and aforethought

Case law merits

supreme court of Appeals of The state of south
carolina case law of.
Herman Winn 125084 vs. state of south carolina
case no; 01-CP-08128 "quoteing"
3. The Inditcment must charge That The defendant
with malice aforethought murdered The defend-
-ant

Inside of The case law of Ricky Pelzer vs. State
of south carolina 622 S.E.2d 780 The court of
Appeals of The state of south carolina decided.
That in order for a alleged crime to be a
lesser included crime of The crime thats charged
and alleged inside of The indictment. The elements
of The alleged crime That is not charged and
alleged inside of The indictment. must be included
into The elements of The greater offense That is
charged and alleged inside of The written write
up of The indictment.

Case law merits

The court of Appeals of The state of south carolina
case law of.
Ricky Pelzer vs. state of south carolina 622 S.E.2d
780 "quoteing"
For an offense to be a lesser included of another
The greater offense must include all The elem-
-ents of The lesser offense. If The lesser offense
includes an element not included in The
greater offense, Then The lesser offense is not
included in The greater

1st ELEMENT

For The Third unindicted crime of murder
"allegeing"
I killed The victim with malice and aforethought

is:
That The accused unlawfully killed another
which defined by its webster dictionary
definition means to "allege" That The accused
unlawfully deprived another person out of
There life

This is because The webster dictionary defi-
-nition for The word KILL means The following
"meaning" to deprive of life

1st ELEMENT

1st Element for crime of felony murder by The felony murder rule theory, thats charged and alleged inside of the written write up of indictment # 2012-GS-07-01935 is:
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

The law dictionary definition for the word felony means "quoteing"
Felony generic term employed to destinguish certain high crimes from minor offenses known as misdameanors; crimes declared to be such by statue or as true crimes" by common law

As a matter of law the first element to the third unindicted crime of murder "allegeing" I killed the victim with malice and aforethought

which first element is:
That the accused unlawfully killed another

which defined by its dictionary definition means to allege.
That the accused unlawfully deprived another person out of there life

has a totally differant definition meaning and is not included into the first element to the crime of felony murder by the felony murder rule theory. Thats charged and alleged inside of the written write up of indictment # 2012-GS-07-01935 which first element is:
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

which the law dictionary definition for the word felony means "quoteing"
felony generic term employed to distinguish certain high crimes from minor offenses known as misdameanors; crime declared to be such by statue as "true crimes" by the common law

As a matter of law proveing that the first element to the third unindicted crime of murder "allegeing"
I killed the victim with malice and aforeth-ought whos first element is:
That the accused unlawfully killed another

IS NOT CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBIN-SON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AND AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSH-LAND DRIVE AND ALLEN ROAD, HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF.

THAT CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-01935 THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL. AS A MATTER OF LAW PROVEING THAT THE FIRST ELEMENT THAT THE JURY AT TRIAL CONVICTED ME ON. THAT IS REQUIRED TO PROVE THE THIRD UNINDICTED CRIME OF MURDER "ALLEGEING" I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT

WHOS FIRST ELEMENT IS. THAT THE ACCUSED UNLAWFULLY KILLED ANETHER IS NOT CHARGED AND ALLEGED INSIDE OF A INDICT-MENT AND THERE IS NOT ANY INDICTMENT PUTTING ME ON NOTICE I HAD TO DEFEND AGAINST.

AS A MATTER OF LAW PROVEING THAT TRIAL JUDGE THOMAS COOPER "ERRORED" BY PERMITTING THE JURY TO CONVICT ME ON THE UNINDICTED ELEMENT "ALLEGEING" I KILLED THE VICTIM WHICH CONSTITUTES THE 1ST ELEMENT "ALLEGEING" I UNLAWFULLY KILLED THE VICTIM

THAT THERE IS NOT ANY INDICTMENT PUTTING ME ON NOTICE I HAD TO DEFEND AGAINST. BECAUSE BY DOING SO TRIAL JUDGE COOPER ALLOWED THE JURY TO CONVICT ME ON THE UNINDICTED ELEMENT "ALLEGEING" I KILLED THE VICTIM WHICH CONSTITUTES THE UNINDICTED 1ST ELEMENT "ALLEGEING" I UNLAWFULLY KILLED THE VICTIM

THAT THE STATE OF SOUTH CAROLINA NEVER SAUGHT TO PROVE I WAS GUILTY OF AND THAT THERE IS NOT ANY INDICTMENT PUTTING ME ON NOTICE I HAD TO DEFEND AGAINST. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF. STATE VS. WILLIAMS DICKERSON 716 S.E. 2d 895 "QUOTE-

→ I. N9 "
Therefore, we adopt the supreme courts holding in hopkins and hold that a defendant is not entitled to a charge on lesser-related offenses here permitting the jury to convict Dickerson as accessory after the fact would permit the jury to find beyond a reasonable doubt elements of a crime the state never sought to prove and Dickerson was not on notice he had to defend against. Accordingly, we affirm the circuit court denial of Dickerson request to charge.

because at the end of trial when trial judge Thomas Cooper. instructed the jury on the crime to deliberate on. to determine rather I was guilty or not guilty of the death of victim K.S. [redacted] trial judge cooper instructed the jury to decide and deliberate on. The 1st element from the third unindicted alleged crime of murder "allegeing" I killed the victim with malice and aforethought

by the trial judge and trial court instructing the jury. That in order to convict me for the death of victim K.S. [redacted], The sate of south carolina had the burden of proof to prove that I was guilty beyond a reasonable doubt of killing the victim which constitutes the 1st element "allegeing"
I unlawfully killed the victim
That there is not any indictment putting me on notice I had to defend against and there is not any indictment chargeing me with.
by doing so proves that as a matter of law, The trial judge and trial court. unconstitutionally releaved the state of south carolina out of there burden of proof. To prove that I Tyrone Robinson am guilty beyond a reasonable doubt. of committe-ing the 1st element "allegeing"
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony
That indictment # 2012-GS-07-01935 puts I Tyrone Robinson on "notice" that I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before the jury at trial on indictment # 2012-GS-07-01935.
As a matter of law the trial judge and trial

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COURT "DID NOT" INSTRUCT THE JURY. That IN ORDER to CONVICT me FOR The death OF VICTIM K.S. [redacted]. The State OF South Carolina had to prove beyond a Reasonable doubt. That I Tyrone Robin-
-son was engaged in a ongoing gun battle an inherantly dangerious felony

As a matter of law proveing That the Trial Judge and Trial court "DID NOT" instruct the jury to decide on. The 1st Element "alleging"
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

That Indictment #2012-GS-07-01935 puts me on notice That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before the jury at trial on Indictment #2012-GS-07-01935.
As a matter of law proveing that without my consent. The trial judge and trial court "DISCHARGED" The jury away from my trial and did NOT ALLOW The jury to decide rather I was NOT GUILTY OR GUILTY of comm-
-itting The 1st Element "alleging"
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

That Indictment #2012-GS-07-01935 put I Tyrone Robinson on notice That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before the jury at trial. on Indictment #2012-GS-
-07-01935.
As a matter of law constituteing a "ACQUITTAL"
on the 1st Element "alleging"
I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

That Indictment #2012-GS-07-01935 puts me on notice That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before the jury at trial on Indictment #2012-GS-07-01935

Case Law Merit

District Court of Appeal of Florida, Fourth District
Case Law of.
Pray vs. State 571 So.2d 554 "quoteing"
The jury acquitted Pray of the underlying felony in count II when it failed to find her guilty of aggravated assault, child abuse

1.

or aggravated battery and found her guilty of The lesser included offense of simple battery (a misdemeaner not a felony) we agree with pay That without a conviction for The underly- -ing felony she could not be convicted of Third degree felony murder." Further quoteing" Accordingly we reverse The conviction for Third degree felony murder

As a matter of law proveing That The state of South Carolina. failed to prove to the jury That I was guilty beyond a reasonabled doubt of commiteing The 1st ELEMENT "alleging" I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

For proof review case law merits

District court of Appeal of Florida, Fourth District case law of.
Pray vs. state 57150. 2d 554 "quoteing"
The jury acquitted pray of The underlying felony in count II when it failed to find her guilty of aggravated assault, child abuse or aggravated battery and found her guilty of The lesser included offense of simple battery (a misdamearnor not a felony)

2Nd ELEMENT

2Nd ELEMENT for Third unindicted crime of murder "allegeing" I killed The victim with malice and aforethought

Is:
That The killing was commited with malice aforethought
which defined by its webster dictionary definition means to allege That The deprivat- -ion of life was commited with malice afore- -thought

That is because The webster dictionary definition for The word kill means The following to deprive of life

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2Nd ELEMENT

2Nd ELEMENT FOR CRIME OF FELONY MURDER by The FELONY MURDER RULE Theory, That's ChaRged and alleged INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT#2012-CF-07-01935 IS: VICTIM K.S. [redacted] DID DIE AS A PROXIMATE RESULT OF I TYRONE ROBINSON COMMITTING A ONGOING GUN battle AN INHERANTLY DANGERIOUS FELONY

The LAW DICTIONARY DEFINITION FOR THE WORD FELONY MEANS "QUOTEING" FELONY GENERIC TERM EMPLOYED TO DISTINGUISH CERTAIN HIGH CRIMES FROM MINOR OFFENSES KNOWN AS MISDAMEANORS; CRIMES DECLARED TO BE SUCH by STATUE OR AS "TRUE CRIMES" by COMMON LAW

AS A MATTER OF LAW THE 2Nd ELEMENT TO THE THIRD UNINDICTED CRIME OF MURDER "ALLEGEING" I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT WHICH SECOND ELEMENT IS; The KILLING WAS COMMITED WITH MALICE AND AFORE-THOUGHT

WHICH DEFINED by IT'S WEBSTER DICTIONARY DEFI-NITION MEANS TO ALLEGE THAT THE DEPRIVATION OF LIFE WAS COMMITED WITH MALICE AFORETHOUGHT has a totally DEFFERANT DEFINITION MEANING AND IS NOT. INCLUDED INTO THE SECOND ELEMENT TO THE CRIME OF FELONY MURDER by The FELONY MURDER RULE THEORY. That's ChaRged and alleged INSIDE OF The WRITTEN WRITE UP OF INDICTMENT#2012-CF-07-01935 WHICH FIRST ELEMENT IS: VICTIM K.S. [redacted] DID DIE AS A PROXIMATE RESULT OF I TYRONE ROBINSON COMMITTING A ONGOING GUN battle AN INHERANTLY DANGERIOUS FELONY

WHICH The LAW DICTIONARY DEFINITION FOR THE WORD FELONY MEANS "QUOTEING" FELONY GENERIC TERM EMPLOYED TO DISTINGUISH CERTAIN HIGH CRIMES FROM MINOR OFFENSES KNOWN AS MISDAM-EANORS; CRIME DECLARED TO BE SUCH by STATUE AS "TRUE CRIMES" by The COMMON LAW

AS A MATTER OF LAW PROVEING That The SECOND ELEM-ENT TO THE THIRD UNINDICTED CRIME OF MURDER "ALLEGEING" I KILLED The VICTIM WITH MALICE AND AFORETHOUGHT

whos second Element is:
That the deprivation of life was commited with malice aforethought

is not charged and alleged inside of the written write up of the crime of felony murder by the felony murder rule theory "allegeing"
That in Beaufort county on or about september 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice afore-thought cause the victim K.S. to be shot and killed in the area of Marshland Drive and allen Road, Hilton Head Island, S.C. and that K. S. did die in Beaufort county as a proximate result there of

That's charged and alleged inside of the written write up of indictment # 2012-GS-07-01935
That I was tried on before the jury at trial.
As a matter of law proveing that the second element to the third unindicted crime of murder "allegeing" I killed the victim with malice and aforethought

whos second Element is:
That the killing was commited with malice aforethought

is not charged and alleged inside of a indictm-ent and there is not any indictment putting me on notice I had to defend against

As a matter of law. proveing that trial judge Thomas Cooper "ERRORED" by permitting the jury to convict me. on the unindicted element "allegeing" was commited with malice and the killing aforethought
That there is not any indictment putting me on NOTICE I had to defend against.
because by doing so trial judge Cooper allowed the jury to convict me on the unindicted 2nd ELEMENT "allegeing" the killing was commited with malice aforethought
That the state of south carolina never saught to prove I was guilty of and that there is not any indictment putting me on notice I had to defend against. For proof review case law merits

supreme court of appeals of the state of south carolina case law of

State vs. Williams Dickerson 776 S.E.2d 895 "quoteing"

Therefore, we adopt the supreme court holding in Hopkins and hold that a defendant is not entitled to a charge on lesser-related offenses here permitting the jury to convict Dickerson as accessory after the fact would permit the jury to find beyond a reasonable doubt elements of a crime the state never sought to prove and Dickerson was not on notice he had to defend against. Accordingly, we affirm the circuit court denial of Dickerson request to charge

As a matter of law proveing that the third unindicted crime and theory of murder "allegeing" I killed the victim with malice and aforethought is not charged and alleged inside of the crime of felony murder by the felony murder rule theory "allegeing"

That in Beaufort County on or about September 1st 2012 while engaged in a ongoing gun battle an inherently dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of Marshland Drive and [redacted] Road, Hilton Head Island, S.C. and that K.S. [redacted] did die in Beaufort County as a proximate result there of

That's charged and alleged inside of the written write up of indictment #2012-GS-07-01935 that I was tried on before the jury at trial.

As a matter of law proveing that the third unindicted crime of murder "allegeing" I killed the victim with malice and aforethought is not charged and alleged inside of a indictment.

As a matter of law proveing that there is not an indictment putting me on notice that I had to defend against, third unindicted crime of murder "allegeing" I killed the victim with malice and aforethought

As a matter of law proveing that I was unconstitutionally convicted, sentenced to prison time of life imprisonment, deprived out of my liberty and wrongfully incarcerated. on the third unindicted crime of murder "allegeing" I killed the victim with malice and aforethought

That There Is not any Indictment putting me on notice I had to defend against. In violation of my Federal 5th and 14th Amendment Right of Due Process of Law which states "Quoteing" Nor shall any person be deprived out of Liberty without Due Process of Law

Also In violation of South Carolina code of Law 17-19-10 which states "Quoteing" No person shall be held to Answer in court for a alleged crime or offense unless upon Indict-ment by a grand Jury

Case Law Merits

Supreme Court of Appeals of The State of Georgia case law of.
Harnwell vs. The State 512 S.E.2d 892 "Quoteing" A Jury Instruction which deviates from the Indictment violates due process where there Is evidence to support a conviction on The unalleged manner of committeing the crime and The Jury Is not Instructed to limit Its consideration to the manner specified In The Indictment

"Further Quoteing" defendants due process Rights were violated by Jury charge on alternative methods of committe-ieing aggravated assault when Indictment only alleged aggravated assault with intent to Rob, where there was evidence to support conviction on unalleged manner of committeing crime, and Jury was not Instructed to limit Its considerat-ion to manner specified In Indictment

As a matter of Law proveing That Trial Judge Thomas Cooper "ERRORED" by permitting The Jury to CONVICT me. on The Third unindicted crime of murder "allegeing" I Killed The victim with malice and aforethought That There Is not any Indictment putting me on notice I had to defend against.

because by allowing The Jury to convict me on The Third unindicted crime of murder "allegeing" I Killed The victim with malice and aforethought

Trial Judge Cooper allowed The Jury to convict me on a unindicted element of a unindicted crime. That The State of South Carolina never saught to prove I was GUILTY of and That There Is not any Indictment putting me on notice I had to defend against at Trial. For Proof

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF. ~~STATE VS WILLIAMS DICKERSON 716 S.E. 2d 895 "QUOTEING" THE SUPREME COURT HELDING THEREFORE WE ADOPT THE SUPREME COURT IN HOPKINS AND HOLD THAT A DEFENDANT IS NOT ENTITLED TO A CHARGE ON LESSER RELATED OFFENSES HERE PERMETTING THE JURY TO CONVICT DICKERSON AS ACCESSORY AFTER THE FACT WOULD PERMIT THE JURY TO FIND BEYOND A REASONABLE DOUBT ELEMENTS OF A CRIME THE STATE NEVER SOUGHT TO PROVE AND DICKERSON WAS NOT ON NOTICE HE HAD TO DEFEND AGAINST. ACCORDINGLY, WE AFFIRM THE CIRCUIT COURT DENIAL OF DICKERSON REQUEST TO CHARGE~~

because at the end of trial when TRIAL JUDGE Thomas cooper. INSTRUCTED THE JURY ON THE CRIME to deliberate on. to determine Rather I was guilty or not guilty of the death of victim K.S. [redacted]. TRIAL JUDGE COOPER INSTRUCTED THE JURY to decide and deliberate on. The 2nd ELEMENT FROM THE THIRD UNINDICTED alleged crime of murder "alleging" I killed the victim with malice and aforethought

by The TRIAL JUDGE and TRIAL COURT INSTRUCTING The JURY. That in order to convict me for the death of victim K.S. [redacted] The state of South Carolina had the burden of proof to prove That I was guilty beyond a reasonable doubt of KILLING the victim with malice and aforethought which constitutes The 2nd ELEMENT "alleging" That The KILLING was committed with malice and afor-ethought

That There is not any indictment putting me on notice I had to defend against and There is not any indictment chargeing me with.

by doing so proves That as a matter of law, TRIAL JUDGE and TRIAL COURT. unconstitutio-nally releaved The state of South Carolina out of there burdon of proof. To prove That I Tyrone Robinson am guilty beyond a reasonable doubt. of commiteing The 2nd ELEMENT "alleg-eing" victim K.S. [redacted] did die as a proxima-te result of I Tyrone Robinson commiteing a ongoing gun battle an inherantly dangerious felony

That Indictment #2012-GS-07-01935 puts I Tyrone Robinson on "Notice" That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before The jury at trial on Indictment #2012-GS-07-01935.

As a matter of law proveing That The trial judge and trial court "did not" instruct the jury. That in order to convict me for the death of victim K.S. The state of South Carolina had to prove beyond a reasonable doubt. That victim K.S. did die as a proximate result of I Tyrone Rob-inson commiteing a ongoing gun battle an inherently dangerious felony

As a matter of law proveing That The trial judge and trial court "did not" instruct the jury to decide on. The 2nd Element "allegeing" That victim K.S. did die as a proximate result of I Tyrone Robinson commiteing a ongoing gun battle an inher-antly dangerious felony

That Indictment #2012-GS-07-01935 puts I Tyrone Robinson on notice That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before The jury at trial on Indictment #2012-GS-07-01935.

As a matter of law proveing That without my consent. The trial judge and trial court discharged The jury away from my trial, and "did not" allow The jury to decide Rather I was Not Guilty or Guilty of commiteing The

2nd Element "allegeing"
victim K.S. did die as a proximate result of I Tyrone Robinson comm-iteing a ongoing gun battle an inherantly dangerious felony

That Indictment #2012-GS-07-01935 puts I Tyrone Robinson on notice That I had to defend against, The grand jury indicted me on, The jury at trial was sworn in to decide on and I was tried on before The jury at trial on Indictment #2012-GS-07-01935.

MALICE AND AFORETHOUGHT NOT PROVEN AS A MATTER OF LAW

INSIDE OF THIS CASE OF FELONY MURDER BY THE FELONY MURDER
RULE THEORY. INDICTMENT#2012-GS-07-01935 CHARGES AND
ALLEGE. THAT I WAS ENGAGED IN A ONGOING GUN BATTLE AN
INHERANTLY DANGERIOUS FELONY WITH MALICE AND
AFORETHOUGHT. THAT CAUSED THE VICTIM K.S.
TO BE SHOT AND KILLED, AND VICTIM K.S.
DID DIE AS A PROXIMATE RESULT THERE OF.
AS A MATTER OF LAW INDICTMENT#2012-GS-07-01935
DOES NOT CHARGE AND ALLEGE. THAT I KILLED AND OR MURDER-
-ED THE VICTIM K.S.
ALSO AS A MATTER OF LAW INDICTMENT#2012-GS-07-
-01935 DOES NOT CHARGE AND ALLEGE THAT I SHOT AND
KILLED THE VICTIM K.S. INSIDE OF INDICTMENT#
BY CHARGEING THE SPECIFIC CRIME
2012-GS-07-01935. THE STATE OF SOUTH CAROLINA, SGT. LAUREL
ALBERTIN, BEAUFORT COUNTY SHERIFF DEPARTMENT, BEAUFORT
COUNTY SHERIFF OFFICE AND ALL WHO BROUGHT THIS CASE
AGAINST ME. TOOK ON THE BURDEN OF PROOF TO PROVE THAT
I AM GUILTY BEYOND A REASONABLE DOUBT. OF COMMITEING
THE SPECIFIC CRIME THATS CHARGED AND ALLEGED INSIDE OF
THE WRITTEN WRITE UP OF INDICTMENT#2012-GS-07-01935.
BEFORE THE STATE OF SOUTH CAROLINA, SGT. LAUREL ALBERTIN,
BEUFORT COUNTY SHERIFF DEPARTMENT AND BEAUFORT COUNTY
SHERIFF OFFICE. COULD GET ME CONVICTED AND SENTENCED TO
PRISON TIME OF LIFE IMPRISONMENT FOR THE DEATH OF VICTIM
K.S. .

THEREFORE IN ORDER FOR THE STATE OF SOUTH CAROLINA, SGT.
LAUREL ALBERTIN, BEAUFORT COUNTY SHERIFF DEPARTMENT,
AND BEAUFORT COUNTY SHERIFF OFFICE. TO PROVE THAT I
WAS GUILTY BEYOND A REASONABLE DOUBT OF ACTING WITH
MALICE AND AFORETHOUGHT. TO COMMIT THE SPECIFIC
CRIME THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN
WRITE UP OF INDICTMENT#2012-GS-07-01935. THE STATE
OF SOUTH CAROLINA, SGT. LAUREL ALBERTIN, BEAUFORT COUNTY
SHERIFF DEPARTMENT AND BEAUFORT COUNTY SHERIFF
OFFICE. TOOK ON THE BURDEN OF PROOF TO POVE THAT I WAS
ACTING WITH MALICE AND AFORETHOUGHT TO COMMIT A
ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY-
AS IS CHARGED AND ALLEGED INSIDE OF THE WRITTE WRITE
UP OF INDICTMENT#2012-GS-07-01935. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA
CASE LAW OF.
LUCAS BAILEY VS. STATE 709 S.E.2d 671 "QUOTEING"
THE TEXAS COURT OF APPEALS
IN PREFACEING ITS ANALYSIS, NOTED THAT BY INCLUDING A MORE SPECIFIC DESCRIPTION
THE STATE UNDERTOOK THE BURDEN OF PROVEING THE SPECI-
-FIC ALLEGATIONS TO OBTAIN A CONVICTION" FURTHER.

QUOTEING"
IN SO RULEING, THE COURT RECOGNIZED THAT A DEFENDANT MAY ONLY BE TRIED AND CONVICTED OF THE CRIMES ALLEGED IN THE INDICTMENT AND THE STATE IS BOUND BY THE THEORY ALLEGED IN THE INDICTMENT." FURTHER QUOTEING"
WE AGREE WITH THE REASONING IN CASTILLO AND APPLY ITS ANALYSIS TO THE FACTS OF THE INSTANT CASE.

THEREFORE INSIDE OF THIS PARTICULAR CASE OF FELONY MURDER BY THE FELONY MURDER RULE THEORY. IN ORDER FOR THE STATE OF SOUTH CAROLINA. TO PROVE THAT I AM GUILTY BEYOND A REASONABLE DOUBT. OF ACTING WITH MALICE AND AFORETHOUGHT, TO COMMIT A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY. THAT CAUSED VICTIM K.S. [redacted] TO BE SHOT AND KILLED AND VICTIM K.S. [redacted] DID DIE AS A PROXIMATE RESULT THERE OF. THE STATE OF SOUTH CAROLINA HAD THE BURDEN OF PROOF TO PROVE THAT I WAS GUILTY BEYOND A REASONABLE DOUBT OF ACTING WITH THE INTENT TO COMMITE A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME JUDICIAL COURT OF APPEALS OF THE STATE OF MASSACHUSSETTS CASE LAW OF.
COMMONWEALTH VS. TIMONTHY S. MORAN 387 MASS. 644, 442 N.E.2d 399 "QUOTEING"
IN FELONY MURDER THE INTENT TO COMMIT THE UNDERLYING FELONY IS THE REQUIRED MALICE AFORE-THOUGHT

IN THIS CASE WHEN TRIAL JUDGE THOMAS COOPER. INSTRUCTED THE JURY ON THE **ELEMENT** OF CRIMINAL INTENT. TRIAL JUDGE THOMAS COOPER INSTRUCTED THE JURY THAT THE STATE OF SOUTH CAROLINA HAD TO PROVE THAT I ACTED WITH THE "INTENT TO KILL". FOR PROOF I QUOTE TRIAL JUDGE THOMAS COOPER JURY INSTRUCTION TO THE JURY AS FOLLOWS.

STATE OF SOUTH CAROLINA
VS.
TYRENE ROBINSON

"QUOTEING" PAGE 995 PARAGRAPHS 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 AND 25 AND PAGE 996 PARAGRAPH 1, 2, AND 3 OF TRIAL JUDGE THOMAS COOPER JURY CHARGE ON TRANSFERRED INTENT FROM THE TRIAL TRANSCRIPT "QUOTEING"
NOW LADIES AND GENTLEMAN IN THIS PARTICULAR CASE WE ARE DEALING WITH THE LAW OF TRANSFERRED INTENT. UNDER THE FACTS OF THIS CASE EVERYONE AGREES THAT THE VICTIM WAS AN UNINTENDED VICTIM IN THIS PARTICULAR CASE. AND SO THE LAW OF TRANSFERRED INTENT THEN APPLIES TO THE CRIME OF MURDER. AND WHAT THAT SAYS IS IF THE DEFENDANT WITH MALICE AFORETHOUGHT ATTEMPTS TO

kill another person but by mistake injures or kills a different person the defendant still has the intent to kill. The intent to kill is merely transferred from the original person that the defendant attempted to kill to the actual person who was killed. The defendant would be guilty of murder in the particular case just as if the attempt had resulted in the death of the person that he attempted to kill. Criminal intent then is necessary "ELEMENT" of the crime in this and every instances and it has to be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that has to be determined by the jury from circumstances which surround this particular situation

Trial Judge Thomas Cooper jury instruction was a error of law. Because in order for the state of South Carolina, Sgt. Laurel Albertin, Beaufort County Sheriff department and Beaufort County Sheriff Office, to convict me for the death of victim K.S. [redacted] The state of South Carolina, Sgt. Laurel Albertin, Beaufort County Sheriff dep-artment and Beaufort County Sheriff Office. was required to prove beyond a reasonable doubt. That I acted with malice and aforethought, to commit a ongoing gun battle an inherantly dangerious felony. Therefore in order for the state of South Car-olina to prove to the jury that I was guilty beyond a reasonable doubt. OF ACTING WITH "MALICE AND AFORETHOUGHT" to commit a ongoing gun battle an inherantly dangerious felony. Trial Judge Thomas Cooper was required to instruct the jury. That in order for the state of South Carolina to prove that I was guilty beyond a reasonable doubt, of acting with malice aforethought to commit a ongoing gun battle an inherantly dangerious felony. The * state of South Carolina had the burden of proof to prove that I was guilty beyond a reasonable doubt of acting with the intent to commit a ongoing gun battle an inherantly dangerious felony as is charged and alleged inside of the written write up of indictment #2012-GS-07-01935 that I was tried on before the jury at trial. For proof review

Case Law Merits

Supreme Judicial Court of Appeals of the State of Massachusetts case law of Commonwealth vs. Timonthy S. Moran 387 Mass. 644, 442 N.E.2d 399 "Quoteing" In felony murder the intent to commit the underlying felony is the required malice aforethought

AS a matter of Law Proveing That because Indictment #2012-GS-07-01935. Charges I Tyrone Robinson with with The allegation alleging I acted with malice and aforethought to commit a ongoing gun battle an inherantly dangerious felony

which required The state of South Carolina, Sgt. Laurel Albertin, Beaufort County Sheriff department and Beaufort County Sheriff Office, to Prove that I was guilty beyond a reasonable doubt, of committing The 3rd ELEMENT "alleging" I acted with The "INTENT" to commit a ongoing gun battle an inherantly dangerious felony

before The state of South Carolina, Sgt. Laurel Albertin, Beaufort County Sheriff department, and Beaufort County Sheriff Office, could get me convicted and sentenced to Prison time of Life imprisonment and deprived me out of my Liberty For The death of victim K.S. [redacted], on Indictment #2012-GS-07-01935, That I was tried on before The jury at trial. For Proof review

case law merits

Supreme Judicial Court of Appeals of The state of Massachussetts case law of: Commonwealth vs. Timonthy S. Moran 387 Mass. 644, 442 N.E.2d 399 "quoteing" In felony murder The intent to commit The underlying felony is The required malice aforethought

AS a matter of Law Trial Judge Thomas Cooper impermissibly CONSTRUCTIVELY Amended The indictment, when Trial Judge Thomas Cooper Thrue his instructions to the jury, Allowed The jury to convict me on The 3rd ELEMENT "alleging" I acted with The intent to kill

That There is not any Indictment putting me on notice I had to prepare a defense for and defend against. Because by doing so Trial Judge Thomas Cooper allowed The jury to convict me on The 3rd unindicted ELEMENT "alleging" I acted with The intent to kill

That There is not any Indictment chargeing me with, and There is not any Indictment putting me on notice I had to prepare a defense for and defend against. For Proof review

CASE LAW MERITS

DISTRICT OF COLUMBIA COURT OF APPEALS CASE LAW OF.
MARVIN SCUTCHINGS, JR. VS. UNITED STATES 509 A.2d 1
by "QUOTEING"
WERE AS IN THIS CASE, A GRAND JURY SPECIFICALLY CHARGES ESSENTIAL ELEMENTS OF A CRIME, SUCH AS MEANS AND PARTY, AND THE GOVERNMENT, PROVES, BOLSTERED BY THE TRIAL COURTS INSTRUCTIONS, ENTIRELY DIFFERENT ELEMENTS, THE DISPARITIES CONSTITUTE A CONSTRUCTIVE AMENDMENT

THE CONSTRUCTIVE AMENDMENT OF THE INDICTMENT. DEPRIVED ME OUT OF MY DUE PROCESS RIGHT TO NOTICE AND FAIR OPPURTUNITY TO PREPARE A DEFENSE FOR AND DEFEND AGAINST. THE 3rd ELEMENT "ALLEGEING"
I ACTED WITH THE INTENT TO KILL

THAT THERE IS NO INDICTMENT PUTTING ME ON NOTICE I HAD TO PREPARE A DEFENSE FOR AND DEFEND AGAINST. AND THERE IS NO INDICTMENT CHARGEING ME WITH. AS A MATTER OF LAW PROVEING THAT I WAS CONVICTED AND SENTENCED TO PRISON TIME OF LIFE IMPRISONMENT. IN VIOLATION OF MY FEDERAL 5th AND 14th AMENDMENT RIGHT OF DUE PROCESS OF LAW WHICH STATES "QUOTEING" NOR SHALL ANY PERSON BE DEPRIVED OUT OF LIBERTY WITHOUT DUE PROCESS OF LAW FOR PROOF REVIEW

CASE LAW MERITS

COLORADO COURT OF APPEALS, DIVISION II CASE LAW OF.
PEOPLE VS. DEUTCH 471 P.3d 1266 "QUOTEING"
CONSTRUCTIVELY AMENDING A CHARGE VIOLATES A DEFENDANTS CONSTITUTIONAL DUE PROCESS RIGHT

AS A MATTER OF LAW PROVEING THAT TRIAL JUDGE THOMAS COOPER "ERRORED" BY PERMITTING THE JURY TO CONVICT ME. ON THE 3rd UNINDICTED ELEMENT "ALLEGEING"
I ACTED WITH THE INTENT TO KILL

THAT THERE IS NOT ANY INDICTMENT PUTTING ME ON NOTICE I HAD TO PREPARE A DEFENSE FOR AND DEFEND AGAINST.
BECAUSE BY DOING SO TRIAL JUDGE THOMAS COOPER ALLOWED THE JURY TO CONVICT ME ON THE 3rd UNINDICTED ELEMENT "ALLEGEING"
I ACTED WITH THE INTENT TO KILL

THAT THE STATE OF SOUTH CAROLINA NEVER SAUGHT TO PROVE I WAS GUILTY OF AND THAT THERE IS NOT

any Indictment putting me on NOTICE I had to defend against. FOR PROOF Review

CASE LAW MERIT

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF.
State vs. Williams DICKERSON 716 S.E.2d 895
"Quoteing"
Therefore we adopt the supreme court holding in hopkins and hold that a defendant is not entitled to a charge on lesser-Related offenses here permitting the jury to convict DICKERSON as accessory after the fact would permit the jury to find beyond a Reasonable doubt element of a crime the state never sought to prove and DICKERSON was not on notice he had to defend against. ACCORDINGLY, we AFFIRM the CIRCUIT COURT denial of DICKERSON Request to charge

Because at the end of Trial. when Trial Judge Thomas Cooper instructed the jury on the ELEMENT of "INTENT". That the state of south carolina had the Burden of proof to prove that I was guilty of beyond a Reasonable doubt. before the state of south carolina could get me convicted and sentenced to prison time of life imprisonment and deprive me out of my liberty for the death of victim K.S. Trial Judge Thomas Cooper instructed the jury to decide and deliberate on the 3rd UNINDICTED ELEMENT "alleging" I ACTED WITH THE INTENT to KILL

That there is not any Indictment putting me on notice. I had to prepare a defense for and defend against, and there is not any Indictment chargeing me with.

by doing so proves that as a matter of law Trial Judge Thomas cooper. unconstitutionally Releaved The state of south carolina out of there Burden of proof. To prove that I TYRONE ROBINSON am GUILTY beyond a Reasonable doubt. of commiteing the

3rd ELEMENT "alleging"
I ACTED WITH THE INTENT TO COMMIT a ONGOING gun battle an inherantly dangerious felony

That the state of south carolina, Sgt. Laurel albertin, Beaufort county sheriff department and Beaufort county sheriff office. had the burdon of proof to prove That I was guilty of beyond a reasonable doubt. IN

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ORDER TO PROVE TO THE JURY THAT I WAS GUILTY BEYOND A REASONABLE DOUBT. OF ACTING WITH MALICE AND AFORETHOUGHT TO COMMITE A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY.

AS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-01935. THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF MASSACHU-SETTS CASE LAW OF. COMMONWEALTH VS. TIMONTHY S. MORAN 387 MASS. 644, 442 N.E.2d 399 "QUOTEING" IN FELONY MURDER THE INTENT TO COMMIT THE UNDER-LYING FELONY IS THE REQUIRED MALICE AFORETHOUGHT

AS A MATTER OF LAW PROVEING THAT TRIAL JUDGE THOMAS COOPER. "DID NOT" INSTRUCT THE JURY TO DECIDE ON. THE 3rd ELEMENT "ALLEGEING" I ACTED WITH THE INTENT TO COMMIT A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY

THAT THE STATE OF SOUTH CAROLINA, SGT. LAUREL ALBERTIN, BEAUFORT COUNTY SHERIFF DEPARTMENT AND BEAUFORT COUNTY SHERIFF OFFICE. HAD THE BURDEN OF PROOF TO PROVE THAT I WAS GUILTY OF BEYOND A REASONABLE DOUBT. IN ORDER TO PROVE TO THE JURY THAT I WAS GUILTY BEYOND A REASONABLE DOUBT, OF ACTING WITH MALICE AND AFORETHOUGHT TO COMMITE A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY

AS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-01935. THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF MASSACHU-SSETTS CASE LAW OF. COMMONWEALTH VS. TIMONTHY S. MORAN 387 MASS. 644, 442 N.E.2d 399 "QUOTEING" IN FELONY MURDER THE INTENT TO COMMIT THE UNDER-LYING FELONY IS THE REQUIRED MALICE AFORETHOUGHT

AS A MATTER OF LAW PROVEING THAT WITHOUT MY CONSENT. TRIAL JUDGE THOMAS COOPER DISCHARGED THE JURY AWAY FROM MY TRIAL, AND "DID NOT" ALLOW THE JURY TO DECIDE RATHER I WAS NOT GUILTY OR GUILTY OF

COMMITEING THE 3rd ELEMENT "ALLEGEING" I ACTED WITH THE INTENT TO COMMIT A ONGOING GUN BATTLE AN INHERANTLY DANGER-IOUS FELONY

THAT THE STATE OF SOUTH CAROLINA HAD THE BURDEN OF PROOF TO PROVE THAT I WAS GUILTY OF BEYOND A REASONABLE DOUBT. BEFORE THE STATE OF SOUTH CAROLINA COULD GET ME CONVICTED AND SENTENCED TO PRISON TIME OF LIFE IMPRISONMENT AND DEPRIVED ME OUT OF MY LIBERTY FOR THE DEATH OF VICTIM K.S.

ALSO THAT THE STATE OF SOUTH CAROLINA, SGT. LAUREL ALBERTIN, BEAUFORT COUNTY SHERIFF DEPARTMENT, AND BEAUFORT COUNTY SHERIFF OFFICE. HAD THE BURDEN OF PROOF TO PROVE THAT I WAS GUILTY OF BEYOND A REASONABLE DOUBT. IN ORDER TO PROVE TO THE JURY THAT I WAS GUILTY BEYOND A REASONABLE DOUBT. OF ACTING WITH MALICE AND AFORETHOUGHT TO COMMITE A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY

AS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT #2012-GS-07-01935 THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL. AS A MATTER OF LAW PROVEING THAT WITHOUT MY CONSENT. TRIAL JUDGE THOMAS COOPER DISCHARGED THE JURY AWAY FROM MY TRIAL AND "DID NOT" ALLOW THE JURY TO DECIDE RATHER I WAS NOT GUILTY OR GUILTY OF COMMITEING THE ELEMENT "ALLEGEING" I ACTED WITH MALICE AND AFORETHOUGHT TO COMMIT A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY

THAT THE STATE OF SOUTH CAROLINA HAD THE BURDEN OF PROOF TO PROVE THAT I WAS GUILTY OF BEYOND A REASONABLE DOUBT. BEFORE THE STATE OF SOUTH CAROLINA AND THE RESPOND-ENTS COULD GET ME CONVICTED, SENTENCED TO PRISON TIME OF LIFE IMPRISONMENT AND DEPRIVED OUT OF MY LIBERTY, FOR THE DEATH OF VICTIM K.S. FOR PROOF REVIEW

CASE LAW MERIT

SUPREME JUDICIAL COURT OF APPEALS OF THE STATE OF MASS-ACHUSSETTS CASE LAW OF COMMONWEALTH VS. TIMONTHY S. MORAN 387 MASS. 644, 442 N.E.2d 399 "QUOTEING" IN FELONY MURDER THE INTENT TO COMMIT THE UNDER-LYING FELONY IS THE REQUIRED MALICE AFORETHOUGHT

1StLY
NOT HARMLESS ERROR

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial and did not allow the jury to decide on rather I was "guilty" or not guilty of commiteing the 1st element "allegeing" I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony

That I was tried on before the jury at trial on indictment #2012-GS-07-01935. Therefore this error is not considered harmless error. For proof review case law merits

United States Court of Appeals for the Ninth Circuit case law of. United States of America vs. Micheal E. Gaudin 997 F.2d 1267 "quoteing" when an element of the crime that must be found by the jury is removed from jury consideration that error cannot be harmless

2NdLY
NOT HARMLESS ERROR

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial. And did not allow the jury to consider rather I was guilty or not guilty of commiteing the 2nd element "allegeing" victim K.S. did die as a proximate result of I Tyrone Robinson being engaged in a ongoing gun battle an inherantly dangerious felony

That I was tried on before the jury at trial on indictment #2012-GS-07-01935. Therefore this error is "not" considered harmless error. For proof review case law merits

United States Court of Appeals for the Ninth Circuit case law of. United States of America vs. Micheal E. Gaudins 997 F.2d 1267 "quoteing" when an element of the crime that must be found by the jury is removed from jury consideration, the error can not be harmless.

3rdLY
NOT HARMLESS ERROR

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial. And did not allow the jury to consider rather I was guilty or not guilty of commiteing the 3rd element "allegeing"

I ACTED WITH THE INTENT TO COMMITE A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935. THEREFORE THIS ERROR IS "NOT" CONSIDERED HARMLESS ERROR. FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF.
UNITED STATES OF AMERICA VS. MICHEAL E. GAUDIN
997 F.2d 1267 "QUOTEING"
WHEN AN ELEMENT OF THE CRIME THAT MUST BE FOUND BY THE JURY IS REMOVED FROM JURY CONSIDERATION, THAT ERROR CAN NOT BE HARMLESS

4THLY
NOT HARMLESS ERROR

AS A MATTER OF LAW TRIAL JUDGE THOMAS COOPER DISCHARGED THE JURY AWAY FROM TRIAL AND DID NOT ALLOW THE JURY TO CONSIDER RATHER I WAS GUILTY OR NOT GUILTY OF COMMITEING ANY OF THE ELEMENTS REQUIRED TO CONSTITUTE THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 2ST, 2012 WHILE ENGAGED IN A ONGOING GUN-BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD, HILTON HEAD ISLAND, S.C. AND THAT K.S. DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF.
THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935. THEREFORE THIS ERROR IS "NOT" CONSIDERED HARMLESS ERROR. FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF.
UNITED STATES OF AMERICA VS. MICHEAL E. GAUDINS
997 F.2d 1267 "QUOTEING"
WHEN AN ELEMENT OF THE CRIME THAT MUST BE FOUND BY THE JURY IS REMOVED FROM JURY CONSIDERATION THAT ERROR CAN NOT BE HARMLESS

BASED ON THE FACTS EXPLAINED. PROVES THAT AS A MATTER OF LAW, THE ELEMENTS THAT ARE REQUIRED TO PROVE THE THIRD UNINDICTED ALLEGED CRIME AND THEORY OF MURDER "ALLEGEING" I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT

ARE NOT INCLUDED INTO THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON, AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT #2012-GS-07-01935 FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF NEBRASKA CASE LAW OF ~~[illegible]~~

~~[illegible] THERE CAN BE NO DESPUTE THAT PRE[illegible] DO NOT CONTAIN [illegible] FELONY MURDER [illegible] CONVICTION [illegible] ELEMENTS [illegible] MURDER PREMEDITATED [illegible] FIRST DEGREE MURDER [illegible] KILLING AND [illegible] MALICE NONE [illegible] PREMEDITATED [illegible] REQUIRED FOR FELONY MURDER [illegible] THE VERY BASIS OF FELONY MURDER [illegible] FELONIOUS ACT OR ATTEMPTED [illegible] THAT RESULTS IN A KILLING [illegible] ADDITION [illegible] REQUIRED FOR PREMEDITATED MURDER [illegible] INTENT [illegible] FELONY MURDER REQUIRES [illegible] TO COMMIT A FELONY, WHEREAS PREMEDITATED MURDER [illegible] FELONY MURDER REQUIRES INTENT TO COMMIT FELONY, PREMEDITATED MURDER REQUIRES INTENT TO KILL~~

BECAUSE THE ELEMENTS REQUIRED TO PROVE THE THIRD UNINDICTED ALLEGED CRIME AND THEORY OF MURDER "ALLEGEING"

I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT

ARE NOT INCLUDED INTO THE ELEMENTS THAT ARE REQUIRED, TO PROVE THE CRIME OF. FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT #2012-GS-07-01935 PROVES THAT AS MATTER OF LAW THE THIRD UNINDICTED ALLEGED CRIME AND THEORY OF MURDER "ALLEGEING" I KILLED THE VICTIM WITH MALICE AND AFORE-THOUGHT

IS NOT A LESSER INCLUDED CRIME OF THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON, AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT #2012-GS-07-01935

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF. RICKY PELZER VS. STATE OF SOUTH CAROLINA 622 S.E. 2d 780 "QUOTEING" FOR AN OFFENSE TO BE A LESSER INCLUDED OF ANOTHER THE GREATER OFFENSE MUST INCLUDED ALL THE ELEMENTS OF THE LESSER OFFENSE. IF THE LESSER OFFENSE INCLUDES AN ELEMENT NOT INCLUDED IN THE GREATER OFFENSE THEN THE LESSER OFFENSE IS NOT INCLUDED IN THE GREATER

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Based on The Facts explained, proves That as a matter of Law. There is not any Indictment chargeing me with the Third unindicted alleged crime of murder "allegeing" I killed the victim with malice and afore-thought

Inside of The case of Lucas Bailey vs. State 709 S.E.2d 671. After The Jury deliberated on the crime of homicide by child abuse to determine rather Lucas Bailey was guilty of The crime of homicide by child abuse or not. The Jury Told The Trial Judge and Trial court That They found evidence of abuse. In a supplamental instruction to the Jury. The Trial Judge and Trial court instructed The Jury. That The Jury could find Lucas Bailey guilty of homicide by child abuse. If The Jury found Lucas Bailey was guilty of homicide by child abuse by The act of abuse or neglect which was inconsistant with the allegations in the Indictment. That charged and alleged that Lucas Bailey commited homicide by child abuse by The act of "neglect and abuse" only as the grand Jury had Indicted Lucas Bailey on. The Trial Judge and Trial court then instructed The Jury on The word cause that was charged and alleged in The Indictment against Lucas Bailey. by doing so The Trial Judge and Trial court explained to The Jury. That the state of South Carolina had to prove beyond a reasonable doubt. That Lucas Bailey act of "neglect or abuse" was the "proximate cause" of The victims death. because in his supplamental instructions. The Trial Judge and Trial court changed The word "and" to "or" and cause the Jury to convict Lucase Bailey on the crime of homicide by child abuse. by The act of "neglect or abuse" instead of The acts of both "neglect and abuse" thats charged and alleged inside of The Indictment, by The grand Jury. The Trial Judge and Trial court supplemental instructions on "neglect or abuse" instead of neglect and abuse as The grand Jury indicted Lucas Bailey on. allowed The Jury to convict Lucas Bailey on The crime of homicide by child abuse by The act of "neglect" only, which unconstitutionally releaved The state of South Carolina out of there burden of proof to

PROVE That Lucas Bailey was guilty beyond a reasonable doubt. of commiteing The crime of homicide by child abuse. by commiteing The act of "abuse along with The act of neglect" As The grand jury charged and alleged inside of The written write up of The indictment. That The jury at trial was sworn in on and Lucas Bailey was tried on before The jury trial...

As a result because The trial judge and trial court supplamental instructions. Allowed The jury to convict Lucas Bailey on The crime of. homicide by child abuse, by The act of "neglect only" and not The act of both "neglect and abuse" That was charged and alleged inside of The written write up of The indictment That The grand jury indicted Lucas Bailey on and Lucas Bailey was tried on before The jury at trial. The supreme court of appeals of The state of south carolina decided. That The trial judge and trial courts supplamental instructions. That allowed The jury to convict Lucas Bailey. on The crime of homicide by child abuse by The act of "neglect" only and not The acts of both "neglect and abuse" That was charged and alleged inside of The written write up of The indictment that The grand jury indicted Lucas Bailey on, and Lucas bailey was tried on before The jury at trial. unconstitutionally allowed The jury to convict Lucas Bailey on a "unindicted crime" That There is absalutely not any indictment chargeing Lucas bailey with. For proof review The supreme court of appeals of The state of south carolina case law of Lucas Bailey vs. State 709 S.E.2d 671

Case law merit

supreme court of appeals of The state of south caro-
-lina case law of:
"Lucas Bailey vs. state 709 S.E.2d 671" "quoteing"
on appeal castillo raised several issues includeing
an arguement That The trial judge egregiously
erred by adding, Through a lesser included offense
charge, a Theory of prosecution "shaking") That was not
supported by The indictment. the texas court of appeals
agreed with castillos arguement finding the trial
court erred in enlargeing The indictment by adding
"shaking" as an additional manner a means of commite-
-ing The charged offense. In so ruleing The court recognized
That a defendant may only be tried and convicted of
crimes alleged in The indictment and The state is bound
by The Theory alleged in The indictment "further quoteing"
we agree with The reasoning in castillo and apply its
analysis to The facts of The instant case.

ACQUITtED ON CRIMINAL LIABILITY FOR THE DEATH OF VICTIM K.S. ON INDICTMENT #2012-GS-07-01

AS PREVIOUSLY EXPLAINED, IN ORDER FOR THE STATE OF SOUTH CAROLINA TO PROVE THAT I TYRONE L. ROBINSON AM CRIMINALLY LIABLE FOR THE DEATH OF VICTIM K.S. THAT CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT #2012-GS-07-01935. TWO ELEMENTS MUST BE PROVEN. THE 1ST ELEMENT REQUIRED TO PROVE CRIMINAL LIABILITY IS:

THE DEFENDANTS CRIMINAL INTENT

THE 2ND ELEMENT REQUIRED TO PROVE CRIMINAL LIABILITY IS:

THE ACTUAL PHYSICAL ACT CONSTITUTEING THE OFFENSE. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF: THE STATE VS. JOHN BENNETT FENNELL 591 S.E.2d: 512 "QUOTEING" CRIMINAL LIABILITY NORMALLY IS BASED UPON THE CONCURRANCE OF TWO FACTORS: THE DEFENDANTS CRIMINAL INTENT AND THE ACTUAL, PHYSICAL ACT CONSTITUTEING THE OFFENSE. A DEFENDANT MAY NOT BE CONVICTED OF A CRIMINAL OFFENSE UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT THAT HE ACTED WITH THE CRIMINAL INTENT, OR MENTAL STATE, REQUIRED FOR A PARTICULAR OFFENSE

1ST ELEMENT

1ST ELEMENT REQUIRED TO PROVE CRIMINAL LIABILITY FOR THE DEATH OF VICTIM K.S. IS:

THE DEFENDANTS CRIMINAL INTENT

AS A MATTER OF LAW A ONGOING GUN BATTLE AN INHERANTLY DANGEROUS FELONY. IS THE ONE AND ONLY CRIMINAL ACT THAT INDICTMENT #2012-GS-07-01935 CHARGE AND ALLEGE VICTIM K.S. DEATH IS A PROXIMATE RESULT THERE OF.

As a matter of law a ongoing gun battle an inherantly dangerious felony. Is the one and only criminal act that indictment#2012-GS-07-01935. charge and allege is the criminal act That caused victim K.S. to be shot and killed.
Therefore in order to prove That I am guilty beyond a reasonable doubt of committing The first element required to prove criminal liability for The death of victim K.S. on indictment #2012-GS-07-01935.
As a matter of law The state of South Carolina had The burdon of proof, to prove That I Tyrone Robinson acted with The criminal intent. to commit a ongoing gun battle an inherantly dangerious felony. for proof review

case law merits

Supreme court of appeals of The state of montana case law of.
State of montana vs. Richard Earl Burkhart 325 mont. 27, 103 P.3d 1037 "quoteing" The state was not releived of haveing to prove a special mental state so as to create a due process violation, but rather, The state was entitled to substitute proof of The mental state necessary to commit homicide with proof of The mental state required to commit The underlying felony, Therefore The state was not required to prove That The defendant intended to kill The victim, but only That he intended to commit The underlying felony of assault with a weapon

Because on motion for directed verdict of acquittal. Trial Judge Thomas Cooper voluntarily dismissed and terminated my jeopardy. on The physical act "allegeing" a ongoing gun battle an inherantly dangerious felony while engaged in a ongoing gun battle an inherantly dangerious felony
That I was Tried on before The jury at Trial on indictment# 2012-GS-07-01935. Because Trial Judge Thomas Cooper obviously believed The evidence The state of South Carolina submitted at Trial, was insufficient to convict. on The physical act "allegeing" a ongoing gun battle an inherantly dangerious felony while engaged in a ongoing gun battle an inherantly dangerious felony
That I was Tried on before The jury at Trial on indictment# 2012-GS-07-01935.
As a matter of law it constitutes a acquittal on The physical act "allegeing"

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While engaged in a ongoing gun battle an inherantly dangerious felony

That I was tried on before the jury at trial on indictment# 2012-GS-07-01935. For proof review

Case law merits

United states of America court of Appeals for the tenth circuit case law of. U.S. vs. Hunt 212 F.3d 539 "a quoteing" what constitutes a "Acquittal" is not to be controlled by the form of the judges action instead we must determine whether the ruleing of the judge what ever its label, actually represents a resolution correct or not of some or all of the factual elements of the offense charged "further quoteing" for its part the government readily admits that certain parts of the indictment were specifically dismissed for lack of evidence there by amounting to an Acquittal as to these parts. The government does not appeal these specific findings

Also as a matter of law when trial judge Thomas cooper discharge the jury away from trial and did not allow the jury to decide. If I was guilty or not guilty of committeing the crime of felony murder by the felony murder rule theory "allegeing" on or about september 1st 2012 that in beaufort county while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of mar[redacted] drive and allen Road on Hilton Head Island and that K.S. [redacted] did die in Beaufort county as a proximate result there of

That I was tried on before the jury at trial on indictment# 2012-GS-07-01935 "it constitutes a "ACQUITTAL" as a matter of law. On the crime of felony murder by the felony murder rule theory "allegeing" on or about september 1st, 2012 that in beaufort county while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of Marshland drive and allen Road on Hilton Head Island,

S.C. and That K.S. [redacted] did die In Beaufort County as a proximate Result There of. That I was Tried on before The Jury at Trial on Indictment # 2012-GS-07-01935. For proof Review

Case Law merits

Supreme Court of Appeals of The state of south Carolina case law of. State vs. Richardson 25 S.E. 220 "Quoteing" So here we might say that after The Jury were charged with The Trial of This case They haveing been discharged without any lawful cause, The prisoner is Acquitted

Case Law merits

Supreme Court of Appeals of The state of south Carolina case law of. State vs. Richardson 25 S.E. 220 "Quoteing" The discharge of The Jury in a criminal case upon a valid Indictment, without The consent of The defendant, not called for by imperious necessity, operates as a Acquittal

Case Law merits

Supreme Court of Appeals of The state of Alabama case law of. Bell and Murray vs. The state 48 Ala. 684, 1872 WL 993, 17 Am. Rep. 40 "Quoteing" It is not The verdict finding defendants guilty of grand larceny on The last Trial, which Acquits Them of burglary. At That time of That Trial There remained in law no such charge as grand larceny in The Indictment. That which Acquits defendants on The last Trial is not The void verdict, but The discharge of The Jury, charged with The Trial of defendants for burglary, without necessity and without Their consent. The void verdict had no effect. The Jury should had been instructed to have returned to Their deliberations, as The Jury was not so instructed but was discharged without a verdict on The only charge by law it was authorized to consider, and without consent of defendants. That disper-sion of The Jury operated an Acquittal

"Further Quoteing" The prisoner has been in Jeopardy, and The Jury was discharged for an insufficient cause an order for his release from custody will be issued from This court, The Judgement Reversed

Based on the facts explained. proves That as a matter of law I was "ACQUITTED" on The First Element. That is required in order to prove That I am Criminally Liable for The death of victim K.S. on Indictment #2012-GS-07-01935. which 1st Element required to prove That I am Criminally Liable for The death of victim K.S. on Indictment #2012-GS-07-01935 That I was Acquitted on is; I Acted with The criminal intent to committe a ongoing gun battle an inherantly dangerious Felony

FOR PROOF REVIEW

case law merits

Supreme court of Appeals of The state of South Carolina case law of: The state vs. John Bennett Kennell 591 S.E.2d 512 "Quoteing" Criminal Liability normally is based upon The concurrance of Two Factors" The defendants criminal intent

2Nd ELEMENT

2nd Element required to prove criminal Liability for The death of victim K.S. is: The Actual physical Act constituteing The offense

As a matter of law Indictment #2012-GS-07-01935 charges and alleges. That The criminal Act of a ongoing gun battle an inherently dangerious felony. is The one and only physical Act That Indictment #2012- death is and allege. victim K.S. a proximate result There of. As a matter of law Indictment #2012-GS-07-01935 also charges and allege. That The criminal Act of a ongoing gun battle an inherantly dangerious felony. is The one and only physical Act That caused victim K.S. to be shot and killed.

Therefore in order to prove That I Tyrone Robinson am guilty beyond a reasonable doubt of committeing The second Element required To prove. That I am crimilly Liable in This case. for The death of victim K.S. That I on Indictment #2012-GS-07-01935. That I was Tried on before The jury at Trial. As a matter of law The state of South Carolina

had The burdon of proof to prove. That Tyrone Robinson commited The physical act of a ongoing gun battle an inherantly dang-erious felony. That is The one and only "physical act" That indictment # 2012-GS-07-01935 charge and allege is The physical act That caused victim K.S. to be shot and killed and victim K.S. death is a proximate result there of. for proof review

case law merits

supreme court of appeals of The state of illinois case law of.
The people of The state of illinois vs. Gregory Shaw 713 N.E.2d 1161 "quoteing" murder, in turn accountability for felony murder may be deemed exists only if defendant legally responsible for The felony That accompanies The murder

Because on motion for directed verdict of acquittal. Trial Judge Thomas Cooper volu-ntarily dismissed and terminated my jeopardy on The physical act "allegeing" while engaged in a ongoing gun battle an inherantly dangerious felony That I was Tried on before The jury at Trial. on indictment # 2012-GS-07-01935. Because Trial Judge Thomas Cooper obviously believed The evidence The state of South Carolina submi-ted at Trial, was insufficient to convict on The physical act "allegeing" while engaged in a ongoing gun battle an inherantly dangerious felony That I was Tried on before The Jury at Trial on indictment # 2012-GS-07-01935 It constitutes a acquittal as a matter of law "allegeing" on The physical act while engaged in a ongoing gun battle an inherantly dangerious felony That I was Tried on before The Jury at Trial on indictment # 2012-GS-07-01935. for proof Review

case law merits

united states of America court of appeals for The tenth circuit case law of.
U.S. vs. Hunt 212 F.3d 539 "quoteing" what constitutes a "acquittal" is not to be controlled by The form of The judges action instead we must determine whether The

RULEING OF THE JUDGE WHAT EVER ITS LABEL ACTUALLY REPRESENTS A RESOLUTION CORRECT OR NOT OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED "FURTHER QUOTEING" FOR ITS PART THE GOVERNMENT READILY ADMITS THAT CERTAIN PARTS OF THE INDICTMENT WERE SPECIFICALLY DISMISSED FOR LACK OF EVIDENCE THERE BY AMOUNTING TO AN ACQUITTAL AS TO THOSE PARTS. THE GOVERNMENT DOES NOT APPEAL THOSE SPECIFIC FINDINGS.

ALSO AS A MATTER OF LAW WHEN TRIAL JUDGE THOMAS COOPER DISCHARGED THE JURY AWAY FROM TRIAL. AND DID NOT ALLOW THE JURY TO DECIDE. IF I WAS GUILTY OR NOT GUILTY OF COMMITEING THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY UNLAWFULLY, AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF. THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICT-MENT# 2012-GS-07-01935

AS A MATTER OF LAW IT CONSTITUTES A "ACQUITTAL" ON THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY, AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF: STATE VS. RICHARDSON 25 S.E. 220 "QUOTEING" SO HERE WE MIGHT SAY THAT AFTER THE JURY WERE CHARGED WITH THE TRIAL OF THIS CASE THEY HAVEING BEEN DISCHARGED WITHOUT ANY LAWFUL CAUSE THE PRISONER IS A ACQUITTED

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF: STATE VS. RICHARDSON 25 S.E. 220 "QUOTEING" THE DISCHARGE OF THE JURY IN A CRIMINAL CASE UPON A VALID INDICTMENT, WITHOUT THE CONSENT OF THE DEFENDANT, NOT CAULLED FOR BY IMPERIOUS NECESSITY, OPERATES AS A ACQUITTAL

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF ALABAMA CASE LAW OF: BELL AND MURRAY VS. THE STATE 48 ALA. 684, 1872 WL. 993, 17 AM REP 40 "QUOTEING" IT IS NOT THE VERDICT FINDING DEFENDANTS GUILTY OF GRAND LARCENY ON THE LAST TRIAL, WHICH ACQUITS THEM OF BURGLARY. AT THAT TIME OF THAT TRIAL, THERE REMAINED IN LAW NO

such charge as grand larceny in the indictment. That which acquits defendants on the last trial is not the void verdict, but the discharge of the jury, charged with the trial of defendants for burglary, without necessity and without their consent. The void verdict had no effect. The jury should have been instructed to have returned to their deliberations. As the jury was not so instructed, but was discharged without a verdict on the only charge by law it was authorized to consider, and without consent of defendants. That despersion of the jury operated an acquittal "further quoteing", The prisoner has been in jeopardy, and the jury was discharged for an insufficient cause an order for his release from custody will be issued from this court the judgement reversed

Based on the facts explained. Proves that as a matter of law I was "ACQUITTED" on the second element that is required in order to prove that I am currently liable for the death of victim K.S. on indictment #2012-GS-07-01935. Which 2nd element required to prove that I am criminally liable for the death of victim K.S. on indictment #2012-GS-07-01935. That I was acquitted on is; The actual physical act of a ongoing gun battle an inherantly dangerious felony for proof review

Case law merits

Supreme court of appeals of the state of south carolina case law of: The state vs. John Bennett Fennell 591 S.E.2d 512 "quoteing" criminal liability normally is based upon the concurrance of two factors. The actual, physical act constituteing the offense

Therefore because as a matter of law. I was "ACQUITTED" on all the elements that are required to constitute "CRIMINAL LIABILITY" for the death of victim K.S. on indictment #2012-GS-07-01935 for the crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort County on or about september 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robin-

-SON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND, S.C. AND THAT K.S. DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

That I was TRIED on before The JURY AT TRIAL on INDICTMENT#2012-GS-07-01935. Because The evidence The State of South Carolina submitted at TRIAL was INSUFFICIENT to CONVICT ON. As a matter of Law by The Laws That Govern ACQUITTALS. I was LEGALLY by LAW "ACQUITTED" on The CRIME of Felony murder by The Felony murder Rule Theory "alleging"

That in Beaufort County on or about September 1st, 2012 while engaged in a ongoing gun battle an inherently dangerous Felony, Tyrone Robin-son did willfully, unlawfully and with malice aforethought cause The victim K.S. to be shot and killed in the area of marshland drive and allen road on Hilton Head Island, S.C. and That K.S. did die in Beaufort County as a proximate result there of.

That The JURY at TRIAL was sworn in to decide on and I was TRIED on before The JURY at TRIAL on INDICTMENT#2012-GS-07-01935

As a result The Federal 5th amendment Right of Double Jeopardy. Barrs The State of South Carolina from RETRIEING I Tyrone Robinson for a RETRIAL for The death of victim K.S.

Also The Federal 5th amendment Right of Double Jeopardy. Bars The State of South Caro-lina from appealing against I Tyrone Robin-son and or, Argueing against I Tyrone Robin-son on The "ACQUITTAL", even if The "ACQUITTAL" That I obtained on The crime of felony murder by The Felony murder Rule Theory. That I was indicted on and Tried on before The Jury at TRIAL on INDICTMENT#2012-GS-07-01935. was based on an erroneous interpretation of gover-ning legal principles or upon legal principles which are Themselves subsequently overturned.

FOR PROOF REVIEW

Case Law merits

SUPREME COURT OF APPEALS OF THE STATE OF NORTH CAROLINA CASE LAW OF.
STATE OF NORTH CAROLINA VS. MARCUS REYMOND ROBINSON 375 N.C. 173, 846 S.E. 2d 711 "QUOTEING" DOUBLE JEOPARDY PROTECTION APPLY ONLY IF THERE HAS BEEN SOME EVENT, SUCH AS AN ACQUITTAL, THAT TERMINATES THE ORIGINAL JEOPARDY. IF JEOPARDY IS TERMINATED BY AN ACQUITTAL, THE STATE IS BARRED FROM APPEAL-ING ANY DECISION THAT MIGHT SUBJECT THE DEFENDANT TO ANOTHER TRIAL FOR THE SAME OFFENSE. AN ACQUITTAL IS "ANY RULEING THAT THE PROSECUTIONS PROOF IS INSUFFICIENT TO ESTABLISH CRIMINAL LIABILITY FOR AN OFFENSE. THE PROHIBITION ON REVIEW OF ACQUITTALS IS ONE OF THE MOST FUNDAMENT-AL RULES IN THIS HISTORY OF DOUBLE JEOPARDY. ACCORDINGLY ACQUITTALS ARE FINAL AND UNREVIEWABLE, EVE IF BASED IN ERROR.

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF.
U.S. VS. HUNT 212 F.3d 539 "QUOTEING" WHAT CONSTITUTES A "ACQUITTAL" IS NOT TO BE CONTROLLED BY THE FORM OF THE JUDGES ACTION. INSTEAD WE MUST DETERMINE WHETHER THE RULEING OF THE JUDGE WHAT EVER ITS LABEL, ACTUALLY REPRESENTS A RESOLUTION CORRECT OR NOT OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGE." FURTHER QUOTEING" FOR ITS PART THE GOVERNMENT READILY ADMITS THAT CERTAIN PARTS OF THE INDICTMENT WERE SPECIFICALLY DISMISSED FOR LACK OF EVIDENCE THERE BY AMOUNTING TO AN ACQUITTAL AS TO THOSE PARTS. THE GOVERNMENT DOES NOT APPEAL THOSE SPECIFIC FINDINGS. THE CRUX OF THE GOVERNMENTS ARGUEMENT, HOWEVER IS, THAT DESPITE THE LABEL OF ACQUITTAL USED BY THE COURTS, THE JUDGEMENT ON COUNTS ONE THROUGH TWELVE WAS IN FACT PARTLY "A DISMISSAL" BASED ON THE RULEING OF LAW THAT THERE WAS AN IMPERMISSIBLE VARIANCE. THE GOVERNMENT OPINES THEREFORE, THAT IT IS NOT BARRED FROM APPEALING OR SEEKING A RETRIAL ON THE INDIVIDUAL PARTS OF THE SCHEME WHICH THE DISTRICT COURT DID NOT SPECIFICALLY REJECT FOR LACK OF SUFFICIENT EVIDENCE.
THE NINTH CIRCUIT REJECTED THE GOVERNMENTS ARGUEMENT IN SCHWARTZ, IN AS MUCH AS WE FIND THE JUDGEMENT BELOW TO BE A TRUE ACQUITTAL, THE DOUBLE JEOPARDY CLAUSE BARRS APPEAL EVEN IF THE DISTRICT COURT BASED THE ACQUITTAL ON

an erroneous interpretation of governing legal principles or upon legal principles which are themselves subsequently overturned

1st Element

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial without my consent. and did not allow the jury to decide on rather I was guilty or not guilty of commiteing the 1st Element "allegeing" I Tyrone Robinson was engaged in a ongoing gun battle an inherantly dangerious felony That I was tried on before the jury at trial on Indictment #2012-GS-07-01935

2nd Element

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial. and did not allow the jury to consider rather I was guilty or not guilty of commiteing the 2nd Element "allegeing" victim K.S. did die as a proximate result of I Tyrone Robinson being engaged in a ongoing gun battle an inherantly dangerious felony That I was tried on before the jury at trial on Indictment #2012-GS-07-01935

3rd Element

As a matter of law Trial Judge Thomas Cooper discharged the jury away from trial, and did not allow the jury to consider rather I was guilty or not guilty of commiteing The 3rd Element "allegeing" I Acted with the intent to commite a ongoing gun battle an inherantly dangerious felony That I was tried on before the jury at trial on Indictment #2012-GS-07-01935

As a matter of law proveing that without my consent. the trial judge and trial court discharged the jury away from trial and did not allow the jury to render a verdict on the crime of felony murder by the felony murder rule theory "allegeing" That in Beaufort County on or about September 1st, 2012, while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice afore-

-Thought Cause The victim K.S. to be shot and killed in The area of Marshl-and, Drive allen Road Hilton Head Island, S.C. and That K.S. did die in Beaufort County as a proximate result there of.

As a matter of law proveing That by The laws That govern acquittals, I was legally "ACQUITTED" on The crime of felony murder by The felony murder Rule Theory "allegeing"

That in Beaufort County on or about september 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause The victim K.S. to be shot and killed in The area of marshland Drive and allen Road, Hilton Head Island, S.C. and That K.S. did die in Beauf-ort County as a proximate result There of.

That The jury at trial was sworn in to decide on, and I was tried on before The jury at trial on indictment # 2012-GS-07-01935.

As a matter of law The Federal 5th Amendment Right of Double Jeopardy. barrs The state of South Carolina from retrieing me in a retrial. on a subsequent indictment for The death of victim K.S. for proof review

Case Law merits

Supreme Court of Appeals of The state of South Carolina case law of. The state vs. Gerald B. Kirby and Charles King Stogner 236 S.E.2d 33 "Quoteing"

But if The jury are discharged without defendants consent for a reason legally insufficient and without any absolute necessity for it, The discharge is equivalent to an acquittal and may be pleaded as a bar to a subsequent indictment

Case Law merits

Supreme Court of Appeals of The State of South Carolina case law of. State vs. Richardson 25 S.E. 220 "Quoteing"

so here we might say That after The jury were charged with The trial of This case They haveing been discharged without any lawful cause, The prisoner is acquitted

AS a matter OF Law There IS Not any
Indictment chargeing I Tyrone Robinson.
with The Third unindicted crime of murder
"alleging"
I killed The victim with malice and aforethought
Also as a matter of law The Third unindicted
alleged crime of murder "allegeing"
I Killed The victim with malice and
aforethought

IS NOT A LESSER INCLUDED CRIME OF
The crime of Felony murder by The Felony
murder Rule Theory "allegeing"
That In Beaufort County on or about
September 1st, 2,012 while engaged in
a ongoing gun battle an inherantly
dangerious Felony, Tyrone Robinson did
willfully, unlawfully and with malice
aforethought cause The victim K.S. [redacted]
[redacted] to be shot and killed in
The area of marshland drive and
allen Road on Hilton Head Island
and That K.S. [redacted] did die
in Beaufort County as a proximate
result there of

That The jury at Trial was sworn in
to decide on, on Indictment #2012-GS-
-07-01935
As a result as a matter of law The
Jury verdict of Guilty on The Third
unindicted alleged crime of murder
"allegeing"
I killed the victim with malice and afore-
-thought
IS The EQUIVALENT to a JURY verdict
OF NOT GUILTY.

Case Law merits

Supreme court of appeals of the state of
South Carolina case law of.
The state vs. Louis English Fuller 552 S.E.2d
282 "quoteing"
If accessory after the fact is not charged
in the indictment, but is instructed to
clarify mere presence, a finding of
accessory after the fact is the equivalent
to a finding of not guilty

Based on The Facts explained. As a matter of law, The prison sentence of Life Imprisonment That Trial Judge Thomas Cooper sentenced me to prison time of Life Imprisonment to. on Indictment# 2012-GS-07-01935 For the crime of Felony murder by The Felony murder Rule Theory "allegeing"
That in Beaufort county on or about September 1st, 2012 while engaged in a ongoing gun battle an inherantly dangerious Felony, Tyrone Robinson did wilfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in The area of marshland drive and allen Road on Hilton Head Island and That K.S. [redacted] did die in Beaufort county as a proximate result There of.
That The jury at Trial was sworn in to decide on, on Indictment# 2012-GS-07-01935 is "VOID". For proof review

case law merits

Crimina court of Appeals of The state of oklahoma case law of:
Ex parte Harris 8 Okla 397, 128 P.156, 1912 OK CR 915 "quoteing"
When a person is lawfully put on trial on charge of larceny, and a jury returns a verdict under the instructions of the court finding such person guilty of receiving stolen property, knowing the same to have been stolen, such verdict is equivalent to an acquittal on the larceny charge and another trial can not be had on the indictment.
A trial court can not render Judgement imposing a sentence in the penitentiary for larceny when the verdict of the jury convicts of receiving stolen property, knowing the same to have been stolen. and when it clearly appears that a person was tried for larceny and convicted by the jury of receiving stolen property, knowing the same to have been stolen, and was sentenced to the penitentiary by the trial court upon the original charge of larceny. such Judgement is "VOID"

1st Greater offense
Crime of murder

As a matter of law the greater offense crime of felony murder by the felony murder rule theory. Is a greater offense crime of murder. That carries a maximum prison sentence of life imprisonment inside of the State of South Carolina

2nd Greater offense
Crime of murder

As a matter of law. The greater offense crime of murder "allegeing" the defendant killed the victim with malice and afore-thought

is also a greater offense crime of murder that carries a maximum prison sentence of life imprisonment.

Therefore because by the laws that govern acquittals, I was legally acquitted on the greater offense crime of murder. When I was acquitted on the greater offense crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland drive and allen Road, Hilton Head Island, S.C. and that K.S. did die in Beaufort County as a proximate result there of

That I was tried on before the jury at trial on indictment #2012-GS-07-01935

As a matter of law my acquittal on the greater offense crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robin-son did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland drive and allen Road, Hilton Head Island, S.C. and that K.S. did die in Beaufort County as a proximate result there of.

That I was tried on before the jury at trial on indictment #2012-GS-07-01935

Is a Bar to the state of South Carolina retrieing me in a retrial on the GREATER OFFENSE CRIME OF MURDER. by the crime and offense "allegeing"

I KILLED THE VICTIM WITH MALICE and aforethought

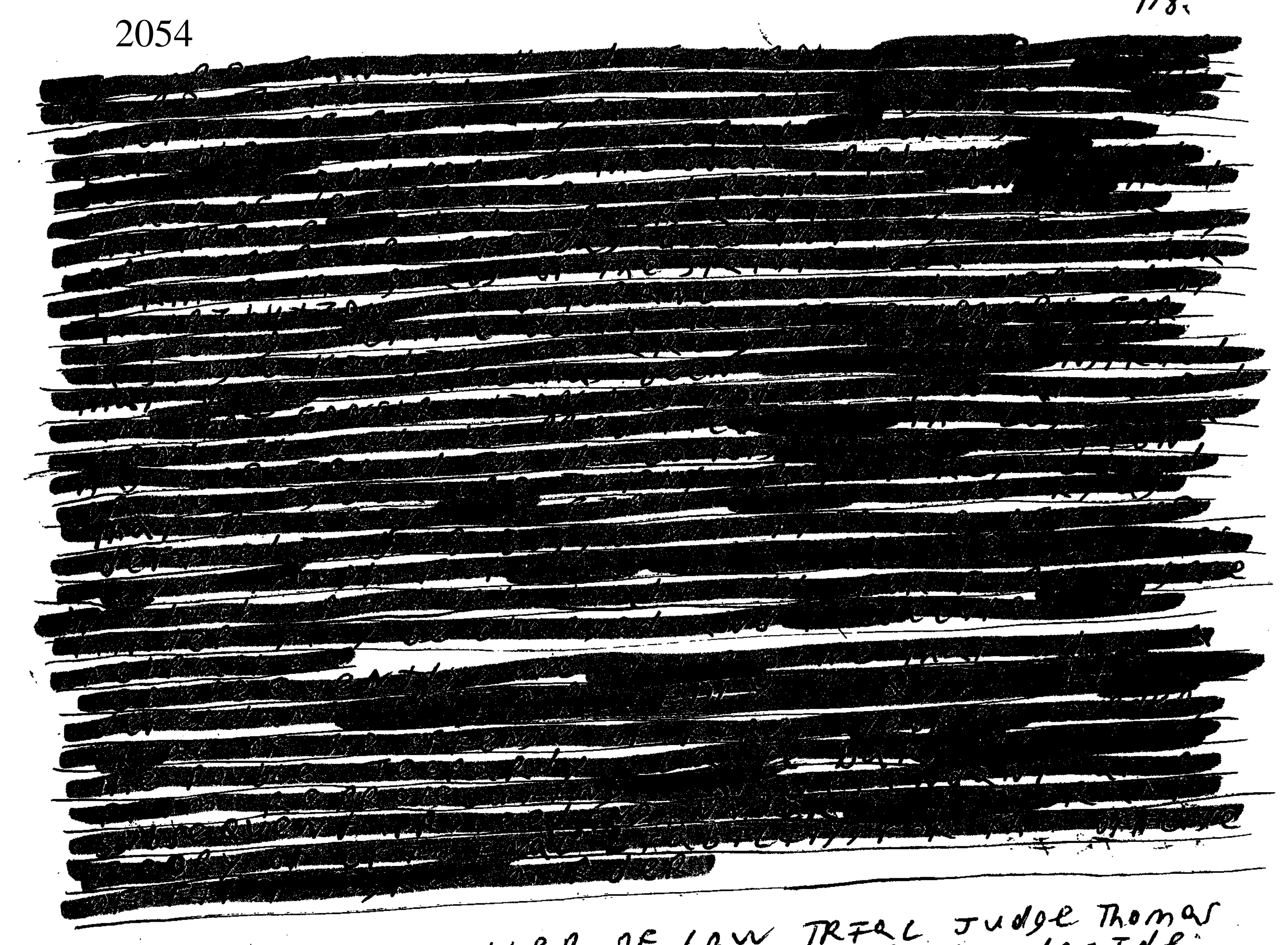
because to do otherwise, would cause me to be put twice in jeopardy for the same greater offense crime of murder. after I was acquitted on the greater offense crime of murder. when I was acquitted on the greater offense crime of felony murder by the felony murder rule theory "allegeing"

That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherently dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, S.C. and that K.S. did die in Beaufort County as a proximate result there of.

That the jury at trial was sworn in to decide on and I was tried on before the jury at trial on indictment #2012-GS-07-01935. for proof review

Case Law Merits

Supreme Court of Appeals of the state of Nebraska case law of.
State of Nebraska vs. Calvin J. White 254 Neb. 566, 577 N.W. 2d 741 "Quoteing"
White was initially charged in 1992 with first degree premeditated murder. after the cause was remanded for new trial, the state now seeks to charge White with inter alia felony murder. The conduct prohibited by §28-303 is first degree murder. premeditated murder and felony murder are not denominated in Nebraska statutes as seperate and independant criminal offenses. but only ways in which liability for first degree murder may be charged and prosecuted. Therefore the differance in the charges between the first trial and the retrial is a differance in the states theory of how White committed the single offense of first degree murder.
The legislature has not manifested any clear intent that a defendant could be convicted



Because as a matter of law Trial Judge Thomas cooper. did not instruct the jury to decide on. Any crimes that are considered lesser included crimes. of the crime of Felony Murder by the Felony Murder Rule Theory "alleging" That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherently dangerous Felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of Marshland Drive and allen Road, Hilton Head Island, S.C. and that K.S. [redacted] did die in Beaufort County as a proximate Result there of

That I was tried on before the jury at trial on Indictment # 2012-GS-07-01935

As a matter of law the "ACQUITTAL" That I obtained on the crime of Felony Murder by the Felony Murder Rule Theory "alleging" That in Beaufort County on or about September

1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland Drive and Allen Road Hilton Head Island, S.C. and that K.S. did die in Beaufort County as a proximate result there of.

That I was tried on before the jury at trial on Indictment#2012-GS-07-01935

Also implies a "Acquittal" on all crimes that are considered "Lesser Included" crimes. of the crime of Felony Murder by the Felony Murder Rule Theory "alleging" That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, S.C. and that K.S. did die in Beaufort County as a proximate result there of

That I was tried on before the jury at trial on Indictment#2012-GS-07-01935

Case Law Merits

United States Court of Appeals for the Ninth Circuit case law of-

U.S. vs. Gooday 714 F.2d 80 "quoteing"
If no instructions are given on lesser included offense, the jury verdict is limited to whether the defendant committed the crime explicitly charged in the indictment. In such cases an acquittal on the crime explicitly charged necessarily implies an acquittal on all lesser offenses included within that charge

Because so as a matter of law the acquittal that I obtained. on the crime of Felony Murder by the Felony Murder Rule Theory "alleging" That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robin-son did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, S.C. and that K.S. did

DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT # 2012-GS-07-01935 ALSO BARRS THE STATE OF SOUTH CAROLINA FROM RETRIEING ME IN A RETRIAL. ON A SUBSEQUENT INDICTMENT, FOR ANY CRIMES THAT ARE CONSIDERED LESSER INCLUDED CRIMES. OF THE CRIMES OF FELONY MURDER BY THE FELONY MURDER RULE THEORY

"ALLEGEING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD, HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT # 2012-GS-07-01935

CASE LAW MERITS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF.

[crossed out]

AS A RESULT AS A MATTER OF LAW MY "JEOPARDY TERMINATED" ON THE CRIME AND OFFENSE OF. FELONY MURDER BY THE FELONY MURDER RULE THEORY

"ALLEGEING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD, HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS

a proximate result there of

when I was "ACQUITTED" on the crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort county on or about september 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robin-son did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in the area of marshland drive and allen road Hilton Head Island and that K.S. did die in Beaufort county as a proximate result there of

That I was tried on before the jury at trial on indictment #2012-GS-07-01935. for proof review

case law merit

supreme court of appeals of the united states of America case law of.
Green vs united states 78 S.CT 221 "quoteing" in accordance with this philosophy it has long been settled under the fifth amendment that a verdict of acquittal is final ending a defendants jeopardy, and even when not followed by any judgement, it is a bar to a subsequent prosecution for the same offense

therefore because as a matter of law the federal 5th amendment right of double jeopardy. bars the state of south carolina from retrieing me in a retrial for the death of victim K.S.. as a matter of law this court

LACKS JURISDICTION

to decide on arguements from the state of south carolina against the "ACQUITTAL"

That I obtained. on the crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort county on or about september 1st, 2,012, while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice afore-thought cause the victim K.S. to be shot and killed in the area of marshland drive allen road, Hilton Head Island, S.C. and

That K.S. did die in Beaufort
County as a proximate result there of
That I was tried on before the jury at
trial on indictment #2012-GS-07-01935

case law merits

Supreme Court of Appeals of the United
States of America case law of.

Also because the prison sentence of life
imprisonment. That trial judge Thomas
Cooper sentenced me to prison time to,
on indictment #2012-GS-07-01935 for
the crime of felony murder by the felony
murder rule theory "alleging"
That in Beaufort County on or about September
1st, 2,012 while engaged in a ongoing gun
battle an inheranthy dangerious felony,
Tyrone Robinson did willfully / unlawfully
and with malice aforethought cause the victim
K.S. to be shot and killed
in the area of Marshland Drive and Allen
Road on Hilton Head Island and that
K.S. did die in Beaufort County
as a proximate result there of.
That I was tried on before the jury at
trial on indictment #2012-GS-07-01935.

IS "VOID".

As a matter of law the VOID prison
sentence of life imprisonment. That trial
judge Thomas Cooper sentenced me to prison
time to on indictment #2012-GS-07-01935
Does not have any LEGAL EFFECT.

For proof review

case law merits

Supreme Court of Appeals of West Washington
case law of.

~~[illegible] void. They can not afford warrant for the ... of ... against the ... paramount guaranty of the constitution in his favor. The courts jurisdiction over ... for the offense charged ... by the return of a verdict of acquittal. Any further steps against him on the indictment are void and without legal effect.~~

Because the prison sentence of life imprisonment that trial judge Thomas Cooper, sentenced me to prison time to on indictment #2012-GS-07-01935 does not have any legal effect. As a matter of law the only thing that does have legal effect on indictment #2012-GS-07-01935. Is the "ACQUITTAL" That I obtained on the crime of felony murder by the felony murder rule theory "allegeing" that in Beaufort County on or about September 1st, 2012 while engaged in a ongoing gun battle an inherently dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of Marshland drive and allen Road on Hilton Head Island, and that K.S. [redacted] did die in Beaufort County as a proximate result there of

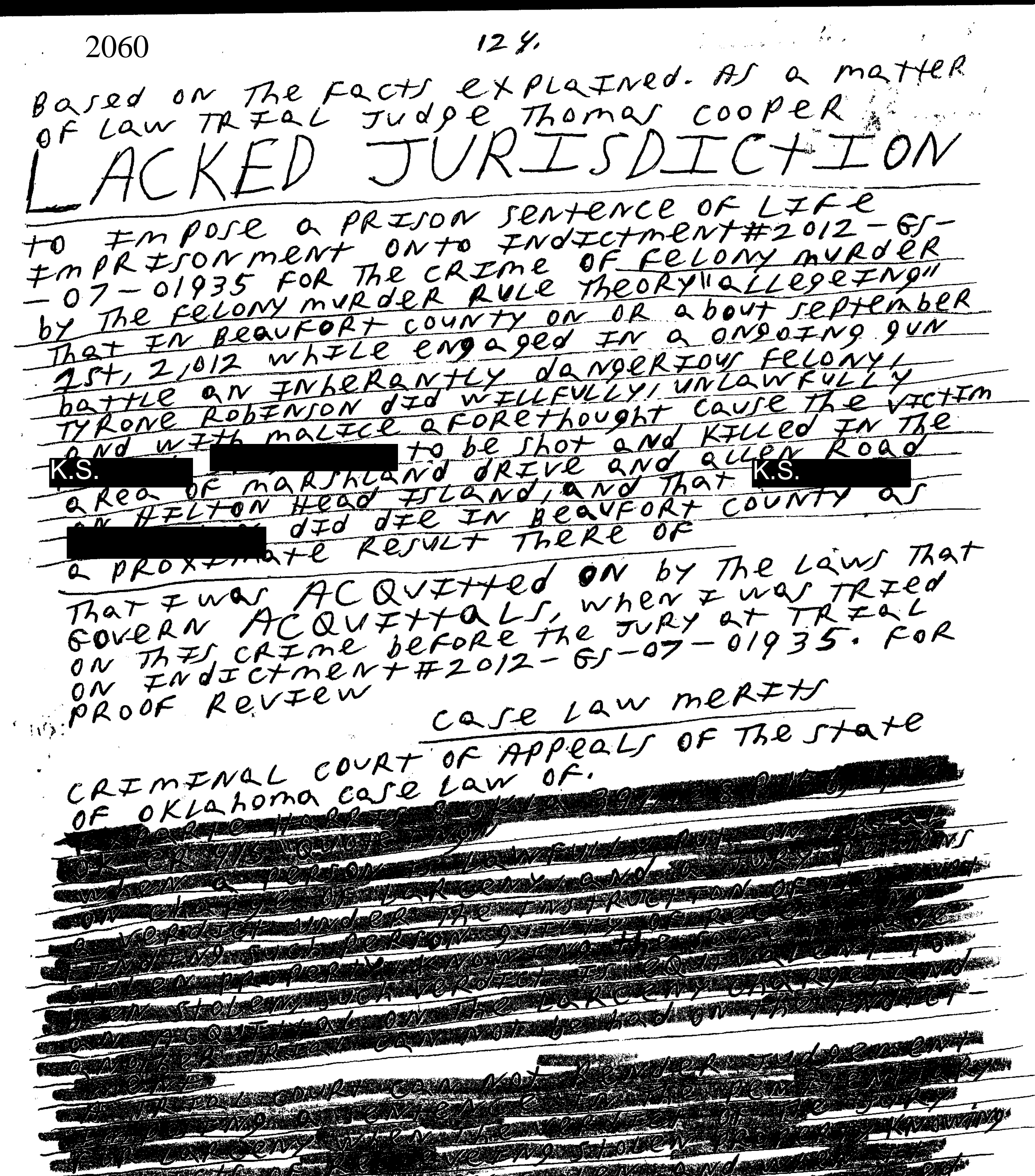
That the jury at trial was sworn in to decide on and I was tried on before the jury at trial on indictment #2012-GS-07-01935 for proof review

Case Law merits

Court of Appeals of the State of Georgia case law of: "quoteing"

Stubbs vs. The State 469 S.E. 2d 229

Simple assault is not a lesser included offense of an aggravated assault in which a gun or a knife is alleged to have been used as a deadly weapon. If the trial court recieves a verdict of guilty on a crime that was neither charged nor was a lesser included offense of a crime charged, then the verdict has the legal effect of an ACQUITTAL.



Based on The Facts explained. As a matter of Law Trial Judge Thomas Cooper

LACKED JURISDICTION

to Impose a Prison sentence of Life Imprisonment onto Indictment #2012-GS-07-01935 For The crime of Felony murder by The Felony murder rule theory "allegeing" That in Beaufort county on or about september 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and Killed in The Marshland drive and allen Road area of Hilton Head Island, and That K.S. did die in Beaufort county as a proximate result there of

That I was ACQUITTED on by The Laws That Govern ACQUITTALS, when I was Tried on This crime before the Jury at Trial on Indictment #2012-GS-07-01935. For Proof Review

Case Law merits

Criminal Court of Appeals of The State of Oklahoma case law of.

upon the original charge of larceny. such judgement is "VOID", and the person accused is entitled to be discharged on the writ of habeas corpus" further quoteing"

The indictment in this case charges the petitioner with the crime of larceny of domestic animals. The verdict of the jury found him guilty of recieveing stolen property. The judgement of the court imposes a sentence upon him for larceny. The crime of larceny under our laws does not embrace that of recieveing stolen property. The elements of the offense are differant, and there was nothing in this indictment to put the petitioner upon notice that he would be tried upon the charge of recieveing stolen good. It is contended that the court did not have JURISDICTION to render judgement against the petitioner for the crime of larceny upon a verdict finding him guilty of recieveing stolen property, and the jury was without lawful power to render verdict of guilty of recieveing stolen property under the indictment. This contention is sound and is conceded by the assistant attorney general" further quoteing" The petitioner haveing been placed on trial on a charge of larceny and the jury haveing found him guilty of recieveing stolen property, the court could not sentence him to the penitentiary for larceny. The judgement must be based upon the verdict of the jury; the verdict of the jury must be responsive to the issue joined. As the verdict in this case has not been set aside, and the petitioner haveing once been in jeopardy, he can not be again tried on this indictment. LET THE WRIT ISSUE AND THE PETITIONER BE DISCHARGED

case law merits

supreme court of appeals of the state of Nebraska case law of: Joe Mingus vs. Charles F. Fairbank, Sheriff, Hall County, Nebraska 317 N.W.2d 770" quoteing" In the case at bar, the jury having by its verdict, determined the prisoner not guilty as charged, although it further adjudged him guilty of another crime, the trial court had no jurisdiction to sentence him. hence its attempt in that direction was illegal in such sense that it was VOID

INSIDE OF THE CASE OF [redacted]. THE
SUPREME COURT OF APPEALS OF THE STATE OF SOUTH
GRANTED PETITIONER MESSERVY, A WRIT OF
HABEAS CORPUS. IN THE SUPREME COURT OF APPEALS
ORIGINAL JURISDICTION. INSIDE OF THE
CASE OF [redacted] WHILE ACTING IN ITS
ORIGINAL JURISDICTION. THE SUPREME
COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA
DECIDED. THAT THE OBJECT OF THE WRIT OF
HABEAS CORPUS. IS TO RELEASE A PERSON FROM
ILLEGAL RESTRAINT. INSIDE OF THE CASE OF [redacted]
[redacted] ORIGINAL JURISDICTION.
WHILE ACTING IN ITS ORIGINAL JURISDICTION
THE SUPREME COURT OF APPEALS OF THE STATE
OF SOUTH CAROLINA DECIDED. THAT BECAUSE
THE PROCEEDINGS COMPLAINED OF, IN THE
WRIT OF HABEAS CORPUS BY MESSERVY
ARE "**VOID**" FOR WANT OF JURISDICTION.
WHILE ACTING IN ITS ORIGINAL JURISDICTION.
THE SUPREME COURT OF APPEALS OF THE STATE OF
SOUTH CAROLINA. ORDERED PETITIONER
MESSERVY TO BE DISCHARGED FROM OUT OF
THE CUSTODY AND THE RESTRAINT OF THE
RESPONDENTS

THE CASE OF [redacted] ESTABLISHES, THAT
[redacted] UNLAWFULLY
WHEN A PERSON IS BEING HELD
RESTRAINED. ON A **VOID** PRISON SENTENCE.
THAT THE TRIAL JUDGE AND TRIAL COURT
LACKED JURISDICTION TO IMPOSE.
THE SUPREME COURT OF APPEALS OF THE STATE
OF SOUTH CAROLINA. WILL ACT IN ITS ORIGINAL
JURISDICTION AND GRANT THE PETITIONER
A WRIT OF HABEAS CORPUS IN ITS ORIGINAL
JURISDICTION, AND DISCHARGE THE
PETITIONER FROM UNLAWFUL RESTRAINT.
FROM OUT OF THE CUSTODY OF THE RESPONDENTS.
FOR PROOF REVIEW CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH
CAROLINA CASE LAW OF. [redacted]
[redacted]

~~This is an applicant in the original jurisdiction of this court for writ of Habeas corpus. The petitioner alleges that he is a citizen of this state [illegible] in the city of Charleston, but [illegible] to go beyond the limits of the state for the purpose of pursuing [illegible] questions. The first question presented is whether habeas corpus is the proper remedy. In this case we think it is. The object of the writ is to release a citizen from any illegal restraint of his liberty. "Further questions" [illegible] proceedings [illegible] as there was [illegible] and petitioner was not [illegible] jury and [illegible] to the provision of the [illegible] proceedings under follow that all the proceedings under the writ [illegible] are~~ VOID ~~for want of jurisdiction, and the restraint there by placed upon petitioner [illegible] must be declared illegal "further questions" [illegible] the petitioner discharged from custody or restraint there under~~

Therecore because The prison sentence of life impisonment. That trial Judge Thomas Cooper lacked jurisdiction to impose onto indictment # 2012-GS-07-01935 for the crime of felony murder by the felony murder rule theory "allegeing"

That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of Marshland Drive Allen Road Hilton Head Island, S.C. and that K.S. [redacted] did die in Beaufort County as a proximate result there of

That the jury at trial was sworn in to decide on, and I was tried on before the jury at trial. **IS VOID AND DOES NOT HAVE ANY LEGAL EFFECT**

The P.C.R court of common pleas of the state of South Carolina. Must decide on the issue

OF THE "VOID" PRISON SENTENCE. UPON THIS APPLICATION FOR POST CONVICTION RELIEF INSIDE OF THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA. AS DECIDED ON BY THE SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA, IN ITS ORIGINAL JURISDICTION. INSIDE OF THE CASE LAW OF MCCULLOUGH VS. HICKS, COUNTY AUDITOR 41 S.E. 761 FOR PROOF REVIEW CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF MCCULLOUGH VS. HICKS, COUNTY AUDITOR 41 S.E. 761 "QUOTEING:" THIS IS A APPLICATION TO THE SUPREME COURT, IN THE EXERCISE OF ITS ORIGINAL JURISDICTION "FURTHER QUOTEING:" THE PETITIONERS CONTEND THAT THIS COURT HAS JURISDICTION OF THE CASE BY REASON OF THE FACT THAT THE CIRCUIT COURT OF THE UNITED STATES DID NOT ACQUIRE JURISDICTION OF THE TOWNSHIP, AND THAT JUDGEMENT RENDERED BY THE COURT IS NULL AND **VOID**, AND MAY BE DISREGARDED IN THIS PROCEEDING. THE RULE IS WELL SETTLED THAT, IF THE JUDGEMENT SHOWS UPON ITS FACE THAT THE COURT DID NOT ACQUIRE JURISDICTION OF THE DEFENDANT, IT IS A NULLITY, AND **MAY BE DISREGARDED BY ANY COURT IN WHICH IT IS OFFERED AS EVIDENCE**

THEREFORE BASED ON THE FACTS LITIGATED IN THIS PETITION. BECAUSE BY THE LAWS THAT GOVERN ACQUITTALS, I WAS LEGALLY ACQUITTED. ON THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING:" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE

ON, and I was Tried on before The Jury at Trial on Indictment #2012-GS-07-01935. Also because The prison sentence of Life Imprisonment, That Trial Judge Thomas Cooper "**LACKED JURISDICTION**"

to sentence me to prison time to on Indictm-ent #2012-GS-07-01935 for The Crime of Felony murder by the Felony murder Rule Theory "alleging"

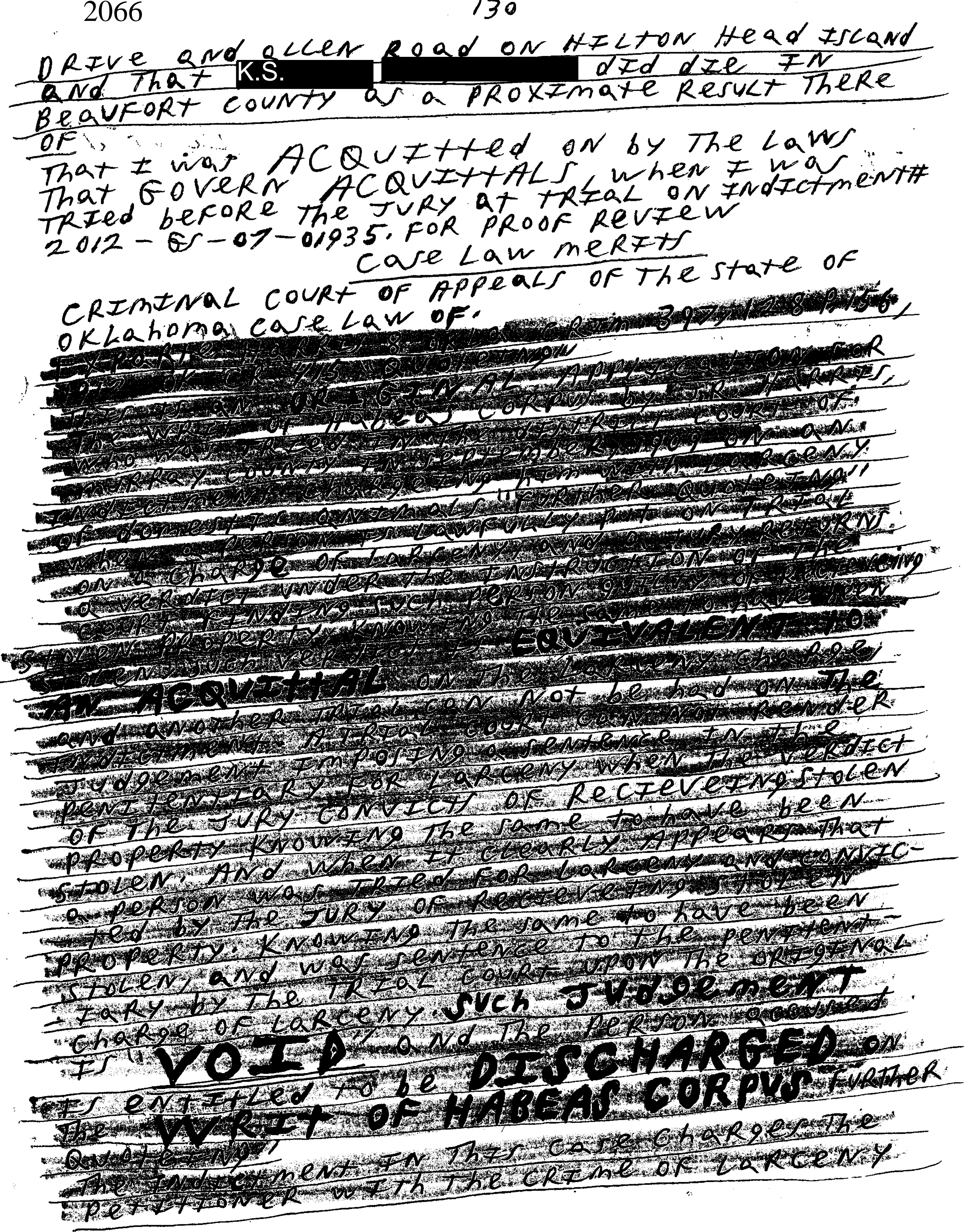
That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious Felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause The victim K.S. [redacted] to be shot and killed in The area of marshland drive and [redacted] K.S. road on Hilton Head Island and That [redacted] did die in Beaufort County as a proximate result There of

That I was "**ACQUITTED**" on by The Laws That govern **ACQUITTALS**. When I was Tried before The Jury at Trial on Indictm-ent # 2012-GS-07-01935 **IS** "**VOID**"

AND DOES NOT HAVE ANY LEGAL EFFECT

This court must Grant As a matter of Law This post conviction me This Application for Relief requested and Relief for The Relief **IMMEDIATELY DISCHARGE** I Tyrone L. Robinson from **UNLAWFUL RESTRAINT**, From out of The custody of South Carolina department of corrections, The state of South Carolina, and Warden Brian Kendall on Indictment #2012-GS-07-01935 for The crime of Felony murder by the Felony murder Rule Theory "alleging"

That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing gun battle an inherantly dangerious Felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause The victim K.S. [redacted] to be shot and killed in The area of marshland



DRIVE and ALLEN ROAD ON HILTON Head ISLAND
and That K.S. [redacted] did die IN
BEAUFORT COUNTY as a PROXIMATE RESULT THERE
OF
That I was ACQUITTED ON by The LAWS
That GOVERN ACQUITTALS when I was
TRIED before The JURY at TRIAL ON INDICTMENT#
2012-GS-07-01935. FOR PROOF REVIEW
Case Law MERITS
CRIMINAL COURT OF APPEALS OF The STATE OF
OKLAHOMA Case Law OF.
Ex parte Harris, 8 Okla. Crim. 397, 128 P. 156, 1912 OK CR 475 quoteing "This is an ORIGINAL Application for The WRIT OF HABEAS CORPUS by J.R. HARRIS, who was tried in the district court of Murray County in September 1909 on an indictment charging him with Larceny of domestic animals" Further quoteing "when a person is lawfully put on trial on a charge of Larceny, and a jury returns a verdict under the instruction of the court finding such person guilty of recieveing stolen property knowing the same to have been stolen, such verdict is EQUIVALENT TO AN ACQUITTAL on the Larceny charge and another trial can not be had on the indictment. A trial court can not render judgement imposing a sentence in the penitentiary for Larceny when the verdict of the JURY convicts of Recieveing stolen property knowing the same to have been stolen. And when it clearly appears that a person was tried for Larceny and convicted by the JURY of Recieveing stolen property. Knowing the same to have been stolen, and was sentence to the penitentiary by the trial court upon the original charge of Larceny. Such JUDGEMENT is" VOID and the person accused is entitled to be DISCHARGED on The WRIT OF HABEAS CORPUS Further Quoteing,
"The Indictment in This case charges The petitioner with The crime of Larceny

of domestic animals. The verdict of the jury found him guilty of recieveing stolen property. The judgement of the court imposes a sentence upon him for larceny. The crime of larceny under our laws does not enbrace that of recieveing stolen property. The element of the offense are differant, and there was nothing in this indictment to put the petitioner upon notice that he would be tried upon the charge of recieveing stolen good

It is contended that the court did not have **JURISDICTION** to render judgement against the petitioner for the crime of larceny upon a verdict finding him guilty of recieveing stolen property, and the jury was without lawful power to render verdict of guilty of recieveing stolen property under the indictment. This contention is sound and is conceded by the assistant attorney general "further quoteing"

The petitioner haveing been placed on trial on a charge of larceny and the jury haveing found him guilty of recieveing stolen property, the court could not sentenced him to the penitentiary for larceny. The judgement must be based on the verdict of the jury, the verdict of the jury must be responsive to the issue joined. As the verdict in this case, has not been set aside. And the petitioner haveing once been in jeopardy, he can not be again tried on this indictment let the writ issue and the PETITIONER BE DISCHARGED

Case Law Merits

Supreme court of appeals of the state of Nebraska case law of.

In RE McVey 50 Neb. 481, 70 N.W. 51

"quoteing"

The crime of breaking and entering building in the daytime is not included in a charge of burglary and a prisoner can not be convicted of the former under a charger of the latter, or burglary

This being truly the verdict here in did not warrant the court in sentenceing the prisoner, as it announced him not guilty of the burglary as charged." Further quoteing"

That the prisoner must be DISCHARGED.

Case Law Merits

Supreme Court of Appeals of the State of South Carolina case law of.

"Quoteing"
In the case at bar, the jury having, by its verdict, determined the prisoner not guilty as charged, although it further adjudged him guilty of another crime, the trial court had no jurisdiction to sentence him hence its attempt in that direction was illegal in such sense that it was void, and habeas corpus the appropriate remedy it follows that the prisoner must be Discharged.

Attorney Artie David Bax failure to motion trial Judge Thomas Cooper. to Discharge me from unlawful restraint on Indictment #2012-GS-07-01935 and object to the "VOID" prison sentence of life imprisonment. That trial Judge Thomas Cooper lacked jurisdiction to impose onto Indictment #2012-GS-07-01935.

Because As a matter of Law The Prison sentence of Life Imprisonment. That Trial Judge Thomas Cooper LACKED JURISDICTION to impose onto Indictment #2012-GS-07-01935 **IS VOID AND DOES NOT HAVE ANY LEGAL EFFECT**

Also Because as a matter of Law my Jeopardy terminated and came to a end on Indictment #2012-GS-07-01935, when by The Laws That govern Acquittal I was Legally Acquitted on The crime of Felony murder by The Felony murder rule Theory "allegeing"

That in Beaufort County on or about September 1st, 2,012 while engaged in a ongoing inherantly dangerious Felony; gun battle an Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K.S. to be shot and killed in The area of marshland Drive allen Road Hilton Head, Island, S.C. and That K.S. did die in Beaufort County as a proximate result There of

That The Jury was sworn in to decide on That The Jury at Trial when I was Tried before the Jury at Trial on Indictment # 2012-GS-07-01935 on This crime on Indictment # 2012-GS-07-01935 As a result the prison sentence of Life Imprisonment that Trial Judge Thomas Cooper LACKED JURISDICTION to impose onto Indictment #2012-GS-07-01935 is **VOID AND DOES NOT HAVE ANY LEGAL EFFECT** requireing This court to **immediately Discharge** me from **UNLAWFUL RESTRAINT** on Indictment #2012-GS-07-01935

DID NOT CONSTITUTE a valid Trial strategy and was deficient performance. satisfieing The first prong, That's required to prove a claim of innefective Assistance of counsel. in violation of my Federal Sixth Amendment Right of effective Assistance of counsel

2NdLY ATTORNEY ARIE david BAX FAILURE TO ASSERT A CLAIM OF **LACK OF JURISDICTION** OVER THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF [redacted] MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT I WAS ACQUITTED ON BY THE LAWS THAT GOVERN ACQUITTALS, WHEN I WAS TRIED BEFORE THE JURY AT TRIAL ON THIS CRIME, ON INDICTMENT # 2012-GS-07-01935

BECAUSE AS A MATTER OF LAW TRIAL JUDGE THOMAS COOPER **LACKED JURISDICTION** TO IMPOSE A "**VOID**" PRISON SENTENCE OF LIFE IMPRISONMENT ONTO INDICTMENT # 2012-GS-07-01935. THAT MY JEOPARDY TERMINATED ON. BECAUSE BY THE LAWS THAT GOVERN "ACQUITTALS" I WAS LEGALLY "ACQUITTED" ON THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2/12 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF [redacted] MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT # 2012-GS-07-01935

AS a RESULT The PRISON sentence of LIFE IMPRISONMENT. That TRIAL Judge Thomas COOPER LACKED JURISdICTION To IMPOSE ON to INdICTMENT # 2012-GS-07-01935. IS **VOID and DOES NOT HAVE ANY LEGAL EFFECT**
DId NOT CONSTITUTE a VALId TRIAL STRATEGY and was deFICIENT PERFORMANCE. SATISFIEING The FIRST PRONG, ThATS REQUIRED to PROVE a CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. IN VIOLATION OF my FEDERAL SIXTH AMENDMENT RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF The STATE OF SOUTH CAROLINA CASE LAW OF.
LUCAS BAILEY VS. STATE 709 S.E.2d 671 "QUOTEING" The SIXTH AMENDMENT TO The UNITED STATES CONSTITUTION GUARANTEES a deFENDANT The RIGHT To EFFECTIVE ASSISTANCE OF COUNSEL U.S. CONST. AMEND VI; STRICKLAND VS. WASHINGTON, 460 U.S. 668 (1984) LOMAX VS. STATE 665 S.E.2d 164 (2,008)
The UNITED STATES SUPREME COURT ESTABLISHED a TWO PRONGED TEST TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL by WHICH a P.C.R APPLICANT MUST SHOW (1ST) COUNSEL PERFORMANCE WAS DEFICIENT

2Nd PRONG

2Nd PRONG PROVEING a CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IS;
The deFICIENT PERFORMANCE PREJUDICED The deFENDANT

IF ATTORNEY ARIE dAVId BAX WOULd OF MOTIONED TRIAL JUDGE Thomas COOPER To DISCHARGE me FROM IMPRISONMENT ON INdICTMENT # 2012-GS-07-01935 and OBJECTEd to my VOId SENTENCE OF LIFE IMPRISONMENT. That TRIAL JUDGE Thomas COOPER LACKED JURISdICTION to OMPOSE ONTO INdICTMENT # 2012-GS-07-01935. BECAUSE AS a MATTER OF LAW The PRISON SENTENCE OF LIFE

IMPRISONMENT. That TRIAL Judge Thomas COOPER LACKED JURISDICTION to Impose onto Indictment# 2012-GS-07-01935 IS VOID AND DOES NOT HAVE ANY LEGAL EFFECT ALSO Because as a matter of law my Jeopardy terminated and came to a end on Indictment# 2012-GS-07-01935. when by The laws That Govern ACQUITTALS I was legally ACQUITTED on The Crime of Felony murder by The Felony murder Rule Theory "alleging" That In Beaufort County on or about September 1st, 2012 while engaged in a ongoing gun battle an inherently dangerous Felony, Tyrone Robinson did willfully, unlawfully, and with malice aforethought cause the victim K.S. [redacted] to be shot and killed in the area of [redacted] Marshland Drive Allen Road Hilton Head Island, S.C. and That K.S. [redacted] did die in Beaufort County as a proximate result There of

That The Jury was sworn in to decide on when I was Tried before The Jury at Trial on This crime on Indictment# 2012-GS-07-01935

As a Result The prison sentence of life imprisonment That Trial Judge Thomas Cooper "LACKED JURISDICTION" to Impose onto Indictment# 2012-GS-07-01935 IS VOID AND DOES NOT HAVE ANY LEGAL EFFECT requireing I Tyrone Robinson to be IMMEDIATELY DISCHARGE FROM UNLAWFUL RESTRAINT ON Indictment# 2012-GS-07-01935.

Then These issues would of been reserved on court record. For South Carolina court of Appeals and or The Supreme Court of Appeals to Review. And South Carolina Court of Appeals and or The Supreme Court of Appeals of The State of South Carolina would of had to DISCHARGE me From UNLAWFUL Restraint and unlawful imprisonment on Indictment# 2012-GS-07-01935. As a Result The outcame of my proceedings on

INDICTMENT # 2012-GS-07-01935 WOULD OF BEEN TOTALLY DIFFERANT IN MY FAVOR. FOR PROOF REVIEW

CASE LAW MERITS

CRIMINAL COURT OF APPEALS OF THE STATE OF OKLAHOMA CASE LAW OF.
EXPARTE HARRIS 8 OKLA. CRIM. 397, 128 P. 156, 1912 OK CR 415 "QUOTEING"
THIS IS AN ORIGINAL APPLICATION FOR THE WRIT OF HABEAS CORPUS BY J.R. HARRIS, WHO WAS TRIED IN THE DISTRICT COURT OF MURRAY COUNTY IN SEPTEMBER, 1909 ON AN INDICTMENT CHARGEING HIM WITH LARCENY OF DOMESTIC ANIMALS "FURTHER QUOTEING" WHEN A PERSON IS LAWFULLY PUT ON TRIAL ON CHARGE OF LARCENY, AND A JURY RETURNS A VERDICT UNDER THE INSTRUCTION OF THE COURT FINDING SUCH PERSON GUILTY OF RECIEVEING STOLEN PROPERTY, KNOWING THE SAME TO HAVE BEEN STOLEN, SUCH VERDICT IS EQUIVALENT TO AN ACQUITTAL ON THE LARCENY CHARGE, AND ANOTHER TRIAL CAN NOT BE HAD ON THE INDICTMENT. A TRIAL COURT CAN NOT RENDER JUDGEMENT IMPOSEING A SENTENCE IN THE PENITENTIARY FOR LARCENY WHEN THE VERDICT OF THE JURY CONVICTS OF RECIEVEING STOLEN PROPERTY KNOWING THE SAME TO HAVE BEEN STOLEN. AND WHEN IT CLEARLY APPEARS THAT A PERSON WAS TRIED FOR LARCENY AND CONVICTED BY THE JURY OF RECIEVEING STOLEN PROPERTY, KNOWING THE SAME TO HAVE BEEN STOLEN, AND WAS SENTENCED TO THE PENITENTIARY BY THE TRIAL COURT UPON THE ORIGINAL CHARGE OF LARCENY. SUCH JUDGEMENT IS "**VOID**" AND THE PERSON ACCUSED IS ENTITLED TO BE **DISCHARGED** ON THE WRIT OF HABEAS CORPUS

SATISFIEING THE SECOND PRONG, THATS REQUIREING TO PROVE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL CONSTITUTEING A VIOLATION OF MY FEDERAL SIXTH AMENDMENT RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL.

2NDLY

IF ATTORNEY ARIE DAVID BAX WOULD OF ASSERTED A CLAIM OF **LACK OF JURISDICTION** OVER THE

CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT I WAS ACQUITTED ON BY THE LAWS THAT GOVERN ACQUITTALS WHEN I WAS TRIED BEFORE THE JURY AT TRIAL ON THIS CRIME ON INDICTM-ENT# 2012-GS-07-01935

BECAUSE AS A MATTER OF LAW TRIAL JUDGE THOMAS COOPER **LACK JURISDICTION** TO IMPOSE A "**VOID**" PRISON SENTENCE OF LIFE IMPRISONMENT ON INDICTMENT# 2012-GS-07-01935, THAT MY JEOPARDY TERMINATED ON. BECAUSE BY THE LAWS THAT GOVERN "ACQUITTALS" I WAS LEGALLY "ACQUITTED" ON, ON THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY, AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD HILTON HEAD ISLAND, S.C. AND THAT K.S. DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE OF AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935

AS A RESULT THE PRISON SENTENCE OF LIFE IMPRISONMENT. THAT TRIAL JUDGE THOMAS COOPER **LACKED JURISDICTION** TO IMPOSE ON TO INDICTMENT# 2012-GS-07-01935. IS **VOID AND DOES NOT HAVE ANY LEGAL EFFECT**

REQUIREING I TYRONE ROBINSON to be IMMEDIATELY DISCHARGED FROM UNLAWFUL RESTRAINT ON INDICTMENT# 2012-GS-07-01935. Then These issues would of been reserved on court record. For South Carolina court of appeals and or The Supreme Court of Appeals to Review. And South Carolina court of appeals and or The Supreme court of Appeals of The state of South Carolina. would of had to DISCHARGE me from UNLAWFUL RESTRAINT and UNLAWFUL IMPRISONMENT ON INDICTMENT # 2012-GS-07-01935. As a Result The outcome of my proceedings on Indictment# 2012-GS-07-01935 would of been totally differant in my favor. FOR PROOF REVIEW

Case Law merits

CRIMINAL COURT OF APPEALS OF The state of Oklahoma case law of. Ex parte Harris 8 Okla. Crim. 397, 128 P. 156, 1912 OK CR 415 "Quoteing" This is an ORIGINAL APPLICATION FOR The WRIT OF HABEAS CORPUS by J.R. HARRIS, who was tried in The district court of murray county in september, 1909 on an Indictment chargeing him with Larceny of domestic animals further quoteing" when a person is lawfully put on trial on a charge of larceny, and a jury returns a verdict under the instruction of The court finding such person guilty of recieve-ing stolen property, knowing The same to have been stolen, such verdict is EQUIVALENT to AN ACQUITTAL ON The Larceny charge, and another trial can not be had on The Indictment. A Trial court can not Render Judgement imposing a sentence in The penitentiary for Larceny when The verdict of The Jury convicts of recieveing stolen property, knowing The same to have been stolen. And when it clearly appears That a person was tried for Larceny and

Convicted by The Jury of Recieveing Stolen Property, Knowing The same to have been stolen, and was sentence to The penitentiary by The Trial Court upon The original charge of Larceny. Such Judgement is "VOID" and The person accused is entitled to be DISCHARGED on The writ of Habeas corpus" Further Quoteing"

The indictment in This case charges The petitioner with The crime of Larceny of domestic animals. The verdict of The Jury found him guilty of recieveing stolen property. The Judgement of The court imposes a sentence upon him for larceny. The crime of larceny under our laws does not embrace That of Recieveing stolen property. The elements of The offense are differant, and There was nothing in This indictment to put The petitioner upon notice That he would be Tried upon The charge of Recieveing stolen good

It is contended That The court did not have JURISDICTION to render Judgement against The petitioner for The crime of Larceny upon a verdict finding him guilty of recieveing stolen property, and The Jury was without lawful power to render a verdict of guilty of recieveing stolen property under The indictment. This contention is sound and is conceded by The Assistant Attorney General "Further Quoteing"

The petitioner haveing been placed on trial on a charge of Larceny and The Jury haveing found him guilty of Recieveing stolen property, The court could not sentence him to The penitentiary for Larceny. The Judgement must be based on The verdict of The Jury, The verdict of The Jury must be Responsive to The issue Joined. As The verdict in This case has not been set aside. and The petitioner haveing once been in Jeopardy, he can not be again Tried on This indict-ment LET THE WRIT ISSUE AND THE PETITIONER BE DISCHARGED

SATISFIEING THE SECOND PRONG THATS REQUIRED TO PROVE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. CONSTITUTEING A VIOLATION OF MY FEDERAL SIXTH AMENDMENT RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF:
LUCAS BAILEY VS. STATE 709 S.E.2d 671
"QUOTEING"
THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL U.S. CONST AMEND. VI; STRICKLAND VS. WASHINGTON, 466 U.S. 668 (1984); LOMAX 665 S.E.2d 164 (2,008)
THE UNITED STATES SUPREME COURT HAS ESTABLISHED A TWO-PRONGED TEST TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL BY WHICH A P.C.R APPLICANT MUST SHOW (2ND) THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT
UNDER THE SECOND PRONG, THE P.C.R APPLICANT "MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSELS UNPROFESSIONAL ERRORS THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERANT

CONCLUSSION

BASED ON THE FACTS EXPLAINED THIS COURT MUST DISCHARGE ME FROM UNLAWFULL IMPRISONMENT. ON INDICTMENT #2012-GS-07-01935 FOR THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND AND THAT K.S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF
THAT I AM CURRENTLY BEING HELD UNLAWFULLY RESTRAINED ON.

I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS SET FOURTH IN THIS HABEAS CORPUS IS TRUE EXACT AND CORRECT.
SIGNATURE: Tyrone L Robinson
DATE: JUNE 15TH, 2,022

EXHIBIT A

INDICTMENT #2012-GS-07-01935
That cites the crime of Felony murder by the Felony murder Rule Theory "alleg-
-eing"
That in Beaufort County on or about September
25th, 2012 while engaged in a ongoing gun
battle an inherantly dangerious Felony,
Tyrone Robinson did willfully, unlawfully
and with malice aforethought cause the
victim K.S. to be shot and
killed in the area of Marshland drive
and allen Road on Hilton Island and that
K.S. did die in Beaufort
County as a proximate result there of

That I was acquitted on and warden Brian
Kendall, South Carolina department of correc-
-tions and the state of South Carolina. Are
currently holding me deprived out of my
liberty, wrongfully incarcerated and
imprisoned on, on Indictment #2012-GS-07-
-01935

143

2079

INDICTMENT
2012GS0701935

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

At a Court of General Sessions, convened on October 18, 2012, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about September 1, 2012, did willfully, unlawfully and with malice aforethought the victim K.S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC, and that K.S. did die in Beaufort County on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

6.

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

144

EXHIBIT B

SentenceIng Sheet That CItes
IndIctment#2012-65-07-01935

145 2081

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE VS. Tyrone Robinson

AKA:

INDICTMENT/CASE#: [redacted]

A/W#: 2012A0720300114

Date of Offense: 9/1/2012

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

Race: AFRICAN AM Sex: M Age: 39

DOB: [redacted]-1975 SS#: [redacted]

Address:

City,State,Zip:

DL#: SID#:

SENTENCE SHEET

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ______ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Solicitor [signature] Sean Stone

SC Bar# ______ Defendant ______ Attorney for Defendant ______ SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of [obscured] days/months/years or ☐ under the Youthful Offender Act not to exceed ______ years and/or to pay a fine of $ [obscured], provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with probation for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)		$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$ 100.00
§ 56-5-2995 (DUI Assessment)	$100	$
§ 56-1-286 (DUI Breath Test)	$12	$
Proviso 47.9 (Public Def/Prob)	$25	$
§ 14-1-212 (Law Enforce. Funding)	$500	$
§ 14-1-213 (Drug Court Surcharge)	$25	$ 25.00
§ 50-21-114(BUI Breath Test Fee)	$150	$
§ 56-5-2942(J) (Vehicle Assessment)	$50	$
Proviso 90.5 (SCCJA Surcharge)	$40/ea	$
3% to County (if paid in installments)	$5	$ 6.00
		$ 3.90
TOTAL		$ 135.90

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E begining

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Certified - A True Copy
Jerri Ann Roseneau Clerk of Court Beaufort County, SC - Karen Boone

Clerk of Court/ Deputy Clerk [signature] Annie B. Winston

Court Reporter: Bonnie Kelly

SCCA/217 (03/2011)

Presiding Judge [signature]

Judge Code: 054

Sentence Date: 9/19/14

EXIBIT C

A COPY OF ARREST WARRANT#2012A07203-00113 CHARGEING "Aaron SCOTT YOUNG JUNOR" WITH CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY, FOR THE DEATH OF VICTIM K.S.

ARREST WARRANT

2012A0720300113

STATE OF SOUTH CAROLINA

[ ] County/ [X] Municipality of

Hilton Head Island

20120901707

THE STATE

against

Aaron Scott Young, Jr

Address: [redacted]

Phone:

Sex:

DL State

DOB:

Prosecuting Agency: Beaufort County Sheriff Department

Prosecuting Officer: L Albertin

Offense: Murder

Offense Code: 00116

Code/Ordinance Sec: 16-03-0010; 16-03-0020

This 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.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Aaron Scott Young Jr on 9-6-2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
101 Ribaut Road Suite 208
Beaufort, SC 29901

STATE OF SOUTH CAROLINA

[ ] County/ [X] Municipality of

Hilton Head Island

AFFIDAVIT

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

Personally appeared before me the affiant L Albertin who being duly sworn deposes and says that defendant Aaron Scott Young, Jr did within this county and state on 09/01/2012 violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [X] Municipality of Hilton Head Island) in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 09-01-12 at approximately 1648 hrs, the Defendant, Aaron Scott Young Jr, while engaged in an ongoing gun battle, an inherently dangerous felony, did willfully, unlawfully and with malice aforethought, cause the victim, K.S. [redacted] to be shot and killed. This incident occurred near [redacted], Hilton Head Island, Beaufort County, SC. The affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

[ ] County/ [X] Municipality of

Hilton Head Island

Affiant's Address: 2001 Duke St, Beaufort, SC 29902-

Affiant's Telephone:

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/01/2012 defendant Aaron Scott Young, Jr did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [X] Municipality of Hilton Head Island) as set forth below:

DESCRIPTION OF OFFENSE: 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 09/06/2012

Signature of Issuing Judge (L.S.)

Judge Code: 6522

Judge's Address: Municipal Court, Hilton Head Island, SC 29928-

Judge's Telephone: (843)341-4670

Issuing Court: [ ] Magistrate [X] Municipal [ ] Circuit

ORIGINAL

Certified true copy ... Beaufort County Sheriff's Office

147

2083

EXIBIT D

A COPY OF ARREST WARRANT #2012 A07203-
-00114. ChARgeING "TYRONE ROBINSON" WITh
The CRIME OF FELONY MURDER by The FELONY
MURDER RULE THEORY, FOR The death OF
VICTIM K.S.

ARREST WARRANT

2012A0720300114

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Hilton Head Island

20120901707

THE STATE

against

Tyrone Robinson

Address:

Phone:

Sex: M

DL State

DOB:

Prosecuting Agency: Beaufort County Sheriff Department

Prosecuting Officer: L Albertin

Offense: Murder

Offense Code: 00116

Code/Ordinance Sec: 16-03-0010; 16-03-0020

This 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 Tyrone Robinson on 9-6-2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
101 Ribaut Road Suite 208
Beaufort, SC 29901

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Hilton Head Island)

AFFIDAVIT

S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant L Albertin who being duly sworn deposes and says that defendant Tyrone Robinson did within this county and state on 09/01/2012 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 09-01-12 at approximately 1648 hrs, the Defendant, Tyrone Lorenzo Robinson, while engaged in an ongoing gun battle, an inherently dangerous felony, did willfully, unlawfully and with malice aforethought, cause the victim, K.S. to be shot and killed. This incident occurred near Hilton Head Island, Beaufort County, SC. The affiant and others are witness to prove same.

Certified to be a true and correct copy of the original on file in the Office of Clerk of Court, Beaufort County. Deputy, Beaufort County Sheriff's Office

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Hilton Head Island)

Affiant's Address 2001 Duke St
Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/01/2012 defendant Tyrone Robinson did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) as set forth below:

DESCRIPTION OF OFFENSE: 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 09/06/2012)
(L.S.))
Signature of Issuing Judge)

Judge Code: 6522

Judge's Address Municipal Court
Hilton Head Island, SC 29928-

Judge's Telephone (843)341-4670

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

59

199

2085

EXHIBIT E

A COPY OF ARREST WARRANT #2012A07203-
-00115. CHARGEING "AARONSCOTT YOUNG JUNOR"
WITH THE CRIME OF CONSPIRACY TO MURDER
I TYRONE ROBINSON

ARREST WARRANT

2012A0720300115

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Hilton Head Island

201209010707

THE STATE

against

Aaron Scott Young, Jr

Address:

Phone:

Sex: M

DL State:

DOB:

Prosecuting Agency: Beaufort County Sheriff Department

Prosecuting Officer: L Albertin

Offense: Criminal Conspiracy

Offense Code: 00049

Code/Ordinance Sec: 16-17-0410

This 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 ______

______
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
101 Ribaut Road Suite 208
Beaufort, SC 29901

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Hilton Head Island

AFFIDAVIT

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

96

Personally appeared before me the affiant L Albertin who being duly sworn deposes and says that defendant Aaron Scott Young, Jr. did within this county and state on 09/01/2012 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 09-01-12 at approximately 1648 hours the Defendant, Aaron Scott Young, Jr., and a Co-Defendant did willfully and unlawfully conspire to murder the victim, Tyrone Robinson. The Defendant and Co-Defendant did travel, while armed with a deadly weapon, to many locations on Hilton Head Island, SC looking for the Victim. This incident occurred near [redacted] Hilton Head Island, Beaufort County, SC. The affiant and others are witness to prove same.

Certified a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County. Chief Deputy, Beaufort County Sheriff's Office

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Hilton Head Island

Affiant's Address 2001 Duke St
Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/01/2012 defendant Aaron Scott Young, Jr did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

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 09/06/2012

______ (L.S.)
Signature of Issuing Judge

Judge Code: 6522

Judge's Address Municipal Court
Hilton Head Island, SC 29928-

Judge's Telephone (843)341-4670

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

2087

ORIGINAL

EXHIBIT F

A COPY OF ARREST WARRENT # 2012 A07203-00116. ChaRgeINg AaRON SCOTT YOUNG SENIOR WITH THE CRIME OF CONSPIRACY to MURDER I TYRONE ROBINSON

ARREST WARRANT

2012A0720300116

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Hilton Head Island

201209010707

THE STATE

against

Aaron Scott Young

Address:

Phone:

Sex: M

DL State:

DOB:

Prosecuting Agency: Beaufort County Sheriff Department

Prosecuting Officer: L Albertin

Offense: Criminal Conspiracy

Offense Code: 00049

Code/Ordinance Sec: 16-17-0410

This 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

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
101 Ribaut Road Suite 208
Beaufort, SC 29901

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Hilton Head Island)

AFFIDAVIT

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

Personally appeared before me the affiant L Albertin who being duly sworn deposes and says that defendant Aaron Scott Young did within this county and state on 09/01/2012 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 09-01-12 at approximately 1648 hours the Defendant, Aaron Scott Young Sr. and a Co-Defendant did willfully and unlawfully conspire to murder the victim, Tyrone Robinson. The Defendant and Co-Defendant did travel, while armed with a deadly weapon, to many locations on Hilton Head Island, SC looking for the Victim. This incident occurred near [redacted] Hilton Head Island, Beaufort County, SC. The affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Hilton Head Island)

Affiant's Address 2001 Duke St
Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/01/2012 defendant Aaron Scott Young did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Hilton Head Island) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

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 09/06/2012)
__________ (L.S.))
Signature of Issuing Judge)

Judge Code: 6522

Judge's Address Municipal Court
Hilton Head Island, SC 29928-

Judge's Telephone (843)341-4670

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Filed for record ... Beaufort County ... Clerk of Court

69

153

2089

154

EXHIBIT G.

A copy of indictment #2014GS0701940 charging "Aaron Scott Young Junor" with crime of Attempted murder against I Tyrone Robinson

155.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701940

At a Court of General Sessions, convened on October 30, 2014 the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about September 1, 2012 the Defendant, Aaron Young, Jr with intent to kill and malice aforethought, either express or implied, attempted to murder the victim, Tyrone Robinson, in violation of Section 16-03-29 of the Code of Laws of South Carolina (2010, as amended).

12

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

Solicitor

EXHIBIT H.

A COPY OF THE SENTENCEING SHEET. THAT AARON SCOTT YOUNG JUNOR WAS SENTENCED TO THIRTY YEARS IMPRISONMENT ON. FOR CRIME OF ATTEMPT TO MURDER I VICTIM TYRONE ROBINSON

61 157 2093

UP 1230

STATE OF SOUTH CAROLINA — IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS. Aaron Scott Young Jr
AKA:
Race: AFRICAN AME Sex: M Age: 21
DOB: [redacted] SS#: [redacted]
Address:
City,State,Zip:
DL#: SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2014GS0701940
A/W#: 2014GS0701940
Date of Offense: 9/1/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature]

~~Swanson, Hunter~~ STONE | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 ~~days/months/~~years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of $ — ; provided that upon the service of — days/months/years and/or payment of $ — ; plus costs and assessments as applicable*; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012 - 1932

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ____ plus 20% fee: ____ $ ____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$133.90

PTUP ____
____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: KDBoone
Court Reporter: WANDA NELSON

Presiding Judge: [signature]
Judge Code: 054
Sentence Date: 2/25/15

SCCA/217 (03/2011)

158

EXHIBIT I

A copy of Indictment #2014GS0701941 Chargeing "Aaron Scott Young Senior" with crime of Attempted murder against I Tyrone Robinson

159

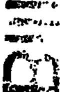
STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701941

At a Court of General Sessions, convened on October 30, 2014 the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about September 1, 2012 the Defendant, Aaron Young, Sr with intent to kill and malice aforethought, either express or implied, attempted to murder the victim, Tyrone Robinson, in violation of Section 16-03-29 of the Code of Laws of South Carolina (2010, as amended).



Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

Solicitor

EXHIBIT J

A COPY OF THE SENTENCEING SHEET, THAT AARON SCOTT YOUNG SENIOR WAS SENTENCED TO TWENTY YEARS IMPRISONMENT ON-FOR CRIME OF ATTEMPT TO MURDER I VICTIM TYRONE ROBINSON

161 2097

Up to 30

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS. Aaron Young Sr
AKA:
Race: AFRICAN AMESex: M Age: 39
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City,State,Z [redacted]
DL#: SID#:

INDICTMENT/CASE#: 2014GS0701941
A/W#: 2014GS0701941
Date of Offense: 9/1/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS TO: Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] #11883 ____ ____ 74889

Swanson, Hunter / DUFFIE STONE — SC Bar# — Defendant — Attorney for Defendant — SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 ~~days/months/~~years or ☐ under the **Youthful Offender Act** not to exceed — years and/or to pay a fine of $ — ; provided that upon the service of — days/months/years and/or payment of $ — ; plus costs and assessments as applicable*; the balance is suspended with **probation** for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: #2173

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ____ plus 20% fee: ____ $ ____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ____
____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: K.D Boone
Court Reporter: Krystal Smith

Presiding Judge: [signature]
Judge Code: 2054
Sentence Date: 8/12/15

SCCA/217 (03/2011)

EXHIBIT
K

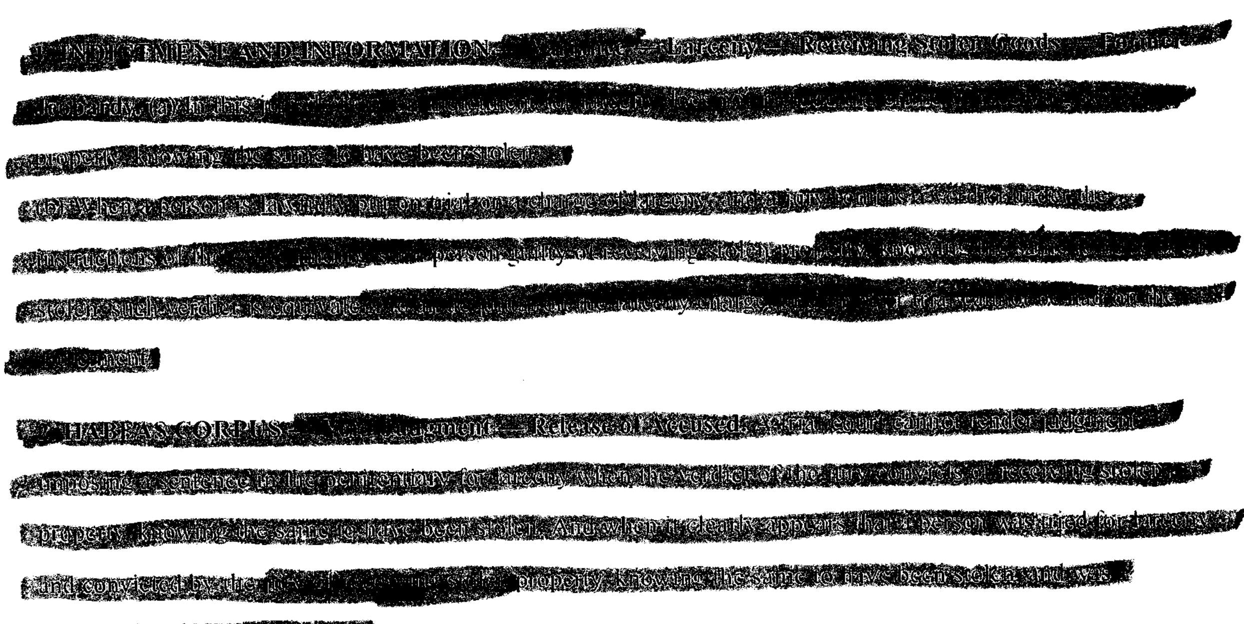
COPY OF CASE LAW MERITS

EX PARTE HARRIS 1912 OK

CR 415, 128 P.156

EX PARTE HARRIS

1912 OK CR 415, 128 P. 156



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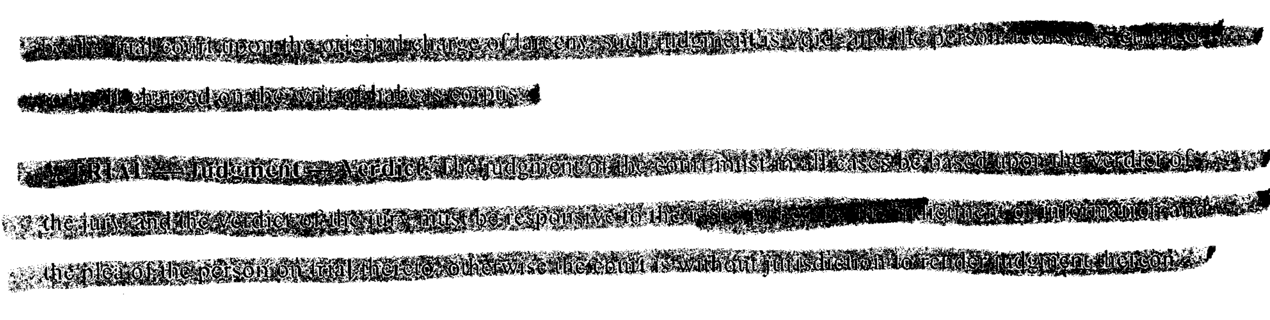

Summers Hardy, Wm. M. Franklin, and *Geo. S. March*, for petitioner.

Smith C. Matson, Asst. Atty. Gen., opposed.

ARMSTRONG, J. This is an original application for a writ of habeas corpus by J.R. Harris, who was tried in the district court of Murray county in September, 1909, on an indictment charging him with larceny of domestic animals. The charging part of the indictment is as follows:

"* * * Do present and find that in said Murray county and state of Oklahoma, on the 24th day of September, in the year of our Lord one thousand nine hundred and eight, and prior to the finding of this indictment, J.R. Harris and Charles Lewis, then and there being, did then and there by stealth willfully, unlawfully, and feloniously steal and carry away personal

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property of another, to wit, two bay mules and one black mare then being the property of one N.A. Armos, with willful, unlawful, and felonious intent to deprive another thereof and to appropriate the same to their own use and benefit. And so the grand jurors aforesaid, upon their oaths aforesaid, do say and find that J.R. Harris and Charles Lewis, in the manner and form and by the means aforesaid, did willfully, unlawfully, and feloniously steal and carry away said two mules and mare aforesaid, with the willful, unlawful, and felonious intent to deprive another thereof and to appropriate the same to their own use and benefit, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State."

When the case was called for trial, a severance was asked by petition and granted by the court. The trial resulted in the jury returning the following verdict, to wit:

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"We, the jury, impaneled and sworn to try the issues in the above-entitled cause, do upon our oaths, find the defendant guilty of receiving stolen property knowingly, and fix his punishment at 2 1/2 years in the state penitentiary.

"JOHN L. MEYERS, Foreman."

Thereafter the following judgment was pronounced by the court:

"* * * The prisoner above named, J.R. Harris, defendant, being personally present in open court and having been legally indicted and arraigned, and having plead not guilty to the crime of grand larceny charged in said indictment, and having been then and there in said court, duly and legally tried and convicted of said crime, and upon being asked by the court whether he had any legal cause to show why judgment and sentence should not be pronounced against him, and giving no good reason in bar thereof, and none appearing to the court: It is therefore ordered, adjudged, and decreed by the court that the said J.R. Harris be confined in the state penitentiary at McAlester, in the state of Oklahoma, for the term of two and one-half years for said crime by him committed. Said term of imprisonment to begin at and from the 18th day of September, A.D. 1909, and that said defendant pay the costs of this prosecution. for which execution is awarded. It is further ordered, adjudged, and decreed by the court that the sheriff of Murray county, state of Oklahoma, transport said J.R. Harris to the said penitentiary at McAlester, in the state of Oklahoma, and that the warden of said penitentiary do confine and imprison said defendant in accordance with this judgment, and that the clerk of this court do immediately certify, under the seal of the court, and deliver to the sheriff aforesaid, two copies of this judgment, one of said copies to accompany the body of said defendant to the said penitentiary and to be left therewith to be warrant and authority for the imprisonment of said defendant in said penitentiary, and the other copy to be warrant and authority of said sheriff for the transportation and imprisonment of said defendant, as hereinbefore provided. Said last-named copy to be returned to the clerk of said court with the proceedings of said sheriff thereunder indorsed thereon. Done in open court this 16th day of September, 1909.

"R. McMILLAN, Judge."

In the case of *Vickers v. United States*, 1 Okla. Cr. 458, 98 P. 469, discussing the principle here involved, this court in an opinion by Doyle, J., said:

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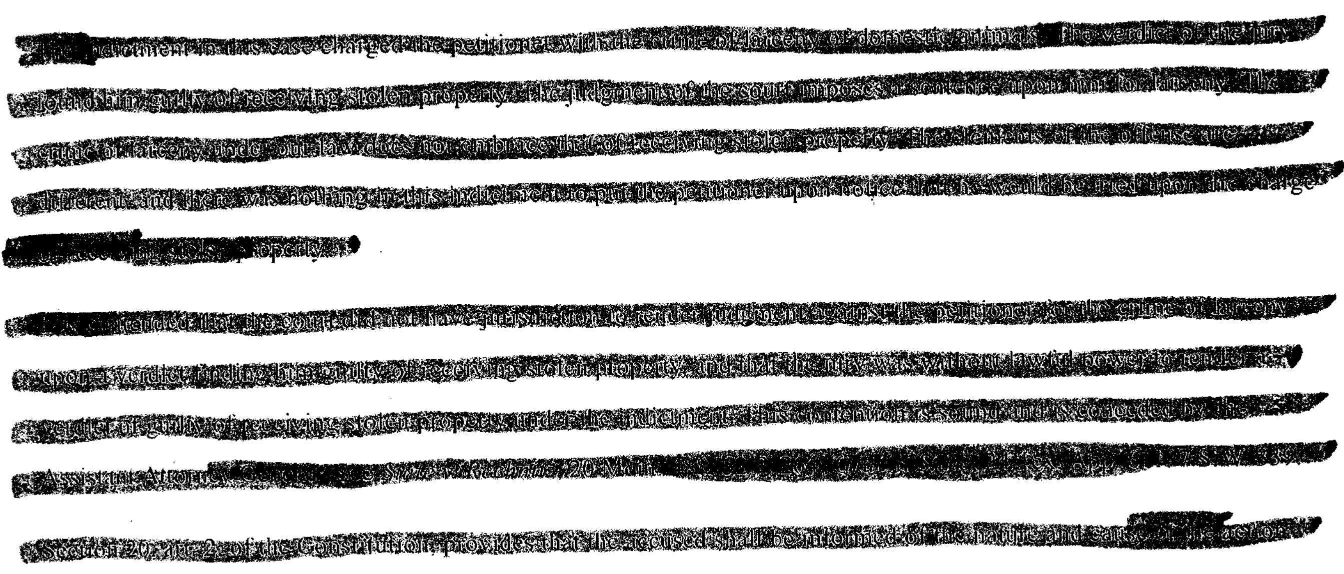
"To authorize a judgment, the verdict in a criminal case must respond to the issues submitted to the jury. Its sufficiency is determined by ascertaining whether it is responsive to and covers the offense charged in the indictment. 12 Cyc. p. 690. It must contain within its system, or by reference to the indictment, every material element of the crime. Where an indictment shows a crime, a general verdict of guilty, in manner and form as charged in the indictment, is a special finding of each element of the crime as charged, and is sufficient. Reference to the indictment is limited to the crime therein charged. In this case, while the indictment is labeled 'indictment for rape,' the only offense charged is assault, and the verdict was a verdict merely of assault and not rape, and, as a general verdict, it was not sufficient to authorize the judgment and sentence. The court did not submit to the jury whether the defendant was guilty of assault with intent to commit rape. If the indictment had properly charged the offense of rape, this offense would have been included also, and whenever the evidence, as in this case, warrants it, the duty of the court is to instruct the jury upon the other offenses included in the crime charged. Pratt v. State, 51 Ark. 167, 10 S.W. 233."



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against him. Section 6696, Comp. Laws 1909, provides that a statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended, shall be contained in the indictment. Section 6697, Id., provides that the indictment must be certain and direct as to the party charged, the offense charged, and the particular circumstances of the offense when necessary. Section 6699, Id., provides that the indictment must charge but one offense unless the same act might constitute different offenses, or the proof be uncertain as to which of two or more offenses the accused might be guilty, and it is then provided that the different offenses may be set forth in separate counts in the same indictment, or that the same offense might be set forth in different terms or degrees under different counts, or might be alleged in the alternative in the same count. Under these provisions, the judgment of conviction in this case was not responsive to any issue embraced in the charge. The judgment of conviction is void, and the district court of Murray county was without jurisdiction to render the same. See *Gaither v. State*, 21 Tex. App. 527, 1 S.W. 456; Brown on Jurisdiction, section 110.

In the case of *Ex parte Justus*, 3 Okla. Cr. 111, 104 P. 933, 25 L.R.A. (N.S.) 483, discussing the principle at issue, this court in an opinion by Owen, J., says:

"This court on *habeas corpus* will not look beyond the judgment and sentence of any court of competent jurisdiction as to any mere irregularities of procedure or errors in law on questions over which the court had jurisdiction. A judgment in its nature concludes the subject on which it is rendered, and pronounces the law of the case. The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as on other courts. It puts an end to inquiries concerning the fact by deciding it. But there is a very material difference between an irregularity in procedure that renders a judgment voidable and revisable on a writ of error or appeal, and acts which exceed the court's jurisdiction, or which deny to the defendant a constitutional right, and thereby render the judgment

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void. While the writ of *habeas corpus* cannot be used to perform the office of a writ of error or appeal, and the remedy by habeas corpus should be limited to cases in which the judgment or sentence attacked is clearly void by reason of its having been rendered without jurisdiction, or by reason of the court having exceeded its jurisdiction in the premises, if the petitioner be imprisoned under a judgment of a court which had no authority to render the judgment complained of, then relief may be accorded. This principle is announced by the great weight of authority, and has been repeatedly adhered to by the Supreme Court of the United States. *In re Lane*, 135 U.S. 443, 10 Sup. Ct. 760, 34 L. Ed. 219; *In re Frederich*, 149 U.S. 70, 13 Sup. Ct. 793, 37 L. Ed. 653; *Ex parte Tyler*, 149 U.S. 164, 13 Sup. Ct. 785, 37 L. Ed. 689; *In re Swan*, 150 U.S. 637, 14 Sup. Ct. 225, 37 L. Ed. 1207."

In *Ex parte Gudenoge*, 2 Okla. Cr. 110, 100 P. 39, this court, in an opinion by Doyle, J., says:

"Every exercise of power to punish a violation of a judicial order is, however, subject to one important qualification, namely: It is absolutely essential that the court making the order should have acted directly within jurisdictional limits, otherwise the disobedience of such an order will be no contempt. In the absence of jurisdiction, the judgment is a nullity; and, if the punishment be by imprisonment, the contemner will be released on the hearing of a writ of *habeas corpus*. *Ex parte Rowland*, 104 U.S. 604, 26 L. Ed. 861; *Ex parte Fisk*, 113 U.S. 713, 5 Sup. Ct. 724, 28 L. Ed. 1117; *Ex parte Crenshaw*, 80 Mo. 447. The rule, now supported by high and abundant authority and excellent reason, is that the court must not only have jurisdiction over the person and the subject-matter, but authority to render the particular judgment. *People v. Liscomb*, 60 N.Y. 559, 19 Am. Rep. 211; *Ex parte Degener*, 30 Tex. App. 566, 15 S.W. 1111; *Holman v. Austin*, 34 Tex. 668. In a late work on Jurisdiction, the author, in discussing the three essential elements necessary to render a conviction valid, says: 'These are that the court must have jurisdiction over the subject-matter, the person of the defendant, and authority to render the particular judgment. If either of these elements are lacking, the judgment is fatally defective.' Brown on Jurisdiction, par. 110. 'Such want of jurisdiction to render the particular judgment may arise either from a constitutional prohibition against the infliction of such punishment in such cases, or from the infliction of a punishment in excess of that, or the commitment may be for an indefinite time, or it may arise from the punishment, as a contempt of an

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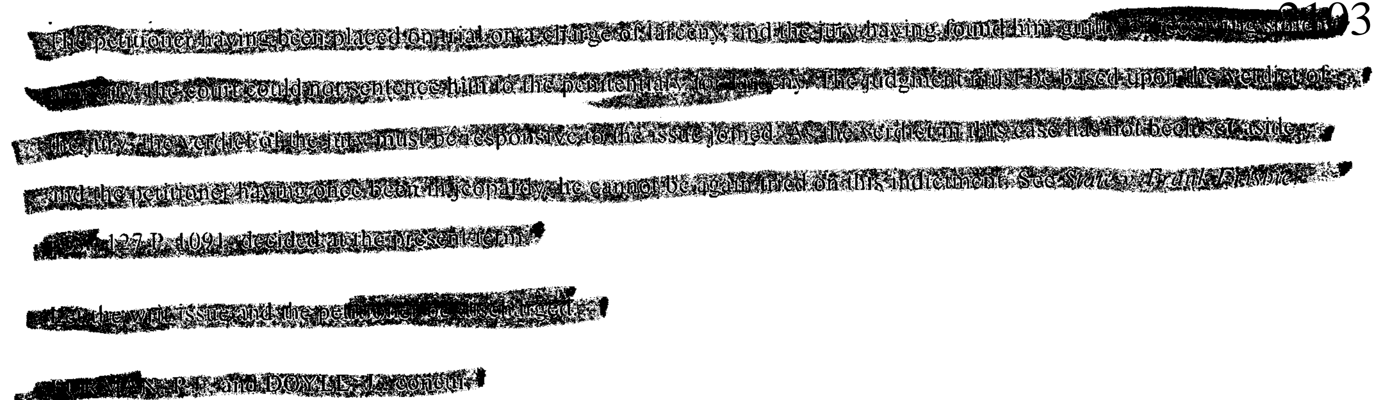
act of default, which in law is not contempt.' A. & E. Encyc. (2d Ed.) vol. 7, p. 37."



The petitioner having been placed on trial on a charge of larceny, and the jury having found him guilty [illegible] the court could not sentence him to the penitentiary for larceny. The judgment must be based upon the verdict of the jury. The verdict of the jury must be responsive to the issue joined. As the verdict in this case has not been set aside, and the petitioner having once been in jeopardy, he cannot be again tried on this indictment. See *State v.* [illegible] 127 P. 1091, decided at the present term.

[illegible] the writ issue and the petitioner [illegible] discharged.

[illegible] P.J., and DOYLE, J., concur.

EXHIBIT
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COPY OF CASE LAW merits

The state vs. Louis English
FULLER 552 S.E.2d 282 (S.C. 2001)

552 S.E.2d 282 (S.C. 2001), 25334, State v. Fuller

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552 S.E.2d 282 (S.C. 2001)

346 S.C. 477

The STATE, Respondent,

v.

Louis English FULLER, Appellant.

No. 25334.

Supreme Court of South Carolina

July 23, 2001.

552 S.E.2d 282 (S.C. 2001)

The State

Louis English Fuller

Supreme Court of South Carolina

July 23, 2001

Heard June 5, 2001.

[346 S.C. 478] Assistant Appellate Defender Robert M. Pachak, of South Carolina Office of Appellate Defense, of Columbia, for appellant.

[346 S.C. 479] Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Tracey C. Green, of Columbia; and Solicitor John R. Justice, of Chester, for respondent.

BURNETT, Justice:

Appellant was convicted of murder and sentenced to life imprisonment. He appeals.

FACTS

Appellant was indicted for the murder of Travelee Johnson (victim). At trial, appellant testified in his own defense. He stated he and victim were friends; appellant, Danny Murphy, and Robert Johnson were "associates."

Appellant explained he, victim, Johnson, and Murphy planned to rob Juan Williams' home. Using his roommate's car, appellant drove the men near Williams' home; they waited in the car for Williams to leave home. Appellant fell asleep.

Appellant awoke when he heard victim screaming. According to appellant, Murphy held victim while Johnson stabbed him. Murphy and Johnson exited the vehicle and pulled victim out of the car. Appellant drove off a short distance then returned, backing the car down the road. He testified he planned to run over Murphy and Johnson so

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they would leave victim alone, but instead, Murphy and Johnson jumped into the car. Appellant drove Murphy and Johnson back to town. Appellant wondered if they were going to kill him.

At Murphy's instruction, appellant stopped the vehicle at a dumpster; Murphy threw a knife inside. Appellant then drove the men to their apartment. Murphy and Johnson put their bloody clothing in a bag. Appellant put the bag behind a dumpster. He stated he took Murphy's boots to his own apartment. The next morning, appellant gave Johnson towels and sponges and Johnson washed the car. Appellant suggested Murphy and Johnson were angry at victim because they believed he had stolen items from their apartment[346 S.C. 480].

ISSUES

I. Did the trial court err by refusing to charge accessory after the fact to murder?

II. Did the trial court fail to give a complete and clear instruction on accomplice liability?

DISCUSSION

Appellant requested the trial judge instruct the jury on accessory after the fact to murder. Noting appellant had not been indicted for accessory after the fact and that accessory after the fact was not a lesser-included offense to murder, the trial judge denied the request but stated appellant could argue accessory after the fact.[1]

Appellant now argues the trial judge erred by refusing his requested accessory after the fact charge. He claims because he did not know Johnson and Murphy planned to kill victim and he was asleep when the stabbing first occurred, "exclusionary" facts existed to warrant a charge on accessory after the fact. We disagree.

The elements of accessory after the fact to a crime are 1) the felony has been completed, 2) the accused must have knowledge that the principal committed the felony, and 3) the accused must harbor or assist the principal felon. *State v. Collins,* 329 S.C. 23, 495 S.E.2d 202 (1998) (*Collins II*). A defendant may not be found guilty as an accessory when indicted solely as a principal. *State v. Collins,* 266 S.C. 566, 225 S.E.2d 189 (1976) (*Collins I*).

When the defendant has not been indicted as an accessory, it is proper to charge the jury on the difference between accessory and principal "where the evidence points to an exclusionary offense which dictates that different proof is required as to each defendant." *State v. Good*, 315 S.C. 135, 139, 432 S.E.2d 463, 466 (1993). For instance, in *Collins, supra*, the Court determined the defendant was entitled to an accessory before the fact charge when he was in jail at the time of the felony and therefore could only be guilty of[346 S.C. 481] accessory before the fact. In *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987), where co-defendants were charged with reckless homicide arising from the operation of a motor vehicle, the Court held because only one person could be the driver of the vehicle, a charge distinguishing principal and accomplice liability was required. On the other hand, in *State v. Gates*, 269 S.C. 557, 238 S.E.2d 680 (1977), the Court ruled the defendant who drove the getaway car but did not enter the convenience store during the robbery was not entitled to an accessory after the fact charge. The Court noted there is "a factual distinction between a crime where the defendant was physically unable to participate and one where the defendant acted as the 'getaway' driver." *State v. Good, supra,* at 137, 432 S.E.2d at 465. One authority explains "[b]y 'exclusionary offense' the Court means an offense which by law, or by the facts of the case, could have been committed by only one principal first."[2] William Shepard McAninch, The Criminal Law of South Carolina, 369 (1996).

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In *Good, supra*, the Court noted the reason for precluding an accessory instruction when an exclusionary offense does not exist:

If accessory after the fact is not charged in the indictment, but is instructed to clarify mere presence, a finding of accessory after the fact is the equivalent to a finding of not guilty. The real impact of the instruction is that it permits the jury to reach a compromise verdict on a non-charged offense. Moreover, to require an accessory instruction on these facts opens the door for every criminal defendant to create a lesser-included offense for which they could not be convicted. *Id.* at 138, 432 S.E.2d at 465.

Appellant was not entitled to a charge on accessory after the fact. First, he was not entitled to

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the charge because he was not indicted as an accessory and accessory after the fact is not a
lesser-included offense to murder. Second, the evidence did not eliminate appellant as a principal
first. To the contrary, appellant admitted being present during the stabbing. [346 S.C. 482] Unlike
the co-defendants in *State v. Leonard, supra*, and *Collins I, supra*, appellant could have
participated in victim's murder as a principal to the same extent as Johnson and Murphy.[3] If the
jury believed appellant's claims that he had no knowledge of Johnson and Murphy's plan to kill
victim and that he was asleep when victim was attacked, appellant would have been acquitted of
murder.

This case is similar to *State v. Good, supra*, where two brothers were charged with double
homicide. Each brother claimed the other committed the murders while he was outside the family's
camper. The Court held there was no error in refusing to charge accessory after the fact because
"there is no exclusionary situation which eliminates one brother or the other from having
participated in the murder as the principal." *Id.* at 139, 432 S.E.2d at 466.

The remaining issue is affirmed pursuant to Rule 220(b)(1), SCACR, and the following
authorities: *State v. Franklin*, 299 S.C. 133, 382 S.E.2d 911 (1989) (charge on accomplice liability
substantially covered language requested by defendant); *State v. Barwick*, 280 S.C. 45, 310
S.E.2d 428 (1983) (jury charge is adequate if it fully and fairly covers the substance of the
requested charge); *State v. Haney*, 257 S.C. 89, 184 S.E.2d 344 (1971) (refusal to give requested
charge not error where requested charge merely rephrases and repeats principles expounded in
given charge); *State v. Clary*, 222 S.C. 549, 73 S.E.2d 681 (1952) (no error in refusing to charge
the precise language requested where jury is correctly instructed in accord with the requested
charge).

AFFIRMED.

TOAL, C.J., MOORE and WALLER, JJ., concur.

PLEICONES, J. concurring in result only.

Notes:

[1] In his closing statement, appellant suggested he could be guilty of accessory after the fact to murder but should be acquitted of murder.

[2] A "principal first" is one who actually does the felonious act or who causes the felonious act to be committed by an innocent agent such as a child or insane person. *State v. Posey*, 35 S.C.L. (4 Strob.) 142 (1849).

[3] Johnson and Murphy were also indicted for murder. Murphy pled guilty to accessory after the fact. The record does not indicate the disposition of Johnson's charges.

172.

EXHIBIT
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COPY OF CASE LAW MERITS
UNITED STATES OF AMERICA VS.
ALLEN HUNT 212 F.3rd 539

2109

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FILED
United States Court of Appeals
Tenth Circuit

MAY 8 2000

PATRICK FISHER
Clerk

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

ALLEN HUNT and MICHELLE D. JONES,

Defendants-Appellees.

No. 99-1120

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. No. 98-CR-380-WM)

Sean Connelly, Attorney, United States Department of Justice, Denver, Colorado (Thomas L. Strickland, United States Attorney, and Sheilah M. Rogers, Assistant United States Attorney, Denver, Colorado, were on the brief) for Plaintiff-Appellant.

Charles Szekely, Assistant Federal Public Defender, Denver, Colorado (Peter Schild, Boulder, Colorado and Michael G. Katz, Federal Public Defender, Denver, Colorado, with him on the brief) for Defendants-Appellees.

Before **TACHA, HOLLOWAY** and **BRORBY**, Circuit Judges.

HOLLOWAY, Circuit Judge.

A grand jury indicted Defendants-Appellees Allen Hunt and Michelle Jones

(Defendants) on 16 counts of theft from the mail in violation of 18 U.S.C. § 1708. During a bench trial, the district judge entered a judgment stating: "I find and conclude that the defendants are not guilty under the indictment as charged." As part of the judgment the district judge concluded that (1) the indictment alleged a theft from CTC Distributor's (CTC); (2) CTC was not part of the "mail" as required for a violation of 18 U.S.C. § 1708; and (3) the indictment failed to allege any other theft from the "mail," as had been suggested by the government. The government timely appeals . Defendants argue that the Double Jeopardy Clause bars the appeal. For reasons that follow, we agree. We therefore dismiss the government's appeal.

I

As the district court observed, the facts are essentially undisputed. Cf. Appendix A to Appellant's Brief-in-Chief at 1. In 1998, Defendants worked at a CTC warehouse in Denver, Colorado. See id. at 2. CTC collects items being shipped by merchandisers to customers. Before delivering the items to CTC, a merchandiser places "mailing indicia" on the packages. CTC then sorts the packages and delivers them to the United States Postal Service's (Postal Service) bulk mailing center, which is located off CTC's premises. See id.

The Postal Service also operates a facility at CTC's warehouse, called a detached mailing unit. See id. A Postal Service employee maintains exclusive control over the detached mailing unit and randomly samples and verifies postage and sortation before

CTC sends packages to the bulk mailing center. See id. Although CTC houses the unit, CTC is not itself part of the unit. See id.

In early 1998, Defendants began using an "over-labeling" scheme to steal packages that were processed at CTC. See id. As part of the scheme, Defendants placed handwritten labels addressed to themselves over the pre-existing mailing indicia provided by the merchandiser. See id. at 2-3. CTC then delivered the over-labeled packages to the bulk mail center and the Postal Service ultimately delivered the packages to Defendants. See id. at 3. "Other than the implied potential that the relevant packages might have been randomly sampled by the [Postal Service] at the [detached mailing unit], the government failed to present evidence that the packages were subject to control and regulation or otherwise accepted as mail by the [Postal Service] at the time the over-labeling occurred." Id.

On December 1, 1998, the grand jury returned a superseding indictment against Defendants alleging 16 counts of theft from the mail in violation of 18 U.S.C. § 1708. See I App. Item 30 at 1. Each count of the indictment was almost identical and alleged:

> On or about [a date in 1998], in the State and District of Colorado, [Defendants], did steal, take and abstract, and by fraud and deception obtain, from and out of any mail, mail route, and authorized depository for mail matter, a package and things contained therein . . . from CTC distributors, a Detached Mailing Unit that works as a contractor between major mailing companies and corporations and the United States Postal

Service, in violation of Title 18, United States Code, Section 1708.[1]

See id. Defendants waived their right to a jury trial and, instead, opted for a bench trial. See, e.g., I App. Item 51 at 3. After the trial had begun, Defendants moved for acquittal. See id. at 6. According to Defendants the indictment alleged only one theft: theft from CTC. See id. at 6,10. The evidence, however, demonstrated that CTC was not part of the mail. See, e.g., id. Defendants argued that the government could not constructively amend the indictment to allege that the theft occurred instead when Defendants received the packages from the Postal Service. See id. Therefore, Defendants said they were entitled to an acquittal. See id. at 13.

The district court agreed. The court held that the indictment "language charges theft from CTC Distributors, a Detached Mailing Unit." See Appendix A to Appellant's Brief-in-Chief at 5. "The plain language of the indictment indicates that the Grand Jury concluded that the defendants stole from CTC Distributors and not at some later time." Id. "That conclusion is buttressed by the 'on or about' date of each count being tied to the date of 'over-labeling' rather than the later delivery." Id. The district court therefore held that the indictment alleged only theft from CTC.

"The government did not prove beyond a reasonable doubt that the CTC was the United States mail, a mail route, or an authorized depository when the over-labeling

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[1] The only variations in the counts involved: (1) the dates, (2) the Defendants, and (3) the items stolen.

occurred" nor was CTC a detached mailing unit. Id. at 7. Indeed, "[t]he proof . . . does not eliminate doubt . . . that the packages did not reach the mail until they were delivered to the [Postal Service] Bulk Mailing Center." Id. Accordingly, the district court granted a judgment which it entitled "JUDGMENT OF ACQUITTAL." I App. Item 54. That judgment stated that "[t]he trial having proceeded to conclusion, and pursuant to the Decision, entered February 12, 1999, the Court rendered its verdict of finding the defendants, Allen Christopher Hunt and Michele Denise Jones not guilty of the charges contained in the superseding indictment." I App. Item 54.

II

Title 18 U.S.C. § 3731 authorizes the government to appeal, inter alia, in these terms:

> from a decision, judgment, or order of a district court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

Congress intended for this section "to remove all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit." United States v. Scott, 437 U.S. 82, 85 (1978) (citation and internal quotation marks omitted); see also United States v. Wilson, 420 U.S. 332, 337 (1975) (stating the same principle). Therefore, pursuant to 18 U.S.C. § 3731, our question is whether the Double Jeopardy

Clause bars this appeal.[2]

"The development of the Double Jeopardy Clause from its common-law origins thus suggests that it was directed at the threat of multiple prosecutions, not at Government appeals, at least where those appeals would not require a new trial." Wilson, 420 U.S. at 342. However, it is now well-settled that the Double Jeopardy Clause bars some government appeals. "A judgment of acquittal, whether based on a 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 a reversal." Scott, 437 U.S. at 91 (omitting footnote); see also Smalis v. Pennsylvania, 476 U.S. 140, 145-46 (1986) (agreeing with ruling below that the Double Jeopardy Clause bars a postacquittal appeal by the prosecution not only when it might result in a second trial, but if reversal would translate into further proceedings of some sort, devoted to the resolution of factual issues going to the elements of the offense charged") (citation and internal quotation marks omitted). Accordingly, the Double Jeopardy Clause bars this appeal if: (1) there was in effect an acquittal below, and (2) [illegible] require such a second fact-finding proceeding on remand as comes within the [illegible] parameters.

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[2] In their motion to dismiss the appeal, Defendants rely "on an argument ancillary to the double jeopardy issue [,] the absence of statutory authority for a Government appeal from a judgment of acquittal in a criminal case." Motion to Dismiss at 5 n.3. As stated in the text above, however, the Supreme Court has held that 18 U.S.C. § 3731 removes "all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit." Scott, 437 U.S. at 85. Therefore, Defendant's independent statutory argument is barred by binding Supreme Court precedent.

A

1

[illegible] to the question whether there was in effect an acquittal below in this case. As stated above, the district court labeled its decision an "acquittal." J. App. Item 54. That label, however, is not determinative; "what constitutes an 'acquittal' is not to be controlled by the form of the judge's action." United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977). Instead, "we must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." Id.; see also Scott, 437 U.S. at 97 (stating the same principle); United States v. Appawoo, [illegible] F.2d 1242, 1249 (10th Cir. 1977) (same).

The district court's ruling satisfies that requirement. Title 18 U.S.C. § 1708 punishes the theft of mail as well as the possession of stolen mail. United States v. Watson, 423 U.S. 411, 418 n.2 (1976). "Proof that an item was stolen from the mail" is an essential element of any 18 U.S.C. § 1708 violation. United States v. Ashford, 924 F.2d 1416, 1423 (7th Cir. 1991); see also United States v. Roglieri, 700 F.2d 883, 885 (2nd Cir. 1983) ("In order to establish a violation of 18 U.S.C. § 1708, the government must prove that matter was stolen from the mail. . . ."); United States v. Douglas, 668 F.2d 459, 461 (10th Cir. 1982) (similar). Here, the district court made a factual finding in the Defendants' favor on that "essential element," concluding that the government had

not proven that the packages were in the "mail" when the theft at CTC occurred.[3] We are persuaded that factual finding bars this appeal. See, e.g., Martin Linen Supply Co., 430 U.S. at 571 (holding that an acquittal "actually represents a resolution, correct or not, of some or all of the factual elements of the charged offense"); Scott, 437 U.S. at 97 (same); United States v. Fay, 553 F.2d 1247, 1249-50 (10th Cir. 1977) ("The trial was terminated with and by a factual determination . . . after substantial proof. It was not a bare dismissal of the charges . . . . Thus, in conformance with the above authorities, we hold that the appeals here sought by the Government are barred by the double jeopardy clause."). In Scott, the Court restated clearly the essence of an acquittal in terms which fit the instant case and require dismissal of this appeal:

> "Rather, a defendant is acquitted only when 'the ruling of the judge, whatever its label, actually represents a resolution [in the defendant's favor], correct or not, of some or all of the factual elements of the offense charged.' Martin Linen, supra, at 574."

The government appears to accept the fact that it cannot appeal the district court's conclusion that CTC was not part of the mail and therefore that the theft from CTC was not theft from the mail in violation of 18 U.S.C. § 1708. The government argues, in effect, that the district court erroneously held that the indictment did not allege a later

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[3]The District Judge's Decision, I App. Item 53, stated that the plain language of the indictment indicated that the grand jury concluded the Defendants stole from CTC Distribution, and not at some later time. Id. at 5. And the Judge concluded that "the government did not sustain its burden of proving mail theft from the CTC beyond a reasonable doubt." Id.

theft from the mail when Defendants received the packages and that the judge's decision was a legal ruling that the indictment did not properly allege the crimes proved at trial and that this legal ruling is appealable. See Appellant's Opening Brief at 8. According to the government, the judge's interpretation of the indictment is a legal conclusion unrelated to factual guilt or innocence, and thus separately appealable.

Contrary to the government's argument, however, when a district court has made a factual finding adverse to the government on an essential element of the offense, legal rulings related to that decision are not separately appealable. See Smalis, 476 U.S. at 144 n.7 ("The status of the trial court's judgment as an acquittal is not affected by the Commonwealth's allegation that the court 'erred in deciding what degree of recklessness was . . . required to be shown under Pennsylvania's definition of [third-degree] murder.' The fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles . . . affects the accuracy of that determination but it does not alter its essential character.") (citation and internal quotation marks omitted) (alteration in original); United States v. DiFrancesco, 449 U.S. 117, 132 (1980) ("It is an acquittal that prevents retrial even if legal error was committed at the trial."); Scott, 437 U.S. at 91 (stating the same principle); United States v. Wood, 958 F.2d 963, 967 (10th Cir.) ("We attach such particular significance to an acquittal that it bars retrial even if based on legal error.") (citation and internal quotation marks omitted), as amended, 1992 WL 58305 (10th Cir. 1992); see also United States v. Lynch, 162 F.3d

732, 735 (2d Cir. 1998) ("Here, the factual element is willfulness, and the district court explicitly resolved it in favor of [the defendants]. It does not matter that this factual finding was arrived at under the influence of an erroneous view of the law. . . . What is decisive for double jeopardy purposes is that the ruling represents a judgment by the court that the evidence is insufficient to convict. We therefore conclude that we lack jurisdiction to consider this appeal under 18 U.S.C. § 3731 and the Double Jeopardy Clause.") (citation and internal quotation marks omitted); Un[illegible]ennings, 861 F.2d 381, 384 n.4 (2d Cir. 1988) ("Where the district court, in rendering an acquittal, made factual determinations, even though based on erroneous [illegible], courts have generally denied retrial.").

Two other circuits have applied this reasoning to cases involving variances from the indictment. First, in United States v. Hospital Monteflores, Inc., 575 F.2d 332, 333 (1st Cir. 1978), the district court had dismissed the indictment against the defendants because of such a variance. The First Circuit held that:

> It is clear to us that, though labeled a dismissal of the indictment, the court's order was a judgment of acquittal since it actually represented a resolution, correct or not, of the offense charged. The court based its decision on consideration of the evidence, and concluded that whether or not the government's proof might make out some illegality, [illegible] out the illegality charged. Jeopardy had attached. Therefore, the corporation is protected by the Double Jeopardy Clause, it may not be retried.

Id. at 333 n.1. (citation and internal quotation marks omitted) (emphasis added). After determining that the Double Jeopardy Clause protected the corporation, the court

[illegible] dismissed the appeal. [illegible] Since we rule that the [illegible] would bar further prosecution of the corporate defendant in this case, supra note [illegible], this appeal is [illegible] under 18 U.S.C. § 3731 [illegible].

The Ninth Circuit reached the same conclusion in United States v. Schwartz, 785 F.2d 673 (9th Cir. 1986). There, the government made the same argument that it makes here:

> [illegible] its part, the government readily admits that certain parts of the indictment were specifically dismissed for lack of evidence, thereby amounting to an acquittal as to those parts. The government does not appeal those specific findings. The crux of the government's argument, however, is that despite the label of "acquittal" used by the court, the judgment on [illegible] Twelve was in [illegible] a dismissal based on the ruling of law that there was an impermissible variance. The government opines, therefore, that it is not barred from appealing or seeking a retrial on the individual parts of the scheme which the district court did not specifically reject for lack of [illegible] evidence.

Id. at 677. The Ninth Circuit rejected the government's argument in Schwartz: "Inasmuch as we find the judgment below to be a true acquittal, the Double Jeopardy Clause bars appeal even if the district court based the acquittal on an erroneous interpretation of governing legal principles or upon legal principles which are themselves subsequently overturned." Id. at 678.

This court applied a similar approach in United States v. Genser, 710 F.2d 1426 (10th Cir. 1983). There, the government charged the Defendant with knowingly and intentionally "dispensing" a controlled substance in violation of 21 U.S.C. § 841(a). Id. at 1427. That statute makes it unlawful to both "distribute or dispense" a controlled

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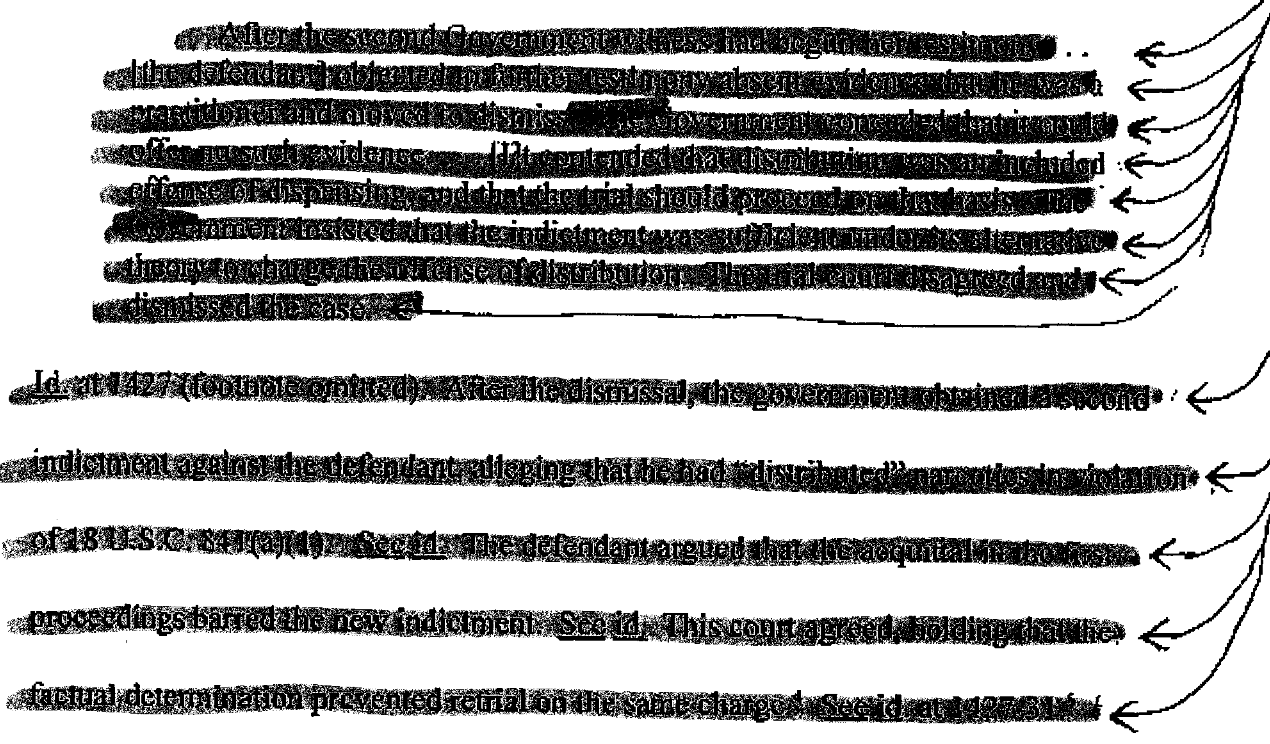
substance. Only a "practitioner," however, can "dispense" a controlled substance under the statute:



[4] This court based the decision, in part, on its holding that 21 U.S.C. § 841(a) states only one offense for double jeopardy purposes, whether based on distribution or dispensing. Id. at 1431. Therefore, the acquittal for violating that statute by dispensing a controlled substance barred a later prosecution for distributing that same substance. See id.

Similarly, here, 18 U.S.C. § 1708 states only one offense: theft from the mail. The government could have proven that theft in a number of different ways (for example, the theft could have occurred when the over-labeling took place at CTC, when Defendants received the packages in the mail from the Postal Service, or it could have been a continuing offense involving both activities). However, the district court's acquittal in this case, as in [illegible], prevents any later prosecution under 18 U.S.C. § 1708 for the same conduct, even if based on a different theory of theft. Cf. Sanabria v. United States, 437 U.S. 54, 72 (1978) ("The Double Jeopardy Clause is not such a fragile guarantee that its limitations can be avoided by the simple expedient of dividing a single crime into a series of temporal or spatial units.") (citation, alterations, and internal quotation marks omitted). Accordingly, the government's suggestion that the later theft from the Postal Service is wholly separable from

Finally, the Supreme Court reached a similar conclusion in Sanabria v. United States, 437 U.S. 54 (1978). There, the government charged the defendant with conducting an illegal gambling business in violation of 18 U.S.C. § 1955. See id. at 56. The indictment alleged two types of illegal gambling activities: (1) horse betting, and (2) numbers betting in violation of the laws of "the Commonwealth of Massachusetts, to wit, M.G.L.A. Chapter 271, Section 17." Id. at 57.

After the trial had begun, the district court determined that numbers betting was not prohibited by section 17 of the Massachusetts code, but by section 7. See id. at 58-59. Concluding that the indictment failed to cite the proper section, the district court excluded all evidence of numbers betting. See id. at 59. The defendant then moved for acquittal, arguing that there was no evidence of horse betting, the other basis for the illegal gambling charge. See id. The district court agreed and granted the motion. See id. The government appealed. As in this case, the government "[c]onced[ed] that there could be no review of the District Court's ruling that there was insufficient evidence of petitioner's involvement with horse betting." See id. at 61. The government, however, argued that it was entitled to a new trial on the numbers betting charge. See id. The Supreme Court disagreed:

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the district court's factual finding of innocence is unconvincing.

[5] We note that Genser involves a retrial rather than an appeal. The government has provided no logical reason why an "acquittal" should have different meaning in either context. The Supreme Court has used its retrial and appellate precedent interchangeably on this point. We therefore hold that an "acquittal" has the same meaning in both contexts.

> We must assume that the trial court's interpretation of the indictment was erroneous. But not every erroneous interpretation of an indictment for purposes of deciding what evidence is admissible can be regarded as a "dismissal." Here, the District Court did not find that the count failed to charge a necessary element of the offense; rather, it found the indictment's description of the offense too narrow to warrant the admission of certain evidence. To this extent, we believe that the ruling below is properly to be characterized as an erroneous evidentiary ruling, which led to an acquittal for insufficient evidence. That judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count and hence bars appellate review of the trial court's errors.

Id. at 68-69 (citation and footnote omitted).

Similarly here the district court allegedly interpreted the indictment erroneously and hence refused to consider evidence that Defendants stole items from the mail after they over-labeled the packages at CTC. That alleged error may have caused the district court to grant an acquittal based on the insufficiency of the evidence. Nevertheless, as in Sanabria, that ruling prevents independent appellate review of the legal error.

Moreover, the Court in Sanabria held that even if the district court's ruling were viewed as a dismissal of the indictment, rather than as an evidentiary ruling, double jeopardy still barred the appeal. See id. at 69. As the Court observed, 18 U.S.C. § 1955 states only one offense: participation in an illegal gambling business. Although the government could prove that offense in more than one way (by demonstrating numbers betting, horse betting, or other unlawful gambling), an acquittal on the offense of participation in an illegal gambling business barred any later prosecution under the statute

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for the same conduct, even if based on a different theory.

It is Congress, and not the prosecution, which establishes and defines offenses

. . . .

The allowable unit of prosecution under § 1955 is defined as participation in a single illegal gambling business . . . .

. . . .

. . . Petitioner was found not guilty for a failure of proof on a key factual element of the offense charged: that he was "connected with" the illegal gambling business. Had the government charged only that the business was [illegible] in horse betting and had petitioner been acquitted, his acquittal would bar any further prosecution for participating in the same gambling [illegible] during the same period of time on a numbers theory. That the trial court disregarded the Government's [illegible] betting does not render its acquittal on the horsebetting theory any less an acquittal on the "offense" charged. The Double Jeopardy Clause is not [illegible] guarantee that its limitations can be avoided by the simple expedient of dividing a single crime into a series of temporal or spatial units.

Id. at 69-72 (citation, alteration, footnote and internal quotation marks omitted).

Similarly, as stated in note 4, supra, 18 U.S.C. § 1708 states only one offense: theft from the mail. The government could have proven that theft in a number of different ways (for example, the theft could have occurred when the over-labeling took place at CTC, when Defendants received the packages in the mail from the postal service, or it could have been a continuing offense involving both activities). [illegible] ever the district court's "acquittal" in this case, as in Sanabria, prevents any later prosecution under 18 U.S.C. § 1708 for the same conduct, even if based on a different theory of theft. Accordingly, the district court's allegedly erroneous interpretation of the indictment is not

somehow separable from the district court's factual finding of innocence on the crime as charged in the indictment.

In sum, when a district court has made a factual finding on an essential element of the offense, legal rulings related to that decision are not separately appealable. See Smalis, 476 U.S. at 144 n.7 ("The status of the trial court's judgment as an acquittal is not affected by the Commonwealth's allegation that the court 'erred in deciding what degree of recklessness was . . . required to be shown under Pennsylvania's definition of [third-degree] murder.' The fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination but it does not alter its essential character."); DiFrancesco, 449 U.S. at 132 (1980) (same); Scott, 437 U.S. at 96-97 (same).[4]

2

The government nevertheless argues that other opinions of the Supreme Court and this court compel a contrary conclusion in this case. We are not persuaded. First, the government relies on Lee v. United States, 432 U.S. 23 (1977). See Appellant's Brief-in-Chief at 8-9. In Lee, the government charged the defendant with theft. See 432 U.S. at 25. The indictment, however, failed to allege knowledge or intent, as required by the statute. See id. After the trial had began, the district court dismissed the indictment as fatally flawed. Id. at 26-27. The defendant conceded, "as he must, that the District Court's termination of the first trial was not an acquittal." Id. at 30 n.8. After the

dismissal, the government re-indicted the defendant, "this time in an indictment alleging all of the elements of the . . . crime." Id. at 27. A jury convicted the defendant, who then appealed arguing that double jeopardy barred the second prosecution. See id. The Supreme Court disagreed, holding that the district court's ruling was factually indistinguishable from a mistrial (which, ordinarily, does not prevent retrial). See id. at 31.

As is apparent, the court in Lee made only a legal determination that the indictment was facially invalid because it failed to allege two elements of the crime. Cf. Sanabria, 437 U.S. at 68 (citing Lee as a case in which the "count failed to charge a necessary element of the offense"). The Court never made any factual finding in the defendant's favor on an essential element of the crime charged. Unlike in Lee, the district court here made such findings.

The government also relies on United States v. Bowling, 593 F.2d 944 (10th Cir. 1979). See Appellant's Brief-in-Chief at 9. There the indictment alleged a single conspiracy. See 593 F.2d at 946. The evidence, however, suggested that there were multiple conspiracies. The district court therefore dismissed the indictment, citing precedents purportedly requiring a dismissal. Id. at 946-47. The government appealed. The defendants argued that double jeopardy barred the appeal. This court disagreed: "In the case at bar the defendants moved for dismissal of Count I of the indictment. This motion did not go to the merits of the case. It was concerned with the validity of the

charge." Id. at 949.

Unlike the reasoning in Lee, Bowline went beyond the face of the indictment and considered factual evidence when dismissing the indictment. It has been held, however, that "an appeal is not barred simply because a ruling in favor of a defendant is based upon facts outside the face of the indictment. . . . Rather, a defendant is acquitted only when the ruling of the judge, whatever its label, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged." Scott, 437 U.S. at 96-97 (citation and internal quotation marks omitted). In Bowline, the district court made no such determination on the factual elements of the offense. However, here the trial judge made such a determination. Therefore, Bowline, like Lee, does not control this case.

In sum, we hold that the district court's factfinding, adverse to the government on an essential element of the crime, makes its decision an acquittal and prevents separate appellate consideration of any alleged legal error related to that decision.

B

Even though we hold that the district court's decision was a true acquittal, that determination may not mean that double jeopardy bars this appeal. "Where a Government appeal presents no threat of successive prosecution, the Double Jeopardy Clause is not offended." DiFrancesco, 449 U.S. at 132 (citation and internal quotation marks omitted); see also Wilson, 420 U.S. at 345 ("[A] defendant has no legitimate claim

to benefit from an error of law when that error could be corrected without subjecting him to a second trial before a second trier of fact.").

In a case tried before a jury, it is easier to determine when there is such a threat. For example, if, after the jury returns its verdict, the district court overturns that decision and "acquits" the defendant, then a reversal on remand would not require a retrial. Instead, an appellate court can simply order reinstatement of the original jury verdict. In those circumstances, double jeopardy does not bar an appeal. See United States v. Jenkins, 420 U.S. 358, 365 (1975) ("When this principle is applied to the situation where the jury returns a verdict of guilt but the trial court thereafter enters a judgment of acquittal, an appeal is permitted. In that situation a conclusion by an appellate court that the judgment of acquittal was improper does not require a criminal defendant to submit to a second trial; the error can be corrected on remand by the entry of a judgment on the verdict."), overruled on other grounds by Scott, 437 U.S. at 86-87; Wilson, 420 U.S. at 353 (similar).

In a bench trial, however, such determinations are more complicated as the Court explained in Jenkins:

> A general finding of guilt by a judge may be analogized to a verdict of "guilty" returned by a jury. In a case tried to a jury, the distinction between the jury's verdict of guilty and the court's ruling on questions of law is easily perceived. In a bench trial, both functions are combined in the judge, and a general finding of "not guilty" may rest either on the determination of facts in favor of a defendant or on the resolution of a legal question favorably to him. If the court prepares special findings of fact, either because the Government or the defendant requests them or because

> the judge has elected to make them sua sponte, it may be possible upon sifting those findings to determine that the court's finding of "not guilty" is attributable to an erroneous conception of law whereas the court has resolved against the defendant all of the factual issues necessary to support a finding of guilt under the correct legal standard.

Jenkins, 420 U.S. at 366-67 (citations and footnote omitted).

As noted, the district court here found that the government did not prove theft from the mail as required by 18 U.S.C. § 1708. The government, however, relies on three statements by the district court which it argues constitute fact findings in the government's favor if the indictment is interpreted as it suggests:

> "[I]f the specific language of the Indictment had been as the government now urges . . . I would conclude that the government has sustained its burden of proof."

> "Similarly, if one were to decide that the specific language were 'mere surplusage' and accept the Indictment as essentially summarizing the statutory language, I again may well conclude that the defendants are guilty."

> "Accordingly, I conclude that the government's urged interpretation would constitute a constructive amendment because it broadens the possible bases for conviction from that which appeared in the Indictment. United States v. Miller, 471 U.S. 130, 138 (1985) . . . As a consequence, the offense proved at trial was not fully contained in the Indictment, for trial evidence had 'amended' the Indictment by broadening the possible basis for conviction from that which appeared in the Indictment.' United States v. Miller, 471 U.S. at 138."

I App. Item 53 at 5-6.

The government would have a better argument if the first statement stood alone: "[I]f the specific language of the Indictment had been as the government now urges . . . I

would conclude that the government has sustained its burden of proof." I App. Item 53 at 5 (emphasis added). However, the Supreme Court has refused to treat similarly strong statements as factual findings:

> Both sides assume that the District Court's statements, made to justify denial of Lee's motion for judgment of acquittal, that he had been "proven [guilty] beyond any reasonable doubt in the world" and that there was "no question about his guilt; none whatsoever," do not amount to a general finding of guilt. We agree that the court's comments, in the context in which they were made, cannot be viewed fairly as a general finding of guilt analogous to a jury verdict.

Lee, 432 U.S. at 28 n.4 (alteration in original).[6]

Therefore there are no factual findings for us to reinstate on appeal were we to reverse the district court on the merits. Instead, we would have to remand for further factfinding proceedings. It does not matter that those proceedings might be relatively minor in this case; [illegible] Double Jeopardy Clause bars a postacquittal appeal by the prosecution not only when it might result in a second trial, but if reversal would translate into further proceedings of some sort, devoted to the resolution of factual issues going to

[6]The district court here qualified its statement cited above ("I would conclude" I App. Item 53 at 5) with its next statement that "[s]imilarly, if one were to decide that the specific language were 'mere surplusage' and accept the Indictment as essentially summarizing the statutory language, I again may well conclude that the defendants are guilty." Id. at 5-6 (emphasis added). The wording of this statement indicates that neither the first nor the second statement constitute factual findings that Defendants would be guilty under the government's reading of the indictment; the district court merely suggested that they "may well" be guilty. Cf. United States v. Dyer, 546 F.2d 1313, 1315-16 (7th Cir. 1976) (holding double jeopardy barred an appeal even though the district court stated that, had indictment been worded as the government alleged, "a different result might be warranted").

the elements of the offense charged." Smalis, 476 U.S. at 145-46 (citation and internal quotation marks omitted); see also Jenkins, 420 U.S. at 370 (stating the same proposition). Smalis teaches that

> "whether the trial is to a jury or to the bench, subjecting the defendant to postacq[illegible] factfinding proceedings going to guilt or innocence violates the Double Jeopardy Clause." Arizona v. Rumsey, [illegible] U.S. [illegible], [illegible]-12 (1984)."

Smalis, 476 U. S. at 145. The defendant [illegible] be forced to "run the gantlet" a second time. Green v. United States, 355 U.S. 184, 190 (1957).

III

We lack jurisdiction pursuant to 18 U.S.C. § 3731 and accordingly, must DISMISS this appeal.

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EXHIBIT N

COPY OF CASE LAW MERITS
SANABRIA VS. UNITED STATES
98 S.Ct 2170

437 U.S. 54 (1978)

SANABRIA v. UNITED STATES.

No. 76-1040.

Supreme Court of United States.

Argued November 8, 1977.
Decided June 14, 1978.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

*56 *Francis J. DiMento* argued the cause and filed briefs for petitioner.

Frank H. Easterbrook argued the cause for the United States *pro hac vice*. With him on the brief were *Solicitor General McCree, Assistant Attorney General Civiletti,* and *Sidney M. Glazer*.

MR. JUSTICE MARSHALL delivered the opinion of the Court.[*]

The issue presented is whether the United States may appeal in a criminal case from a midtrial ruling resulting in the exclusion of certain evidence and from a subsequently entered judgment of acquittal. Resolution of this issue depends on the application of the Double Jeopardy Clause of the Fifth Amendment to the somewhat unusual facts of this case.

I

Petitioner was indicted, along with several others, for violating 18 U.S. C. § 1955 (1976 ed.), which makes it a federal offense to conduct, finance, manage, supervise, direct, or own all or part of an "illegal gambling business." § 1955 (a). Such a business is defined as one that is conducted by five or more persons in violation of the law of the place where the business is located and that operates for at least 30 days or earns at least $2,000 in any one day. § 1955 (b) (1).[1] The *57 single-count indictment here charged in relevant part that the defendants' gambling business involved "accepting, recording and registering bets and wagers on a parimutual [*sic*] number pool and on the result of a trial and contest of skill, speed, and endurance of beast," and that the business "was a violation of the laws of the Commonwealth of Massachusetts, to wit, M. G. L. A. Chapter 271, Section 17."[2]

The Government's evidence at trial showed the defendants to have been engaged primarily in horse betting and numbers betting. At the close of the Government's case, petitioner's counsel, who represented 8 of the 11 defendants, moved for a judgment of acquittal as to all of his clients. Joined by counsel for other defendants, he argued, *inter alia,* that the *58 Government had failed to prove that there was a violation of the state statutory section as alleged in the indictment, since Mass. Gen. Laws Ann., ch. 271, § 17 (West 1970), as construed by the state courts, did not prohibit numbers betting but applied only to betting on "games of competition" such as horse races. The Government responded

that "violation of the State law is a jurisdictional element of [the federal] statute" and that "not every [defendant] must be found to be violating this State law." The District Court accepted the Government's theory and denied the defendants' motion, stating that "a defendant to be convicted must [only] be found to have joined in [the illegal] enterprise in some way."

Petitioner's counsel then sought clarification of whether "the numbers pool allegation [was] still in the case." The court indicated that it was, because counsel had not presented any state-court authority for the proposition that § 17 did not include numbers betting. The court also expressed the view, however, that if petitioner's counsel were correct, "we would have to exclude . . . all of the evidence that has to do with bets o[n] numbers." The Government demurred, arguing that exclusion of the numbers evidence would "not necessarily follow" from acceptance of petitioner's theory.[3] Taking his lead from the court, petitioner's counsel next moved "to strike or limit the evidence." The motion was denied.

After the defendants had rested, the trial judge announced that he was reversing his earlier ruling on the motion to exclude evidence, because he had discovered a Massachusetts *59 case holding that numbers betting was not prohibited by § 17, but only by § 7 of ch. 271.[4] The court then struck all evidence of numbers betting, apparently because it believed such action to be required by the indictment's failure to set forth the proper section.[5]

At this point counsel moved for a judgment of acquittal as to petitioner alone, arguing that there was no evidence of his connection with horse-betting activities. The Government did not disagree that the evidence was insufficient to show petitioner's involvement with a horse-betting operation, but repeated its earlier argument relating to the "jurisdictional" nature of the state-law violation. The court rejected this contention, stating that the offense had "to be established in the terms that you [the Government] charged it, which was as a violation of § 17" and that petitioner had to be "connected with this operation, and by that I mean a horse operation." The court concluded: "I don't think you've done it." It then granted petitioner's motion for a judgment of acquittal[6] and entered an order embodying this ruling later that day.[7]

The next day the Government moved the court to reconsider both "its ruling . . . striking . . . evidence concerning the operation of an illegal . . . numbers pool" and "its decision granting defendant Thomas Sanabria's motion for judgement *60 [*sic*] of acquittal."[8] Prompted by the Government's arguments in support of reconsideration, the court asked defense counsel why he had not raised the objection to the indictment's citation of § 17 earlier and what prejudice resulted to petitioner from the failure to cite the proper section. Counsel responded that the objection had not "ripened" until, at the end of the Government's case, the court was asked to take judicial notice of § 17, and that he need not and did not allege actual prejudice. The court denied the motions to reconsider, but indicated that, had it granted the motion to restore the numbers evidence, it also would have vacated the judgment of acquittal.[9] The case against the remaining 10 defendants went to the jury on a theory that the gambling business was engaged in horse betting; all were convicted.

The Government filed a timely appeal "from [the] decision *61 and order . . . excluding evidence and entering a judgment of acquittal . . . and . . . denying the Motion for Reconsideration." Conceding that there could be no review of the District Court's ruling that there was insufficient evidence of petitioner's involvement with horse betting, the Government sought a new trial on the portion of the indictment relating to numbers betting.

The Court of Appeals for the First Circuit held first that it had jurisdiction of the appeal. Although the jurisdictional statute, 18 U.S. C. § 3731 (1976 ed.), by its terms authorizes the Government to appeal only from orders "dismissing an indictment . . . as to any one or more counts."[10] the word "count" was "interpret[ed] . . . to refer to any discrete basis for the imposition of criminal liability." 548 F.2d 1, 5 (1976). Viewing the horse-betting and numbers allegations as "discrete bas[es] of criminal liability" duplicitously joined in a single count, the court characterized the District Court's action as a "dismissal" of the numbers "charge" and an acquittal for insufficient evidence on the horse-betting charge. *Id.*, at 4-5, and n. 4. It concluded that § 3731 authorized an appeal from the "dismissal" of the numbers charge, "if the double jeopardy clause does not bar a future prosecution on this charge." 548 F. 2d, at 5.

Consistent with its above analysis, the court found that petitioner had voluntarily terminated the proceedings on the numbers portion of the count by moving, in effect, to dismiss it. Since the "dismissal" imported no ruling on petitioner's *62 "criminal liability as such," and since petitioner's motion was not attributable to "prosecutorial or judicial overreaching," the court applied the rule permitting retrials after a prosecution is terminated by a defendant's request for a mistrial. *Id.*, at 7-8, citing *United States* v. *Dinitz*, 424 U.S. 600 (1976). There being no double jeopardy bar to a new trial, the court went on to resolve the merits of the appeal in the Government's favor. It held, based on an intervening First Circuit decision,[11] that the District Court had erred in "dismissing" the numbers theory. Accordingly, the judgment of acquittal was "vacated" and the case "remanded so that the government may try defendant on that portion of the indictment that charges a violation of § 1955 based upon numbering [*sic*] activities." 548 F. 2d, at 8.

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We granted certiorari, 433 U.S. 907 (1977),[12] limiting our review to the related issues of appealability and double jeopardy.[13] We now reverse.

*63 II

In *United States* v. *Wilson*, 420 U.S. 332 (1975), we found that the primary purpose of the Double Jeopardy Clause was to prevent successive trials, and not Government appeals *per se*. Thus we held that, where an indictment is dismissed *after* a guilty verdict is rendered, the Double Jeopardy Clause did not bar an appeal since the verdict could simply be reinstated without a new trial if the Government were successful.[14] That a new trial will follow upon a Government appeal does not necessarily forbid it, however, because in limited circumstances a second trial on the same offense is constitutionally permissible.[15] Appealability in this case therefore turns on whether the new trial ordered by the court below would violate the command of the Fifth Amendment that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb."[16]

*64 In deciding whether a second trial is permissible here, we must immediately confront the fact that petitioner was acquitted on the indictment. That "'[a] verdict of acquittal . . . [may] not be reviewed . . . without putting [the defendant] twice in jeopardy, and thereby violating the Constitution,'" has recently been described as "the most fundamental rule in the history of double jeopardy jurisprudence." *United States* v. *Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977), quoting *United States* v. *Ball*, 163 U.S. 662, 671 (1896). The fundamental nature of this rule is manifested by its explicit extension to situations where an acquittal is "based upon an egregiously erroneous foundation." *Fong Foo* v. *United States*, 369 U.S. 141, 143 (1962); see *Green* v. *United States*, 355 U.S. 184, 188 (1957). In *Fong Foo* the Court of Appeals held that the District Court had erred in

various rulings and lacked power to direct a verdict of acquittal before the Government rested its case.[17] We accepted the Court of Appeals' holding that the District Court had erred, but nevertheless found that the Double Jeopardy Clause was "violated when the Court of Appeals set aside the judgment of acquittal and directed that petitioners be tried again for the same offense." 369 U. S., at 143. Thus when a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous.

The Government does not take issue with these basic principles. Indeed, it concedes that the acquittal for insufficient evidence on what it refers to as the horse-betting theory of liability is unreviewable and bars a second trial on that charge.[18] The disputed question, however, is whether a retrial *65 on the numbers theory of liability would be on the "same offense" as that on which petitioner has been acquitted.

The Government contends, in accordance with the reasoning of the Court of Appeals, that the numbers theory was dismissed from the count before the judgment of acquittal was entered and therefore that petitioner was not acquitted of the numbers theory. Petitioner responds that the District Court did not "dismiss" anything but rather struck evidence and acquitted petitioner on the entire count; further, assuming *arguendo* that there was a "dismissal" of the numbers theory, he urges that a retrial on this theory would nevertheless be barred as a second trial on the same statutory offense. We first consider whether the Court of Appeals correctly characterized the District Court's action as a "dismissal" of the numbers theory.

A

In the Government's view, the numbers theory was "dismissed" from the case as effectively as if the Government had actually charged the crime in two counts and the District Court had dismissed the numbers count. The first difficulty this argument encounters is that the Government did not in fact charge this offense in two counts. Legal consequences ordinarily flow from what has actually happened, not from what a party might have done from the vantage of hindsight. See *Central Tablet Mfg. Co.* v. *United States,* 417 U.S. 673, 690 (1974).[19] The precise manner in which an indictment *66 is drawn cannot be ignored, because an important function of the indictment is to ensure that, "in case any other proceedings are taken against [the defendant] for a similar offence,. . . the record [will] sho[w] with accuracy to what extent he may plead a former acquittal or conviction." *Cochran* v. *United States,* 157 U.S. 286, 290 (1895), quoted with approval in *Russell* v. *United States,* 369 U.S. 749, 764 (1962); *Hanger* v. *United States,* 285 U.S. 427, 431 (1932).[20]

With regard to the one count that was in fact charged, as to which petitioner has been at least formally acquitted, we are not persuaded that it is correct to characterize the trial court's action as a "dismissal" of a discrete portion of the count. While form is not to be exalted over substance in determining the double jeopardy consequences of a ruling terminating a prosecution, *Serfass* v. *United States,* 420 U.S. 377, 392-393 (1975); *United States* v. *Jorn,* 400 U.S. 470, 478 n. 7 (1971); *United States* v. *Goldman,* 277 U.S. 229, 236 (1928), neither is it appropriate entirely to ignore the form of order entered by the trial court, see *United States* v. *Barber,* 219 U.S. 72, 78 (1911). Here the District Court issued only two orders, one excluding certain evidence and the other entering a judgment of acquittal on the single count charged. No language in the indictment was ordered to be stricken, compare *United States* v. *Alberti,* 568 F.2d 617, 621 (CA2 1977), nor was the indictment amended. The judgment of acquittal was entered on the entire count and found petitioner not guilty of *67 the crime

of violating 18 U.S. C. § 1955 (1976 ed.), without specifying that it did so only with respect to one theory of liability:

> "The defendant having been set to the bar to be tried for the offense of unlawfully engaging in an illegal gambling business, in violation of Title 18, United States Code, Sections 1955 and 2, and the Court having allowed defendant's motion for judgment of acquittal at the close of government's evidence,
>
> "It is hereby ORDERED that the defendant Thomas Sanabria be, and he hereby is, acquitted of the offense charged, and it is further ORDERED that the defendant Thomas Sanabria is hereby discharged to go without day."

The Government itself characterized the District Court's ruling from which it sought to appeal as "a decision and order . . . excluding evidence and entering a judgment of acquittal." Notice of Appeal.[21] Similar language appears in *68 its motion for reconsideration filed in the District Court. Indeed, the view that the trial court "dismissed" as to one "discrete basis of liability" appears to have originated in the opinion below. Thus, not only defense counsel and the trial court but the Government as well seemed in agreement that the trial court had made an evidentiary ruling based on its interpretation of the indictment.

We must assume that the trial court's interpretation of the indictment was erroneous. See n. 13, *supra*. But not every erroneous interpretation of an indictment for purposes of deciding what evidence is admissible can be regarded as a "dismissal." Here the District Court did not find that the count failed to charge a necessary element of the offense, cf. *Lee* v. *United States*, 432 U.S. 23 (1977); rather, it found the indictment's description of the offense too narrow to warrant the admission of certain evidence. To this extent, we believe the ruling below is properly to be characterized as an erroneous evidentiary ruling,[22] which led to an acquittal for insufficient *69 evidence. That judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count and hence bars appellate review of the trial court's error. *United States* v. *Martin Linen Supply Co.*, 430 U. S., at 571; *Fong Foo* v. *United States*, 369 U.S. 141 (1962); *Green* v. *United States*, 355 U. S., at 188; *United States* v. *Ball*, 163 U. S., at 671.

B

Even if the Government were correct that the District Court "dismissed" the numbers allegation, in our view a retrial on that theory would subject petitioner to a second trial on the "same offense" of which he has been acquitted.[23]

It is Congress, and not the prosecution, which establishes and defines offenses. Few, if any, limitations are imposed by the Double Jeopardy Clause on the legislative power to define offenses. *Brown* v. *Ohio*, 432 U.S. 161, 165 (1977). But once Congress has defined a statutory offense by its prescription of the "allowable unit of prosecution," *United States* v. *Universal C. I. T. Credit Corp.*, 344 U.S. 218, 221 *70 (1952); *Bell* v. *United States*, 349 U.S. 81 (1955); *Braverman* v. *United States*, 317 U.S. 49 (1942); *In re Nielsen*, 131 U.S. 176 (1889), that prescription determines the scope of protection afforded by a prior conviction or acquittal. Whether a particular course of conduct involves one or more distinct "offenses" under the statute depends on this congressional choice.[24]

The allowable unit of prosecution under § 1955 is defined as participation in a single "illegal gambling business." Congress did not assimilate state gambling laws *per se* into the federal penal code, nor did it define discrete acts of gambling as independent federal offenses. See H. R. Rep. No. 91-1549, p. 53 (1970). See also *Iannelli* v. *United States*, 420 U.S. 770, 784-790 (1975). The Government need not prove that the defendant himself performed any act of gambling prohibited by state law.[25] It is participation in the gambling business that is a federal offense, and it is only the gambling business that must violate state law.[26] And, as the Government recognizes, *71 under § 1955 participation in a single gambling business is but a single offense, "no matter how many state statutes the enterprise violated." Brief for United States 31.

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The Government's undisputed theory of this case is that there was a single gambling business, which engaged in both horse betting and numbers betting. With regard to this single business, participation in which is concededly only a single offense, we have no doubt that petitioner was truly acquitted.

We have recently defined an acquittal as "'a resolution, correct or not, of some or all of the factual elements of the offense charged.'" *Lee* v. *United States*, 432 U. S., at 30 n. 8, quoting *United States* v. *Martin Linen Supply Co., supra*, at 571. Petitioner was found not guilty for a failure of proof on a key "factual element of the offense charged": that he was "connected with" the illegal gambling business. See *supra*, at 59.[27] Had the Government charged only that the business *72 was engaged in horse betting and had petitioner been acquitted, his acquittal would bar any further prosecution for participating in the *same* gambling business during the same time period on a numbers theory.[28] That the trial court disregarded the Government's allegation of numbers betting does not render its acquittal on the horse-betting theory any less an acquittal on the "offense" charged. "The Double Jeopardy Clause is not such a fragile guarantee that . . . its limitations [can be avoided] by the simple expedient of dividing a single crime into a series of temporal or spatial units," *Brown* v. *Ohio*, 432 U. S., at 169, or, as we hold today, into "discrete bases of liability" not defined as such by the legislature. See *id.*, at 169 n. 8.[29]

While recognizing that only a single violation of the statute is alleged under either theory,[30] the Government nevertheless contends that separate counts would have been proper, and that an acquittal of petitioner on a horse-betting count would not bar another prosecution on a numbers count. Brief for United States 33. Although there may be circumstances in which this is true, petitioner here was acquitted for insufficient proof of an element of the crime which both such counts would sharethat he was "connected with" the single gambling business. See *supra*, at 59. This finding of fact stands as an *73 absolute bar to any further prosecution for participation in that business.[31]

The Government having charged only a single gambling business, the discrete violations of state law which that business may have committed are not severable in order to avoid the Double Jeopardy Clause's bar on retrials for the "same offense."[32] Indeed, the Government's argument that these are discrete bases of liability warranting reprosecution following a final judgment of acquittal on one such "discrete basis" is quite similar to an unsuccessful argument that it presented in *Braverman* v. *United States*, 317 U.S. 49 (1942). Braverman had been convicted of and received consecutive sentences on four separate counts of conspiracy, each count alleging a conspiracy to violate a separate substantive provision of the federal narcotics laws. The Government conceded that only a single conspiracy existed, as it concedes here that only a single gambling business existed; nonetheless, it urged that separate punishments were appropriate because the single conspiracy had several discrete objects. We firmly rejected that argument:

"[T]he precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. Whether the object of a single agreement is to commit one or many crimes, it is in *74 either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one." *Id.*, at 53.

The same reasoning must also apply where the essence of the crime created by Congress is participation in a "business," rather than participation in an "agreement."[33]

The Double Jeopardy Clause is no less offended because the Government here seeks to try petitioner twice for this single offense, instead of seeking to punish him twice as it did in *Braverman.*[34] "If two offenses are the same . . . for purposes of barring consecutive sentences at a single trial, they necessarily will be the same for purposes of barring successive prosecutions." *Brown* v. *Ohio, supra,* at 166. Accordingly, even if the numbers allegation were "dismissed," we conclude that a subsequent trial of petitioner for conducting the same illegal gambling business as that at issue in the first trial would subject him to a second trial on the "same offense" of which he was acquitted.

*75 III

The only question remaining is whether any of the exceptions to the constitutional rule forbidding successive trials on the same offense, see n. 15, *supra,* apply here. The short answer to this question is that there is no exception permitting retrial once the defendant has been acquitted, no matter how "egregiously erroneous," *Fong Foo* v. *United States,* 369 U. S., at 143, the legal rulings leading to that judgment might be. The Government nevertheless argues, relying principally on *Lee* v. *United States,* 432 U.S. 23 (1977), and *Jeffers* v. *United States,* 432 U.S. 137 (1977), that petitioner waived his double jeopardy rights by moving to "dismiss" the numbers allegation and by not objecting to the form of the allegation prior to trial.

In *Lee* we held a retrial permissible because the District Court's midtrial decision granting the defendant's motion to dismiss the indictment for failure to state an offense was "functionally indistinguishable from a declaration of mistrial" at the defendant's request. 432 U. S., at 31. The mistrial analogy relied on in *Lee* is manifestly inapposite here. Although jeopardy had attached in *Lee,* no verdict had been rendered; indeed, petitioner conceded that "the District Court's termination of the first trial was not an acquittal," *id.*, at 30 n. 8. Here, by contrast, the trial proceeded to verdict, and petitioner was acquitted. While in *Lee* the trial court clearly did contemplate a reprosecution when it granted defendant's motion, *id.*, at 30-31, neither petitioner's motion here nor the trial court's rulings contemplated a second trialnor could they have, since only a single offense was involved and petitioner went to judgment on that offense. Where a trial terminates with a judgment of acquittal, as here, "double jeopardy principles governing the permissibility of retrial after a declaration of mistrial," *Lee* v. *United States,* 432 U. S., at 31, have no bearing.

Nor does *Jeffers* support the Government's position. The *76 defendant there was first tried and convicted of conspiring to distribute narcotics in violation of 21 U.S. C. § 846. Eight Members of the Court agreed that his subsequent trial for conducting a continuing criminal enterprise in violation of 21 U.S. C. § 848 during the same time period was on the "same offense," since the § 846 violation was a lesser included offense to the § 848 violation. Prior to the first trial, however, Jeffers had specifically opposed the Government's effort to try both indictments together, in part on the ground

that they involved distinct offenses. 432 U. S., at 144 n. 8. Reasoning that Jeffers necessarily contemplated a second trial, four Members of the Court found that he had "elect[ed] to have the two offenses tried separately," *id.*, at 152, and, by not raising the potential double jeopardy problem, had waived any objection on that ground to successive trials, *id.*, at 152-154.[35] The instant case presents quite a different situation. Petitioner's counsel never argued that horse betting and numbers were distinct offenses,[36] *a fortiori* did not argue for or contemplate *77 separate trials on each theory, and *a multo fortiori* did not "elect" to undergo successive trials.

Finally, we agree with the Court of Appeals that this case does not present the hypothetical situation on which we reserved judgment in *Serfass* v. *United States*, of "'a defendant who is afforded an opportunity to obtain a determination of a legal defense prior to trial and nevertheless knowingly allows himself to be placed in jeopardy before raising the defense.'" 420 U. S., at 394, quoting Solicitor General; see 548 F. 2d, at 7. Petitioner did not have a "legal defense" to the single offense charged: participating in an illegal gambling business in violation of § 1955. Unlike questions of whether an indictment states an offense, a statute is unconstitutional, or conduct set forth in an indictment violates the statute, what proof may be presented in support of a valid indictment and the sufficiency of that proof are not "legal defenses" required to be or even capable of being resolved before trial. In all of the former instances, a ruling in the defendant's favor completely precludes conviction, at least on that indictment. Here, even if the numbers language had been struck before trial, there was no "legal" reason why petitioner could not have been convicted on this indictment, as were his 10 codefendants. [illegible]

The Government's real quarrel is with the judgment of acquittal. While the numbers evidence was erroneously excluded, the judgment of acquittal produced thereby is final and unreviewable. Neither 18 U.S. C. § 3731 (1976 ed.) nor *78 the Double Jeopardy Clause permits the Government to obtain relief from all of the adverse rulingsmost of which result from defense motionsthat lead to the termination of a criminal trial in the defendant's favor. See *United States* v. *Wilson*, 420 U. S., at 351-352; S. Rep. No. 91-1296, p. 2 (1970). To hold that a defendant waives his double jeopardy protection whenever a trial court error in his favor on a midtrial motion leads to an acquittal would undercut the adversary assumption on which our system of criminal justice rests, see *Jeffers* v. *United States*, 432 U. S., at 159-160 (STEVENS, J., dissenting in part and concurring in judgment in part), and would vitiate one of the fundamental rights established by the Fifth Amendment.

[illegible]

Accordingly, the judgment of the Court of Appeals is

Reversed.

MR. JUSTICE STEVENS, concurring.

Although I join the text of the Court's opinion, I cannot agree with the dictum in footnote 23. It is true "that there is no statutory barrier to an appeal from an order dismissing only a portion of a count," *ante*, at 69 n. 23, but it is equally true that there is no statutory *authority* for such an appeal. It

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necessarily followsat least if we are faithful to the concept that federal courts have only such jurisdiction as is conferred by Congressthat the Court of Appeals had no jurisdiction of this appeal.

The Criminal Appeals Act, 18 U.S. C. § 3731 (1976 ed.), authorizes the United States to appeal an order of a district *79 court "dismissing an indictment or information *as to any one or more counts,* except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution." (Emphasis added.) By its plain terms, this statute does not encompass the present case.

Putting to one side the question whether an acquittal may properly be regarded as an order "dismissing an indictment" within the meaning of the statute, see *United States* v. *Martin Linen Supply Co.*, 430 U.S. 564, 576 (STEVENS, J., concurring), the statutory grant of appellate jurisdiction is still unequivocally limited to review of a dismissal "as to any one or more counts." The statute does not refer to "subunit[s] of an indictment" or "portion[s] of a count," *ante,* at 69 n. 23, but only to "counts," a well-known and unambiguous term of art.

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Prior to the amendment of § 3731 in 1971, this Court's rule of statutory interpretation was that "the Criminal Appeals Act [should be] strictly construed against the Government's right of appeal, *Carroll* v. *United States,* 354 U.S. 394, 399-400 (1957)." *Will* v. *United States,* 389 U.S. 90, 96-97. The Court's present pattern of interpretation of § 3731, as exemplified by *Martin Linen, supra,* does more than simply abandon this approach; it reverses direction entirely and reads the statute in whatever manner would favor a Government appeal. It is, of course, true that the legislative history of the Act indicates that Congress intended § 3731 "to be liberally construed," S. Rep. No. 91-1296, p. 18 (1970), but this expression of legislative intent does not give us a license to ignore the words of the statute. In fact, the Court does not even suggest that the language "one or more counts" is ambiguous; instead it argues that the words cannot be given their proper meaning because the Act was intended "to eliminate `[t]echnical distinctions in pleadings . . . .'" *Ante,* at 69 n. 23. This argument has a hollow ring in light of the Court's prior assertion *80 that "[t]he precise manner in which an indictment is drawn cannot be ignored, because an important function of the indictment is to ensure that, `in case any other proceedings are taken against [the defendant] for a similar offense, . . . the record [will] show with accuracy to what extent he may plead a former acquittal or conviction.'" *Ante,* at 65-66. Furthermore, in my judgment, a rule that the Government may appeal from the "dismissal" of a portion of a count, provided that the portion establishes a "discrete basis of liability," fosters rather than eliminates technical distinctions and encourages exactly the sort of nearsighted parsing of indictments that the amendment was intended to discourage.

I cannot, therefore, join that portion of the Court's decision which states that the Criminal Appeals Act permits an appeal from only a portion of a count. It clearly does not, and for that reason, as well as for the reasons stated in the text of the Court's opinion, the Court of Appeals' decision must be reversed.

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

This case, of course, is an odd and an unusual one, factually and procedurally. Because it is, the case will afford little guidance as precedent in the Court's continuing struggle to create order and understanding out of the confusion of the lengthening list of its decisions on the Double Jeopardy Clause. I would have thought, however, that the principles enunciated late last Term in *Lee* v. *United States,* 432 U.S. 23 (1977)which I deem a more difficult case for the Government than this onehad application to the facts here. I do not share the Court's distinction of *Lee, ante,* at 75, and I do not agree that *Lee* is "manifestly inapposite." Here, as in *Lee,* there is misdescription by the trial court of

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STIRONE
v.
UNITED STATES.

No. 35.

Supreme Court of United States.

Argued November 9-10, 1959.
Decided January 11, 1960.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Michael von Moschzisker argued the cause for petitioner. With him on the brief was *Vincent M. Casey.*

Wayne G. Barnett argued the cause for the United States. On the brief were *Solicitor General Rankin, Assistant Attorney General Wilkey, Ralph S. Spritzer, Beatrice Rosenberg* and *Theodore George Gilinsky.*

213 *213 MR. JUSTICE BLACK delivered the opinion of the Court.

Petitioner Nicholas Stirone was indicted and convicted in a federal court for unlawfully interfering with interstate commerce in violation of the Hobbs Act.[1] The crucial question here is whether he was convicted of an offense not charged in the indictment.

So far as relevant to this question the indictment charged the following:

From 1951 until 1953, a man by the name of William G. Rider had a contract to supply ready-mixed concrete from his plant in Pennsylvania to be used for the erection of a steel-processing plant at Allenport, Pennsylvania. For the purpose of performing this contract Rider

> "caused supplies and materials [sand] to move in interstate commerce between various points in the United States and the site of his plant for the manufacture or mixing of ready mixed concrete, and more particularly, from outside the State of Pennsylvania into the State of Pennsylvania."

The indictment went on to charge that Stirone, using his influential union position,

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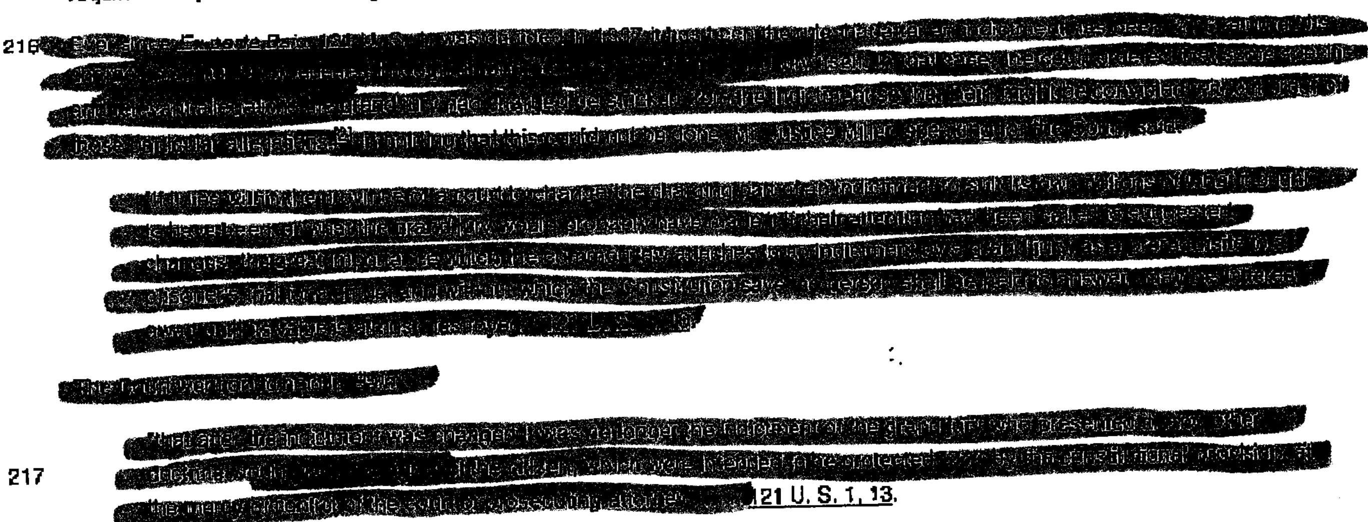
> "did . . . unlawfully obstruct, delay [and] affect interstate commerce between the several states of *214 the United States and the movement of the aforesaid materials and supplies in such commerce, by extortion. . . of $31,274.13 . . . induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready mixed concrete."

The district judge, over petitioner's objection as to its materiality and relevancy, permitted the Government to offer evidence of an effect on interstate commerce not only in sand brought into Pennsylvania from other States but also in steel shipments from the steel plant in Pennsylvania into Michigan and Kentucky. Again over petitioner's objection the trial judge charged the jury that so far as the interstate commerce aspect of the case was concerned, Stirone's guilt could be rested either on a finding that (1) sand used to make the concrete "had been shipped from another state into Pennsylvania" or (2) "Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce . . ." from Pennsylvania into other States. On motion of petitioner for arrest of judgment, acquittal or new trial, the District Court held that "A sufficient foundation for introduction of both kinds of proof was laid in the indictment." 168 F. Supp. 490, 495. The Court of Appeals affirmed, all the judges agreeing that interference with the sand movements into Pennsylvania was barred by the Hobbs Act. 262 F. 2d 571. Judge Hastie and Chief Judge Biggs disagreed with the court's holding that Stirone could be tried and convicted for interference with the possible future shipments of steel from Pennsylvania to Michigan and Kentucky. 262 F. 2d. at 578, 580. They were of opinion that no interference with interstate steel shipments was charged in 215 the indictment and that in any event it is an unreasonable extension of the Act to make a federal offense out of *215 extortion from a man merely because he is supplying concrete to build a mill which after construction will produce steel, a part of which may, if processed, move in interstate commerce.

We agree with the Court of Appeals that Rider's dependence on shipments of sand from outside Pennsylvania to carry on his ready-mixed concrete business entitled him to the Hobbs Act's protection against interruption or stoppage of his commerce in sand by extortion of the kind that the jury found the petitioner had committed here. That Act speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence.

The Act outlaws such interference "in any way or degree." 18 U. S. C. § 1951 (a). Had Rider's business been hindered or destroyed, interstate movements of sand to him would have slackened or stopped. The trial jury was entitled to find that commerce was saved from such a blockage by Rider's compliance with Stirone's coercive and illegal demands. It was to free commerce from such destructive burdens that the Hobbs Act was passed. United States v. Green, 350 U. S. 415, 420.

Whether prospective steel shipments from the new steel mills would be enough, alone, to bring this transaction under the Act is a more difficult question. We need not decide this, however, since we agree with the dissenting judges in the Court of Appeals that it was error to submit that question to the jury and that the error cannot be dismissed as merely an insignificant variance between allegation and proof and thus harmless error as in Berger v. United States, 295 U. S. 78. The crime charged here is a felony and the Fifth Amendment requires that prosecution be begun by indictment.



also United States v. Norris, 281 U. S. 619, 622. Cf. Clyatt v. United States, 197 U. S. 207, 219, 220. Yet the court did permit that in this case. The indictment here cannot fairly be read as charging interference with movements of steel from Pennsylvania to other States nor does the Court of Appeals appear to have so read it. The grand jury which found this indictment was satisfied to charge that Stirone's conduct interfered with interstate importation of sand. But neither this nor any other court can know that the grand jury would have been willing to charge that Stirone's conduct would interfere with interstate exportation of steel from a mill later to be built with Rider's concrete. And it cannot be said with certainty that with a new basis for conviction added, Stirone was convicted solely on the charge made in the indictment the grand jury returned. Although the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same. And the addition charging interference with steel exports here is neither trivial, useless, nor innocuous. Compare Ford v. United States, 273 U. S. 593, 602; Gaito v. Lane, 265 U. S. 393, 402. While there was a variance in the sense of a variation between pleading and proof, that variation here destroyed the defendant's substantial right to be tried only on charges presented in an indictment returned by a grand jury. Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless error. Compare Berger v. *218 United States, 295 U. S. 78. The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge.[3] Thus the basic protection the grand jury was designed to afford is defeated by a device or method which subjects the defendant to prosecution for interference with interstate commerce which the grand jury did not charge.

Here, as the trial court charged the jury, there are two essential elements of a Hobbs Act crime: interference with commerce, and extortion. Both elements have to be charged. Neither is surplusage and neither can be treated as surplusage. The charge that interstate commerce is affected is critical since the Federal Government's jurisdiction of this crime rests only on that interference. It follows that when only one particular kind of commerce is charged to have been burdened a conviction must rest on that charge and not another, even though it be assumed that under an indictment drawn in general terms a conviction might rest upon a showing that commerce of one kind or another had been burdened. The right *219 to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment. Here, as in the *Bain* case, we cannot know whether the grand jury would have included in its indictment a charge that commerce in steel from a nonexistent steel mill had been interfered with. Yet because of the court's admission of evidence and under its charge this might have been the basis upon which the trial jury convicted petitioner. If so, he was convicted on a charge the grand jury never made against him. This was fatal error. Cf. Cole v. Arkansas, 333 U. S. 196; De Jonge v. Oregon, 299 U. S. 353.

Reversed.

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208

[1] 62 Stat. 793, 18 U. S. C. § 1951.

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years; or both.

"(b) As used in this section—

.....

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

[2] Bain was indicted for making a false statement "with intent to deceive *the Comptroller of the Currency and* the agent appointed to examine the affairs of said association . . . ." After sustaining demurrers of Bain to the indictment, the trial court went on to say that "thereupon, on motion of the United States, by counsel, the court orders that the indictment be amended by striking out the words *'the Comptroller of the Currency and'* therein contained." By this amendment it was intended to permit conviction of Bain without proof that he had deceived the Comptroller as the grand jury had charged.

[3] "Yet the institution [the grand jury] was adopted in this country, and is continued from considerations similar to those which give to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offences upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from government, or be prompted by partisan passion or private enmity. No person shall be required, according to the fundamental law of the country, except in the cases mentioned, to answer for any of the higher crimes unless this body, consisting of not less than sixteen nor more than twenty-three good and lawful men, selected from the body of the district, shall declare, upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial." *Ex parte Bain*, 121 U. S. 1, 11. See also *Costello* v. *United States*, 350 U. S. *359, 362, 363, n. 6.

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EXHIBIT P

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STATE OF NEBRASKA VS.
CALVIN J. WHITE 212 F.3d 539

2-10

Summaries (3)

Judge-written summaries of this case:

- Holding that a defendant cannot be convicted of both premeditated murder and felony murder (from 2 cases)
- Holding that premeditated and felony murder are merely alternate theories of the same crime (from 1 case)

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This case has been cited by other opinions:

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- Stenberg v. Carhart (2000) (/opinion/118387/stenberg-v-carhart/?)
- Ervin v. State (1999) (/opinion/1533803/ervin-v-state/?)
- Hopkins v. Reeves (1998) (/opinion/118221/hopkins-v-reeves/?)
- State v. Lotter (1998) (/opinion/2116540/state-v-lotter/?)

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Authorities (39)

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- Brown v. Ohio, 432 U.S. 161 (/opinion/109695/brown-v-ohio/?) (1 time)
- Green v. United States, 355 U.S. 184 (/opinion/105594/green-v-united-states/?) (1 time)
- Missouri v. Hunter, 459 U.S. 359 (/opinion/110824/missouri-v-hunter/?) (1 time)
- United States v. Dixon, 509 U.S. 688 (/opinion/112906/united-states-v-dixon/?) (1 time)
- Whalen v. United States, 445 U.S. 684 (/opinion/110237/whalen-v-united-states/?) (1 time)

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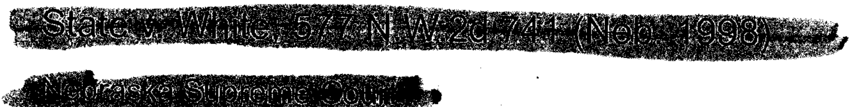
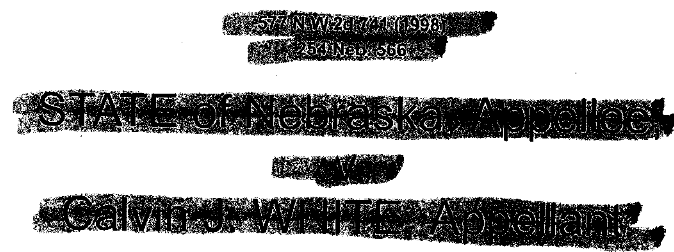


Filed: May 8th, 1998

Precedential Status: Precedential

Docket Number: S-96-984

Author: C Thomas White (/person/5033/c-thomas-white/)



No. S-96-984.
Supreme Court of Nebraska.

May 8, 1998.

*743 Robin W. Hadfield, of Nebraska Commission on Public Advocacy, and Vicky L. Johnson, Fillmore County Public Defender, for appellant.

(/opinion/112906/united-states-v-dixon/), 125 L. Ed. 2d 556 (/opinion/112906/united-states-v-dixon/) (1993 [illegible]

However, we reject the *Blockburger* test as the controlling principle in this case for two reasons. First, *Blockburger* is an acceptable test in resolving the issue of whether a lesser offense is merged into a greater offense by reason of identity of elements. In *Brown v. Ohio*, 432 U.S. 161 (/opinion/109695/brown-v-ohio/), 168, 97 S. Ct. 2221 (/opinion/109695/brown-v-ohio/), 2226, 53 L. Ed. 2d 187 (/opinion/109695/brown-v-ohio/) (1977), the Supreme Court stated that "[t]he greater offense is ... by definition the 'same' for purposes of double jeopardy as any lesser offense included in it." The Court added that "the sequence [of the greater and lesser offenses] is immaterial." *Id.* However, the Supreme Court has never applied the *Blockburger* test in a case where the accused has been charged with committing the same crime in alternative ways, e.g., first degree premeditated murder and first degree felony murder.

Second, the *Blockburger* test is deemed by the Supreme Court to be only a rule of statutory construction. *Missouri v. Hunter*, 459 U.S. 359 (/opinion/110824/missouri-v-hunter/), 103 S. Ct. 673 (/opinion/110824/missouri-v-hunter/), 74 L. Ed. 2d 535 (/opinion/110824/missouri-v-hunter/) (1983). The central focus of double jeopardy analysis is the determination of legislative intent.

> [T]he Fifth Amendment double jeopardy guarantee serves principally as a restraint on courts and prosecutors. The legislature remains free under the Double Jeopardy Clause to define crimes and fix punishments; but once the legislature has acted courts may not impose more than one punishment for the same offense and prosecutors ordinarily may not attempt to secure that punishment in more than one trial.

Brown v. Ohio, 432 U.S. at 165, 97 S.Ct. at 2225. See, also, *Sanabria v. United States*, 437 U.S. 54 (/opinion/109894/sanabria-v-united-states/), 98 S. Ct. 2170 (/opinion/109894/sanabria-v-united-states/), 57 L. Ed. 2d 43 (/opinion/109894/sanabria-v-united-states/) (1978). If the legislature intends to create two separate offenses and allow punishment for both, then it has the power to do so. It is the legislature, and not the prosecution, which establishes and defines offenses. See *id.*

"The assumption underlying the *Blockburger* rule is that [the legislature] ordinarily does not intend to punish the same offense under two different statutes." *Ball v. United States*, 470 U.S. 856 (/opinion/111384/ball-v-united-states/), 861, 105 S. Ct. 1668 (/opinion/111384/ball-v-united-states/), 1671, 84 L. Ed. 2d 740 (/opinion/111384/ball-v-united-states/) (1985). In this case, we are not comparing two different statutes; premeditated murder and felony murder are both defined in the same statute, Neb.Rev.Stat. § 28-303 (Reissue 1995). In determining whether successive prosecutions violate the Double Jeopardy Clause when there has been a single violation of a single statute, the U.S. Supreme Court has expressly declined to apply the *Blockburger* test. *Sanabria v. United States, supra.*

*746 Likewise, in considering whether dual convictions and sentences for first degree murder for one killing amounted to double jeopardy, the Supreme Court of Colorado declined to apply the *Blockburger* test. *People v. Lowe*, 660 P.2d 1261 (/opinion/1119217/people-v-lowe/) (Colo. 1983). The Colorado court used two methods in determining that the dual convictions and sentences could not stand. First, "'[t]he Due Process Clause of the Fourteenth Amendment ... would presumably prohibit state courts from depriving persons of liberty or property as punishment for criminal conduct *except to the extent authorized by state law.*'" (Emphasis supplied.) *Id.* at 1267 (quoting *Whalen v. United States*, 445 U.S. 684 (/opinion/110237/whalen-v-united-states/), 100 S. Ct. 1432 (/opinion/110237/whalen-v-united-states/), 63 L. Ed. 2d 715 (/opinion/110237/whalen-v-united-states/) (1980)). Next, to determine whether state law authorized the dual convictions and sentences, the court applied rules of statutory construction:

> [T]he [U.S.] Supreme Court has adopted the rule of lenity as a tool of statutory construction.... The rule requires that courts resolve ambiguities in a penal code in the defendant's favor.... The rule of lenity is a corollary of the rule of statutory construction that requires penal statutes to be construed against the government.... The rule of lenity applies not only to interpretations of the substantive prohibitions, but also to the penalties they impose....

> We have likewise recognized the rule of lenity as a tool to be used in interpreting penal statutes. Colorado criminal statutes are to be strictly construed in favor of the accused.

(Citations omitted.) *People v. Lowe*, 660 P.2d at 1267-68.

The Colorado court then went on to examine the first degree murder statute to determine whether the statute created one offense or multiple offenses:

> Section 18-3-102, C.R.S.1973 (1978 Repl. Vol. 8 & 1982 Supp.), provides:

> "... (1) A person commits the crime of murder in the first degree if:

> "(a) After deliberation and with the intent to cause the death of a person other than himself, he causes the death of that person or of another person; or

> "(b) Acting either alone or with one or more persons, he commits or attempts to commit arson, robbery, burglary, kidnapping, sexual assault in the first or second degree ... and, in the course of or in furtherance of the crime that he is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone; or

[illegible]

Consequently, we determine that when a defendant is impliedly acquitted at trial of the offense of first degree murder, the Double Jeopardy Clause bars the State State from prosecuting that defendant at a subsequent proceeding, under a different theory of criminal liability, for the offense of first degree murder. To hold otherwise would mean that in cases involving only one death, the State could potentially bring successive prosecutions for felony murder until the State eventually obtained a conviction or until it ran out of underlying felonies on which to base the felony murder charge. We agree with other courts that have made the observation that it would indeed be a strange system of justice that would permit two sentences to be imposed for the killing of one person. See, *People v. Lowe,* 660 P.2d 1261 (/opinion/1119217/people-v-lowe/) (Colo.1983); *Gray v. State,* 463 P.2d 897 (/opinion/1136235/gray-v-state/) (Alaska 1970). It would be no less strange to allow a prosecution for the same offense after an acquittal or conviction based on a different theory of criminal liability.

Our holding that the Double Jeopardy Clause bars the State from retrying White for the crime of first degree murder does not prevent the State from proceeding with a new trial on the vacated second degree murder conviction and the related charge of use of a firearm to commit a felony. Reversal for trial error, such as incorrect jury instructions and ineffective assistance of counsel, implies nothing with respect to the guilt or innocence of White. Rather, it is only a determination that a defendant has been convicted through a judicial process which is defective in some fundamental respect. *State v. Williams,* 247 Neb. 931 (/opinion/1347945/state-v-williams/), 531 N.W.2d 222 (/opinion/1347945/state-v-williams/) (1995), *cert. denied* 516 U.S. 1008, 116 S. Ct. 563, 133 L. Ed. 2d 488. Reversal based upon trial error does not bar a retrial of a criminal defendant. *Id.; State v. Yelli,* 247 Neb. 785 (/opinion/1596432/state-v-yelli/), 530 N.W.2d 250 (/opinion/1596432/state-v-yelli/) (1995), *cert. denied* 516 U.S. 915, 116 S. Ct. 304, 133 L. Ed. 2d 209. As a result of our holding, we do not consider White's other assignments of error.

*749 CONCLUSION

For the foregoing reasons, we conclude that the district court erred in overruling White's amended plea in bar. We, therefore, reverse the order of the district court and remand this cause to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

McCORMACK, J., not participating.

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EXHIBIT Q

CASE LAW MERITS

EX PARTE MESSERVY,
61 S.E. 445 (S.C. 1908)

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Ex Parte Messervy, 61 S.E. 445 (S.C. 1908)

Supreme Court of South Carolina

Filed: May 9th, 1908

Precedential Status: Precedential

Citations: 61 S.E. 445, 80 S.C. 285

Docket Number: 6907

Author: Ira Boyd Jones (/person/5650/ira-boyd-jones/)

May 9, 1908. The opinion of the Court was delivered b[illegible] is an application in the original jurisdiction of this Court for writ of habeas corpus.

The petitioner alleges that he is a citizen of this State, resident in the city of Charleston, but desires to go beyond the limits of the State for the [illegible] pursuing an education; that on January 4, 1908, upon the petition of Pearl C. Messervy and proceedings in a civil action by her against petitioner for alimony, Judge Memminger caused petitioner to be arrested under a writ *ne exeat republica*, commanding him not to depart from the State; that, having been arrested by the sheriff and about to be put in the common jail, petitioner gave bail in the sum of five thousand dollars, conditioned not to depart from the State, to be at all times amenable to the jurisdiction of the Court and to do and receive what may be adjudged by the Court in said suit for alimony; that John W. Messervy went surety for petitioner and that petitioner is now in the custody of said John W. Messervy, and is not allowed to depart from the State or go whence he pleases; that petitioner is unlawfully imprisoned and deprived of his liberty, in that Judge Memminger had no power to cause petitioner's arrest in a civil action, except as provided under section 200 of the Code of Civil Procedure, and that petitioner has not been arrested for any of the causes set forth in said section or for contempt of Court; that the said writ of *ne exeat republica* had been abolished in this State by section 199 of the Code of Procedure; that there has been no final decree for permanent alimony in said case; that if the writ *ne exeat* exists it will not issue for alimony *pendente lite;* that an appeal was pending *Page 287 from the order allowing temporary alimony when the writ*ne exeat* was issued.

Upon this petition, Hon. Y.J. Pope, Chief Justice, granted an order, dated January 17, 1908, commanding John W. Messervy to produce John E. Messervy before the Court with the cause of his detention and to show cause why he should not be released from custody, and a copy of the order was also required to be served upon the attorneys for Pearl C. Messervy.

John W. Messervy made return admitting his custody of John E. Messervy, as alleged in the petition, and brought him before the Court.

Pearl C. Messervy made return, denying that petitioner had been arrested by the sheriff, and denying that he was in the custody of John W. Messervy, although admitting the issuance of the writ *ne exeat*, and that petitioner would have been put in jail but for the execution by him of the bail bond alleged.

The first question presented is whether *habeas corpus* is the proper remedy in this case. We think it is. The object of the writ is to release [illegible] liberty.

When the sheriff apprehended the petitioner under the writ *ne exeat* there was the present purpose and apparent power to lodge petitioner in jail, which was only prevented by the execution of the bail bond. A condition of this bond was that petitioner should not depart from the State. The return of the surety on his bail bond declares that he has custody of the petitioner, and brings the body of the petitioner before the Court. These circumstances show more than a mere moral restraint of the petitioner's liberty. In *Wales* v. *Whitney*, 114 U.S. 564 (/opinion/91406/wales-v-whitney/), 571, the Court said: "Something more than moral restraint is necessary to make a case for *habeas corpus*. There must be actual confinement or the present means of enforcing it. The class of cases in which a sheriff or other officer, with a writ in his hands for the arrest of a person whom he is required to take into custody, *Page 288 to whom the person to be arrested submits without force being applied, comes under this definition. The officer has the authority to arrest and the power to exercise it. If the party named in the writ resists, or attempts to resist, the officer can summon bystanders to his assistance, and may himself use personal violence. Here the force is imminent and the party is in presence of it. It is physical power which controls him, though not called into demonstrative action."

The case of *State* v. *Buyck*, 1 Brev., 460, is cited by counsel for Pearl C. Messervy to establish the view that the petitioner can not be released on *habeas corpus*. That case was decided in 1804, and held that a party charged with a felony is not entitled to be discharged *from his recognizances* under the seventh section of the *habeas corpus* act, and that the provisions of said section apply only to persons actually in prison.

This, however, is not a proceeding under section 90 of our Criminal Code, similar to section 7 of the *habeas corpus* act.

In the case of *Ancrum* v. *Dawson*, 1 McMullan Eq., 408, decided in 1842, the Court held that the writ *ne exeat* was in the nature of equitable bail writ, but that a party would not be discharged from it unless in actual custody. These decisions were rendered when the writ *ne exeat* was in force in this State, and would not be controlling if it be true, as alleged by petitioner, that the writ *ne exeat* has been abolished.

This contention we now consider, and it is involved in the question whether the restraint placed upon the petitioner is illegal.

Section 199 of the Code of Procedure provides: "No person shall be arrested in a civil action except as provided by the Code of Procedure, but the same shall not apply to proceedings for contempt." The Code then proceeds to prescribe the cases in which arrest in civil actions may be made. The sweeping provision of section 199, with its *Page 289 specified exception, and the particular provisions made for arrests in civil actions, abolishes the old writ of *ne exeat*.

Ordinarily, *habeas corpus* is not a proper remedy to relieve a party under recognizance or bail when he has not been surrendered by his surety. This case, however, is peculiar in that it is alleged in the petition and admitted by the return of John W. Messervy, who produces the body of the petitioner before the Court, that petitioner is in the custody of said bail, and that his right to go beyond the State is restrained.

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LUCAS BAILEY VS. STATE OF SOUTH
CAROLINA 709 S.E.2d 671

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Lucas Bailey, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26975
Submitted March 16, 2011 - Filed May 9, 2011

REVERSED AND REMANDED

Tara Shurling, of Columbia, for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott and Assistant Attorney General Mary S. Williams, of Columbia, for Respondent.

JUSTICE BEATTY: After his conviction for homicide by child abuse[1] was affirmed on direct appeal, Lucas Bailey filed an application for post-conviction relief (PCR). We granted a petition for a writ of certiorari to review the denial of PCR. Bailey contends the judge erred in denying PCR as trial counsel was ineffective in failing to object to supplemental jury instructions that allowed the jury to convict him for an act that was not alleged in the indictment. We reverse and remand for a new trial.

I. Factual/Procedural Background

This case arises from the tragic death of sixteen-month-old Charles Devon Allen ("Victim"). At the

time of his death, Victim lived wi[illegible]is mother, Amy Hughes, her boyfri[illegible]d, Bailey, and Victim's two sisters, who were then five and six years old, respectively.[2]

Around 6:00 p.m. on Thursday, April 26, 2001, Bailey called 9-1-1 and reported that Victim was not breathing. When Aiken County emergency personnel arrived, they found Victim lying face down on the bed. The coroner pronounced Victim dead as his body was "cool to the touch" and *rigor mortis* had begun to set in. Based on the history presented by Bailey and Hughes, investigators initially believed that Victim might have died from an accidental overdose of cold medications. However, upon examining Victim's body, the coroner noticed three "circular marks" or "discolorations" on the child's abdomen.

The next day, Dr. Joel Sexton, a forensic pathologist, performed an autopsy. Dr. Sexton noted visible bruises on Victim's abdomen. Upon further examination, he discovered "extensive internal injuries in the abdominal region and in the head region." Injuries to the intestines and the mesentery arteries and veins indicated multiple blows had torn the areas by compression against the spine. As to Victim's head, Dr. Sexton noted that "there were numerous small round contusions . . . in the front, on the top of the head, on the right side of the head and in the back," which resulted in swelling of the brain. According to Dr. Sexton, the contusions were consistent with a fist or a knuckle-sized object hitting the head. He believed the head injuries contributed to Victim's death and were consistent with some of the symptoms exhibited by Victim prior to his death. He explained that a head injury leads to swelling of the brain, which in turn causes vomiting, lethargy, a "limp" body, and eyes that "roll back" into the head.

Ultimately, Dr. Sexton opined the abdominal injuries were the primary cause of Victim's death. He believed that at least one of the abdominal injuries had occurred hours before death. He concluded that the later abdominal injuries could have caused Victim's death within minutes due to the loss of blood. The cause of death was "listed as blood loss which we refer to as exsanguination due to laceration of these mesentery arteries and veins . . . due to blunt force injury to the abdomen due to a beating." Although Dr. Sexton could not definitively pinpoint Victim's time of death, he opined that it occurred sometime after 2:30 p.m. on Thursday, April 26, 2001. Dr. Sexton believed Victim's injuries were inflicted by an adult as a child would not have had the "force" to cause these injuries. Finally, he did not believe the cold medications given to Victim prior to his death caused or contributed to the death.

Law enforcement interviewed Hughes and Bailey. Subsequently, an Aiken County grand jury indicted Bailey for homicide by child abuse.

At trial, Hughes testified for the State. Hughes testified that she had worked on the Monday and Tuesday preceding Victim's death. According to Hughes, Victim was cared for by Bailey on Monday and then went to daycare on Tuesday. Because Victim had a cold on Wednesday, Hughes stayed home from her job to care for him. Hughes recalled that she and Victim went to sleep in the same bed around 8:00 p.m. Around 12:00 or 12:30 a.m., Bailey took Victim into the kitchen to feed him. Hughes, who had remained in bed, heard a "loud noise" coming from the kitchen followed by Victim crying out. Although Hughes did not get up to check on Victim, she asked Bailey what had happened, to which Bailey responded, "Nothing." When Bailey returned to bed around 12:50 a.m., he told Hughes that he had put Victim in the bed with his sisters.

Hughes stated that her oldest daughter came in the next morning and reported that Victim had thrown up. According to Hughes, Bailey got up and when he returned he told Hughes that Victim was fine and that he had cleaned him up and placed him in his crib. When Hughes checked on Victim later on Thursday morning, she observed that Victim was unusually quiet and did not stand up in his crib. After taking her daughter to school, Hughes returned and gave Victim some medicine for his cold, but

Victim was unable to keep it down. Hughes stayed home from work to care for Victim and called a friend to bring additional cold medication. Hughes stated that Victim was unable to keep this medication down and that he was weak and "wasn't moving." She then took Victim into the bedroom where she laid down with him and Bailey. When Hughes's mother arrived around noon, Hughes left Victim with Bailey. While she was talking with her mother, Hughes heard a "loud sound" from her bedroom. Hughes then asked her daughter to get Victim, but her daughter reported that Bailey told her "no."

Approximately twenty or thirty minutes later, Hughes's daughter took Victim out of the bedroom and brought him to Hughes. Hughes described Victim as "droopy," unable to sit up on his own, and that his eyes rolled back into his head. Around 2:00 p.m., Hughes's friend returned with a different cold medication that Victim was able to tolerate. Hughes testified that Victim fell asleep and Bailey then put him to bed. After she laid down with Victim for approximately thirty minutes to an hour, she got up and checked that Victim was breathing normally.

Around 5:00 p.m., Hughes left the home to drive Bailey's mother to the store. When Hughes returned home around 6:00 or 6:30 p.m., she found emergency personnel at her home. At that time, she was informed that Victim was dead. Hughes ultimately claimed that Bailey had struck Victim, resulting in his death.

During his testimony, Bailey adamantly denied hitting Victim or causing his death. Although Bailey recounted essentially the same timeline as Hughes, he claimed that he and Hughes discussed taking Victim for medical treatment but decided to see if Victim felt better after taking medication on Thursday. He further testified that he checked on Victim after Hughes left on Thursday afternoon and discovered that Victim was not breathing.

In his jury charge, the judge instructed the jurors on the offense of homicide by child abuse by reading the applicable statutory language.**[3]**

Approximately one hour into deliberations, the jury sent a note to the judge with several questions concerning evidentiary issues. Additionally, the jury asked "the difference between the indictment and the last statement on the indictment form"**[4]** and "whether the neglect has to directly contribute to the death." In response to the notes, counsel believed that recharging the statute on the offense of homicide by child abuse would be appropriate.

When the jury returned to the courtroom, the foreman referenced the last sentence of the indictment and explained that the jury "wanted to get an understanding of the meaning of the indictment." After the judge read the last sentence of the indictment, the foreman responded:

> Well, the definition was the question we [were] asking for. Also, our verdict to . . . to say this person did that last statement . . . you're talking two different . . .

Before the foreman finished his statement, the judge explained the purpose of the indictment was to "state the charges with enough specificity so that the defendant knows what he has to defend against." The judge then re-read the applicable provisions of the homicide by child abuse statute and gave the jury a printed copy of the statute.

Approximately thirty minutes later, the jury sent out another note, stating:

Does the State have to prove beyond a reasonable doubt: <u>that the defendant caused the death of the child</u> and does the neglect or abuse have to have caused the death?

Counsel and the judge debated the meaning of the jury's question. When the jury returned to the courtroom, the judge explained that "in this case, the only allegations are that [the defendant] caused the death of the child by neglect and abuse," and that under the statute several acts qualified as "neglect and abuse," but the State was required to prove only one of them.

In response, the foreman stated:

> We see . . . as a jury, total jury, we see the neglect in the parents, but we fail to see evidence that Lorenzo struck the child. There was no evidence to us that Lorenzo struck this child. There was neglect, yes, on both parties, but we fail to see that - - - and that's written in that document that we didn't see any evidence. We didn't see any evidence . . . And the definition of your homicide has a combination of both. I know [its] a part of that definition, but we fail to see any evidence that he did that.

The judge then instructed the jury to refer to the language of the homicide by child abuse statute.

Out of the presence of the jury, defense counsel indicated her concern over the "emphasis on the neglect to the possible exclusion of the rest of the statute;" however, she believed the jury understood the judge's explanation.

When the jury returned to the courtroom, the judge issued supplemental instructions that stated in part:

> [I]f you are distinguishing some acts that you would call abuse and some that you would call neglect, that's up to you as long as you kind of go by the statute here. The statute doesn't really . . . It says it can be abuse or neglect, and it doesn't say which acts might be which, but it says that abuse or neglect is an act or omission which causes harm.

So if there is an act or omission which causes harm then that is abuse or neglect, by definition under this statute. Any act which causes, any act or omission, or failure to act, which causes harm to the child's health, that would be by this statute abuse or neglect, without getting into the difference of which is which, it doesn't matter.

The judge further explained that:

> So you have to find that [the defendant] either did something or failed to do something . . . that caused the death of the child. Either his doing something which is an act, or failing to do something which is an omission. And that that conduct on his part, either the act or the omission, caused the death of this child.

Moments later, a juror approached the bench and, in an off-the-record discussion, expressed her concern to the judge over the definition of the word "caused."**[5]** The judge then gave an instruction on proximate cause. In part, the judge stated: "You must find that the State has convinced you beyond a reasonable doubt that either an act or failure to act on the part of this defendant is a proximate cause of the death of this child."

Nine minutes later, the jury returned with a guilty verdict. The judge denied counsel's motion for a new trial and sentenced Bailey to twenty-five years' imprisonment.

Bailey appealed his conviction and sentence to the Court of Appeals, alleging the trial judge erred in declining to direct a verdict of acquittal. The court affirmed Bailey's conviction and sentence, concluding that "substantial circumstantial evidence" supported a finding that Bailey abused Victim.

Subsequently, Bailey filed a timely PCR application. After a hearing, the PCR judge denied Bailey's application. As to trial counsel's performance, the PCR judge found, in part, that counsel was not ineffective for failing to object to certain jury instructions. In so ruling, the PCR judge concluded that counsel's decision constituted trial strategy and that even if counsel's performance was deficient, Bailey had not proven prejudice.

II. Discussion

A.

Bailey contends the judge erred in denying his PCR application as his trial counsel was ineffective in failing to object to the trial judge's supplemental jury instructions. In support of this contention, Bailey claims the instructions allowed the jury to convict him for "an act alternative to the one specified with particularity in the indictment." Because "the infliction of physical injuries was the specific act alleged in the indictment," Bailey asserts the jury was limited to a determination of whether he committed this act. Based on the foreman's statement that the jury found no evidence that Bailey struck the child, Bailey claims the jury found "a material variance between the act alleged in the indictment and the State's proof." Specifically, Bailey avers the jury convicted him of an unindicted crime as the jury found evidence of neglect rather than the specifically-alleged acts of abuse. Given that the judge's erroneous instructions precipitated this result, Bailey asserts his trial counsel was ineffective in failing to object to these supplemental instructions.

B.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

The United States Supreme Court has established a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Under the second prong, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

C.

As a threshold matter, the State claims Bailey's issue is not preserved for appellate review given it was not raised to and ruled upon by the PCR judge. We disagree.

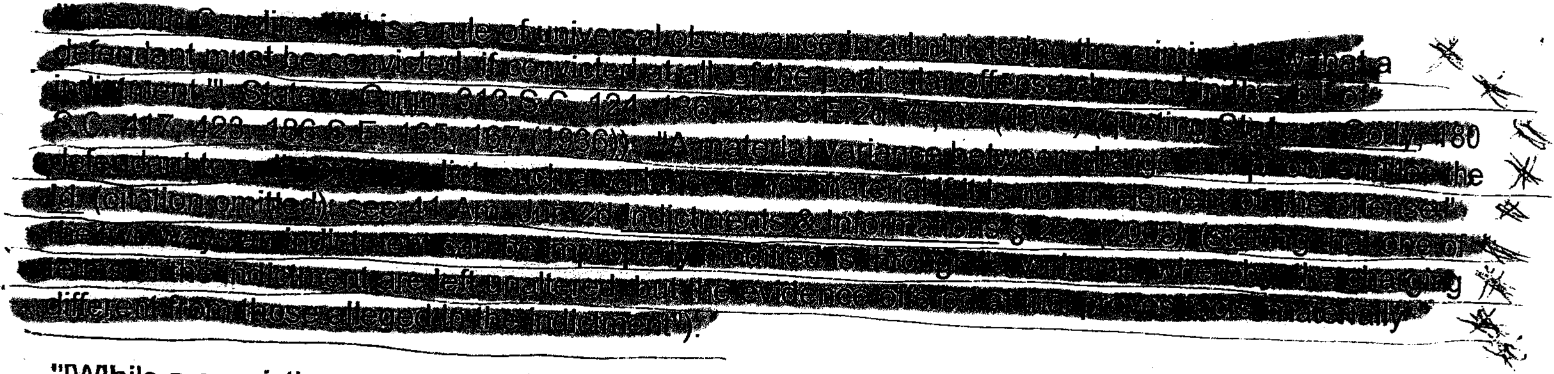
In his PCR application, Bailey characterized the trial judge's instructions as erroneous and confusing because the jury was misled regarding the homicide by child abuse statute and the indictment. Additionally, Bailey argued that trial counsel was ineffective in failing to object to certain instructions.

During the PCR hearing, Bailey testified that his trial counsel failed to object to the improper jury instructions. In explaining this claim, Bailey referenced the trial judge's supplemental instructions and the judge's discussions with the jury regarding its questions. Trial counsel admitted that she did not object to these instructions and contended her decision constituted trial strategy. Finally, in his written order, the PCR judge addressed Bailey's allegation of "ineffective assistance of counsel for failing to object to jury charges."

Based on the foregoing, we find Bailey's argument was properly preserved for this Court's review. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (holding an issue must be raised to and ruled upon by the trial court to be preserved for appellate review).

D.

Having found that Bailey's issue is properly before this Court, we turn to the merits.



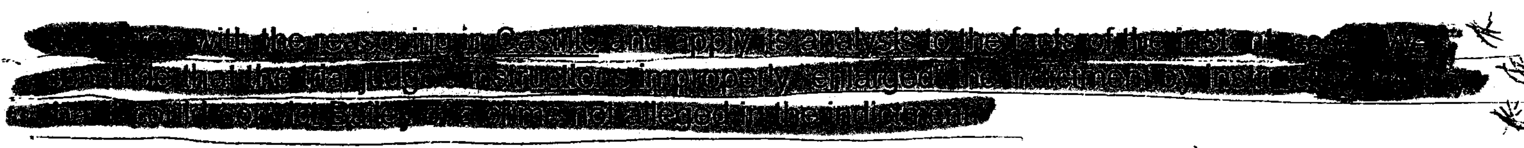
"[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the [illegible] charges a complete offense and the State presents evidence which convicts under a different [illegible] alleged." Thomason v. State, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994) (citations omitted). [illegible] the latter circumstance violates principles of due process ... because the State has failed to prove beyond a reasonable doubt every fact necessary [illegible] charged." Id. (citations omitted); see 41 Am. Jur. 2d Indictments & Informations § 256 (2005) [illegible] material variance that violates a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal [illegible] an appeal of a judgment of conviction of the offense not charged in the indictment.").

In a case involving similar facts to the instant case, the Texas Court of Appeals found error in the trial judge's jury instructions that permitted the jury to convict the defendant of an act not alleged in the indictment. Castillo v. State, 7 S.W.3d 253 (Tex. Ct. App. 1999). In Castillo, the defendant was charged with the felony offense of intentionally and knowingly causing serious bodily injury to a child and convicted of the lesser included offense of reckless injury to a child pursuant to section 22.04(a)(1) of the Texas Penal Code. Id.; Tex. Penal Code Ann. § 22.04(a)(1) (1994) ("A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes a child ... serious bodily injury."). The one-count indictment charging Castillo with this offense provided that Castillo:

> [d]id then and there intentionally and knowingly cause serious bodily injury to Triston Castillo, a child 14 years or younger by then and there striking the child with a deadly weapon, to wit: the defendant's hands or by striking the child's head against a deadly weapon, to wit: a wall or a floor.

Id. at 255. In prefacing its analysis, the Texas Court of Appeals noted that "[b]y including a more

At trial, the child's mother testified that the morning the child was taken to the hospital, she was taking a shower when she heard the child "crying out loudly" while in Castillo's care. When she went to check on the child, she observed that he was "in a daze," "seizing," and "limp." Id. at 255. Although Castillo admitted to shaking the child because he was having difficulty breathing, he expressly denied that the child hit or struck a wall. Id. at 257.



In light of its holding, the court declined to reach Castillo's claim of ineffective assistance of counsel. The court, however, noted the claim would "loom large on the scene, given the failure to move for an instructed verdict and to object to the charge which enlarged the indictment." Id. at 262.

A careful review of the jury's questions and the ensuing discussion with the judge reveals that the jury focused on the terms of the indictment and recognized the alternative elements in the homicide by child abuse statute, i.e., an "act" versus an "omission." The foreman of the jury then stated the jury found "no evidence" that Bailey struck the Victim.**[7]** Based on this statement and the reference to the last line of the indictment, it is evident the jury was inquiring as to whether a finding of "neglect" on the part of Bailey was sufficient for a conviction under the statute.

We find that trial counsel not only failed to object to these jury instructions, but also acquiesced in the

judge's erroneous interpretation. Thus, counsel's failure to object did not constitute a valid trial strategy. Cf. Padgett v. State, 324 S.C. 22, 484 S.E.2d 101 (1997) (finding trial counsel's failure to challenge first-degree burglary indictment did not constitute valid trial strategy where counsel did not recognize the distinction between a "barn" and a "dwelling" for the purposes of first-degree burglary).

Having found that trial counsel's performance was deficient, the question becomes whether Bailey was prejudiced by counsel's errors.[8] Because the supplemental instructions created a material variance between the State's evidence and the allegations in the indictment, we conclude that Bailey was prejudiced by trial counsel's failure to object as this deficiency undermined confidence in the outcome of his trial. Accordingly, we hold trial counsel rendered ineffective assistance. See McKnight v. State, 378 S.C. 33, 48-49, 661 S.E.2d 354, 361-62 (2008) (finding trial counsel rendered ineffective assistance when she failed to object to the supplemental jury charge on the measure of criminal intent required for a conviction under the Homicide by Child Abuse statute; reasoning that the supplemental charge: (1) did not clarify the particular mental state and served to "further confuse the jury;" (2) "attained a special significance in the minds of the jurors;" and (3) was "prejudicial in fact" as the jury returned a guilty verdict five minutes after the supplemental charge).

III. Conclusion

In conclusion, we find Bailey's issue was preserved for appellate review as it was raised to and ruled upon by the PCR judge. In terms of the merits, we hold trial counsel was deficient in failing to object to the supplemental jury instructions as the judge perpetuated the jury's confusion that they could convict Bailey of homicide by child abuse based on an unindicted allegation of neglect. We find that a confluence of the lone specific allegation of physical abuse in the indictment and the jury's expressed confusion about the necessity of evidence of physical abuse by Bailey with the insufficient jury instructions created a structural due process defect that deprived Bailey of a fair trial. We conclude that Bailey was prejudiced by counsel's deficient performance. Accordingly, we reverse the order of the PCR judge and remand for a new trial.

REVERSED AND REMANDED.

TOAL, C.J., PLEICONES, KITTREDGE and HEARN, JJ., concur.

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[1] S.C. Code Ann. § 16-3-85 (2003).

[2] Bailey was not the biological father of Victim or Hughes's other children; however, Hughes was pregnant with Bailey's child at the time of Victim's death.

[3] Specifically, the judge read the following provisions of section 16-3-85:

(A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life;

. . . .

(B) For purposes of this section, the following definitions apply:

EXHIBIT
S

CASE LAW MERITS

GREEN VS. UNITED STATES

78 S.Ct 221

355 U.S. 184 (1957)

GREEN

v.

UNITED STATES.

No. 46.

Supreme Court of United States.

Argued April 25, 1957.
Restored to the calendar for reargument June 24, 1957.
Reargued October 15, 1957.
Decided December 16, 1957.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

George Blow argued the cause on the original argument. *George Rublee, II,* was with him on the reargument. With them on the briefs was *Charles E. Ford.*

185 *185 *Leonard B. Sand* argued the cause for the United States. With him on the briefs were *Solicitor General Rankin, Assistant Attorney General Olney* and *Beatrice Rosenberg. Carl H. Imlay* was also on the brief on the original argument.

Opinion of the Court by MR. JUSTICE BLACK, announced by MR. JUSTICE DOUGLAS.

This case presents a serious question concerning the meaning and application of that provision of the Fifth Amendment to the Constitution which declares that no person shall

"... be subject for the same offence to be twice put in jeopardy of life or limb ...."

The petitioner, Everett Green, was indicted by a District of Columbia grand jury in two counts. The first charged that he had committed arson by maliciously setting fire to a house.[1] The second accused him of causing the death of a woman by this alleged arson which if true amounted to murder in the first degree punishable by death.[2] Green entered a plea of not guilty to both counts and the case was tried by a jury. After each side had presented its evidence the trial judge instructed the jury that it could find Green guilty of arson under the first count and of either (1) first degree murder or (2) second degree murder under the second count. The trial judge treated second degree murder, which is defined by the District Code as the killing of another with malice *186 aforethought and is punishable by imprisonment for a term of years or for life,[3] as an offense included within the language charging first degree murder in the second count of the indictment.

186

The jury found Green guilty of arson and of second degree murd[illegible] The trial judge accepted the verdict, entered the proper judgments and dismissed the jury. Green was sentenced to one to three years' imprisonment for arson and five to twenty years' imprisonment for murder in the second degree. He appealed the conviction of second degree murder. The Court of Appeals reversed that conviction because it was not supported by evidence and remanded the case for a new trial. 95 U. S. App. D. C. 45, 218 F. 2d 856.

On remand Green was tried again for first degree murder under the original indictment. At the outset of this second trial he raised the defense of former jeopardy but the court overruled his plea. This time a new jury found him guilty of first degree murder and he was given the mandatory death sentence. Again he appealed. Sitting *en banc,* the Court of Appeals rejected his defense of former jeopardy, relying on *Trono v. United States,* 199 U. S. 521, and affirmed the conviction. 98 U. S. App. D. C. 413, 236 F. 2d 708. One judge concurred in the result, and three judges dissented expressing the view that Green had twice been placed in jeopardy in violation of the Constitution. We granted certiorari, 352 U. S. 915. Although Green raises a number of other contentions here *187 we find it necessary to consider only his claim of former jeopardy.

187

The constitutional prohibition against "double jeopardy" was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. In his Commentaries, which greatly influenced the generation that adopted the Constitution, Blackstone recorded:

". . . the plea of *auterfoits acquit,* or a former acquittal, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life more than once for the same offence."[4]

Substantially the same view was taken by this Court in *Ex parte Lange,* 18 Wall. 163, at 169:

"The common law not only prohibited a second punishment for the same offence, but it went further and forbid a second trial for the same offence, whether the accused had suffered punishment or not, and whether in the former trial he had been acquitted or convicted."[5]

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, *188 as well as enhancing the possibility that even though innocent he may be found guilty.

In accordance with this philosophy it has long been settled under the Fifth Amendment that a verdict of acquittal is final, ending a defendant's jeopardy, and even when "not followed by any judgment, is a bar to a subsequent prosecution for the same offence." United States v. Ball, 163 U. S. 662, 671. Thus it is one of the elemental principles of our criminal law that the Government cannot secure a new trial by means of an appeal even though an acquittal may appear to be erroneous. United States v. Ball, supra; Peters v. Hobby, 349 U. S. 331, 344-345. Cf. Kepner v. United States, 195 U. S. 100; United States v. Sanges, 144 U. S. 310.

Moreover it is not even essential that a verdict of guilt or innocence be returned for a defendant to have once been placed in jeopardy so as to bar a second trial on the same charge. This Court, as well as most others, has taken the position that a defendant is placed in jeopardy once he is put to trial before a jury so that if the jury is discharged without his consent he cannot be tried again. Wade v. Hunter, 336 U. S. 684; Kepner v. United States, 195 U. S. 100, 128. In general see American Law Institute, Administration of The Criminal Law: Double Jeopardy 61-72 (1935). This prevents a prosecutor or judge from subjecting a defendant to a second prosecution by discontinuing the trial when it appears that the jury might not convict. At the same time jeopardy is not regarded as having come to an end so as to bar a second trial in those cases where "unforeseeable circumstances . . . arise during [the first] trial making its completion impossible, such as the failure of a jury to agree on a verdict." Wade v. Hunter, 336 U. S. 684, 688-689.

*189 At common law a convicted person could not obtain a new trial by appeal except in certain narrow instances.[6] As this harsh rule was discarded courts and legislatures provided that if a defendant obtained the reversal of a conviction by his own appeal he could be tried again for the same offense.[7] Most courts regarded the new trial as a second jeopardy but justified this on the ground that the appellant had "waived" his plea of former jeopardy by asking that the conviction be set aside.[8] Other courts viewed the second trial as continuing the same jeopardy which had attached at the first trial by reasoning that jeopardy did not come to an end until the accused was acquitted or his conviction became final.[9] But whatever the rationalization, this Court has also held that a defendant can be tried a second time for an offense when his prior conviction for that same offense had been set aside on appeal. United States v. Ball, 163 U. S. 662.

In this case, however, we have a much different question. At Green's first trial the jury was authorized to find him guilty of either first degree murder (killing while *190 perpetrating a felony) or, alternatively, of second degree murder (killing with malice aforethought).[10] The jury found him guilty of second degree murder, but on his appeal that conviction was reversed and the case remanded for a new trial. At this new trial Green was tried again, not for second degree murder, but for first degree murder, even though the original jury had refused to find him guilty on that charge and it was in no way involved in his appeal.[11] For the reasons stated hereafter, we conclude that this second trial for first degree murder placed Green in jeopardy twice for the same offense in violation of the Constitution.[12]

Green was in direct peril of being convicted and punished for first degree murder at his first trial. He was forced to run the gantlet once on that charge and the jury refused to convict him. When given the choice between finding him guilty of either first or second degree murder it chose the latter. In this situation the great majority of cases in this country have regarded the jury's verdict as an implicit acquittal on the charge of first degree murder.[13] But the result in this case need not rest alone *191 on the assumption, which we believe legitimate, that the jury for one reason or another acquitted Green of murder in the first degree. For here, the jury was dismissed without returning any express verdict on that charge and without Green's consent. Yet it was given a full opportunity to return a verdict and no extraordinary circumstances appeared which prevented it from doing so. Therefore it seems clear, under established principles of former jeopardy, that Green's jeopardy for first degree murder came to an end when the jury was discharged so that he could not be retried for that offense. Wade v. Hunter, 336 U. S. 684. In brief, we believe this case can be treated no differently, for purposes of former jeopardy, than if the jury had returned a verdict which expressly read: "We find the defendant not guilty of murder in the first degree but guilty of murder in the second degree."

After the original trial, but prior to his appeal, it is indisputable that Green could not have been tried again for first degree murder for the death resulting from the fire. A plea of former jeopardy would have absolutely barred a new prosecution even though it might have been convincingly demonstrated that the jury erred in failing to convict him of that offense. And even after appealing the conviction of second degree murder he still could not have been tried a second time for first degree murder had his appeal been unsuccessful.

Nevertheless the Government contends that Green "waived" his constitutional defense of former jeopardy to a second prosecution on the first degree murder charge by making a *successful* appeal of his improper conviction of second degree murder. We cannot accept

this paradoxical contention. "Waiver" is a vague term used for a great variety of purposes, good and bad, in the law. In any normal sense, however, it connotes some kind of voluntary knowing relinquishment of a right. Cf. *Johnson* v. *Zerbst*, 304 U. S. 458. When a man has been convicted *192 of second degree murder and given a long term of imprisonment it is wholly fictional to say that he "chooses" to forego his constitutional defense of former jeopardy on a charge of murder in the first degree in order to secure a reversal of an erroneous conviction of the lesser offense. In short, he has no meaningful choice. And as Mr. Justice Holmes observed, with regard to this same matter in *Kepner* v. *United States*, 195 U. S. 100, at 135: "Usually no such waiver is expressed or thought of. Moreover, it cannot be imagined that the law would deny to a prisoner the correction of a fatal error, unless he should waive other rights so important as to be saved by an express clause in the Constitution of the United States."

It is true that in *Kepner,* a case arising in the Philippine Islands under a statutory prohibition against double jeopardy, Mr. Justice Holmes dissented from the Court's holding that the Government could not appeal an acquittal in a criminal prosecution. He argued that there was only one continuing jeopardy until the "case" had finally been settled, appeal and all, without regard to how many times the defendant was tried, but that view was rejected by the Court. The position taken by the majority in *Kepner* is completely in accord with the deeply entrenched principle of our criminal law that once a person has been acquitted of an offense he cannot be prosecuted again on the same charge. This Court has uniformly adhered to that basic premise. For example, in *United States* v. *Ball*, 163 U. S. 662, 671, a unanimous Court held:

> "The verdict of acquittal was final, and could not be reviewed, on error or otherwise, without putting [the defendant] twice in jeopardy, and thereby violating the Constitution."

And see *Peters* v. *Hobby*, 349 U. S. 331, 344-345; *United States* v. *Sanges*, 144 U. S. 310.

193 *193 Using reasoning which purports to be analogous to that expressed by Mr. Justice Holmes in *Kepner,* the Government alternatively argues that Green, by appealing, prolonged his original jeopardy so that when his conviction for second degree murder was reversed and the case remanded he could be tried again for first degree murder without placing him in new jeopardy. We believe this argument is also untenable. Whatever may be said for the notion of continuing jeopardy with regard to an offense when a defendant has been convicted of that offense and has secured reversal of the conviction by appeal, here Green was not convicted of first degree murder and that offense was not involved in his appeal. If Green had only appealed his conviction of arson and that conviction had been set aside surely no one would claim that he could have been tried a second time for first degree murder by reasoning that his initial jeopardy on that charge continued until every offense alleged in the indictment had been finally adjudicated.

Reduced to plain terms, the Government contends that in order to secure the reversal of an erroneous conviction of one offense, a defendant must surrender his valid defense of former jeopardy not only on that offense but also on a different offense for which he was not convicted and which was not involved in his appeal. Or stated in the terms of this case, he must be willing to barter his constitutional protection against a second prosecution for an offense punishable by death as the price of a successful appeal from an erroneous conviction of another offense for which he has been sentenced to five to twenty years' imprisonment. As the Court of Appeals said in its first opinion in this case, a defendant faced with such a "choice" takes a "desperate chance" in securing the reversal of the erroneous conviction. The law should not, and in our judgment does not, place the defendant in such an incredible dilemma. Conditioning an appeal of one *194 offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy.[14]

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The Government argues, however, that we should accept *Trono* v. *United States*, 199 U. S. 521, as a conclusive precedent against Green's claim of former jeopardy.[15] The *Trono* case arose in the Philippine Islands, *195 shortly after they had been annexed by the United States, under a statutory prohibition against double jeopardy. At that time a sharply divided Court took the view that not all constitutional guarantees were "applicable" in the insular possessions, particularly where the imposition of these guarantees would disrupt established customs. *Downes* v. *Bidwell*, 182 U. S. 244. In *Trono* the defendants had been charged with murder but were acquitted by the trial court which instead found them guilty of the lesser offense of assault. They appealed the assault conviction to the Philippine Supreme Court. That court, acting under peculiar local procedures modeled on pre-existing Spanish practices, which allowed it to review the facts and law and to substitute its findings for those of the trial judge, set aside their acquittal, found them guilty of murder and increased their sentences.

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On review by this Court, Mr. Justice Peckham, writing for himself and three other Justices, took the position that by appealing the conviction for assault the defendants waived their plea of former jeopardy with regard to the charge of murder. He said:

> "We do not agree to the view that the accused has the right to limit his waiver as to jeopardy, when he appeals from a judgment against him. As the judgment stands before he appeals, it is a complete bar to any further prosecution for the offense set forth in the indictment . . . . No power can wrest from him the right to so use that judgment, but if he chooses to appeal from it . . . he thereby waives, if successful, his right to avail himself of the former acquittal of the greater offense . . . ." 199 U. S., at 533.

196 *196 Mr. Justice Holmes refused to join the Peckham opinion but concurred in the result. Just the year before, in *Kepner v. United States*, 195 U. S. 100, 135, he had sharply denounced the notion of "waiver" as indefensible. There is nothing which indicates that his views had changed in the meantime. As pointed out above, he did dissent from the holding in *Kepner*—that the Government could not appeal an acquittal—on the ground that a new trial after an appeal by the Government was part of a continuing jeopardy rather than a second jeopardy. But that contention has been consistently rejected by this Court.

Chief Justice Fuller and Justices Harlan, White, and McKenna dissented in *Trono*. Mr. Justice McKenna wrote a dissent which was concurred in by Justices White and Harlan. During the course of this opinion he stated:

> "It is, in effect, held that because the defendants . . . appealed and sought a review, as authorized by the statute, of the minor offense for which they were convicted, the United States was given the right to try them for the greater offense for which they were acquitted. . . . I think that the guarantees of constitutions and laws should not be so construed. . . . I submit that the State seeks no convictions except in legal ways, and because it does not it affords means of review of erroneous rulings and judgments, and freely affords such means. It does not clog them with conditions or forfeit by their exercise great and constitutional rights.
>
> .....
>
> "Here and there may be found a decision which supports the exposition of once in jeopardy expressed in the [Peckham] opinion. Opposed to it is the general consensus of opinion of American text books on criminal law and the overwhelming weight of American decided cases." 199 U. S., at 538-539, 540.

197 *197 We do not believe that *Trono* should be extended beyond its peculiar factual setting to control the present case. All that was before the Court in *Trono* was a statutory provision against double jeopardy pertaining to the Philippine Islands—a territory just recently conquered with long-established legal procedures that were alien to the common law.[16] Even then it seems apparent that a majority of the Court was unable to agree on any common ground for the conclusion that an appeal of a lesser offense destroyed a defense of former jeopardy on a greater offense for which the defendant had already been acquitted. As a matter of fact, it appears that each of the rationalizations advanced to justify this result was rejected by a majority of the Court. As Mr. Justice Holmes, who concurred in the result, effectively demonstrated, the "waiver theory" is totally unsound and indefensible. On the other hand Mr. Justice Holmes' theory of continuing jeopardy has never outwardly been adhered to by any other Justice of this Court.[17]

198 *198 We believe that if either of the rationales offered to support the *Trono* result were adopted here it would unduly impair the constitutional prohibition against double jeopardy. The right not to be placed in jeopardy more than once for the same offense is a vital safeguard in our society, one that was dearly won and one that should continue to be highly valued. If such great constitutional protections are given a narrow, grudging application they are deprived of much of their significance. We do not feel that *Trono* or any other decision by this Court compels us to forego the conclusion that the second trial of Green for first degree murder was contrary to both the letter and spirit of the Fifth Amendment.

Reversed.

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE BURTON, MR. JUSTICE CLARK and MR. JUSTICE HARLAN join, dissenting.

On the basis of the following facts the Court has concluded that petitioner has twice been put in jeopardy of life in violation of the Fifth Amendment to the Constitution.[1]

Petitioner was tried under an indictment on two counts. The first count charged arson under D. C. Code, 1951, § 22-401. The second count charged murder in the first degree under D. C. Code, 1951, § 22-2401, in that in perpetrating the arson petitioner had caused the death of one Bettie Brown. In submitting the case to the jury under the second count, the trial court instructed on both first and second degree murder. The jury returned a verdict finding petitioner guilty of arson under the first count and of second degree murder under the

199 second count; the verdict was silent on the charge of first degree *199 murder. The court entered judgment on the verdict, and sentenced petitioner to terms of imprisonment of one to three years on the first count of the indictment and five to twenty years on the second count.

Petitioner appealed his conviction of second degree murder, contending that there was no evidence to support a verdict for that offense. The Court of Appeals sustained this claim. It reversed the conviction and ordered a new trial on the ground that, since there was no basis in the evidence for finding petitioner guilty of murder in the second degree, it was error to instruct the jury on that issue. 95 U. S. App. D. C. 45, 218 F. 2d 856.[2] Petitioner was retried on the second count of the indictment, convicted of first degree murder, and sentenced to death. The Court of Appeals, the nine judges sitting *en banc*, affirmed this conviction, rejecting petitioner's contention that he had been put twice in jeopardy of his life in violation of the Federal Constitution, 98 U. S. App. D. C. 413, 236 F. 2d 708, Chief Judge Edgerton and Judges Bazelon and Fahy dissenting.

Since the prohibition in the Constitution against double jeopardy is derived from history, its significance and scope must be determined, "not simply by taking the words and a dictionary, but by considering [its] . . . origin and the line of [its] . . . growth." Gompers v. United States, 233 U. S. 604, 610.

200 *200 The origin of this constitutional protection is found in the common-law pleas of *autrefois acquit* and *autrefois convict*. In *Vaux's Case*, 4 Co. Rep. 44a, 45a, it was accepted as established that "the life of a man shall not be twice put in jeopardy for one and the same offence, and that is the reason and cause that *auterfoits* acquitted or convicted of the same offence is a good plea . . . ." Likewise Blackstone stated that "the plea of *auterfoits acquit*, or a former acquittal, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life, more than once, for the same offence. And hence it is allowed as a consequence, that when a man is once fairly found not guilty upon any indictment, or other prosecution, before any court having competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime." 4 Bl. Comm. 335. To try again one who had been previously convicted or acquitted of the same offense was "abhorrent to the law of England." Regina v. Tancock, 13 Cox C. C. 217, 220; see The King v. Emden, 9 East 437, 445-447.

A principle so deeply rooted in the law of England, as an indispensable requirement of a civilized criminal procedure, was inevitably part of the legal tradition of the English Colonists in America. The Massachusetts Body of Liberties of 1641, an early compilation of principles drawn from the statutes and common law of England, declared that, "No man shall be twise sentenced by Civill Justice for one and the same Crime, offence, or Trespasse," and that "Everie Action betweene partie and partie, and proceedings against delinquents in Criminall causes shall be briefly and destinctly entered on the Rolles of every Court by the Recorder thereof. That such actions be not afterwards brought againe to the vexation of any man." Colonial Laws of Massachusetts 43, 47.

201 *201 Thus the First Congress, which proposed the Bill of Rights, came to its task with a tradition against double jeopardy founded both on ancient precedents in the English law and on legislation that had grown out of colonial experience and necessities. The need for the principle's general protection was undisputed, though its scope was not clearly defined. Fear of the power of the newly established Federal Government required "an explicit avowal in [the Constitution] . . . of some of the plainest and best established principles in relation to the rights of the citizens, and the rules of the common law." People v. Goodwin, 18 Johns. (N. Y.) 187, 202. Although many States in ratifying the Constitution had proposed amendments considered indispensable to secure the rights of the citizen against the Federal Government, New York alone proposed a prohibition against double jeopardy. This is not surprising in view of the fact that only in New Hampshire had the common-law principle been embodied in a constitutional provision. 2 Poore, Federal and State Constitutions, Colonial Charters and other Organic Laws (2d ed.), 1282. The bill of rights adopted by the New York convention, and transmitted to Congress with its ratification of the Constitution, included a declaration that, "no Person ought to be put twice in Jeopardy of Life or Limb for one and the same Offence, nor, unless in case of impeachment, be punished more than once for the same Offence." Documents Illustrative of the Formation of the Union, H. R. Doc. No. 398, 69th Cong., 1st Sess. 1035. This declaration was doubtless before Madison when he drafted the constitutional amendments to be proposed to the States.

The terms in which Madison introduced into the House what became the specific provision that is our present concern were these: "No person shall be subject, except in cases of impeachment, to more than one punishment *202 or one trial for the same offence . . . ." 1 Annals of Cong. 434. Debate on this provision in the Committee of the Whole evidenced a concern that the language should express what the members understood to be the established common-law principle. There was fear that, as proposed by Madison, it might be taken to prohibit a second trial even when sought by a defendant who had been convicted. Representative Benson of New York objected to the provision because he presumed it was meant to express the established principle "that no man's life should be more than once put in jeopardy for the same offence; yet it was well known, that they were entitled to more than one trial." 1 Annals of Cong. 753. Others who spoke agreed that although of course there could be no second trial following an acquittal, the prohibition should not extend to a second trial when a conviction had been set aside. The provision as amended by the Senate, S. J., 1st Cong., 1st Sess. 77, and eventually ratified as part of the Fifth Amendment to the Constitution, was substantially in the language used by Representative Benson to express his understanding of the common law.

The question that had concerned the House in debating Madison's proposal, the relation between the prohibition against double jeopardy and the power to order a new trial following conviction, was considered at length by Mr. Justice Story, on circuit, in United States v. Gibert, 25 Fed. Cas. 1287, 1294-1303 (1834). The defendants in that case had been found guilty of robbery on the high seas, a capital offense, and moved for a new trial. Mr. Justice Story, after full consideration of the English and American authorities, concluded that the court had no power to grant a new trial when the first trial had been duly had on a valid indictment before a court of competent jurisdiction. According to his view, the prohibition against double jeopardy applied equally whether the defendant *203 had been acquitted or convicted, and there was no exception for a case where the new trial was sought by the defendant for his own benefit. Earlier, Mr. Justice Story had himself taken a non-literal view of the constitutional provision in United States v. Perez, 9 Wheat. 579, where, writing for the Court, he found that discharge of a jury that had failed to agree was no bar to a second trial. See also 3 Story, Commentaries on The Constitution (1833), 659-660.

Story's conclusion that English law prohibited, except in rare instances, granting a new trial after conviction of a felony was undoubtedly

correct, see The King v. Mawbey, 6 T. R. 619, 638, and on occasion this result has been expressly made to depend on the maxim prohibiting double jeopardy. *The Queen* v. *Murphy*, 2 L. R. P. C. 535, 547-548; see *The Attorney-General* v. *Bertrand*, 1 L. R. P. C. 520, 531-534; but see The Queen v. Scaife, 17 Q. B. 238. To this day the Court of Criminal Appeals has ordinarily no power to order a new trial even after quashing a conviction on appeal by the defendant, Criminal Appeal Act, 7 Edw. VII, c. 23, s. 4 (2), and repeated efforts to secure this power for the court have met with the argument that a new trial would, at least in spirit, offend the principle that a defendant may not be put twice in jeopardy for the same offense. See 176 H. L. Deb. (5th ser. 1952) 759-763.

The old practice of the English courts, and the position taken by Mr. Justice Story, however, was generally rejected in the United States. The power to grant a new trial in the most serious cases appears to have been exercised by many American courts from an early date in spite of provisions against double jeopardy. United States v. Fries, 3 Dall. 515 (treason); see *People* v. *Morrison*, 1 Parker's Crim. Rep. (N. Y.) 625, 626-643 (rape). In United States v. Keen, 26 Fed. Cas. 686, 687-690, a decision rendered only five years after United States v. *204 Gibert, supra, Mr. Justice McLean, on circuit, vigorously rejected the view that the constitutional provision prohibited a new trial on the defendant's motion after a conviction, or that it "guarantees to him the right of being hung, to protect him from the danger of a second trial." See 26 Fed. Cas., at 690. Other federal courts that had occasion to consider the question also rejected Mr. Justice Story's position, see United States v. Williams, 28 Fed. Cas. 636, 641; United States v. Harding, 26 Fed. Cas. 131, 136-138, and statements by this Court cast serious doubt on its validity. See Ex parte Lange, 18 Wall. 163, 173-174, and Mr. Justice Clifford dissenting at 201-204. In Hopt v. Utah, 104 U. S. 631, 110 U. S. 574, 114 U. S. 488, 120 U. S. 430, the defendant was in fact retried three times following reversals of his convictions.

Finally, United States v. Ball, 163 U. S. 662-671, expressly rejected the view that the double jeopardy provision prevented a second trial when a conviction had been set aside. Two of the defendants in the case had been convicted of murder, and on writ of error the judgments were reversed with directions to quash the indictment. The same defendants were then convicted on a new indictment. In affirming these convictions the Court said, "it is quite clear that a defendant, who procures a judgment against him upon an indictment to be set aside, may be tried anew upon the same indictment, or upon another indictment, for the same offence of which he had been convicted." 163 U. S., at 672. On a literal reading of the constitutional provision, with an eye exclusively to the interests of the defendants, they had been "once in jeopardy," and were entitled to the benefit of a reversal of their convictions without the hazard of a new trial. The Court recognized, however, that such a wooden interpretation would distort the purposes of the constitutional provision to the prejudice of society's legitimate interest in convicting the guilty as much as, *205 in United States v. Gibert, they had been distorted to the prejudice of the defendants. See also Murphy v. Massachusetts, 177 U. S. 155, 158-160.

The precise question now here first came before a federal court in United States v. Harding, 26 Fed. Cas. 131. There three defendants had been jointly indicted and tried for murder. One was convicted of murder and two of manslaughter, and all moved for a new trial. A new trial was ordered for the defendant convicted of murder, and as to the other two defendants the case was continued to allow them to decide whether they would take a new trial or abide by their convictions. Mr. Justice Grier warned these defendants:

> "You ought clearly to understand and weigh well the position in which you now stand. You have been once tried and acquitted of the higher grade of offence charged against you in this indictment, the penalty affixed to which is death; but . . . you have escaped. . . . But let me now solemnly warn you to consider well the choice you shall make. Another jury instead of acquitting you altogether, may find you guilty of the whole indictment, and thus your lives may become forfeit to the law." 26 Fed. Cas., at 138.

In thus assuming that the defendants could be retried for the greater offense of murder without violating the prohibition against double jeopardy, Mr. Justice Grier evidently drew upon a familiar background and what he took to be established practice in the federal courts. To one versed in these traditions, the choice to which the defendants were put in abiding by their convictions or obtaining a new trial, on which the entire question of their guilt would be open to re-examination, seemed legally speaking a matter of course.

Not until Trono v. United States, 199 U. S. 521 (1905), more than fifty years after the *Harding* case, did the question *206 that had there been passed upon by Mr. Justice Grier first come before this Court. Trono v. United States came here from the Philippine Islands. The plaintiffs in error had been proceeded against in a court of first instance on a complaint accusing them of murder in the first degree. They were acquitted of this charge, but convicted of the included offense of assault. They appealed to the Supreme Court of the Philippines, and that court, exercising a jurisdiction similar to that conferred by Spanish law on the former Audience to review the whole case both on the facts and the law, reversed the judgment of the court of first instance, convicted the plaintiffs in error of the crime of "homicide," or murder in the second degree, and increased the punishment imposed by the court of first instance. The plaintiffs in error then sought review by this Court, claiming that the action of the Supreme Court of the Philippines had placed them twice in jeopardy in contravention of the declaration of rights contained in § 5 of the Act of July 1, 1902, for the Government of the Philippines. The provision in the statute relied on by the plaintiffs in error declared that, "no person for the same offense shall be twice put in jeopardy of punishment . . . ." 32 Stat. 692. This language, it will be noted, is substantially identical with that in the Fifth Amendment to the Constitution, upon which petitioner in the present case relies. Its legal relation to the Fifth Amendment calls for later consideration.

This Court affirmed the judgment of the Supreme Court of the Philippines, holding that since the plaintiffs in error had appealed their convictions of the lower offense in order to secure a reversal, there was no bar to convicting them of the higher offense in proceedings in the appellate court that were tantamount to a new trial. After canvassing state and federal precedents, Mr. Justice Peckham concluded that, "the better doctrine is that *207 which does not limit the court or jury, upon a new trial, to a consideration of the question of guilt of the lower offense of which the accused was convicted on the first trial, but that the reversal of the judgment of conviction opens up the whole controversy and acts upon the original judgment as if it had never been." 199 U. S., at 533. It was pointed out that in permitting retrial for the greater offense the Court only applied the principle laid down in *United States* v. *Ball, supra*, and that the result was justified not only on the theory that the accused had "waived" their right not to be retried, but also on the ground that, "the constitutional provision was really never intended to, and, properly construed, does not cover, the case of a judgment under these circumstances, which has been annulled by the court at the request of the accused . . . ." 199 U. S., at 534.

The Court in *Trono* left no doubt that its decision did not turn on any surviving peculiarities of Spanish procedure, or on the fact that the plaintiffs in error relied on a statutory provision rather than on the Fifth Amendment itself. "We may regard the question as thus presented," stated Mr. Justice Peckham, "as the same as if it arose in one of the Federal courts in this country, where, upon an indictment for a greater offense, the jury had found the accused not guilty of that offense, but guilty of a lower one which was included in it, and upon an appeal from that judgment by the accused a new trial had been granted by the appellate court, and the question was whether, upon the new trial accorded, the accused could be again tried for the greater offense . . . ." 199 U. S., at 530. The dissenters did not dispute this view of the case, but on the contrary were concerned with the Court's holding precisely because of its constitutional implications. Mr. Justice Harlan adhered to the view he had taken in earlier cases that the Bill of Rights applied to the Islands, and Mr. Justice McKenna in the principal *208 dissent observed that, "Let it be remembered that we are dealing with a great right, I may even say a constitutional right, for the opinion of the court discusses the case as though it were from a Circuit Court of the United States." 199 U. S., at 539.

The scope and significance of the *Trono* case is underscored by the Court's decision in *Kepner* v. *United States*, 195 U. S. 100, rendered only a year before. That case also arose in the Philippine Islands. The plaintiff in error had been acquitted by the court of first instance of the offense with which he was charged. On appeal by the Government to the Supreme Court of the Islands, the judgment was reversed and the plaintiff in error convicted. In this Court both the Attorney General for the Philippines and the Solicitor General of the United States contended that § 5 of the Act of July 1, 1902, which included the same prohibition against double jeopardy involved in the *Trono* case, should be construed in the light of the system of law prevailing in the Philippines before they were ceded to the United States. Brief for the Attorney General of the Philippines, pp. 6-16, 29-38; Brief for the Solicitor General, pp. 34-44. Under that jurisprudence, proceedings in the Supreme Court, or Audience, were regarded not as a new trial but as an extension of preliminary proceedings in the court of first instance. The entire proceedings constituted one continuous trial, and the jeopardy that attached in the court of first instance did not terminate until final judgment had been rendered by the Audience.

The Court rejected the Government's contention and held that the proceedings after acquittal had placed the accused twice in jeopardy. Whatever the Spanish tradition, the purpose of Congress was "to carry some at least of the essential principles of American constitutional jurisprudence to these islands and to engraft them upon the law of this people, newly subject to our jurisdiction." *209 "This case does not . . . require determination of the question whether the jeopardy clause [of the Fifth Amendment] became the law of the islands . . . without Congressional action, as the act of Congress made it the law of these possessions when the accused was tried and convicted." 195 U. S., at 121-122, 125. The Court also rejected the suggestion that the rights enumerated in the Act of Congress could have been used "in any other sense than that which has been placed upon them in construing the instrument from which they were taken . . . ." 195 U. S., at 124. Mr. Justice Holmes, dissenting, found the case "of great importance, not only in its immediate bearing upon the administration of justice in the Philippines, but, since the words used in the Act of Congress are also in the Constitution, even more because the decision necessarily will carry with it an interpretation of the latter instrument." 195 U. S., at 134.

The legislative history of the Philippine Bill of Rights, § 5 of the Act of July 1, 1902, made inevitable the Court's conclusion that by its enactment Congress extended to the Islands the double jeopardy provision of the Fifth Amendment, notwithstanding surviving Spanish procedures, so that the Court should construe the statute as it would the constitutional provision itself. President McKinley, in his famous instructions to the Philippine Commission, dated April 7, 1900, drawn by a leader of the American Bar, Secretary of War Elihu Root, had stated that

> "the Commission should bear in mind, and the people of the Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which *210 we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar. It is evident that the most enlightened thought of the Philippine Islands fully appreciates the importance of these principles and rules, and they

will inevitably within a short time command universal assent. Upon every division and branch of the Government of the Philippines, therefore, must be imposed these inviolable rules:

"That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense . . . ." 1 Public Laws of the Philippine Commission, p. LXVI.[3]

211 *211 As the Court pointed out, "These principles were not taken from the Spanish law; they were carefully collated from our own Constitution, and embody almost verbatim the safeguards of that instrument for the protection of life and liberty." 195 U. S., at 124. In the Act of July 1, 1902, Congress adopted, almost in the language of the President's instructions, the fundamental provisions he considered must be engrafted onto Philippine law, and the historical context in which Congress acted leaves no doubt that it was also actuated by the same purpose as the President, to extend to the Philippines "certain great principles of government which have been made the basis of our governmental system . . . ." 1 Public Laws of the Philippine Commission, p. LXVI. In the double jeopardy provision of § 5 Congress did not fashion a novel principle specially adapted to Philippine conditions and different from what was familiar to American
212 constitutional *212 thought. On the contrary, it extended over those newly subject to our jurisdiction the specific command of the Fifth Amendment, as construed and developed in the decisions of this Court. The Court in the *Kepner* and *Trono* cases, therefore, following the statutory language itself, emphasized by its legislative history, construed the double jeopardy provision of § 5 as though it were construing the same provision in the United States Constitution. See also *Weems* v. *United States*, 217 U. S. 349, 367-368. The background of these decisions, and the expressed understanding of the Court on the nature and scope of the provision construed, make them direct authority in all cases arising under the double jeopardy provision of the Fifth Amendment.

The decision in *Trono* was emphatically a decision of the Court. Although Mr. Justice Holmes concurred in the result only, and not in the opinion of Mr. Justice Peckham, there can be no doubt of where he stood. He had dissented in the *Kepner* case on the ground that trial and retrial constituted one procedure entailing one continuous jeopardy, and that there could be no second jeopardy until a conviction or acquittal free from legal error had been obtained. He was dissatisfied with the opinion of Mr. Justice Peckham in the *Trono* case, therefore, not remotely because it upheld the accused's conviction of the greater offense, but because it did not go further and adopt the continuing jeopardy theory Mr. Justice Holmes had espoused in the *Kepner* case. If there was no double jeopardy for him when the Government appealed an acquittal, obviously there was none when the defendant appealed a conviction. Indeed, in *Kepner* he explicitly stated that he considered state cases that held the defendant could not be retried for the greater offense to be wrong.

213 Many statements by this Court since *Trono* show that the principle of that case cannot in all good conscience *213 be rested on the criminal procedure of the Philippine Islands, but on a construction of the Fifth Amendment itself, and as such binding on the entire federal judiciary. In *Burton* v. *United States*, 202 U. S. 344, 378, a case arising in the continental United States, the Court referred to the principle established by the *Trono* decision without any suggestion that it was confined to cases arising in the Philippines. In *Brantley* v. *Georgia*, 217 U. S. 284, the defendant was convicted of manslaughter under an indictment for murder. On appeal to the State Court of Appeals, the conviction was reversed and the defendant retried and convicted of murder. Although the case concerned the Due Process Clause, the Court comprehensively stated that this "was not a case of twice in jeopardy under any view of the Constitution of the United States." 217 U. S., at 285.

Of special relevance is *Stroud* v. *United States*, 251 U. S. 15, 17-18. In that case the defendant was indicted for murder, and the jury returned a verdict of "guilty as charged in the indictment without capital punishment." The judgment was reversed and a new trial had on which the defendant was again found guilty of murder, but without a recommendation against capital punishment. He was then sentenced to death. This Court expressly relied on *Trono* in affirming the judgment and rejecting the contention that the imposition of a greater punishment had placed the defendant twice in jeopardy. As a practical matter, and on any basis of human values, it is scarcely possible to distinguish a case in which the defendant is convicted of a greater offense from one in which he is convicted of an offense that has the same name as that of which he was previously convicted but carries a significantly different punishment, namely death rather than imprisonment.

214 Whatever formal disclaimers may be made, neither *Trono* itself nor the reliance placed upon it for more than *214 half a century permits any other conclusion than that the Court today overrules that decision. It does so, furthermore, in a case where the defendant's position is far less persuasive than it was in *Trono*. There the plaintiffs in error had been expressly acquitted of the greater offense, whereas in the present case petitioner relies on an "implied acquittal" based on his conviction of the lesser offense of second degree murder and the jury's silence on the greater offense. Surely the silence of the jury is not, contrary to the Court's suggestion, to be interpreted as an express finding that the defendant is not guilty of the greater offense. All that can with confidence be said is that the jury was in fact silent. Every trial lawyer and every trial judge knows that jury verdicts are not logical products, and are due to considerations that

preclude accurate guessing or logical deduction. Insofar as state cases speak of the jury's silence as an "acquittal," they give a fictional description of a legal result: that when a defendant is found guilty of a lesser offense under an indictment charging a more serious one, and he is content to accept this conviction, the State may not again prosecute him for the greater offense. A very different situation is presented, with considerations persuasive of a different legal result, when the defendant is not content with his conviction, but appeals and obtains a reversal. Due regard for these additional considerations is not met by stating, as though it were a self-evident proposition, that the jury's silence has, for all purposes, "acquitted" the defendant.

Moreover, the error of the District Court, which was the basis for petitioner's appeal from his first conviction, was of a kind peculiarly likely to raise doubts that the jury on the first trial had made a considered determination of petitioner's innocence of first degree murder. By instructing on second degree murder when the evidence did not warrant a finding of such an offense, the court *215 gave the jury an opportunity for compromise and lenity that should not have been available. The fact of the matter is that by finding petitioner guilty of arson under count one of the indictment, and of second degree murder under count two, the jury found him guilty of all the elements necessary to convict him of the first degree felony murder with which he was charged, but the judge's erroneous instruction permitted the jury, for its own undisclosed reason, to render an irrational verdict.

We should not be so unmindful, even when constitutional questions are involved, of the principle of *stare decisis*, by whose circumspect observance the wisdom of this Court as an institution transcending the moment can alone be brought to bear on the difficult problems that confront us. The question in the present case is effectively indistinguishable from that in *Trono*. Furthermore, we are not here called upon to weigh considerations generated by changing concepts as to minimum standards of fairness, which interpretation of the Due Process Clause inevitably requires. Instead, the defense of double jeopardy is involved, whose contours are the product of history. In this situation the passage of time is not enough, and the conviction borne to the mind of the rightness of an overturning decision must surely be of a highly compelling quality to justify overruling a well-established precedent when we are presented with no considerations fairly deemed to have been wanting to those who preceded us. Whatever might have been the allowable result if the question of retrying a defendant for the greater offense were here for the first time, to fashion a policy *in favorem vitae*, it is foreclosed by the decision in *Trono* v. *United States*.

Even if the question were here for the first time, we would not be justified in erecting the holding of the present case as a constitutional rule. Yet the opinion of the Court treats the question, not as one within *216 our supervisory jurisdiction over federal criminal procedure, but as a question answered by the Fifth Amendment itself, and which therefore even Congress cannot undertake to affect.

Such an approach misconceives the purposes of the double jeopardy provision, and without warrant from the Constitution makes an absolute of the interests of the accused in disregard of the interests of society. In *Palko* v. *Connecticut*, 302 U. S. 319, we held that a State could permit the prosecution to appeal a conviction of second degree murder and on retrial secure a conviction of first degree murder without violating any "fundamental principles of liberty and justice." Since the State's interest in obtaining a trial "free from the corrosion of substantial legal error" was sufficient to sustain the conviction of the greater offense after an appeal by the State, it would of course sustain such a conviction if the defendant had himself appealed. Although this case defined conduct permissible under the Due Process Clause of the Fourteenth Amendment, it cannot wisely be ignored in tracing the constitutional limits imposed on the Federal Government. Nor should we ignore the fact that a substantial body of opinion in the States permits what today the Court condemns as violative of a "vital safeguard in our society."[4] The Court restricts Congress within limits *217 that in the experience of many jurisdictions are not a part of the protection against double jeopardy or required by its underlying purpose, and have not been imposed *218 upon the States in the exercise of their governmental powers.

Undeniably the framers of the Bill of Rights were concerned to protect defendants from oppression and from *219 efforts to secure, through the callousness of repeated prosecutions, convictions for whose justice no man could vouch. On the other hand, they were also aware of the countervailing interest in the vindication of criminal justice, which sets outer limits to the protections for those accused of crimes. Thus if a defendant appeals his conviction and obtains a reversal, all agree, certainly in this country, that he may be retried for the same offense. The reason is, obviously, not that the defendant has consented to the second trial—he would much prefer that the conviction be set aside and no further proceedings had—but that the continuation of the proceedings by an appeal, together with the reversal of the conviction, are sufficient to permit a re-examination of the issue of the defendant's guilt without doing violence to the purposes behind the Double Jeopardy Clause. The balance represented by that clause leaves free another appeal to law. Since the propriety of the original proceedings has been called in question by the defendant, a complete re-examination of the issues in dispute is appropriate and not unjust. In the circumstances of the present case, likewise, the reversal of petitioner's conviction was a sufficient reason to justify a complete new trial in order that both parties might have one free from errors claimed to be prejudicial. As Mr. Justice Peckham pointed out in *Trono*, "the constitutional provision was really never intended to, and, properly construed, does not cover, the case of a judgment under these circumstances, which has been annulled by the court at the request of the accused . . . ." 199 U. S., at 534.

I would affirm the judgment.

FOOT NOTE:

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[1] D. C. Code, 1951, § 22-401.

[2] D. C. Code, 1951, § 22-2401. "Whoever, being of sound memory and discretion . . . without purpose so to do kills another in perpetrating or in attempting to perpetrate any arson, as defined in section 22-401 . . . is guilty of murder in the first degree."

Section 22-2404 provides that the "punishment of murder in the first degree shall be death by electrocution."

[3] D. C. Code, 1951, § 22-2403. "Whoever with malice aforethought except as provided in [§] 22-2401 . . . kills another, is guilty of murder in the second degree."

§ 22-2404. "The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years."

[4] Blackstone's Commentaries 335.

[5] And see *United States* v. *Ball*, 163 U. S. 662, 669:

"The prohibition is not against being twice punished, but against being twice put in jeopardy; and the accused, whether convicted or acquitted, is equally put in jeopardy at the first trial."

[6] See 1 Stephen, History of the Criminal Law of England, c. x; *United States* v. *Gibert*, 25 Fed. Cas. 1287.

[7] Under English law the appellate court has no power to order a new trial after any appeal except in certain cases where the first trial was a complete "nullity," as for example when the trial court was without jurisdiction over the person or subject matter. See 4 Stephen, Commentaries on the Laws of England (21st ed. 1950), 284. The English appellate court does have power to substitute a finding of guilt of a lesser offense if the evidence warrants, but it cannot find the defendant guilty of an offense for which he was acquitted or increase his sentence. See 10 Halsbury, Laws of England (Simonds ed. 1955), 539-541, and the cases cited there.

[8] See, *e. g.*, *Brewster* v. *Swope*, 180 F. 2d 984; *State* v. *McCord*, 8 Kan. 232, 12 Am. Rep. 469; *Cross* v. *Commonwealth*, 195 Va. 62, 77 S. E. 2d 447; *Smith* v. *State*, 196 Wis. 102, 219 N. W. 270.

[9] See, *e. g.*, *State* v. *Aus*, 105 Mont. 82, 69 P. 2d 584. Cf. *Griffin* v. *Illinois*, 351 U. S. 12, 18.

[10] In substance the situation was the same as though Green had been charged with these different offenses in separate but alternative counts of the indictment. The constitutional issues at stake here should not turn on the fact that both offenses were charged to the jury under one count.

[11] It should be noted that Green's claim of former jeopardy is not based on his previous conviction for second degree murder but instead on the original jury's refusal to convict him of first degree murder.

[12] Many of the state courts which have considered the problem have concluded that under circumstances similar to those of this case a defendant cannot be tried a second time for first degree murder. Other state cases take a contrary position. In general see the Annotations at 59 A. L. R. 1160, 22 L. R. A. (N. S.) 959, and 5 L. R. A. (N. S.) 571. Of course, many of the state decisions rest on local constitutional or statutory provisions.

[13] See cases collected in the Annotations cited in n. 12, *supra*, and the Annotation at 114 A. L. R. 1406.

[14] The suggestion is made that under the District Code second degree murder is not an offense included in a charge of first degree murder for causing a death in the course of perpetrating a felony (commonly referred to as "felony murder") because it involves elements different from those necessary to establish the felony murder, and that therefore Green could not legally have been convicted of second degree murder under the indictment. We fail to comprehend how this suggestion aids the Government. In the first place, the District of Columbia Court of Appeals has expressly held that second degree murder is a lesser offense which can be proved under a charge of felony murder. *Goodall* v. *United States*, 86 U. S. App. D. C. 148, 180 F. 2d 397; *Green* v. *United States*, 95 U. S. App. D. C. 45, 218 F. 2d 856. Even more important, Green's plea of former jeopardy does not rest on his conviction for second degree murder but instead on the first jury's refusal to find him guilty of felony murder.

It is immaterial whether second degree murder is a lesser offense included in a charge of felony murder or not. The vital thing is that it is a distinct and different offense. If anything, the fact that it cannot be classified as "a lesser included offense" under the charge of felony murder buttresses our conclusion that Green was unconstitutionally twice placed in jeopardy. American courts have held with uniformity that where a defendant is charged with two offenses, neither of which is a lesser offense included within the other, and has been found guilty on one but not on the second he cannot be tried again on the second even though he secures reversal of the conviction and even though the two offenses are related offenses charged in the same indictment. See, *e. g.*, Annotation, 114 A. L. R. 1406.

[15] With the exception of *Trono*, the Government appears to concede in its brief, pp. 38-39, that the double jeopardy problem raised in this case has not been squarely before this Court. *Palko* v. *Connecticut*, 302 U. S. 319, *Brantley* v. *Georgia*, 217 U. S. 284, and *Kring* v. *Missouri*, 107 U. S. 221, are not controlling here since they involved trials in state courts. *Stroud* v. *United States*, 251 U. S. 15, is clearly distinguishable. In that case a defendant was retried for first degree murder after he had successfully asked an appellate court to set aside a prior conviction for that same offense.

[16] In the course of his opinion Mr. Justice Peckham made some general observations to the effect that he regarded the statutory provision as having the same effect as the Fifth Amendment. Those remarks were not essential to the decision so that even if they had been accepted by the full Court they would not be conclusive in this case where the interpretation of the Fifth Amendment is necessarily decisive. Cf. *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 626-627.

[17] Mr. Justice White and Mr. Justice McKenna who dissented with Mr. Justice Holmes in *Kepner* refused to agree with the Court in *Trono*. In his dissent in the latter case Mr. Justice McKenna attributed his vote in *Kepner* to the fact that the Philippine Islands had a system of jurisprudence which was totally

different from ours in that it provided no trial by jury and traditionally had permitted appellate courts to review both the law and the facts in criminal cases and to substitute their findings for those made by the trial judge. Justice Peckham, in his opinion, also recognized the peculiar nature of these Philippine procedures.

[1] "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . ."

[2] In reversing petitioner's conviction the court observed that: "In seeking a new trial at which—if the evidence is substantially as before—the jury will have no choice except to find him guilty of first degree murder or to acquit him, Green is manifestly taking a desperate chance. He may suffer the death penalty. At oral argument we inquired of his counsel whether Green clearly understood the possible consequence of success on this appeal, and were told the appellant, who is 64 years of age, says he prefers death to spending the rest of his life in prison. He is entitled to a new trial." 95 U. S. App. D. C. 45, 48, 218 F. 2d 856, 859.

[3] These instructions were drawn up for the guidance of the Commission headed by William Howard Taft. In 1912, W. Cameron Forbes, then Governor General of the Philippines, asked Taft "what the history of the formation of the Philippine policy was, who it was that had written the instructions by President McKinley to the Taft Commission. He informed me that this was the work of Secretary Root, who wrote the letter of instructions, after which he had read them over to him (Judge Taft) and other members of his Commission, and that some suggestions and modifications were made but that the main work was intact." 1 Forbes, The Philippine Islands, 130, n. 2. In an address in 1913, Taft stated that the instructions "had a conspicuous place in the history of our relations to the Philippines, and a Congressional indorsement, given to but few documents in the whole history of our country. It secured to the Philippine people all the guaranties of our Bill of Rights except trial by jury and the right to bear arms. It was issued by President McKinley as commander-in-chief of the Army and Navy in the exercise of a power which Congress was glad to leave to him without intervention for four years. He had thus the absolute control of what should be done in the way of establishing government in the Philippine Islands, and this letter to Mr. Root was the fundamental law of a civil government established under military authority. Subsequently, in 1902, when Congress assumed responsibility, it formally adopted and expressly ratified this letter of instructions, and declared that it, as supplemented by the remaining provisions of the statute, should be the Constitution of the Government of the Philippine Islands, and the charter of the liberties of the Filipino people." 2 Forbes, The Philippine Islands, 500.

[4] Of the 36 States that have considered the question, 19 permit retrial for the greater offense:

Colorado.—See *Young* v. *People*, 54 Colo. 293, 298-307.

Connecticut.—See *State* v. *Lee*, 65 Conn. 265, 271-278; *State* v. *Palko*, 122 Conn. 529, 538-539, 541, aff'd 302 U. S. 319.

Georgia.—*Brantley* v. *State*, 132 Ga. 573, 574-579, aff'd 217 U. S. 284; *Perdue* v. *State*, 134 Ga. 300, 302-303.

Indiana.—See *Ex parte Bradley*, 48 Ind. 548, 549-558; *State ex rel. Lopez* v. *Killigrew*, 202 Ind. 397, 403-406.

Kansas.—*State* v. *McCord*, 8 Kan. 232, 240-244; see *In re Christensen*, 166 Kan. 671, 675-677.

Kentucky.—*Hoskins* v. *Commonwealth*, 152 Ky. 805, 807-808.

Mississippi.—*Jones* v. *State*, 144 Miss. 52, 60-73, motion for leave to proceed *in forma pauperis* denied for want of substantial federal question, 273 U. S. 639 (citing *Trono* v. *United States*); *Butler* v. *State*, 177 Miss. 91, 100.

Missouri.—See *State* v. *Simms*, 71 Mo. 538, 540-541; *State* v. *Stallings*, 334 Mo. 1, 5.

Nebraska.—*Bohanan* v. *State*, 18 Neb. 57, 58-77, submission of cause set aside because of escape of plaintiff in error, 125 U. S. 692; *Macomber* v. *State*, 137 Neb. 882, 896.

Nevada.—*In re Somers*, 31 Nev. 531, 532-539; see *State* v. *Teeter*, 65 Nev. 584, 610.

New Jersey.—See *State* v. *Leo*, 34 N. J. L. J. 340, 341-342, 356.

New York.—*People* v. *Palmer*, 109 N. Y. 413, 415-420; *People* v. *McGrath*, 202 N. Y. 445, 450-451.

North Carolina.—*State* v. *Correll*, 229 N. C. 640, 641-642; see *State* v. *Matthews*, 142 N. C. 621, 622-623.

Ohio.—*State* v. *Behimer*, 20 Ohio St. 572, 576-582; *State* v. *Robinson*, 100 Ohio App. 466, 470-472.

Oklahoma.—*Watson* v. *State*, 26 Okla. Cr. 377, 379-390; see *Pierce* v. *State*, 96 Okla. Cr. 76, 79.

South Carolina.—See *State* v. *Gillis*, 73 S. C. 318, 319-324; *State* v. *Steadman*, 216 S. C. 579, 588-592.

Utah.—*State* v. *Kessler*, 15 Utah 142, 144-147.

Vermont.—See *State* v. *Bradley*, 67 Vt. 465, 472-474; *State* v. *Pianfetti*, 79 Vt. 236, 246-247.

Washington.—*State* v. *Ash*, 68 Wash. 194, 197-203; *State* v. *Hiatt*, 187 Wash. 226, 236.

In eight of these States, Indiana, Kansas, Kentucky, Nevada, New York, Ohio, Oklahoma, and Utah, this result is based to some extent on statutes defining the effect of granting a new trial. In four, Colorado, Georgia, Mississippi and Missouri, on special constitutional provisions that permit retrial for the greater offense. Connecticut, North Carolina, and Vermont have no constitutional provisions as to double jeopardy, but recognize the common-law rohibition.

In 17 States the defendant cannot be retried for the greater offense:

Alabama.—See Thomas v. State, 255 Ala. 632, 635-636.

Arkansas.—Johnson v. State, 29 Ark. 31, 32-46; see Hearn v. State, 212 Ark. 360, 361.

California.—People v. Gilmore, 4 Cal. 376; People v. Gordon, 99 Cal. 227, 228-232; In re Hess, 45 Cal. 2d 171, 175-176; but see People v. Keefer, 65 Cal. 232, 234-235; People v. McNeer, 14 Cal. App. 2d 22, [illegible]-30; In re Moore, 29 Cal. App. 2d 56.

Delaware.—See State v. Naylor, 28 Del. 99, 114-115, 117.

Florida.—State ex rel. Landis v. Lewis, 118 Fla. 910, 911-916; see McLeod v. State, 128 Fla. 35, 37; Simmons v. State, 156 Fla. 353, 354.

Illinois.—Brennan v. People, 15 Ill. 511, 517-519; People v. Newman, 360 Ill. 226, 232-233.

Iowa.—State v. Tweedy, 11 Iowa 350, 353-358; State v. Coleman, 226 Iowa 968, 976.

Louisiana.—See State v. Harville, 171 La. 256, 258-262.

Michigan.—People v. Farrell, 146 Mich. 264, 266, 269, 272-273, 294; People v. Gessinger, 238 Mich. 625, 627-629.

New Mexico.—State v. Welch, 37 N. M. 549, 559; State v. White, 61 N. M. 109, 113.

Oregon.—State v. Steeves, 29 Ore. 85, 107-111; State v. Wilson, 172 Ore. 373, 382.

Pennsylvania.—Commonwealth v. Deitrick, 221 Pa. 7, 17-18; Commonwealth v. Flax, 331 Pa. 145, 157-158.

Tennessee.—See Slaughter v. State, 6 Humph. 410, 413-415; Reagan v. State, 155 Tenn. 397, 400-402.

Texas.—Jones v. State, 13 Tex. 168, 184-185; Brown v. State, 99 Tex. Cr. R. 19, 21-22; but see Hill v. State, 126 Tex. Cr. R. 79, 80-81; Joubert v. State, 136 Tex. Cr. R. 219, 220-221; Beckham v. State, 141 Tex. Cr. R. 438, 442; Hall v. State, 145 Tex. Cr. R. 192, 194; Ex Parte Byrd, 157 T[illegible] Cr. R. 595, 597-598.

Virginia.—Stuart v. Commonwealth, 28 Gratt. 950, 953-964; see Taylor v. Commonwealth, 186 Va. 587, 589-590, 592.

West Virgin[illegible].—See State v. Franklin, 139 W. Va. 43, 64.

Wisconsin.—Radej v. State, 152 Wis. 503, 511-513; but see State v. B[illegible], 173 Wis. 608, 616-628; State v. Witte, 243 Wis. 423, 427-431; State v. Evjue, 254 Wis. 581, 586-592.

In two of these States, Virginia and Texas, the result is based to some extent on statutes prohibiting retrial for the greater offense, and in New Mexico on a constitutional provision to the same effect.

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EXHIBIT T

A COPY OF SOUTH CAROLINA COURT OF APPEALS DECISION. WERE SOUTH CAROLINA COURT OF APPEALS DECIDED. THAT AARON SCOTT YOUNG JUNOR, WAS IN THE COMMISSION OF COMMITT-ING THE INHERANTLY DANGERIOUS FELONY OF ATTEMPT TO MURDER I TYRONE ROBINSON. DURING THE TIME VICTIM, K.S. [redacted] WAS SHOT AND KILLED, AT THE SAME LOCATION VICTIM K.S. [redacted] WAS SHOT AND KILLED AT.

2-39

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

Appellate Case No. 2015-000508

Appeal From Beaufort County
Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 5592
Heard June 6, 2018 – Filed August 22, 2018

AFFIRMED

of Parker Poe Adams & Bernstein, LLP, of Charleston,
and Chief Appellate Defender Robert Michael Dudek, of
Jennifer Kirk Dunlap and Frederick Elliotte Quinn, both
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General Margaret Graham Boykin, all of Columbia, and Solicitor Isaac McDuffie Stone, III, of Bluffton, for Respondent.

HUFF, J.: Aaron Young, Jr. appeals his convictions of murder and attempted murder. On appeal, Young, Jr. argues the trial court erred in denying: (1) his motion for a directed verdict on the murder charge because the State's mutual

2 40

DIRECTED VERDICT - ATTEMPTED MURDER

Young, Jr. argues the trial court erred in denying his motion for a directed verdict on the attempted murder charge. Young, Jr. asserts the State failed to produce substantial circumstantial evidence showing he attempted to murder Robinson. Specifically, Young, Jr. asserts the evidence at trial showed Robinson was not

present when Young, Jr. shot Robinson's car, and there was no evidence Young, Jr. ever pointed his gun at or tried to shoot Robinson. Young, Jr. therefore concludes the trial court should have granted his motion for a directed verdict. We disagree.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *McHoney*, 344 S.C. at 97, 544 S.E.2d at 36. In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

The trial court properly denied Young, Jr.'s motion for a directed verdict on the attempted murder charge because the State presented substantial circumstantial evidence demonstrating Young, Jr.'s guilt. *See State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999) ("On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State."); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

Here, Singleton testified after Robinson first fired his revolver at the ground near the Youngs, the Youngs went into their house and retrieved a semi-automatic pistol. Thereafter, Singleton and the Youngs drove around their neighborhood searching for Robinson, and Young, Jr. assembled the pistol during the search. Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him. Delaney also testified Robinson told him about an exchange of gun fire with the Youngs. Moreover, the State published Young, Jr.'s police interview to the jury. In the interview, Young, Jr. explained, "The first time we caught [Robinson] … the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road…. But the [pistol] just wouldn't go off." Young, Jr. also clarified Robinson was his intended target. Viewing this evidence in the light most favorable to the State, we find there was substantial circumstantial evidence tending to prove Young, Jr. attempted to murder Robinson. *See Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial [court] is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (quoting Mitchell, 341 S.C. at 409,

535 S.E.2d at 127)). Thus, we find the trial court properly denied Young, Jr.'s motion for a directed verdict.

CONCLUSION

Accordingly, Young Jr.'s convictions are

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.

EXHIBIT U

COPY OF TRIAL TRANSCRIPT

595

EXHIBIT

ELEMENTS FOR THIRD UNINDICTED ALLEGED CRIME OF MURDER "ALLEGEING" I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT

14.

VOLUNTARY MANSLAUGHTER

Code §16-3-50

Class A Felony

Elements of the Offense:

1. That the accused unlawfully killed another person.

2. That the killing took place without malice, express or implied.

Note:

Voluntary manslaughter is distinguished from murder by the absence of malice aforethought. "Malice" is defined in Black's Law Dictionary as "the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent." For a killing to be manslaughter rather than murder, it is essential to have adequate legal provocation which produces an uncontrollable impulse to do violence. The test of adequate provocation is whether a reasonable man would have acted similarly under the circumstances. Killing with a deadly weapon creates a presumption of malice. In which case, the proper charge would be murder until such a presumption is rebutted. Manslaughter may be reduced to involuntary manslaughter by a verdict of the jury.

Penalty:

Imprisonment for not more than 30 years or less than 2 years.

INVOLUNTARY MANSLAUGHTER

597

Code §16-3-60

Class F Felony

Elements Of The Offense:

1. That the accused unlawfully killed another person.

2. That the killing was without malice aforethought.

15.

3. That the killing was unintentional, and

4. The killing resulted from criminal negligence.

Note:

Criminal Negligence is defined as the "reckless disregard of the safety of others." The absence of an intent to kill or to inflict bodily harm distinguishes involuntary manslaughter from voluntary manslaughter

§56-5-2910 pertains to reckless homicide from the operation of a motor vehicle. This section does not supersede the common-law offense of involuntary manslaughter.

Penalty:

Imprisonment for not more than 5 years.

MURDER

Code §16-3-10

Exempt Felony

Elements Of The Offense:

1. That the accused unlawfully killed another, and

2. That the killing was committed with malice aforethought.

Note:

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you in advance. Sincerely I am [illegible]
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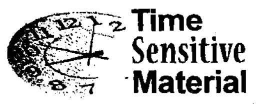

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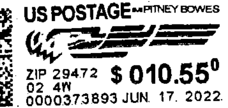

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Tyrone Lorenza Robinson, #235104, Applicant, v. State of South Carolina, Respondent.	) CASE NO. 2021-CP-07-00820)) **RETURN, MOTION FOR CLARIFICATION, AND PARTIAL MOTION TO DISMISS** (Counsel Appointed)

In response to the application for post-conviction relief (PCR) filed by Tyrone Robinson (Applicant) on April 22, 2021, Respondent makes the following return, motion for clarification, and partial motion to dismiss:[1]

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In October 2012, the Beaufort County Grand Jury indicted Applicant for murder (2012–GS–07–01935). This charge arose from the fatal shooting of eight-year-old K. S. [redacted] on September 1, 2013.[2]

On September 15–19, 2014, Applicant proceeded to a jury trial before the Honorable Thomas G. Cooper, Jr. Applicant was represented by Arie D. Bax, Esquire. Solicitor Duffie McDuffie Stone, III., and Deputy Solicitor Sean Thornton prosecuted the case. The jury convicted

[1] Respondent's return was due to be filed within 90 days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 day s if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the circuit court, and the circuit court may extend the time for filing).

[2] Applicant was indicted with co-defendants Aaron Young, Sr. and Aaron Young, Jr. On April 21, 2014, the State called the case to trial with all three co-defendants. Before the jury was sworn, however, the State joined the defendants' motion to sever, and the trials were severed and continued.

Applicant as indicted, and Judge Cooper sentenced Applicant to life.

Applicant filed a motion to reconsider the sentence, which was denied on October 12, 2017.[3] Applicant filed a timely notice of appeal, which was perfected by Appellate Defender David Alexander through the filing of an Anders[4] brief.[5] The court of appeals dismissed pursuant to Anders, and the remittitur was sent December 16, 2020.

CURRENT POST-CONVICTION RELIEF APPLICATION

On April 22, 2021, Applicant filed this current PCR application totaling 414 pages. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
2. Prosecutorial Misconduct
3. The Circuit Court lacked Subject Matter Jurisdiction
4. Double Jeopardy
5. Actual Innocence[6]

Applicant requests relief in the form of "discharge from imprisonment on indictment, vacate conviction and prison sentence of life."

On June 4, 2021, Applicant filed an amended application totaling 427 pages, including 303 handwritten pages of argument. Applicant alleges the following:

1. Ineffective Assistance of Counsel
2. Due Process Violations

On August 27, 2021, Applicant filed a second amended application totaling 119 pages, including 85 handwritten pages of argument. Applicant alleges the following:

1. Ineffective Assistance of Counsel

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[3] Applicant initially filed a notice of appeal on September 29, 2014, but that appeal was dismissed after counsel for applicant sought to withdraw the appeal due to the pending motion to reconsider the sentence. See Appellate Case No. 2014-002138.

[4] Anders v. California, 386 U.S. 738 (1967).

[5] While Applicant's motion to reconsider was pending, Applicant filed his first PCR application (2015-CP-07-2053). That application was dismissed without prejudice on December 12, 2019.

6 The State construes Applicant's argument of failing to satisfy the elements of "felony murder rule theory" and due process violations for "failure to prove elements of murder beyond a reasonable doubt" as an argument of actual innocence.

2. Due Process Violations
3. Prosecutorial Misconduct
4. Double Jeopardy
5. The Circuit Court lacked Subject matter jurisdiction.
6. Actual Innocence

On June 20, 2022, Applicant filed a third amended application totaling 596 pages, including 132 handwritten pages of argument. Applicant alleges the following:

1. "Violation of Federal Sixth Amendment right of effective assistance of counsel; Ineffective Assistance of Counsel"
2. "Violation of Federal Fifth and Fourteenth Amendment rights of Due Process of Law; and deprived out of Federal Due Process right to notice."
3. "Lack of Jurisdiction over the Crime."

Attached to this return and incorporated by reference are the records of the Beaufort County Clerk of Court of the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate record (including the trial transcript), and the transcript of the April 21-23, 2014, hearing. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

MOTION FOR CLARIFICATION

Respondent moves for the amendment of the application, through counsel, to clarify which grounds applicant plans to raise at the evidentiary hearing. The Uniform PCR Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2014). When a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the Court may at any time prior to the entry of judgment "issue orders for amendment of the application or any pleading or motion." S.C Code Ann. § 17-27-70(a). The Court may, in its discretion, fix the time for which a more definite statement shall be made. Rule 12(e), SCRCP. Appointed counsel "shall insure that all grounds for relief are included in the application and shall amend the application if necessary." Rule 71.1(d), SCRCP.

The standard form and contents of a PCR application are outlined in section 17-27-50 of the South Carolina Code, which states in pertinent part:

> The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary. The application shall be made on such form as prescribed by the Supreme Court.

S.C. Code Ann. § 17-27-50 (2014). The prescribed instructions on the PCR application read:

> In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth *in concise form* the answers to each applicable question.

Appl. for Post-Conviction Relief, SCRCPForm5. 1 (emphasis added).

Here, Applicant submitted an application and three amendments totaling 1,556 pages of filing. The application includes grounds for PCR alongside supporting factual bases. However, Applicant's lengthy arguments and often illegible handwriting make it difficult to determine the specific grounds and factual bases for his allegations. Therefore, Respondent moves pursuant to Rules 8(e) and 71.1(d), SCRCP, to have Applicant, through counsel, file an amended application prior to any hearing to clarify the allegations.

INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent requests an evidentiary hearing on Applicant's claim of ineffective assistance of counsel. Applicant asserts that trial counsel was ineffective in his representation of Applicant because trial counsel did not object to Applicant's arrest warrant. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 11 5, 11 7-1 8, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel

is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The record likely does not refute or disprove Applicant's claims. Thus, once Applicant amends his application to clarify his claims, Respondent requests an evidentiary hearing. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "allege specific instances of ineffective assistance of counsel which are not conclusively refuted by the record").

PROSECUTORIAL MISCONDUCT

The State requests an evidentiary hearing in response to Applicant's allegations of prosecutorial misconduct. Applicant claims the solicitor made improper remarks in closing arguments. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). "[S]olicitors may not vouch for a witness's credibility, as doing so improperly invades the province of the jury and places the government's prestige behind the witness." Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016). In the context of improper statements by a prosecutor, "[t]he relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986); contra Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (2019) (finding solicitor's comments that stated his job was to "present the truth" and denigrated defense counsel denied Applicant due process). The record does not conclusively disprove Applicant's allegations. Thus, once Applicant amends his application to clarify his claims, Respondent requests an evidentiary hearing.

<u>PARTIAL MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT</u>

Respondent moves for dismissal and/or summary judgment on the following allegations on the basis there is no genuine issue of material fact that would necessitate an evidentiary hearing:

Lack of Subject Matter Jurisdiction

Applicant's allegations regarding jurisdiction are without merit. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 11. Applicant's conviction involved a criminal charge in General Sessions Court—which had jurisdiction over this conviction. Therefore, this claim should be dismissed on the basis that there is no genuine issue of material fact that would necessitate an evidentiary hearing.

Double Jeopardy

Applicant asserts counsel was ineffective for failing to object to Applicant's charges which he alleges constituted double jeopardy. He contends that prior to this trial, he was brought to a jury trial with co-defendants before a motion for severance was granted. Respondent asserts Applicant's allegations of a violation of double jeopardy are without merit. The "Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and protects against multiple punishments for the same offense." State v. Brandt, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011). "Generally, jeopardy attaches when a jury is sworn and impaneled, unless prior to reaching a verdict, the jury is discharged with the defendant's consent or upon some ground of legal necessity." State v. Rowlands, 343 S.C. 454, 457, 539 S.E.2d 717, 718 (Ct. App. 2000). Based on the records before this court, the jury was never sworn at the April 2014 hearing.[7]

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[7] See April 21–23, 2014 transcript.

Thus, jeopardy did not attach, and this Court should grant summary judgement on this claim in favor of Respondent. See id.

Actual Innocence

Applicant's allegations of due process violations and "not guilty under the felony murder rule theory" should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 –160. Claims by an applicant that he is innocent, is not guilty, or that the evidence against him was insufficient to prove guilt are not cognizable grounds for PCR absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act).

Here, Applicant's claims that his due process rights were violated for "failure to prove elements of crime beyond a reasonable doubt" are intended to claim actual innocence. Additionally, Applicant claims the evidence was insufficient to prove his guilt under the "felony murder rule theory." Applicant does not frame these as claims of ineffective assistance of counsel or newly discovered evidence. Thus, these allegations should be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Respondent requests Applicant specify any claims he intends to raise in advance of the hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State or, alternatively, the State will request a continuance. Respondent further requests all potential exhibits and materials used to produce

potential expert witness testimony be sent to Respondent in advance of the hearing. Likewise, Respondent requests all potential evidence and a witness list be sent to Respondent in advance of the hearing . Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that result in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Any allegation not expressly admitted, qualified, or explained is hereby denied.

CONCLUSION

WHEREFORE, Respondent moves to dismiss the allegations of lack of subject matter jurisdiction and actual innocence. Respondent requests the Court grant Respondent summary judgement as to its claim of double jeopardy. Finally, Respondent requests an evidentiary hearing once Applicant has clarified the grounds he intends to proceed on.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: ______________________
Danielle Dixon

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
803-734-3737

March 12, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	2021-CP-07-00820
Tyrone Lorenza Robinson, #235104,	)	
Applicant,	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
State of South Carolina,	)	
Respondent.	)	

2024 MAR 15 AM 11:1_
CLERK OF COURT
BEAUFORT COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Respondent's Return, Motion for Clarification, and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey Faith Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this 12th day of March, 2024.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	))))	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Tyrone Robinson, #235104, Applicant, v. State of South Carolina, Respondent.	))))))	Case No.: 2021-CP-07-00820 **APPLICANT'S AMENDED APPLICATION**

2025 APR -3 ... BEAUFORT COUNTY CLERK OF COURT

NOW COMES Applicant, Tyrone L Robinson, amending his application filed April 22, 2021. In addition to the allegations raised in his initial application and subsequent amended applications, Applicant submits the following attachments in support of his application.

Based upon the attached, Mr. Robinson requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.

Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Tyrone Robinson

April 03, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Tyrone L Robinson, #235104, Applicant,) Case No.: 2021-CP-07-00820

v.) Affidavit of Service by Mail

State of South Carolina, Respondent.

2025 APR -3 PM 12

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211

Attorney for Applicant

April 3, 2025

Issue Argued
on P.C.R

My Sixth Amendment Right to effective assistance of counsel was violated constituting ineffective assistance of counsel. Because on motion for directed verdict of Acquittal trial attorney Arie David Bax failed to argue. That as a matter of law I am entitled to a directed verdict of acquittal on indictment #2012-GS-07-01935. Because Trial Judge Thomas Cooper voluntary dismissal without my consent. of all the elements thats required to constitute criminal liablity for the crime and offense charged and alleged inside of indictment #2012-GS-07-01935. because the evidense the state of south carolina submited at trial was insufficient to convict on. As a matter of law trial judge Thomas Cooper voluntary dismissal without my consent. constituted a acquittal that terminated my jeopardy on all of the elements that are required to constitute criminal liablity. for the crime and offense thats charged and alleged inside of the written write up of indictment# 2012-GS-07-01935. Because the evidense the state of south carolina submited at trial was insufficient to convict on. As a matter of law it constitutes a acquittal on the whole crime of felony murder by the felony murder rule theory "allegeing" That in Beaufort County on or about september 1st, 2012 while engaged in a ongoing gun battle an inherantly dangerous felony, Tyrone Robinson did willfully unlawfully and with malice aforethought cause the victim K. S. to be shot and killed in the area of Marshland drive and Allen Road on Hilton Head Island, S.C. and that K. S. did die in Beaufort County as a proximate result there of

That the jury at trial was sworn in to decide on and I was tried on before the jury at trial on indictment# 2012-GS-07-01935

As a result trial judge Thomas Cooper could not constructively amend the indictment, and submit the case to the jury on the second unindicted nonexistent false murder charge "allegeing" on or about september 1st, 2012 Tyrone Robinson did willfully and with malice cause him to be shot and killed and he died

That there is not any indictment chargeing me with because this nonexistent crime and offense; is a nonexistent crime and offense. That does not constitute or classify as a crime or offense that I can be held criminally liable for, by the laws that govern the state of south carolina

3rd ARGUEMENT

The FIRST alleged ~~CRIME~~ OF FIRST degree Felony murder by The Felony murder Rule Theory. Thats charged and alleged inside of The written write up of Indictment # 2012-GS-07-01935 That The Jury at my Trial was sworn in on at Trial, The defense of Double Jeopardy attaches to and I was put in ~~[illegible]~~ Jeopardy of being punished with prison time of Life imprisonment on under S.C. code of Law 16-3-10 for alleged crime of First degree Felony murder by The Felony murder Rule Theory, of victim K. S. on September 1st 2,012, on Hilton Head Island Beaufort S.C. in The area of marshland Drive is as follows

I quote The trial judge and trial court confess-ion from The trial transcript attatched

State of South Carolina
VS.
Tyrone Robinson

"Quoteing" from page 3 and 4 of trial transcript The court (AKA) Trial Judge Thomas Cooper stated "Quoteing" Ladies and gentleman you have heard The solicitor has called the case of The state versus Tyrone Robinson. Mr. Robinson has been indicted by The grand Jury of Beaufort county and charged with The crime of murder. The indictment alleges that here in Beaufort county on or about September The 1st of 2,012 while engaged in a ongoing gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. to be shot and killed in the area of marshland Drive and allen Road on Hilton Head Island Beaufort county as a proximate result there of on September the 1st 2,012 in violation of The law

which after The jury was sworn in is The First alleged crime of First degree Felony murder by The felony murder Rule Theory. That I was put in Jeopardy at trial of being punished and recieveing prison time of life imprison-ment for. Inside of The court of General session in The 14th Judicial circuit of Beaufort county South Carolina. Trial in This case against I Tyrone Robinson began on September 15th 2,014 and lasted until September 19th 2,014

ELEMENTS

Elements Required to constitute the crime of felony murder by the felony murder rule theory

Elements required to constitute the crime of felony murder by the felony murder rule theory

1st Element required to constitute the crime of felony murder by the felony murder rule theory is:

The defendant was in the commission of commiteing a inherently dangerious felony

Indictment #2012-GS-07-01935 charge and allege that I Tyrone Robinson was in the commiss-ion of commiteing a ongoing gun battle an inher-antly dangerious felony

Therefore as a matter of law indictment #2012-GS-07-01935 charge I Tyrone L. Robinson with commiteing the 1st element from the crime of felony murder by the felony murder rule theory.

CONFESSION

On page 1052 paragraphs 2, 3, and 4 of trial transcript the state of south carolina and its solicitor Issiac Mc. Duffie Stone. confessed to the trial judge and trial court, that they had indicted me on and were tryen me before the jury at trial. on the 1st element required to constitute the crime of felony murder by the felony murder rule theory. when the state of south carolina and its solicitor Issiac Mc. Duffie Stone. confessed to the trial judge and trial court at pretrial hearing on Febuary 27th 2014 on page 1052 paragraphs 2, 3 and 4 of trial transcript "quoteing" our theory is the felony murder rule theory, that you have three people commiteing inherently dangerious felonies

case law merits

Supreme court of appeals of state of south carolina case law of.

Gore vs. Leeke 199 S.E.2d 755 "quoteing" If several person agree or conspire to commite a felony such as grand larceny or robbery or burglary each of those person are criminally responsible for the acts of associates or confed-erates which are done in furtherance or in prosecution of the common purpose for which they combined.

case law merits

Supreme court of appeals of state of montana case law of.

State of montana vs. macheal vernon billedeaux 307 mont 89, 2001 mt 9, 36 P.3d 900 to convict on a charge of deliberate homicide under the felony murder rule 45-5-102 (b) MCA, the state must show that the person attempts to commit, commits, or is legally accountable for the attempt or commission of felony assault, aggravated

assault, or any other forcible felony.

2Nd Element required to constitute the crime of felony murder by the felony murder rule theory is: death to the victim as a consequence of the defendants conduct in commiteing that crime

Indictment # 2012-GS-07-01935 charge and allege that the death of victim K. S. [redacted] is the proximate result of I Tyrone [redacted] Robinson commiteing a ongoing gun battle an inherantly dangerious felony

Therefore as a matter of law indictment # 2012-GS-07-01935 charge I Tyrone Robinson with commiteing the 2nd element from the crime of felony murder by the felony murder rule theory.

CONFESSION

On page 1052 paragraphs 2, 3, and 4 of trial transcript the state of South Carolina and its solicitor Isiac Mc. Duffie Stone. confessed to the trial judge and trial court, that they had indicted me on and were tryen me before the jury at trial on the 2nd element required to constitute the crime of felony murder by the felony murder rule theory. when the state of South Carolina and its solicitor Isiac Mc. Duffie Stone. confessed to the trial judge and trial court at pretrial hearing on febuary 27th 2014 on page 1052 paragraphs 4 and 5 of trial transcript "quoteing" of those inherantly dangerious felonies, and as a result, a child dies

2.

Case law merits

Supreme court of appeals of state of South Carolina case law of 1995, E. 2d 755 "quoteing" Gore vs. Leeke ladies and gentleman may the common purpose ladies and gentleman may have not included or may not have been involv-ed in the killing and the murder of anyone but if in executing this common design and purpose and if it was unlawful as for instance, breaking in and stealing and in the execution of the common purpose a homicide is commited by one of the confederates or one of the associates and you, the jury determine from the proof beyond a reason-able doubt the homicide was a probable or natural consequence of the acts which were done in pursuance of this common design then ladies and gentleman all who are present either actually or constructively

and participateing in the unlawful/common design are as guilty as the slayer himself

CASE LAW MERITS

Supreme Court of Appeals of State of Montana case law of State of Montana vs. Micheal Vernon Billedeaux Jr. 804 Mont. 89, 18 P.3d 980, 2001 MT 9

to convict on a charge of deliberate homicide under the felony murder Rule 45-5-102(b) MCA the state must show that in the course of the forcible felony the person or any other person legally accountable for the crime causes the death of another human being

1st NOTICE

NOTICE That Felony murder Rule Theory Is The one and only Theory of prosecution That I had to prepare a defense for and defend against

At pretrial hearing on Febuary 27th, 2014 at Beaufort County General Session Court house. The State of South Carolina and Solicitor Issiac Mc. Duffie Stone, put me on notice and confessed to me, That the Felony murder Rule Theory was the one and only Theory of prosecution That the State of South Carolina and its Solicitor Issiac Mc. Duffie Stone were prosecuteing me on before the jury at trial for the death of victim K. S. That The State of South Carolina and its Solicitor Issiac Mc. Duffie Stone put me on notice That I had to defend against. Is The Felony murder Rule Theory allegeing That I was commiteing inherantly dangerious felonies along with three other people, and as a result of those inherantly dangerious felonies a child died, for proof I quote the following from the trial transcript

State of South Carolina
vs.
Tyrone Robinson

"Quoteing" The State of South Carolina and its Solicitor Issiac Mc. Duffie Stone confession of NOTICE That I had to defend against. From page 1052 paragraphs 2, 3, 4 and 5 of trial transcript from pretrial hearing on Febuary 24th, 2014 "Quoteing" Our theory is the felony murder rule That you have three people commiteing inherantly dangerious felonies, and as a result of those inherantly dangerious felonies a child dies

2nd NOTICE

NOTICE That Issue of who shot and killed the victim Khalil Singleton is not the controlling law to determine rather I was guilty or not guilty for the death of victim K. S. under the Felony murder Rule Theory that I was tried on before the jury at trial

At pretrial hearing on Febuary 27th, 2014 at Beaufort County General Session Court house. The State of South Carolina and its Solicitor Issiac Mc. Duffie Stone put me on "NOTICE" That the issue of who shot and killed

The victim K. S. [redacted] to determine rather + controlling law, to determine for the death was GUILTY or NOT GUILTY K. S. [redacted] under the felony of victim [redacted] murder rule theory. That the state of South Carolina and its solicitor Issiac Mc. Duffie Stone was trieing me on before the jury at trial for the death of victim K. S. [redacted] by doing so the state of South Carol-ina and its solicitor Issiac Mc. Duffie Stone. put me on "NOTICE" That I did not have to defend against the unindicted crime and theory of rather or not I shot and killed the victim K. S. [redacted]

Also by doing so the State of South Carolina and its solicitor Issiac Mc. Duffie Stone. put me on Notice That I was not in jeopardy of being convicted and sentenced to prison time of life imprisonment, for the unind-icted crime and theory of rather or not I shot and killed the victim K. S. [redacted]

For proof I quote the following from the trial transcript

State of South Carolina

VS.

TYRONE ROBINSON

"Quoteing" The State of South Carolina and its solicitor Issiac Mc. Duffie Stone confession of notice That I did not have to defend against unindicted crime and theory. page 1052 paragraphs 5, 6, and 7 of trial transcript from pretrial hearing on Febuary 27th, 2014 "Quoteing" The actual shooter, so to speak, The one That discharged The fatal bullet, under That scenario, is while relevant, not controlling

3rd NOTICE

Notice That The State of South Carolina and its solicitor Issiac Mc. Duffie Stone were not switching up there theory of The felony murder rule theory That they were prosecuteing me on at trial for the death of victim K. S. [redacted] at pretrial hearing on Febuary 27th, 2014

The state of South Carolina and its solicitor Issiac Mc. Duffie Stone. put me on notice That The state of South Carolina and its solicitor Issiac Mc. Duffie Stone. was absalutely not switching up there theory of the felony murder rule theory. That The state of South Carolina and its solicitor Issiac Mc. Duffie Stone was prosecuting me on at trial for the death of victim K. S. Because the state of South Carolina and its solicitor Issiac Mc. Duffie Stone stated that they felt like all three of us were involved in inherently dangerious felonies.

by doing so the state of South Carolina and its solicitor Issiac Mc. Duffie Stone. put me on notice that the crime of felony murder by the felony murder rule theory is the one and only crime and theory that I had to prepare a defense for and defend against for proof I quote the following from the trial transcript

State of South Carolina

VS.

Tyrone Robinson

"Quoteing" The state of South Carolina and its solicitor Issiac Mc. Duffie Stone confession of notice that they were not switching up thier theory of felony murder by the felony murder rule theory that they were prosecuting me on for the death of victim K. S. page 1052 paragraphs 12, 13, 14 and 15 of trial transcript from pretrial hearing on Febuary 27th, 2,014 "Quoteing" we're not switching up our theories, depending on which defendant we're talking about

2Nd UNINDICTED ALLEGED

FALSE MURDER CHARGE THAT IS A NONEXIST-
-ENT SECOND UNINDICTED FALSE MURDER CHARGE
THAT IS NOT CLASSIFIED AS A CRIME BY THE LAWS
OF THE STATE OF SOUTH CAROLINA IS.
THE SECOND UNINDICTED ALLEGED FALSE MURDER CHARGE
"ALLEGEING" ON OR ABOUT SEPTEMBER THE 1ST 2012 TYRONE ROBINSON
DID WILLFULLY WITH MALICE CAUSE HIM TO BE SHOT
AND KILLED AND HE DIED

THAT IS A NONEXISTENT SECOND UNINDICTED
FALSE MURDER CHARGE THAT IS NOT CLASSIFIED
AS A CRIME BY THE LAWS OF THE STATE OF SOUTH
CAROLINA.
THAT THERE IS NOT ANY INDICTMENT CHARGEING
ME WITH IN VIOLATION OF S.C. CODE OF LAW 17-19-10
WHICH STATES "QUOTEING"
NO PERSON SHALL BE HELD TO ANSWER IN
COURT FOR A ALLEGED CRIME OR OFFENSE
UNLESS UPON INDICTMENT BY A GRAND JURY

FOR PROOF I QUOTE THE PROCEEDINGS FROM THE
TRIAL TRANSCRIPT OF ATTORNEY ARIE DAVID
BAX AND THE CONFESSION OF TRIAL JUDGE THOMAS
COOPER THATS ATTATCHED AS EVIDENCE

STATE OF SOUTH CAROLINA
VS.
TYRONE ROBINSON

"QUOTEING" PAGE 667 PARAGRAPH 22, AND 23 OF TRIAL
TRANSCRIPT OF TRIAL ATTORNEY ARIE DAVID BAX
STATEING "QUOTEING"
AND I THINK WITHOUT THAT HE IS ENTITLED TO A
DIRECTED VERDICT

"QUOTEING" FROM PAGE 668 PARAGRAPH 3, 4, 5, 6, 7 AND 8, OF
TRIAL TRANSCRIPT OF TRIAL ATTORNEY ARIE DAVID
BAX STATEING "QUOTEING"
BECAUSE UNDER THERE INDICTMENT THEY HAVE NOT MET
THEIR BURDON TO MEET THE LANGUAGE OF THE INDICTMENT
THAT THEY HAVE GONE FORWARD ON. THEY HAVE NOT BEEN
ABLE TO PROVE AN INHERANTLY DANGERIOUS FELONY OF
ANY KIND THAT WAS OCCURING AT THE TIME THE CHILD
DIED THAT MR. ROBINSON WAS INVOLVED IN, EXCUSE ME

"QUOTEING" FROM PAGE 669 PARAGRAPH 2, 3, 4, 5, 6, 7, 8, 9,
10, 11, 12, 13 AND 14 OF TRIAL TRANSCRIPT OF TRIAL JUDGE
THOMAS COOPER "QUOTEING"
NOW THE INHERANTLY DANGERIOUS FELONY MAY HAVE
BEEN THERE TO TRY TO SHOW EVIDENCE OF MALICE, MAY
HAVE BEEN THERE FOR SOME OTHER PURPOSE. I REALLY
CANT SPEAK TO THAT, BUT IF THOSE WORDS WERE NOT THERE
IF THOSE WORDS WERE NOT THERE AND THE GUN BATTLE STUFF

and all that was not there and if it just said
That on or about september the 1st, 2012 Tyrone Robin-
-son did willfully and with malice cause him to be
shot and killed and he died

Then these issues of course would be plain and appro-
-priate and the charge would be atleast simply
made under these circumstances and if it was evid-
-ence to support these charges then it would go forw-
-ard

"quoteing" from page 672 paragraphs 10, 11, 12, 13, 14, 15,
16, 17, 18 and 19 of trial transcript Judge Thomas Cooper
"quoteing"
my point was that from the stand point for a
motion for a directed verdict that the inclusion
of the words while engaged in a ongoing gun battle
an inherantly dangerious felony, which I thought
was put there more appropriately when they were
dealing with three defendants in this particular
case that those words could be taken out of this
particular charge as indicated and there would
be no question about whether or not they would
have a right to a jury on the charge of murder
"quoteing" from page 674 paragraphs 21, 22, 23, 24,
and 25 and page 675 paragraphs 1 and 2 of trial
transcript trial attorney Arie David Bax "quoteing"
mr. Bax, and I just note that just for a matter of
course for future review I just feel that as a
defense attorney it is not a proper situation
were the defense feels like it has to jugle between
alternative theories of prosecution. And I feel
strongly thats that what that put me in. I certainly
understand the ruleing and respect that your honor
thank you sir

BLACK LAW DICTIONARY DEFINITION
FOR THE CRIME OF FELONY MURDER STATES
"quoteing"
murder that occures during the commission
of a dangerious felony often limited
to rape, kidnapping, robbery, burglary

Blacks law dictionary definition proves that
indictment #2012-GS-07-01935 charges I Tyrone
Robinson with the crime of felony murder

THE NECESSARY ELEMENTS
REQUIRED TO CONSTITUTE THE CRIME
OF FELONY MURDER BY THE FELONY MURDER
RULE THEORY

The essential and factual element "allegeing"
while engaged in a ongoing gun battle an
inherantly dangerious felony

Thats charged and alleged inside of the written
write up of the alleged crime of felony murder by the
felony murder rule theory "allegeing"
while engaged in a ongoing gun battle an inherantly
dangerious felony, Tyrone Robinson did willfully,
unlawfully and with malice aforethought cause the

Victim K. S. [redacted] to be shot and killed That's charged and alleged inside of the written write up of Indictment #2012-GS-07-01935 That I was tried on before The Jury at Trial. That is a essential and factual element That is Required in order to constitute The crime of felony murder by The felony murder rule Theory for proof Review

Case Law merits

Supreme court of Appeals of The State of South Carolina case law of: Gore vs. Leeke 199 S.E.2d 755 "Quoteing" If several person agree or conspire to commite a felony such as grand larceny or Robbery or burglary each of These persons are criminally responsible for The acts of associates or confederates which are done in furtherance or in prosecution of The common purpose for which they combined. The common purpose ladies and gentleman may have not included or may not have been involved in the killing and the murder of anyone but if in executeing This common design and purpose and if it was unlawful as for instance / breaking in and stealing, and in The execution of the common purpose a homicide is committed by one of the confederates or one of The associates and you, the Jury determine from the proof beyond a reasonable doubt The homicide was a probable or natural consequence of The acts which were done in pursuance of This common design Then, ladies and gentleman, all who are present either actually or constructively, and participateing in The unlawfull common design are as guilty as The slayer himself

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Case Law merits

Supreme court of Appeals of The united states of America case law of: Whalen vs. united states 100 S.Ct 1475 "Quoteing" A conviction for killing in the course of rape can not be had without proveing all the elements of the offense of rape "further quoteing" In The present case proof of rape is a necessary element of proof of the felony murder

Case Law merits

Supreme court of Appeals of The State of South Carolina case law of: Paul Simmons vs. State of South Carolina 215 S.E.2d 883 "Quoteing" This case poses a difficult question whether an essential element of a felony can be constitutionally founded upon an inference drawn from the commission of a misdemeanor, even in a case were the felony murder rule was implied

ELEMENTS TEST

Proveing That the second unindicted alleged false murder charge is not classified as the crime of felony murder by the felony murder rule Theory
And also is not classified as a violation for the crime of law of The state of South Carolina for The felony murder by The felony murder rule Theory

As a matter of law the 1st Element "allegeing" Tyrone Robinson was in the commission of commiteing a ongoing gun battle an inherantly dangerous felony

That is charged and alleged inside of the written written up of the crime of felony murder by the felony murder rule theory "allegeing"

while engaged in a ongoing gun battle an inherantly dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. [redacted] to be shot and killed in the area of Marshland Drive and Allen Road on Hilton Head Island, S.C. and that K. S. [redacted] did die in Beaufort County as a proximate result thereof

That's charged and alleged inside of the written write up of indictment #2012-GS-07-01935 that I was tried on before the jury at trial.

Is not included in the alleged elements of the second unindicted alleged false murder charge "allegeing" on or about September the 1st 2,012 Tyrone Robinson did willfully and with malice cause him to be shot and killed and he died

Also as a matter of law the 2nd Element "allegeing" the death of victim K. S. [redacted] is the proximate result of I Tyrone Robinson commiteing a ongoing gun battle an inherantly dangerous felony

That is charged and alleged inside of the written write up of the crime of felony murder by the felony murder rule theory "allegeing"

while engaged in a ongoing gun battle an inherantly dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. [redacted] to be shot and killed in the area of Marshland Drive and Allen Road on Hilton Head Island S.C. and that K. S. [redacted] did die in Beaufort County as a proximate result there of

That's charged and alleged inside of the written write up of indictment #2012-GS-07-01935 that I was tried on before the jury at trial.

Is not included into the alleged elements of the second unindicted alleged false murder charge "allegeing" Tyrone Robinson on or about September the 1st 2,012 cause him to be did willfully and with malice shot and killed and he died

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As a matter of law proveing that the 1st element and the 2nd element required to constitute the crime of felony murder by the felony murder rule theory that's charged and alleged inside of the written write up of indictment #2012-GS-07-01935 that I was tried on before the jury at trial. Is not included into the second unindicted alleged false murder charge "allegeing" Tyrone Robinson did on or about September 1st 2,012 willfully and with malice cause him to be shot and killed and he died

As matter of law proveing that the second unindicted alleged false murder charge "allegeing" Tyrone Robinson did on or about September 1st 2,012 willfully and with malice cause him to be shot and killed and he died

Is not defined as the crime of felony murder by the felony murder rule theory by the laws of the state of South Carolina.

Also is not defined as a violation of the laws that governs the crime of felony murder in the state of South Carolina.

case law merits

Supreme court of appeals of the state of south carolina case law of,
Gore vs. Leeke 199 S.E.2d 755 "quoteing"

If several person agree or conspire to commit a felony such as grand larceny or robbery or burglary each of those persons are criminally responsible for the acts of associates or confederates which are done in furtherance or in prosecution of the common purpose for which they combined. The common purpose ladies and gentleman may have not included or may not have been involved in the killing and the murder of anyone but if in executing this common design and purpose and if it was unlawful as for instance breaking in and stealing, and in the execution of the common purpose a homicide is commited by one of the confederates or one of the associates and you, the jury determine from the proof beyond a reasonable doubt the homicide was a probable or natural consequence of the acts which were done in pursuance of this common design then, ladies and gentleman, all who are present either actually or constructively, and participateing in the unlawful common design are as guilty as the slayer himself

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THE LAW DICTIONARY DEFINITION FOR THE WORD MURDER MEANS THE FOLLOWING MEANING "QUOTEING"

murder a common law offense of unlawful homicide, unlawful killing of another human being with malice aforethought. This requires a premeditated intent to kill plus an element of hatred

As a matter of law there is absalutely not any indict-ment that charges I Tyrone Lorenza Robinson with the crime of murder by the crime allegeing I killed the victim with malice and aforethought

THE NECESSARY ELEMENTS REQUIRED IN ORDER TO CONSTITUTE THE CRIME OF MURDER 16-3-10 BY THE LAWS OF THE STATE OF SOUTH CAROLINA

Inside of the state of south carolina the crime of murder is the killing of any human being with malice aforethought either express or implied for proof review

case law merits

Supreme court of appeals of the state of south carolina case law of.
The state of south carolina vs. Watson 563 S.E.2d 336 "quoteing"

16-3-10 murder is the killing of any person with malice aforethought either expressed or implied

IN ORDER TO CONSTITUTE THE CRIME OF MURDER IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 16-3-10. INSIDE OF THE STATE OF SOUTH CAROLINA. TWO ELEMENTS MUST BE ESTABLISHED.
THE FIRST ELEMENT THAT MUST BE ESTABLISHED IS THE ELEMENT "ALLEGEING"
THE DEFENDANT UNLAWFULLY KILLED ANETHER PERSON
THE SECOND ELEMENT THAT MUST BE ESTABLISHED IS THE ELEMENT "ALLEGEING"
THE KILLING WAS COMMITTED WITH MALICE AND AFORETH-OUGHT

2Nd ELEMENTS TEST

PROVEING AS A MATTER OF LAW THAT THE SECOND UNINDICTED FALSE MURDER CHARGE IS NOT CLASSIFIED AS THE CRIME OF MURDER 16-3-10 BY THE LAWS OF THE STATE OF SOUTH CAROLINA - AND ALSO IS NOT CLASSIFIED AS A VIOLATION OF SOUTH CAROLINA CODE OF LAWS 16-3-10 FOR THE CRIME OF MURDER INSIDE OF THE STATE OF SOUTH CAROLINA

1St ELEMENT

34.

REQUIRED TO CONSTITUTE UNINDICTED CRIME OF MURDER 16-3-10 BY THE LAWS OF THE STATE OF SOUTH CAROLINA

1St ELEMENT REQUIRED TO CONSTITUTE UNINDICTED CRIME OF MURDER 16-3-10 BY THE CRIME ALLEGEING THE DEFENDANT KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT

THE ACCUSED UNLAWFULLY KILLED ANOTHER IS! THAT THE ACCUSED UNLAWFULLY KILLED ANOTHER WHICH DEFINED BY ITS WEBSTER DICTIONARY DEFINITION MEANS TO ALLEGE THAT THE ACCUSED UNLAWFULLY DEPRIVED ANETHER PERSON OUT OF THERE LIFE

THIS IS BECAUSE THE WEBSTER DICTIONARY DEFINITION FOR THE WORD KILL MEANS THE FOLLOWING "MEANING" TO DEPRIVE OF LIFE

1St ELEMENT

FALSE MURDER CHARGE FOR SECOND UNINDICTED ALLEGED FALSE MURDER CHARGE

1St ELEMENT FOR SECOND UNINDICTED ALLEGED FALSE MURDER CHARGE BY THE CRIME "ALLEGEING"
ON OR ABOUT SEPTEMBER THE 1St 2/012 TYRONE ROBINSON DID WILLFULLY WITH MALICE CAUSE HIM TO BE SHOT AND KILLED AND HE DIED IS:

ON OR ABOUT SEPTEMBER THE 1St 2/012 TYRONE ROBINSON DID WILLFULLY CAUSE HIM TO BE SHOT AND KILLED AND HE DIED

WHICH DEFINED BY ITS DICTIONARY DEFINITION MEANS TO

"allege" on or about september the 1st 2,012 Tyrone Robinson did willfully cause a train of events that resulted in the victim K. S. being shot and deprived out of his life

This is because the law book dictionary definition for the word cause means the following meaning "allegeing" cause that which effects a result direct cause the active, efficient cause that set in motion a train of events that brings about a result without intervention of any other independant source

As a matter of law the first element to the second unindicted alleged false murder charge "allegeing" on or about september the 1st 2,012 Tyrone Robinson did willfully with malice cause him to be shot and killed and he died which is

on or about september the 1st 2,012 Tyrone Robinson did willfully cause him to be shot and killed and he died

which defined by its dictionary definition means to allege. on or about september the 1st 2,012 Tyrone Robinson did willfully cause a train of events that resulted in the victim K. S. being shot and deprived out of his life

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is not included into and does not constitute the 1st element required to constitute the unindicted crime of murder 16-3-10 by the crime "allegeing" the defendant killed another with malice and aforethought

which has the 1st element of "quoteing" that the accused unlawfully killed another which defined by its dictionary definition means to allege that the accused unlawfully deprived another person out of there life

2nd ELEMENT

required to constitute the unindicted crime of murder 16-3-10 by the crime "allegeing" the defendant killed the victim with malice and aforethought is: That the killing was commited with malice and aforethought

which defined by its webster dictionary definition means to allege that the deprivation of life was commited with malice and aforethought

This is because the webster dictionary definition for the word kill means the following "meaning" to deprive of life

2 Nd ELEMENT

FOR Second UNINdICted alleged False murder case

2Nd Element FOR Second UNINdICted alleged False murder charge by The CRIME "alleGeING" ON OR about September The 1st, 2,012 TYRONE ROBINSON did WILLFULLY WITH malICE cause him To be shot and Killed IS:

ON OR about September The 1st 2,012 TYRONE ROBINSON did WITH malICE cause him to be shot and Killed and he dIed

which defINed by IIS dICTIONARY defINITION means to "allege"
ON OR about September The 1st, 2,012 TYRONE ROBINSON dId WITH malICE cause a TRAIN OF events That Resulted IN The VICTIM KHALIL SINGLETON beING shot and deprIved out OF his LIFE

ThIS IS because The law book dICTIONARY defINITION FOR The word cause means The FOLLOWING meanING "allegeING" That which effects a Result DIRECT cause The active, efficient cause That set IN motion a TRAIN OF events That brINGS about a Result without INTERVENTION OF any other INDEPENDENT SOURCE

As a matter of Law The second element to the unINdIcted alleged False murder charge "allegeING" ON OR about September The 1st 2,012 TYRONE ROBINSON did WILLFULLY and WITH malICE cause him to be shot and Killed and he dIed which IS

ON OR about September The 1st, 2,012 TYRONE ROBINSON dId WITH malICE cause him to be shot and Killed and he dIed

which defINed by IIS dICTIONARY defINITION means to "allege"
ON OR about September The 1st, 2,012 TYRONE ROBINSON dId WITH malICE cause a TRAIN OF events That Resulted IN The VICTIM K. S. [redacted] beING shot and deprIved out OF his LIFE

IS NOT INCLUDED INTO and does NOT CONSTITUTE The 2nd element ReQUIRED to CONSTITUTE The UNINdICted CRIME OF MURDER 16-3-10 by The CRIME "allegeING"
The defendant Killed another with malICE and aForethought

which has The 2nd element OF "QUOTEING" The KILLING was committed with malICE and aForethought

which defINed by IIS dICTIONARY defINITION means to "allege"
That The deprIvation OF LIFE was committed with malICE and aForethought

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AS a matter of law proveing That The second unindicted alleged false murder charge "alleging" Tyrone Robinson on or about September The 21st, 2,012 did willfully with malice cause him to be shot and killed and he died

Is a second unindicted nonexistent false murder charge That is not defined as a crime of murder by The laws That govern The state of South Carolina under South Car-olina code of law 16-3-10. For proof review

Statutory merits

South Carolina code of law 17-19-30 allegations suffic-ient for indictment for murder "quoteing" Every indictment for murder shall be deemed and adjudged sufficient and good in law which in addition to setting fourth The time and place, together with a plain statement, divested of all useless phraseology, of The manner in which The death of The deceased was caused, charges That The defendant did feloniously, willfully and of his malice aforethought KILLED AND MURDERED The DECEASED

AS a matter of law on motion for directed verdict of acquittal. The trial judge and trial court acting without my consent, took out The words while engaged in a ongoing gun battle an inherantly dangerious felony from out of indictment #2012-GS-07-01935. To prove That trial judge Thomas Cooper took out The words while engaged in a ongoing gun battle an inherantly dangerious felony from out of indictment #2012-GS-07-01935 That The grand jury indicted me on. I quote The following from The trial transcript.

State of South Carolina

VS.

Tyrone Robinson

"Quoteing" from page 672 paragraph 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of trial judge Thomas Cooper decision from trial transcript "quoteing" my point was That from The stand point of a motion for directed verdict. That The inclusion of The words while engaged in a ongoing gun battle an inherantly dangerious felony which I Thought was put There more appropriately when They were dealing with Three defendants in That particular case. That Those words could be taken out of This particular charge as indicted and There would be no question about whether or not They would have a right to a jury on The charge of murder against Mr. Robinson

AS A MATTER OF LAW THERE ARE TWO ELEMENTS
THAT ARE REQUIRED TO CONSTITUTE THE CRIME
OF FELONY MURDER BY THE FELONY MURDER RULE
THEORY, THATS CHARGED AND ALLEGED INSIDE OF
THE WRITTEN WRITE UP OF INDICTMENT #2012-GS-
-07-01935 THAT THE GRAND JURY INDICTED ME
ON.

1ST ELEMENT

VOLUNTARILY DISMISSED WITHOUT MY CONSENT AND TERMINATED MY JEOPARDY ON

THE FIRST ELEMENT THAT IS REQUIRED TO CONSTIT-
-UTE. THE CRIME OF FELONY MURDER BY THE FELONY
MURDER RULE THEOR IS:
THE DEFENDANT WAS IN THE COMMISSION OF
COMMITTING A INHERANTLY DANGERIOUS FELONY

AS A MATTER OF LAW INDICTMENT #2012-GS-07-
-01935. CHARGE AND ALLEGE THAT I TYRONE ROBINSON
WAS ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY
DANGERIOUS FELONY

AS A MATTER OF LAW PROVEING THAT INDICTMENT #2012-
-GS-07-01935 PUTS I TYRONE ROBINSON. IN "JEOPARDY"
OF BEING CONVICTED ON THE FIRST ELEMENT REQUIRED
TO CONSTITUTE THE CRIME OF FELONY MURDER BY THE
FELONY MURDER RULE THEORY. THAT THE GRAND JURY
INDICTED ME ON AND I WAS TRIED ON BEFORE THE JURY
AT TRIAL ON INDICTMENT #2012-GS-07-01935.
BECAUSE AS A MATTER OF LAW TRIAL JUDGE THOMAS COOPER
TOOK OUT THE WORDS WHILE ENGAGED IN A ONGOING
GUN BATTLE AN INHERANTLY DANGERIOUS FELONY
FROM OUT OF INDICTMENT #2012-GS-07-01935. AS A
MATTER OF LAW IT CONSTITUTED A VOLUNTARY
DISMISSAL WITHOUT MY CONSENT. THAT TERMINATED
MY JEOPARDY ON THE ONE AND ONLY "INHERANTLY
DANGERIOUS FELONY" THAT INDICTMENT #2012-GS-
-07-01935. CHARGE AND ALLEGE THAT I WAS IN ENGAGED
IN COMMITTEING. AS A MATTER OF LAW PROVEING
THAT BECAUSE TRIAL JUDGE THOMAS COOPER TOOK OUT
THE WORDS WHILE ENGAGED IN A ONGOING GUN BATTLE
AN INHERANTLY DANGERIOUS FELONY FROM OUT OF
INDICTMENT #2012-GS-07-01935 THAT THE GRAND JURY
INDICTED ME ON. AS A MATTER OF LAW IT CONSTITUTES
A VOLUNTARY DISMISSAL WITHOUT MY CONSENT. THAT
TERMINATED MY JEOPARDY ON THE 1ST ELEMENT "ALLEGEING
I TYRONE ROBINSON WAS ENGAGED IN A ONGOING GUN BATTLE
AN INHERANTLY DANGERIOUS FELONY

AS a matter of Law The second UNINdicted NONEXIST-
-ent False murder charge "allegeING"
ON OR about September 1st, 2012 TYRONE ROBINSON
did WILLFULLY WITH malice cause him to be shot
and KILLED and he died

Thats a NONEXISTENT False murder charge That IS
NOT defined as a CRIME by The LAWS That govern
The state of South CAROLINA and There IS NOT any
INdictment putting me ON NOTICE I had to defend
against. "does NOT" put me IN "JEOPARDY" of
being convicted on The 1st ELEMENT "allegeING"
I TYRONE ROBINSON was engaged IN a ONGOING gun
battle an INherantly dangerious FELONY

That The grand Jury INdicted me ON. and The
State of South CAROLINA had The burden of proof to
prove That I was guilty of beyond a reasonable doubt.
before The State of South CAROLINA could convict
me for The death of victim K. S.
As a matter of Law proveing That without my
consent. TRIAL Judge Thomas Cooper voluntarily
dismissed and terminated my JEOPARDY.
on The 1st Element "allegeING"
I TYRONE ROBINSON was engaged IN a ONGOING gun
battle an INherantly dangerious FELONY

That I was TRIED ON before The JURY at TRIAL
ON INdictment #2012-GS-07-01935, The grand
JURY INdicted me ON, and The State of South
CAROLINA had The burden of proof to prove That I
was guilty of beyond a reasonable doubt before The
State of South CAROLINA could convict me for The death
of victim K. S.

2NdELEMENT

VOLUNTARILY DISMISSED WITHOUT MY CONSENT AND TERMINATED MY JEOPARDY ON

The "SECOND" element Required to constitute The
crime of Felony murder by The Felony murder
Rule Theory IS "quoteING"
death to The victim as a consequence of The defend-
-ant conduct IN commiteING That crime

As a matter of Law INdictment #2012-GS-07-
-01935. charge and allege That victim K. S.
did die as a proximate result of I TYRONE
ROBINSON being engaged IN a ONGOING gun battle

an Inherantly dangerious Felony

As a matter of Law proveing that Indictment # -2012-GS-07-01935 puts I Tyrone Robinson In "Jeopardy" of being convicted on the second element required to constitute the crime of felony murder by the felony murder rule theory. That the grand jury indicted me on and I was tried on before the jury at trial on Indictment # -2012-GS-07-01935.

Because as a matter of law. Trial Judge Thomas Cooper took out the words while engaged in a ongoing gun battle an inherantly dangerious felony from out of Indictment # 2012-GS-07-01935 That the grand jury indicted me on. As a matter of law it constitutes a voluntary dismissal without my consent. That terminated my jeopardy on the one and only "crime". That Indictment # 2012-GS-07-01935 charge and allege is the "crime" That victim K. S. did die as a proximate result there of. As a matter of law proveing that because Trial Judge Thomas Cooper took out the words while engaged in an ongoing gun battle an inherantly dangerious felony from out of Indictment # 2012-GS-07-01935 That the grand jury indicted me on. As a matter of law it constitutes a voluntary dismissal without my consent that terminated my jeopardy on the 2nd Element "allegeing" victim Khalil Sindleton did die as a proximate result of I Tyrone Robinson being engaged in a ongoing gun battle an inherantly dangerious felony

As a matter of law the second unindicted nonexistent false murder charge "allegeing" on or about September 1st, 2,012 Tyrone Robinson did willfully with malice cause him to be shot and killed and he died

Thats a nonexistent false murder charge That is not defined as a crime by the laws that govern the state of South Carolina and there is not any indictment putting me on notice I had to defend against. "Does Not" put me in "Jeopardy" of being convicted on the 2nd ELEMENT "allegeing" victim K. S. did die as a proximate result of I Tyrone Robinson being engaged in a ongoing gun battle an inherantly dangerious felony

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That The grand Jury Indicted me on. and The
State of South Carolina had The burden of Proof
to Prove That I was guilty of beyond a Reasona-
-ble doubt. before The State of South Carolina
could convict me for The death of victim K. S.
As a matter of Law proveing That without my consent.
Trial Judge Thomas Cooper voluntarily dismissed
and terminated my Jeopardy on The 2nd Element
"allegeing" did die as a proxim-
victim K. S. I Tyrone Robinson being engaged
-ate Result of I Tyrone Robinson being engaged
In a ongoing gun battle an inherently dangerious
Felony

That I was Tried on before The Jury at Trial
on Indictment# 2012-GS-07-01935, The grand Jury
Indicted me on, and The State of South Carolina
had The burden of Proof to Prove That I
was guilty of beyond a Reasonable doubt before
The State of South Carolina could convict me for
The death of victim K. S.

As a matter of Law proveing That when Trial
Judge Thomas Cooper. voluntarily dismissed
and terminated my Jeopardy on The 1st Element "allege-
-ing" I Tyrone Robinson was engaged in a ongoing
gun battle an inherently dangerious Felony
From The crime of Felony murder by The Felony
murder Rule Theory That The grand Jury Indicted
me on, on Indictment# 2012-GS-07-01935
Also proveing That when Trial Judge Cooper.
voluntarily dismissed and terminated my
Jeopardy on The 2nd Element "allegeing"
victim K. S. did die as a proxi-
-mate Result of I Tyrone Robinson being
engaged in a ongoing gun battle an inherently
dangerious Felony
From The crime of Felony murder by The Felony
murder Rule Theory That The grand Jury Indict-
-ed me on, on Indictment# 2012-GS-07-01935
As a matter of Law without my consent Trial
Judge Thomas Cooper actions constitute a
voluntary dismissal That Dismissed
The crime of Felony murder by The
Felony murder Rule Theory "allegeing"
That in Beaufort County on or about Septe-
-mber 7th, 2012 while engaged in a

ONGOING GUN battle AN INHERENTLY DANGER-
-IOUS FELONY, TYRONE ROBINSON DID WILLFULLY
UNLAWFULLY, AND WITH MALICE AFORETHOUGHT
CAUSE THE VICTIM K. S. [redacted] TO BE
SHOT AND KILLED IN THE AREA OF MARSHLAND
DRIVE ALLEN ROAD, HILTON HEAD ISLAND, S.C.
AND THAT K. S. [redacted] DID DIE IN
BEAUFORT COUNTY AS A PROXIMATE RESULT
THERE OF

THAT THE GRAND JURY INDICTED ME ON, I WAS
TRIED ON BEFORE THE JURY AT TRIAL AND
THE STATE OF SOUTH CAROLINA HAD THE BURDON
OF PROOF TO PROVE, THAT I WAS GUILTY OF
BEYOND A REASONABLE DOUBT. BEFORE THE STATE
OF SOUTH CAROLINA COULD CONVICT AND
SENTENCE ME TO PRISON TIME FOR THE DEATH
OF VICTIM K. S. [redacted].

CRIMINAL LIABILITY REQUIRED TO CONSTITUTE A CRIME OR OFFENSE IS NONEXISTENT, CONSTITUTEING A NONEXISTENT CRIME AND OFFENSE

IN ORDER TO CONSTITUTE CRIMINAL LIABILITY
FOR A CRIME AND OFFENSE. IN ORDER TO HOLD
A PERSON CRIMINALLY LIABLE FOR A CRIME
OR OFFENSE IN THE STATE OF SOUTH CAROLINA.
TWO ELEMENTS MUST BE PROVEN. THE 1ST
ELEMENT REQUIRED TO CONSTITUTE CRIMINAL
LIABILITY IS:
THE DEFENDANTS CRIMINAL INTENT

THE 2ND ELEMENT REQUIRED TO CONSTITUTE
CRIMINAL LIABILITY IS:
THE ACTUAL PHYSICAL ACT CONSTITUTEING
THE OFFENSE FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF
SOUTH CAROLINA CASE LAW OF.
THE STATE VS. JOHN BENNET FENNEL 591 S.E.2d
512 "QUOTEING"
CRIMINAL LIABILITY NORMALLY IS BASED
ON THE CONCURRANCE OF TWO FACTORS:
THE DEFENDANTS CRIMINAL INTENT AND

The actaul, physical act constituteing the offense. A defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense

1st Element

1st element required to constitute criminal liability is:
The defendants criminal intent

As a matter of law a ongoing gun battle an inherantly dangerious felony. Is the one and only criminal act and physical act, that indictment #2012-GS-07-01935, charge and allege victim K. S. death is a proximate result the there of.
As a matter of law indictment #2012-GS-07-01935. charge and allege that I committed a ongoing gun battle an inhera-ntly dangerious felony with malice and aforethought. Therefore in order prove I was guilty beyond a reasonable doubt of commiteing a ongoing gun battle an inher-antly dangerious felony with malice and aforethought, the state of south carol-ina had to prove beyond a reasonable doubt. That I acted with the criminal intent to commit a ongoing gun battle an inher-antly dangerious felony. For proof review

Case law merits

Supreme Judicial Court of Appeals of the state of massachussetts case law of. Commonwealth vs. Timonthy S. Moran 387 mass. 644. 442 N.E.2d 399 "quoteing" in felony murder the intent to commit the underlying felony is the required malice aforethough

Case law merits

Court of appeals of the state of south carolina case law of. State vs. Brown 881 S.E.2d 771 "quoteing" in felony murder the law implies malice from proof of the felony "further quoteing"

The specific intent to commit the felony and the commission or attempt to commit such crime must be proven beyond a reason-able doubt

Because on motion for directed verdict of acquittal. Trial Judge Thomas Cooper volunt-arily dismissed and terminated my jeopardy. on the physical act and the criminal act "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

That I was tried on before the jury at trial on indictment #2012-GS-07-01935.
Because trial Judge Thomas Cooper obviously believed the evidence the state of South Carolina submited at trial was insufficient to convict. on the physical act and criminal act "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

That I was tried on before the jury at trial on indictment # 2012-GS-07-01935.
As a matter of law trial Judge Thomas Cooper voluntarily dismissal without my consent constitutes a acquittal on the element "allegeing" I acted with the criminal intent, to commite a ongoing gun battle an inherantly dangerious felony
That is required in order to constitute the first elements, required to constitute criminal liability for the crime and offense. Thats charged and alleged inside of the written write up of indictment # 2012-GS-07-01935. Because when trial Judge Thomas Cooper voluntarily dismissed and terminated my jeopardy, on the "alleg-ation"
while engaged in a ongoing gun battle an inherantly dangerious felony

From out of indictment # 2012-GS-07-01935. because the evidence the state of South Carolina submited at trial was insufficient to convict on.
As a matter of law there was no longer a ongoing gun battle an inherantly dangerious felony, for me to act with the

CRIMINAL INTENT TO COMMITE
That was Required IN ORDER to hold me
CRIMINALLY LIABLE, FOR The CRIME and
OFFENSE. Thats charged and alleged INSIDE
OF The WRITTEN WRITE UP OF INDICTMENT#
2012-GS-07-1935
AS a matter OF LAW PROVEING, That TRIAL
Judge Thomas COOPER. VOLUNTARY DISMISSAL
WITHOUT MY CONSENT. That terminated my
Jeopardy ON The PHYSICAL ACT and CRIMINAL
ACT "ALLEGEING"
WHILE engaged IN a ONGOING GUN battle AN
INHERANTLY dangerous FELONY
because The evidence The state OF SOUTH CAROL-
-INA SUBMITED at TRIAL was INSUFFICIENT to
CONVICT ON. CONSTITUTED A ACQUITTAL ON
The FIRST element "ALLEGEING" INTENT to comm-
-IT a ONGOING GUN battle an INHERANTLY
I acted with The CRIMINAL
dangerous FELONY
because The evidence The state OF South Caro-
-LINA SUBMITED at TRIAL was INSUFFICIENT
to CONVICT ON. That Is The FIRST element
REQUIRED to CONSTITUTE CRIMINAL LIABILITY
Thats REQUIRED IN ORDER to hold me CRIMINALLY
LIABLE FOR The death OF VICTIM K. S.
-[redacted]. FOR PROOF OF ACQUITTAL REVIEW
CASE LAW MERITS
UNITED STATES OF AMERICA COURT OF APPEALS
FOR The NINTH CIRCUIT CASE LAW OF.
U.S. VS. HUNT 212 F.3d 539 "QUOTEING"
what CONSTITUTES a "ACQUITTAL" Is NOT to
be CONTROLLED by The FARM OF The JUDGES
ACTION INSTEAD we must DETERMINE
WHETHER The RULEING OF The JUDGE what ever
ITS LABEL ACTUALLY REPRESENTS a RESOLUT-
-ION CORRECT OR NOT OF SOME OR ALL OF
The FACTUAL ELEMENTS OF The OFFENSE CHARGED
"FURTHER QUOTEING"
FOR ITS PART The GOVERNMENT READILY ADMITS
That CERTAIN PARTS OF The INDICTMENT WERE
SPECIFICALLY DISMISSED FOR LACK OF EVIDENCE
There by AMOUNTING to an ACQUITTAL AS
to Those PARTS. The GOVERNMENT does NOT
APPEAL Those SPECIFIC PARTS

AS a matter OF LAW The second UNINDICTED
NONEXISTENT FALSE MURDER CHARGE "ALLEGEING"

ON OR about September 1ST, 2012 TYRONE ROBINSON did WILLFULLY and WITH MALICE CAUSE HIM TO be shot and KILLED and he died

That There IS NOT ANY INDICTMENT CHARGEING me WITH. DOES NOT Charge and allege That I committed any Physical act with malice and aforethought OR CRIMINAL ACT WITH malice and aforethought. That IS REQUIRED IN ORDER to CONSTITUTE CRIMINAL INTENT. That IS The FIRST element REQUIRE to CONSTITUTE CRIMINAL LIABILITY FOR a CRIME OR OFFENSE, by The Laws That govern The state OF South Carolina. FOR PROOF REVIEW

Case Law MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF. The State VS. JOHN BENNETT FENNELL 591 S.E.2d 512 "QUOTEING"

CRIMINAL LIABILITY NORMALLY IS based UPON The CONCURRANCE OF TWO FACTORS. The defendants CRIMINAL INTENT

2Nd ELEMENT

2Nd ELEMENT REQUIRED to PROVE CRIMINAL LIABILITY FOR The death OF VICTIM K. S. [redacted] IS.

The ACTUAL PhysICAL ACT CONSTITUTEING The OFFENSE

As a matter OF Law INDICTMENT # 2012-GS-07-01935, charges and alleges. That The PhysICAL Act OF a ONGOING gun battle an INHERANTLY dangerIOUS FELONY. IS The one and ONLY PhysICAL Act That INDICTMENT # 2012-GS-07-01935, charge and allege. VICTIM K. S. [redacted] death IS a PROXIMATE RESULT There OF. As a matter OF Law INDICTMENT # 2012-GS-07-019-35. ALSO charges and allege, That The PhysICAL Act OF a ONGOING gun battle an INHERANTLY dang-erIOUS FELONY. IS The one ONLY PhysICAL ACT That caused VICTIM K. S. [redacted] to be shot and KILLED.

Therefore IN ORDER to PROVE That I TYRONE ROBINSON am guILTY beyond a Reasonable doubt. OF commITTEING The second element

required to prove that I am criminally liable for the crime and offense. That is charged and alleged inside of the written write up of indictment # 2012-GS-07-01935. That I was tried on before the jury at trial for the death of victim K. S. As a matter of law the state of South Carolina had the burdon of proof to prove that I Tyrone Robinson committed the physical act of a ongoing gun battle an inherantly dangerous felony. "That is the one and only "physical act" That is the one and only charge and allege, indictment # 2012-GS-07-01935 charge and allege, is the physical act that caused victim K. S. K. S. to be shot and killed and victim K. S. death is a proximate result there of. That is the second element required to constitute criminal liability. For the crime and offense charged and alleged inside of the written write up of indictment # 2012-GS-07-01935. For proof review

Case law merits

Supreme Court of Appeals of the state of Illinois case law of
The People of the state of Illinois vs. Gregory Shaw 713 N.E. 2d 1161 "quoteing" accountability for felony murder, in turn exists only if defendant may be deemed legally responsible for the felony that accompanies the murder

Case law merits

Court of Appeals of the state of South Carolina case law of
State vs. Brown 881 S.E. 2d 771 "quoteing" in felony murder the law implies malice from proof of the felony "further quoteing" the specific intent to commit the felony and the commission or attempt to commit such crime must be prove beyond a reasonable doubt

Because on motion for directed verdict of acquittal. Trial Judge Thomas Cooper voluntarily dismissed and terminated my jeopardy. On the physical act "allegeing" while engaged in a ongoing gun battle an inherantly dangerous felony
That I was tried on before the jury at trial on indictment # 2012-GS-07-01935. Obviously because Trial Judge Thomas Cooper

believed The evidence The state of South Carolina submited at Trial was insufficient to convict. on The physical act "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony.

That I was Tried on before the Jury at Trial on Indictment #2012-GS-07-01935 As a matter of law Trial Judge Thomas Cooper, voluntarily dismissal without my consent. Constitutes a ACQUITTAL on The physical act "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

That is required in order to constitute The second Element required to constitute criminally liability for The crime and offense. Thats charged and alleged inside of The written write up of indictment # 2012-GS-07-01935. Because when Trial Judge Thomas Cooper voluntarily dismissed and terminated my Jeopardy. on The allegation "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

From out of Indictment # 2012-GS-07-01935. because The evidence The state of South Carolina submited at Trial was insufficient to convict on. There was no longer As a matter of law There was no longer a physical act of a ongoing gun battle an inherantly dangerious felony. That was required in order to contribute responsibility and liability of victim K.S. death to, and hold me criminally liable for The death of victim K.S. For The crime and offense That charged and alleged inside of The written write up of Indictment # 2012-GS-07-01935 proveing That Trial As a matter of law Judge Thomas Cooper. voluntary dismissal without my consent. That terminated my Jeopardy on The physical act "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

because The evidence The state of South Carolina submited at Trial was insufficient to convict on. Constituted a ACQUITTAL on The second Element "allegeing"
while engaged in a ongoing gun battle an inherantly dangerious felony

Because The evidence The state of South Carolina submited at Trial was insufficient to convict on. That is The second Element requ- -ired to constitute criminal liability, Thats required in order to hold me crimi- -nally liable for the death of victim K. S. For proof of Acquittal review

Case Law merits

United states of America court of appeals for The tenth circuit case, Law of. U.S. vs. Hunt 212 F. 3d 539 "quoteing" What constitutes a "Acquittal" is not to be controlled by The form of The Judges action instead we must determine whether The ruleing of the Judge what ever its Label, Actually represents a resolution correct or not of some or all of The factual elements of The offense charged "further quoteing" For its part The government readily admits That certain parts of The indictment were specifically dismissed for lack of evidence There by amounting to an Acquittal as to Those parts. The government does not appeal Those specific parts

Therefore because as a matter of law. I was "Acquitted" on all The elements That are required to constitute criminal K. S. Liability for The death of victim [redacted]. For The crime and offense of Felony murder by The felony murder rule Theory "alleging" That in Beaufort county on or about september 1st, 2012 while engaged in a ongoing gun battle an inherantly dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. [redacted] to be shot and killed in The area of marshland drive allen on Hilton Head Island, S.C. and K. S. [redacted] did die in Beaufort county as a proximate result there of

That The jury was sworn in to decide on and I was tried on before The jury at trial on indictment # 2012-GS-07-01935. Because The evidence The state of South Carolina submited at trial was insufficient to convict on. As a matter of law by The laws That govern Acquittals, I was legally "Acquitted" on The crime of felony murder by The felony murder rule Theory "alleging" That in Beaufort county on or about septem- -ber 1st, 2012 while engaged in a ongoing

gun battle an inherantly dangerious felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. to be shot and killed in the area of Hilton Head Island, S.C. and that K. S. did die in Beaufort County as a proximate result there of

That the jury was sworn in to decide on and I was tried on before the jury at trial on indictment # 2012-GS-07-01935. Because the evidence the state of South Carolina submited at trial was insufficient to convict on. As a result the federal 5th Amendment right of double jeopardy. Bars the state of South Carolina from retrieing I Tyrone Robinson in a retrial for the death of victim K. S.

Also the federal 5th Amendment right of double jeopardy. Bars the state of South Carolina, from appealing against I Tyrone Robinson and or argueing against I Tyrone Robinson on the "ACQUITTAL", even if the "ACQUITTAL" that I obtained on the crime of felony murder by the felony murder rule theory, that I was indicted on and tried on before the jury at trial, on indictment #2012-GS-07-01935. was based on an erroneous interpretation of governing legal principles or upon legal principles which are themselves subsequently overturned. For proof review

Case Law Merits

Supreme Court of Appeals of the State of North Carolina case law of. State of North Carolina vs. Marcus Reymond Robinson 373 N.C. 173, 846 S.E. 2d 711 "quoteing" Double jeopardy protection apply only if there has been some events such as an ACQUITTAL, that terminates the original jeopardy. If jeopardy is terminated by an ACQUITTAL, the state is barred from appealing any decision that might subject the defendant to another trial for the same offense. An ACQUITTAL is any ruleing that the prosecution proof is insufficient to establish criminal liability for an offense. The prhibition on review of ACQUITTALS is one of the most fundamental rules in this history of double jeopardy. Accordingly ACQUITTALS are final and unreviewable, even if based in error

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CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF. U.S. VS. HUNT 212 F.3d 539 "QUOTEING" WHAT CONSTITUTES A "ACQUITTAL" IS NOT TO BE CONTROLLED BY THE FORM OF THE JUDGES ACTION. INSTEAD WE MUST DETERMINE WHETHER THE RULEING OF THE JUDGE WHAT EVER ITS LABEL, ACTUALLY REPRESENTS A RESOLUTION CORRECT OR NOT. OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED "FURTHER QUOTEING" FOR ITS PART THE GOVERNMENT READILY ADMITS THAT CERTAIN PARTS OF THE INDICTMENT WERE SPECIFICALLY DISMISSED FOR LACK OF EVIDENCE THERE BY AMOUNTING TO AN "ACQUITTAL AS TO THOSE PARTS. THE GOVERNMENT DOES NOT APPEAL THOSE SPECIFIC FINDINGS. THE CRUX OF THE GOVERNMENTS ARGUEMENT, HOWEVER IS, THAT DESPITE THE LABEL OF ACQUITTAL USED BY THE COURTS, THE JUDGEMENTS ON COUNT ONE THROUGH TWELVE WAS IN FACT PARTLY "A DISMISSAL" BASED ON THE RULEING OF LAW THAT THERE WAS AN IMPERMISSIBLE VARIANCE. THE GOVERNMENT OPINES THEREFORE, THAT IT IS NOT BARRED FROM APPEALING OR SEEKING AN RETRIAL ON THE INDIVIDUAL PARTS OF THE SCHEME WHICH THE DISTRICT COURT DID NOT SPECIFICALLY REJECT FOR LACK OF SUFFICIENT EVIDENCE. THE NINTH CIRCUIT REJECTED THE GOVERNMENTS ARGUEMENT IN SCHWARTZ, IN AS MUCH AS WE FIND THE JUDGEMENT BELOW TO BE A TRUE ACQUITTAL THE DOUBLE JEOPARDY CLAUSE BARRS APPEAL EVEN IF THE DISTRICT COURT BASED THE ACQUITTAL ON AN ERRONEOUS INTERPRETATION OF GOVERNING LEGAL PRINCIPLES OR UPON LEGAL PRINCIPLES WHICH ARE THEMSELVES SUBSEQUENTLY OVERTURNED

AS A MATTER OF LAW THE SECOND UNINDICTED NONEXISTENT FALSE MURDER CHARGE "ALLEGEING" ON OR ABOUT SEPTEMBER 21ST, 2012 TYRONE ROBINSON DID WILLFULLY AND WITH MALICE CAUSE HIM TO BE SHOT AND KILLED AND HE DIED

THAT THERE IS NOT ANY INDICTMENT CHARGEING ME WITH. DOES NOT CHARGE AND ALLEGE THAT I COMMITTED THE PHYSICAL ACT OF A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY. THAT IS THE PHYSICAL ACT THAT

IS REQUIRED. IN ORDER TO HOLD ME CRIMINALLY LIABLE, FOR THE DEATH OF VICTIM K. S. [redacted], ON INDICTMENT # 2012-GS-07-01935.

AS A MATTER OF LAW THE SECOND UNINDICTED NONEXISTENT FALSE MURDER CHARGE "ALLEGEING"
ON OR ABOUT SEPTEMBER 1ST, 2,012 TYRONE ROBIN-SON DID WILLFULLY AND WITH MALICE CAUSE HIM TO BE SHOT AND KILLED AND HE DIED
DOES NOT CHARGE AND ALLEGE THAT I COMMITED ANY PHYSICAL ACT. THAT CAUSED VICTIM K. S. [redacted] TO BE SHOT AND KILLED. THAT IS REQUIRED IN ORDER TO CONSTITUTE THE SECOND ELEMENT, THAT IS REQUIRED. IN ORDER TO CONSTITUTE CRIMINAL LIABILITY FOR A CRIME OR OFFENSE, BY THE LAWS THAT GOVERN THE STATE OF SOUTH CAROLINA. FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF.
THE STATE VS. JOHN BENNET FENNEL 591 S.E. 2d 512 "QUOTEING"
CRIMINAL LIABILITY NORMALLY IS BASED UPON THE CONCURRANCE OF TWO FACTORS. THE ACTUAL, PHYSICAL ACT CONSTITUTEING THE OFFENSE

AS A MATTER OF LAW THE FIRST ELEMENT OF CRIMINAL INTENT AND THE SECOND ELEMENT OF PHYSICAL ACT. THAT ARE REQUIRED IN ORDER TO CONSTITUTE CRIMINAL LIABIL-ITY. FOR A CRIME OR OFFENSE BY THE LAWS THAT GOVERN THE STATE OF SOUTH CAROLINA. IS **NONEXISTENT** AND DO NOT EXIST IN THE SECOND UNINDICTED NONEXISTENT FALSE MURDER CHARGE "ALLEGEING"
ON OR ABOUT SEPTEMBER 1ST 2,012 TYRONE ROBINSON DID WILLFULLY WITH MALICE CAUSE HIM TO BE SHOT AND KILLED AND HE DIED
AS A MATTER OF LAW PROVEING THAT THE SECOND UNINDICTED NONEXISTENT FALSE MURDER CHARGE "ALLEGEING"
ON OR ABOUT SEPTEMBER 1ST, 2,012 TYRONE ROBIN-SON DID WILLFULLY WITH MALICE CAUSE HIM TO BE SHOT AND KILLED AND HE DIED
DOES NOT CHARGE AND ALLEGE THAT I COMMITED ANY OF THE ELEMENTS. THAT ARE REQUIRED TO CONSTITUTE CRIMINAL LIABILITY FOR

a CRIME OR OFFENSE by The Laws That govern
The State of South Carolina. That are Requir-
-ed to constitute criminal liability
for a crime or offense by The Laws That govern
The State of South Carolina.
As a matter of law proveing That The second
unindicted nonexistent false murder charge
"alleging"
on or about September 1st, 2,012 Tyrone
Robinson did willfully with malice cause
him to be shot and killed and he died
is a nonexistent false murder charge That
does not constitute or classify as a
crime or offense, That I can be held crim-
-inally liable for. by The Laws That govern
The State of South Carolina. For proof review

case law merits

Supreme Court of Appeals of The State of
South Carolina case law of.
Moses Williams, Jr vs. State of South
Carolina 410 S.E. 2d 563 "quoteing"
It is clear from the statue That a violent
crime defendant is subject to The addit-
-ional punishment for displaying what
appears to be a firearm. It is equally clear
That such a defendant is not subject to The
additional punishment for displaying what
appear to be a knife. The weapon must in
fact be a knife. This court is without
authority to depart from The plain mean-
-ing of The words of The statue.

Because Trial Judge Thomas Cooper, could
not "constructively" amend the indictment,
and submit The case to The Jury. on The second
unindicted nonexistent false murder
charge "alleging"
on or about September 1st, 2,012 Tyrone Robin-
-son did willfully and with malice cause
him to be shot and killed and he died
Because as a matter of law This nonexistent
crime and offense. does not constitute or
classify as a crime or offense That I can
be held criminally liable for by The laws
That govern The State of South Carolina.

ALSO because TRIAL JUDGE Thomas COOPER VOLU-
-NTARY DISMISSAL WITHOUT MY CONSENT.
CONSTITUTED A ACQUITTAL THAT TERMINATED
MY JEOPARDY. ON ALL OF THE ELEMENTS THAT
ARE REQUIRED TO CONSTITUTE CRIMINAL
LIABILITY. FOR THE CRIME AND OFFENSE THATS
CHARGED AND ALLEGED INSIDE OF THE WRITTEN
WRITE UP, OF INDICTMENT #2012-GS-07-01935.
THAT THE JURY AT TRIAL WAS SWORN IN TO
DECIDE ON AND I WAS TRIED ON BEFORE THE
JURY AT TRIAL ON INDICTMENT #2012-GS-07-
-01935. WHICH CONSTITUTES A ACQUITTAL ON
THE CRIME OF FELONY MURDER BY THE FELONY
MURDER RULE THEORY "ALLEGING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEM-
-BER 1ST, 2,012 WHILE ENGAGED IN A ONGOING
GUN BATTLE AN INHERANTLY DANGEROUS FELONY,
TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY,
AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM
K. S. [redacted] TO BE SHOT AND KILLED IN THE
AREA OF MARSHLAND DRIVE AND ALLEN ROAD
ON HILTON HEAD ISLAND AND THAT K. S. [redacted]
DID DIE IN BEAUFORT COUNTY AS A PROXIMATE
RESULT THERE OF

THAT THE JURY WAS SWORN IN TO DECIDE ON AND
I WAS TRIED ON BEFORE THE JURY AT TRIAL ON
INDICTMENT #2012-GS-07-01935.
AS A MATTER OF LAW TRIAL JUDGE THOMAS COOPER
WAS REQUIRED BY LAW. TO ENTER A DIRECTED
VERDICT OF ACQUITTAL. ON INDICTMENT #2012-
-GS-07-01935 FOR THE CRIME OF FELONY MURDER
BY THE FELONY MURDER RULE THEORY "ALLEGING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER
1ST, 2,012 WHILE ENGAGED IN ONGOING GUN BATTLE
AN INHERANTLY DANGEROUS FELONY, TYRONE ROBIN-
-SON DID WILLFULLY, UNLAWFULLY, AND WITH
MALICE AFORETHOUGHT CAUSE THE VICTIM K. S. [redacted]
TO BE SHOT AND KILLED IN THE AREA
OF MARSHLAND DRIVE AND ALLEN ROAD ON
HILTON HEAD ISLAND AND THAT K. S. [redacted]
DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT
THERE OF
THAT THE JURY AT TRIAL WAS SWORN IN TO DECIDE
ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL
ON INDICTMENT #2012-GS-07-01935. FOR PROOF
REVIEW

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS
FOR THE NINTH CIRCUIT CASE LAW OF.
U.S. VS. HUNT 212 F.3d 539 "QUOTEING"
DEFENDANT ARGUED THAT THE GOVERNMENT COULD
NOT CONSTRUCTIVELY AMEND THE INDICTMENT
TO ALLEGE THAT THE THEFT OCCURED INSTEAD

when defendants recieved the package from postal service. Therefore, defendant said they were entitled to an acquittal. The district court agreed "further quoteing" accordingly, the district court granted a judgement which it entitled judgement of acquittal "further quoteing", what constitutes a "acquittal" is not to be controlled by the form of the judges action. Instead we must determine whether the ruleing of the judge what ever its label, actually represents a resolution correct or not of some or all of the factual elements of the offense charged "further quoteing" for its part the government readily admits that certain parts of the indictment were specifically dismissed for lack of evidence there by amounting to an acquittal as to those parts. The government does not appeal those specific findings. The crux of the government's arguement however is, that despite the label of acquittal used by the courts, the judgement on counts one through twelve was in fact partly a dismissal based on the ruleing of law that there was an impermissible variance. The government opines therefore, that it is not barred from appealing or seeking a retrial on the individual parts of the scheme which the district court did not specifically reject for lack of sufficient evidence. The Ninth Circuit rejected the governments arguement in Swartz, in as much as we find the judgement below to be a true acquittal, the double jeopardy clause barrs appeal even if the district court based the acquittal on an erroneous interpretation of governing legal principles or upon legal principles which are themselves overturned

Attorney Arie David Bax failure to preserve this arguement and issue on court record for the South Carolina Court of Appeals and for the South Carolina Court of Appeals to review. Or the Supreme Court of Appeals to review. Or the Supreme Court did not constitute a valid trial strategy and was deficient performance. Satisfieing the first prong required to constitute a claim of ineffective assistance of counsel and violation of my federal 6th Amendment right of effective assistance of counsel. For proof review

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF:
LUCAS BAILEY VS. STATE OF SOUTH CAROLINA 709 S.E.2d 671 "QUOTEING"
THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GAURANTEES A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. U.S. CONST. AMEND VI; STRICKLAND VS. WASHINGTON, 466 U.S. 668 (1984, LOMAX VS. STATE 665 S.E.2d 164 (2008) THE UNITED STATES SUPREME COURT ESTABLISHED A TWO PRONGED TEST TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL BY WHICH A P.C.R APPLICANT MUST SHOW (1st) COUNSELS PERFORMANCE WAS DEFFICIENT

2ND PRONG

2ND PRONG PROVEING CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.
ATTORNEY ARIE DAVID BAX DEFICIENT PERFOR-MANCE PREJUDICED ME. BECAUSE ON MOTION FOR DIRECTED VERDICT OF ACQUITTAL. IF ATTOR-NEY ARIE DAVID BAX WOULD OF ARGUED THAT AS A MATTER OF LAW, I AM ENTITLED TO A DIRECTED VERDICT OF ACQUITTAL ON INDICTM-ENT# 2012-GS-07-01935 FOR THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING"
THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1st 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERENTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K. S. TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND, S.C. AND THAT K. S. DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF
THAT THE JURY WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935
BECAUSE WHEN TRIAL JUDGE THOMAS COOPER VOLUNTARILY DISMISSED AND TERMINATED MY JEOPARDY. ON ALL THE ELEMENTS THAT ARE REQUI-RED TO CONSTITUTE CRIMINAL LIABILITY. FOR THE CRIME AND OFFENSE THAT IS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT# 2012-GS-07-01935. AS A MATTER OF LAW IT CONSTITUTES A "ACQUITTAL" ON ALL

OF THE ELEMENTS THAT ARE REQUIRED TO CONSTIT-UTE CRIMINAL LIABILITY. FOR THE CRIME AND OFFENSE THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT #2012-GS-07-01935, WHICH CONSTITUTES A ACQUITTAL ON THE WHOLE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING"

THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBIN-SON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K. S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD ON HILTON HEAD ISLAND, S.C. AND THAT K. S. [redacted] DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT #2012-GS-07-01935

AS A RESULT TRIAL JUDGE THOMAS COOPER COULD NOT CONSTRUCTIVELY AMEND THE INDICT-MENT. AND DENY MY MOTION FOR DIRECTED VERDICT OF ACQUITTAL, SUBMIT THE CASE TO THE JURY AND DEPRIVE ME OUT OF MY LIBERTY. ON THE SECOND UNINDICTED NONEXISTENT FALSE MURDER CHARGE "ALLEGEING"

ON OR SEPTEMBER THE 1ST, 2,012 TYRONE ROBIN-SON DID WILLFULLY WITH MALICE CAUSE. HIM TO BE SHOT AND KILLED AND HE DIED

THAT THERE IS NOT ANY INDICTMENT CHARGEING ME WITH

BECAUSE AS A MATTER OF LAW THIS NONEXISTENT CRIME AND OFFENSE. IS A SECOND UNINDICTED NONEXISTENT CRIME AND OFFENSE. THAT DOES NOT CHARGE AND ALLEGE ANY OF THE ELEMENTS THAT ARE REQUIRED. TO CONSTITUTE CRIMINAL LIABILITY FOR A CRIME AND OFFENSE, IN ORDER TO HOLD A PERSON CRIMINALLY LIABLE FOR A CRIME AND OFFENSE, BY THE LAWS THAT GOVERN THE STATE OF SOUTH CAROLINA. AS A MATTER OF LAW PROVEING THAT THIS SECOND UNINDICTED NONEXISTENT CRIME AND OFFENSE. IS A SECOND UNINDICTED NONEXISTENT CRIME AND OFFENSE, THAT IS A NONEXISTENT CRIME AND OFFENSE. THAT DOES NOT CONSTITUTE OR CLASSIFY AS A CRIME AND OFFENSE BY THE LAWS THAT GOVERN THE STATE OF SOUTH CAROLINA.

THEN THIS ARGUEMENT WOULD OF BEEN PRESERVED ON COURT RECORD. FOR SOUTH CAROLINA COURT OF APPEALS AND OR THE SUPREME COURT OF APPEALS TO REVIEW. AND AS A RESULT THE SOUTH CAROLINA

COURT OF APPEALS AND OR THE SUPREME COURT OF APPEALS. WOULD OF HAD TO REVERSE TRIAL JUDGE THOMAS COOPER DENIAL OF MOTION FOR DIRECTED VERDICT OF ACQUITTAL, AND REVERSE MY CONVICTION AND PRISON SENTENCE OF LIFE IMPRISONMENT. AND ENTER A DIRECTED VERDICT OF "ACQUITTAL" ON INDICTMENT# 2012-GS-07-01935 FOR THE CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY "ALLEGEING" THAT IN BEAUFORT COUNTY ON OR ABOUT SEPTEMBER 1ST, 2,012 WHILE ENGAGED IN A ONGOING GUN BATTLE AN INHERANTLY DANGERIOUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSE THE VICTIM K.S. [redacted] TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE ALLEN ROAD ON HILTON HEAD ISLAND, S.C. AND THAT KHALIL SINGLETON DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF

THAT THE JURY WAS SWORN IN TO DECIDE ON AND I WAS TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT# 2012-GS-07-01935 PURSUANT TO THE UNITED STATES OF AMERICA COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF. U.S. VS. HUNT 212 F.3d 539 FOR PROOF REVIEW

CASE LAW MERITS

UNITED STATES OF AMERICA COURT OF APPEALS FOR THE NINTH CIRCUIT CASE LAW OF: U.S. VS. HUNT 212 F.3d 539 "QUOTEING" DEFENDANT ARGUED THAT THE GOVERNMENT COULD NOT CONSTRUCTIVELY AMEND THE INDICTMENT TO ALLEGE THAT THE THEFT OCCURED INSTEAD WHEN DEFENDANT RECIEVED THE PACKAGE FROM POSTAL SERVICE. THEREFORE DEFENDANT SAID THAT THEY WERE ENTITLED TO AN ACQUITTAL. THE DISTRICT COURT AGREED "FURTHER QUOTEING" WHAT CONSTITUTES A "ACQUITTAL" IS NOT TO BE CONTROLLED BY THE FORM OF THE JUDGES ACTION. INSTEAD WE MUST DETERMINE WHETHER THE RULEING OF THE JUDGE WHAT EVER ITS LABEL, ACTUALLY REPRESENTS A RESOLUTION CORRECT OR NOT OF SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED "FURTHER QUOTEING" ADMITS FOR ITS PART THE GOVERNMENT READILY ADMITS THAT CERTAIN PARTS OF THE INDICTMENT WERE SPECIFICALLY DISMISSED FOR LACK OF EVIDENCE THERE BY AMOUNTING TO AN ACQUITTAL AS TO THOSE PARTS. THE GOVERNMENT DOES NOT APPEAL THOSE SPECIFIC FINDINGS. THE CRUX OF THE GOVERNMENTS

argument however is, That despite the label used by the courts, the judgement on counts one through twelve was in fact partially a dismissal based on the ruling of law that there was a impermissible variance. The government opines therefore, that it is not barred from appealing or seeking a retrial on the individual parts of the scheme which the district court did not specifically reject for lack of sufficient evidence. The Ninth Circuit rejected the government's arguement in Swartz, In as much as we find the judgement below to be a true acquittal, the double jeopardy clause barrs appeal even if the district court based the acquittal on an erroneous interpretation of governing legal principles or upon legal principles which are themselves overturned

Therefore the outcome of my proseceedings on indictment# 2012-GS-07-01935 would of been totally differant in my favor. As a matter of law proveing that trial attorney Arie David Bax deficient performance prejudiced me. Because it undermined confidence in the outcome of my trial, deprived me out of a fair trial. and caused me to be held unlawfully restrained on indictment# 2012-GS-07-01935. after by the laws that govern acquittals, I was legally acquitted on the of felony murder by the felony murder rule the originally alleging"

That in Beaufort County on or about September 1st, 2012 while engaged in a ongoing gun battle an inherantly dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim [redacted] to be shot and killed in the area of Marshland drive and Allen [redacted] Road on Hilton Head Island, S.C. and that [redacted] did die in Beaufort County as a proximate result there of

That the jury was sworn in to decide on and I was tried on before the jury at trial on indictment# 2012-GS-07-01935 satisfieing the first as a matter of law satisfieing the first prong thats required to constitute a claim of ineffective assistance of counsel. constituteing a claim of ineffective assistance of counsel and a violation of my federal

SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSIST-
-ANCE OF COUNSEL, FOR PROOF REVIEW

CASE LAW MERITS

SUPREME COURT OF APPEALS OF THE STATE OF SOUTH CAROLINA CASE LAW OF.

LUCAS BAILEY VS. STATE 709 S.E.2d 671 "QUOTEING" THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. U.S. CONST AMEND. VI; STRICKLAND VS. WASHING-TON, 466 U.S. 668 (1984), LOMAX 665 S.E.2d 164 (2,008) THE UNITED STATES SUPREME COURT HAS ESTABLISH A TWO-PRONGED TEST TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL BY WHICH A P.C.R APPLIC-ATION MUST SHOW (2ND) THE DEFICIENT PERFOR-MANCE PREJUDICED THE DEFENDANT

QUESTION

My Sixth Amendment Right to effective
Assistance of counsel Was violated const-
-ituteing ineffective Assistance of counsel-
As a Result of Trial attorney Arie david
Box. Failure to object and Assert a
claim of violation of South Carolina code
of Law 17-19-10. to protect me from
being held to Answer in court for and
be held UNLAWFULLY Restrained. On
The second unindicted nonexistent
False murder charge "allegeing"
On or about september 1st, 2,012 Tyrone
Robinson did willfully with malice
cause him to be shot and killed and he
died
That there is no indictment putting me
On notice That I had to propere a defense
For and defend against and There is
Not any indictment chargeing me with.
In violation of South Carolina code of law
17-19-10 which states "quoteing"
Nor shall any person be held to answer
In court for a alleged crime or
offense unless upon indictment by
a grand jury

QUESTION

my SIXTH Amendment RIGHT to effective ASSIS-
-tance OF COUNSEL, WAS VIOLATED CONSTITUTEING
INEFFECTIVE ASSISTANCE OF COUNSEL. AS A
RESULT OF TRIAL ATTORNEY ARIE DAVID
BAX, FAILURE to object and ASSERT a
CLAIM OF VIOLATION OF SOUTH CAROLINA code
OF LAW 17-19-10 to PROTECT me FROM BEING
held to ANSWER IN COURT FOR and be held
UNLAWFULLY RESTRAINED. ON THE THIRD
UNINDICTED ALLEGED CRIME OF MURDER "ALLEGEING"
I KILLED THE VICTIM WITH MALICE AND AFORETHOUGHT
THAT THERE IS NO INDICTMENT PUTTING me ON
NOTICE THAT I HAD TO PREPARE A DEFENSE
FOR and DEFEND AGAINST, and THERE IS NOT
ANY INDICTMENT CHARGEING me WITH IN
VIOLATION OF SOUTH CAROLINA code OF LAW
17-19-10 WHICH STATES "QUOTEING"

NOR SHALL ANY PERSON be held to
ANSWER IN COURT FOR a ALLEDGED CRIME
OR OFFENSE UNLESS UPON INDICTMENT by
a GRAND JURY

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT — 2021-CP-07-07820

Tyrone Lorenzo Robinson,

Plaintiff,

vs.

State of South Carolina,

Defendant.

TRANSCRIPT OF HEARING

April 16, 2025
Beaufort, South Carolina

B E F O R E:

The Honorable Frank Addy, Jr., Judge Presiding

A P E A R A N C E S:

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I N D E X   O F   E X H I B I T S

No exhibits were introduced for the record.

1 **P R O C E E D I N G S**

1 * * * * *
2 THE COURT: Okay, we are going on the
3 record, and I think this is case 2021-CP-07-
4 0820, Tyrone Robinson vs. the State. Before we
5 took a break for lunch, Ms. Dixon, you had
6 informed the Court that there was a -- an issue
7 with obtaining service of process on Mr.
8 Robinson's attorney. Did -- did you want to put
9 the background of this on the record, and ---
10 MS. DIXON: Yes, Your Honor.
11 THE COURT: -- and kind of set the stage for
12 us, if you could, please?
13 MS. DIXON: Yes, Your Honor, I can tell you
14 what efforts the State has made to prepare his
15 testimony. This case was rostered back in May
16 of 2024. At that time we sent a subpoena to the
17 Sheriff's Office. We also, as we typically do,
18 emailed a copy of the subpoena to the witness
19 and asked him if he wanted to accept by email.
20 He told me, no, and good luck serving me. The
21 Sheriff's Department, as I understand it, made
22 several attempts to serve him both at his
23 address in AIS, as well as other addresses that
24 they had listed for him. They were not able to
25 accomplish service. He did not appear for that

1 hearing. It is my understanding Mr. Robinson
2 wanted him to be present, so we all agreed to
3 continue the case at that time in the hopes that
4 we could procure Mr. Bax at the next PCR term.
5 That was set in November of 2024, which was the
6 next term in the Fourteenth Circuit that year.
7 And at that time the State again emailed him a
8 copy of the subpoena, asked if he wanted to
9 accept service, we did not get a response. We
10 sent the subpoena to the Sheriff's Department.
11 It is our understanding from them that they made
12 several multiple attempts to -- to serve the
13 subpoena again at different addresses for him
14 that they were familiar with. They were not
15 able to effectuate service. He did not appear.
16 We were informed at that time by a deputy that
17 he may be living abroad. We got back around to
18 this term of court, and we had different ideas
19 about how to effectuate service. We had an
20 investigator in our office look into it, and it
21 is our understanding that he no longer lives in
22 the United States. We did mail him a copy of
23 this hearing date, I also emailed him. We have
24 not received any response from him. He isn't
25 here today. We didn't really expect him to be

1 here, but we're not sure that continuing this to
2 another term that we will have any additional
3 success of appearing him, so I think, with that
4 being said, we're ready to move forward today.
5 THE COURT: Okay. And -- and I'm trying to
6 pull up his name on the Bar website is ---
7 MS. DIXON: And, Your Honor, I did note we
8 as of I believe it was March 3rd, first he was
9 administratively suspended. I think for failure
10 ---
11 MS. KANEALEY: Failure to pay Bar dues.
12 MS. DIXON: -- failure to pay Bar dues.
13 THE COURT: Okay.
14 MS. DIXON: I haven't checked more recently.
15 I haven't checked in the last week or two,
16 but ---
17 THE COURT: I -- I ---
18 MS. DIXON: -- we did look into that.
19 THE COURT: I'm unfamiliar with his -- his -
20 - with this attorney, but his name that he
21 practices under is Arie, A-R-I-E, Bax, B-A-X?
22 MS. DIXON: Correct.
23 THE COURT: Okay.
24 MS. DIXON: Correct, and it doesn't appear
25 that he hasn't -- I mean we have been informed

1 that he's told clients he's winding up his
2 practice. I think he doesn't intend to return
3 and practice law, so ---
4 THE COURT: All right, very good. Did you
5 want to be heard on that before I let Ms. Dixon
6 set the stage as far as the ---
7 MS. MARTO: Nothing beyond that I've talked
8 to my client. He's aware of the situation of
9 Mr. Bax. I told him I don't think Mr. Bax would
10 be particularly helpful for him anyway, and so
11 it's in his best interest that he's probably not
12 here, and so we're comfortable proceeding
13 forward.
14 THE COURT: All right. Attorney General, he
15 was convicted of murder and did receive a life
16 sentence; is that correct?
17 MS. DIXON: That is correct, Your Honor.
18 THE COURT: All right.
19 MS. DIXON: It does stem from the shooting
20 of an eight-year-old, K. S. [redacted] [redacted], and,
21 basically, it was Mr. Robinson was engaged in a
22 gun battle with Aaron Young, Jr. and Aaron
23 Young, Sr. They were in cars kind of driving
24 around Beaufort shooting at each other.
25 THE COURT: This is a case that went up on

1 appeal to the Supreme Court ---

2 MS. DIXON: Correct.

3 THE COURT: -- and the ---

4 MS. DIXON: Correct, uh-huh.

5 THE COURT: -- that ---

6 MS. DIXON: That's correct.

7 THE COURT: -- I remember that holding.

8 MS. DIXON: Mutual combat. I think that was

9 as to the Youngs' cases, because it's undisputed

10 that it was Mr. Robinson's gun that killed the

11 child, so as to him they didn't really have to

12 do the -- well, he had a different situation

13 than the Youngs did.

14 THE COURT: Okay, I understand now then, all

15 right.

16 MS. DIXON: And just a little bit more

17 procedural background ---

18 THE COURT: Sure.

19 MS. DIXON: -- because I think this will come

20 up as part of his double jeopardy claim, but

21 this case was initially called to trial April

22 21st, 2014, along with the co-defendants Aaron

23 Young, Jr. and Aaron Young, Sr. At that time

24 the Youngs filed a motion to sever, and Mr.

25 Robinson at that time was actually proceeding

1 pro se with Arie Bax as his standby counsel. At
2 that hearing the State ultimately joined into
3 the defendants' motion to sever, and the case
4 was continued before -- there was a jury
5 selected, they were never sworn, and the State
6 after that tried the three defendants
7 separately. Mr. Robinson was tried September
8 15th through 19th, 2014, before Judge Cooper,
9 and he was convicted as indicted. He did file a
10 motion to reconsider the sentence, and there's a
11 little bit of -- this procedural history gets a
12 little messy, because he filed a PCR application
13 in 2015 while his motion to reconsider was still
14 pending, so that application was later dismissed
15 without prejudice. The motion to reconsider his
16 sentence was denied October 12th, 2017. He did
17 file an appeal -- a direct appeal. Appellate
18 defender, David Alexander, filed an Anders
19 brief. The Court of Appeals dismissed it
20 pursuant to Anders. The remittitur was sent
21 December 16th of 2020. He filed his current
22 application timely, April 22nd, 2021. It has
23 been amended three or four times. There's about
24 1,600 pages of amendments with this case. I do
25 think that most of his claims relate back to the

1 indictment itself, and that maybe he can expound
2 on that a little bit. But with that I'll turn
3 it over to Ms. Marto.
4 THE COURT: All right, very good.
5 MS. MARTO: Good afternoon, Judge.
6 THE COURT: Good afternoon.
7 MS. MARTO: We call Mr. Robinson to the
8 stand.
9 THE COURT: Come on up, sir, and have a seat
10 please.
11 * * * * *
12 **Tyrone Robinson,**
13 **having been duly sworn,**
14 **testifies as follows:**
15 * * * * *
16 **DIRECT EXAMINATION**
17 BY MS. MARTO:
18 Q. Good afternoon, sir. You went to trial
19 for murder, right?
20 A. Yes.
21 Q. And you got a life sentence?
22 A. Yes.
23 Q. You were represented by Mr. Bax?
24 A. Yes.
25 Q. And how do you feel he did representing

1 you?
2 A. I feel he was ineffective.
3 Q. All right. So before we dive into your
4 allegations the Court does have your amendments,
5 so everything that you've written the Court has
6 a copy of. Now, in those amendments what's the
7 first issue you want the Court to know and hear
8 from you about?
9 A. Well, the first, my Sixth Amendment
10 right to effective assistance of counsel was
11 violated as a result of error thereabouts in
12 failing to make a proper -- proper motion for
13 the directed verdict, because it was violating
14 my Sixth Amendment right consequently to
15 ineffectiveness of counsel, 'cause he failed to
16 argue that -- that because Trial Judge Thomas
17 Cooper dismissed the elements required to
18 constitute the crime of felony murder by the
19 felony murder rule that I was indicted on a
20 motion for a directed verdict, dismissed because
21 the evidence was insufficient to convict on, and
22 constitute -- constituted an acquittal on all
23 the evidence that he dismissed, which
24 constituted an acquittal on the crime of felony
25 murder, by the felony murder rule that I was

1 indicted on, and he failed to make a proper
2 motion.
3 Q. Sir, I'm sorry, I'm not trying to cut
4 you off. Can you maybe speak a little bit
5 slower and a little bit louder, because I think
6 there are some people who can't hear.
7 A. My Sixth Amendment right to effective
8 assistance of counsel was violated constituting
9 ineffective assistance of counsel.
10 THE COURT: It's all right, it's just -- I'm
11 sorry.
12 BY WITNESS:
13 A. As a result of attorney error
14 thereabouts on a motion for a directed verdict
15 of acquittal failed to argue that because Trial
16 Judge Thomas Cooper voluntary dismissed all the
17 elements required to constitute the crime of
18 felony murder, by the felony murder rule that I
19 was indicted on, that his actions constituted an
20 acquittal on the crime of felony murder by the
21 felony murder rule, was saying that in Beaufort
22 County on or about September the 1st, 2012,
23 while engaged in an ongoing gun battle
24 inherently a dangerous felony, Tyrone Robinson
25 did willfully, unlawfully and with malice and

1 aforethought caused the victim K. S. [redacted]
2 to be shot and killed, and he died on -- as a
3 proximate result of that. And -- and he also
4 failed to object to -- to the descriptive
5 amendment of the indictment, and argue that
6 Trial Judge Thomas Cooper could not submit the
7 case to a jury on the unindicted version that
8 constitutes a non-existent crime of defense,
9 which states on or about September the 1st
10 Tyrone Robinson did willfully with malice cause
11 him to be shot and killed. That there is no
12 indictment charging me with -- no indictment
13 putting me on notice I had to prepare a defense,
14 when defendant is and constitutes a non-
15 existence crime and offense, that doesn't
16 constitute a crime and/or offense that I could
17 be held criminally liable for -- for the laws
18 governing the State of South Carolina.
19 Q. So you're saying you didn't know you
20 were charged with murder?
21 A. I knew I was charged with murder, but
22 the indictment stated that I was charged -- at -
23 - at -- at my pretrial hearing the Solicitor
24 Issac McDuffie Stone told the Judge, Judge
25 Thomas Cooper, that I was charged with felony

1 murder, by felony murder of three. He said that
2 his three was three or more people were
3 committing inherent dangerous felonies, and as a
4 result of that somebody got killed. So that's
5 the theory that I -- that was presented at trial
6 on me, and that was at the pretrial hearing on
7 February 27th of 2014. At that pretrial hearing
8 he told Judge Thomas Cooper -- hold on ---
9 Q. What felonies did they say you were
10 committing during that time; do you know?
11 A. They charged -- they said I was
12 committing a felony called an ongoing gun battle
13 and an inherently dangerous felony. That's the
14 felony they -- that's what they claimed.
15 WITNESS: Your Honor, I have -- I can stand
16 up ---
17 THE COURT: Yeah, here just pass ---
18 WITNESS: All right.
19 THE COURT: -- pass them over to me.
20 WITNESS: Okay.
21 THE COURT: This is part of the trial
22 transcript that you're showing me?
23 WITNESS: Yes, sir.
24 THE COURT: Okay.
25 WITNESS: Well, now ---

1 THE COURT: Okay, he -- he's, basically,
2 showing me pages 16 and 17 ---
3 WITNESS: Okay.
4 THE COURT: -- of the trial transcript.
5 WITNESS: Yeah, but -- and I -- and I -- for
6 the record, I've got it numbered on page -- page
7 1052, because that's -- this trial transcript
8 I'm submitting is from my appeal case, and
9 that's -- I got the number from the appeal.
10 WITNESS:
11 A. Okay, I'm gonna read from paragraph
12 two to paragraph 13, it states our theory in the
13 felony murder rule that you have three people
14 committing inherently dangerous felonies, and as
15 a result of those inherently dangerous felonies
16 a child dies. The actual shooter so to speak,
17 the one that discharged the fatal bullet under
18 that scenario is irrelevant and not controlling.
19 So that is the position that the State's going
20 under. That's the theory that the State goes
21 under, and that is a consistent theory among all
22 the defendants, that's -- that's the theory.
23 We're not switching up our theories depending on
24 which defendant we're talking about. And -- and
25 the first case on page -- starting from 24 to

1 page 16, our theory is all three of them are
2 culpable -- culpable under that scenario, and
3 that's the theory we're proceeding for trial.
4 So I wanted to clarify that as far as who the
5 gunman was, and things like that.
6 THE COURT: And that -- that was Solicitor
7 Stone's comments.
8 WITNESS: Comments, yes.
9 THE COURT: I -- I understand that.
10 WITNESS: Okay.
11 THE COURT: Next question?
12 BY MS. MARTO:
13 Q. All right, so the two issues you've
14 raised so far is concerning the indictments and
15 directed verdict. What's your next issue?
16 A. Well, the next -- the next one, it's
17 like -- it's like four issues that I'm -- I'm --
18 I'm raising with this argument, is that my Sixth
19 Amendment Right to effective assistance of
20 counsel was violated ineffective assistance of
21 counsel as a result of attorney error
22 thereabouts. Failure to object to a
23 constructive amendment of indictment to -- to --
24 failure -- failure to construct -- to object to
25 constructive amendment of indictment, and assert

1 a claim of a violation of my federal Fifth and
2 Fourteenth Amendment, due process right to
3 notice of the charges brought against me to
4 protect me from being unconstitutionally be
5 deprived of my liberty on an indicted crime, in
6 theory alleging on or about September the 1st,
7 2012, Tryone Robinson did willfully with malice
8 cause him to be shot and killed, and he died.
9 And there's no indictment charging me with it,
10 and there's no indictment putting me on notice I
11 had to prepare a defense for. And I also assert
12 the claim of a violation of my federal Fifth and
13 Fourteenth Amendment right -- from federal Fifth
14 and Fourteenth Amendment due process right to
15 notice of the charges brought against me for --
16 for the -- for the same issues for the
17 unindicted crime that I had no notice -- notice
18 that I had to prepare a defense for a defendant
19 case. And now I also argue -- argue that my
20 Sixth Amendment right to effective assistance of
21 counsel were violated. Counsel -- ineffective
22 assistance of counsel because the attorney erred
23 by failure to assert the claim of violation of
24 South Carolina Code of Laws 17-19-10 to protect
25 me from being unlawfully held and to answer in

1 court for it, and deprive my liberty on that
2 unindicted crime allegedly on or about September
3 the 1st of 2012, Tyrone Robinson did willfully
4 with malice cause him to be shot and killed, and
5 there's no indictment charged me with, which
6 violates South Carolina Code of Laws 17-19-10,
7 which states nor should any person be held to
8 answer in court for alleged crime or offense
9 unless upon indictment by -- by a grand jury.
10 And the other issue was -- well, yeah, for that
11 -- for -- for that. Yeah, those are the issues
12 that I ---
13 Q. Is that everything you have concerning
14 the indictments themselves?
15 A. No, I've got other issues to argue, but
16 for this argument, I'm arguing those issues for
17 this argument.
18 Q. Okay. Is there anything else that you
19 want to expand upon on that, or are you -- do
20 you think that that's covered?
21 A. Well, I need to argue -- I need to
22 argue how to ---
23 Q. I know you've got other issues, I'm
24 talking about this one issue.
25 A. That's what I mean, I need to argue how

1 it -- how it occurred.
2 Q. Okay.
3 A. So ---
4 Q. Yes, so how did it occur?
5 A. And -- and what happened was, the Trial
6 Judge Thomas Cooper, when he -- when -- when he
7 swore the jury in, he told the jury -- he swore
8 the jury, this is on page one of the trial --
9 trial transcript, right here, if you want to see
10 it.
11 THE COURT: No, I've got it.
12 WITNESS: You've got it?
13 THE COURT: Yes.
14 BY MS. MARTO:
15 Q. What page number, sir?
16 A. Page one.
17 Q. Okay.
18 A. He -- he still -- he -- he's -- it
19 states that -- well, to start I'm on paragraph
20 18, Thank you, ladies and gentlemen, as you have
21 heard the Solicitor has called the case of the
22 State vs. Tyrone Robinson. Mr. Robinson has
23 been indicted by the Grand Jury of Beaufort
24 County and charged with the crime of murder.
25 That that being alleged that here in Beaufort

1 County on or about September the 1st, 2012,
2 while engaged in an ongoing gun battle, an
3 inherently dangerous felony Tyrone Robinson did
4 willfully, unlawfully and with malice
5 aforethought cause the victim K. S.
6 to be shot and killed in the area of Marshland
7 Road and Allen Road on Hilton Head Island, and
8 that K. S. died in Beaufort County on
9 September 1st, in violation of the law. So
10 that's -- that's the -- that's the crime the
11 jury was sworn into to decide on, and that's the
12 crime that -- the crime and the theory that the
13 -- that the State of South Carolina tried me on
14 before the jury. After the State of South
15 Carolina rested their case, we -- Attorney Arie
16 Bax, he motioned for a directed -- directed
17 verdict. And one of the issues what he was
18 arguing was because the evidence proved that I
19 was not engaged in an ongoing gun battle or any
20 type of felony. The evidence proved that I was
21 being attacked by Aaron, Sr. and Aaron, Jr., and
22 the only felony that was being committed at the
23 time was the felony of conspiracy to murder me,
24 that -- that they was committing against me,
25 that was occurring at the time the victim K. S.

1 ████████ was shot and killed. So the felony
2 murder -- his death couldn't be attributed to me
3 by the crime of felony murder, by felony murder
4 which I was indicted on because I was not
5 participating in any felonies, I was the victim
6 who was being attacked, and felonies were being
7 committed against me; so instead of awarding me
8 a directed verdict Trial Judge Thomas Cooper,
9 what he did, he stated that if there was an
10 indictment that stated -- let me -- hold on. On
11 page -- on my -- on my transcript it's 993, but
12 it's I think 858 of the transcript that you
13 have, and -- and he stated -- what did he say?
14 And so in order for the State to prove the
15 defendant guilty of murder, it must be proven
16 beyond a reasonable doubt that defendant killed
17 the victim, and that the killing was done – no,
18 that's -- hold on, excuse me, let me look at the
19 transcript. This is it right here. Okay, this
20 is Arie Bax, I think, right here on page 532 of
21 the trial transcript, paragraph one. An
22 indictment was as we argued at the beginning of
23 this case, alleged felony murder, allegedly he
24 was in the commission of an inherently dangerous
25 felony that they labeled an ongoing gun battle.

1 As I argued to the jury, and I argue to you --
2 you now, there is no ongoing gun battle.
3 Additionally, Your Honor, the gun battle I don't
4 think -- no -- no one had ever intended for a
5 gun battle to be applied by someone who is
6 legally asserting self-defense. He's fleeing --
7 he was contained to flee, he was trying to get
8 away. The evidence that has been presented by
9 the State was that he was trying to get away on
10 that morning by getting in his car and driving
11 away, but by going and trying to find people,
12 she was asking when he -- what I did, all the
13 discovery, Chief Mitchell now, but already
14 informed trying to find anybody that can help
15 him, he -- he would get out of town, he was
16 fleeing, and he did not. And I will recite to
17 you, Your Honor, they have absolutely no
18 evidence that he has introduced that just --
19 that has been introduced that he expressed at
20 the time an intent to go find the Youngs. He
21 had -- he was -- he was going to get in his car
22 and go back on White Horse Road. None of this
23 has ever been presented in this case, and I
24 think without that, he is entitled to a directed
25 verdict not only based on -- on two theories of

1 law, one that they have failed to at all prove
2 or disprove or offer contradictory evidence to
3 the idea that he was -- was -- if he fired a
4 weapon, it was in self-defense, and he was
5 entitled to self-defense, and they have not
6 disproven it. And because under their
7 indictment they have not met their burden to
8 meet the language of the indictment that they
9 have gone forward on. They have not been able
10 to prove an inherently dangerous felony of any
11 kind that was occurring at the time that the
12 child died that Mr. Robinson was involved in.
13 And on page four -- page -- this is 534, I
14 think, and starting from paragraph six, instead
15 of awarding a directed verdict, Trial Judge
16 Thomas Cooper stated, but if those words were
17 not there -- if those words were not there and
18 the gun battle stuff and all that was not there,
19 and if it just said that on or about September
20 the 1st Tyrone Robinson did willfully and with
21 malice cause him to be shot and killed, and he
22 died, then those issues, of course, would be
23 plain and appropriate, and this charge would be
24 at least simply made under those circumstances,
25 and that there was evidence to support those

1 charges, they would go forward. But he said
2 that if there was a -- if there was an
3 indictment charging me with those, and if those
4 words were plain, but there was -- there's no
5 indictment. You can't -- you can't tell me to
6 answer in Court for a crime you just made up,
7 saying on a -- on a -- if there's a -- if
8 there's an indictment, and there's no
9 indictment, so that violates South Carolina Code
10 of Law 17-19-10, because there are no
11 indictments charging me with this, but I was
12 held to answer the Court with this, but he
13 denied my directed verdict -- a motion for
14 directed verdict, based on -- on this unindicted
15 theory. And on page 537 at -- on paragraph ten
16 it says he stated, my point was that from the
17 standpoint of a -- of a motion for directed
18 verdict, that an inclusion of the words, while
19 engaged in an ongoing gun battle, an inherently
20 dangerous felony, which I thought were put there
21 more appropriately when they were dealing with
22 three defendants in this particular case that
23 those words could be taken out of this -- of
24 this -- taken -- be taken out of this particular
25 charge as I indicated, and as he indicated, he

1 indicated he took -- he took the words out of
2 the charge. As to criminal conduct, I'm charged
3 with -- they're holding me responsible for, the
4 murder. He took those out as a result of error
5 thereabouts arguing there was no evidence to
6 support that. And he said no words could be
7 taken out of this particular charge as
8 indicated, and there would be no question as
9 whether to -- to whether or not they could have
10 -- have a right to go to a jury on the charge of
11 murder against me. All right, and on page 38 he
12 stated, so I'm not -- I'm not granting a
13 directed verdict that the State can't argue one
14 thing or another. I simply trying to show, and
15 I hope I have shown it sufficiently that in this
16 particular case it is not necessary for the
17 indictment to have continued in those words. So
18 he just left them in the indictment because he
19 took the element -- essential element -- the
20 only criminal conduct I'm charged with
21 committing that to hold me responsible for the
22 death of -- of the victim, he dismissed that
23 because there's no evidence to -- to -- to -- to
24 support it and submit the case to the jury or to
25 me to answer in court for the unindicted version

1 that the grand jury never issued an indictment
2 and charged me with it. But -- so -- but
3 anyway, so when he dismissed the ongoing gun
4 battle inherently a dangerous felony from that
5 indictment, because the evidence was
6 insufficient to -- to -- to submit -- to
7 convict, that constituted an acquittal on the
8 allegation that I was engaged in an ongoing gun
9 battle, which is criminal conduct under the
10 United States of America case of -- Tenth
11 Circuit case of U.S. vs. Hunt, cited at 212 F.3d
12 539, which states, for our part the government
13 rarely admits that certain parts of the
14 indictment was dismissed for lack of evidence,
15 thereby amounting to an acquittal on those -- on
16 those parts. The government does not
17 specifically -- does not appeal those specific
18 parts, but now in order to prove the crime of
19 felony murder, by the felony murder three, Your
20 Honor, do you have a copy of this indictment?
21 THE COURT: I -- I do, it's in here.
22 WITNESS: Okay, well ---
23 THE COURT: I think I understand your
24 argument as it relates to the indictment, and --
25 and what Judge Cooper ruled as far as it relates

1 to the directed verdict issue. I understand
2 what you're saying, and so if you want to move
3 on to the additional ground, that would be fine.
4 WITNESS: Well, I -- I need to emphasize a
5 few things on it, if you don't mind.
6 THE COURT: That's -- that's fine, but I'm
7 looking at the indictment right now, and it --
8 it basically indicates an ongoing gun battle,
9 inherently dangerous felony ---
10 WITNESS Right.
11 THE COURT: -- etcetera.
12 BY WITNESS:
13 A. But the thing I want to emphasize on it
14 is in order to charge -- to -- to prove the
15 crime that I'm -- 'cause I'm charged with felony
16 murder, by felony murder with three. There's
17 three elements that had to be proven. The first
18 element they had to prove, crime of felony
19 murder by felony murder is that I was in the
20 commission of committing an ongoing gun battle,
21 inherently a dangerous felony. The second
22 element that had to be proven is that the
23 victim's death is the proximate result of an
24 ongoing battle, inherently a dangerous felony.
25 Indictment states that I was engaged in an

1 ongoing gun battle, inherently a dangerous
2 felony, and the State said the victim died as a
3 proximate result of that ongoing gun battle,
4 inherently a dangerous felony. Those are the
5 two -- two elements. The second element -- the
6 third element that had to be proved was, that I
7 acted with the intent to commit the ongoing gun
8 battle, inherently a dangerous felony, and that
9 is because the indictment states that I
10 committed this ongoing gun battle, inherently a
11 dangerous felony with malice and aforethought.
12 In order to prove in the case of felony murder
13 when -- when the indictment only charges theory
14 of felony murder, that -- that -- that in order
15 to prove that a person is guilty of felony
16 murder, when the indictment alleged he committed
17 a felony with malice aforethought, he -- the
18 State must prove that he acted with intent to
19 commit the felony. And that's cited in the case
20 of State vs. Brown, cited at 881 S.E. 2d 771,
21 where the South Carolina Court of Appeals stated
22 that the -- that -- stated that the key feature
23 of -- of felony murder is that the intent to
24 commit the felony substitute for the malice
25 element of murder. And it first states that the

1 intent to commit the felony, and the commission,
2 or attempt to commit such crime must be proven
3 beyond a reasonable doubt.
4 BY THE COURT:
5 Q. And I -- I understand that. How did
6 your lawyer mess up? Because he moved for a
7 directed verdict, that part of Judge Cooper's
8 discussion that you were just talking about was
9 where ---
10 A. Well --
11 Q. -- he had moved for a directed verdict.
12 A. -- he failed to object to object to the
13 amendment -- or the indictment, that's where he
14 messed up with that, because he had me to answer
15 in Court for a -- a -- an unindicted version
16 that the grand jury never issued an indictment
17 to charge me with, and that violated my Federal
18 Fifth and Fourteenth Amendment due process right
19 to notice a charge brought against me, and in
20 South Carolina Code of Laws 17-19-10 ---
21 Q. And I -- I understand that argument.
22 A. Okay.
23 Q. And for the directed verdict, how you
24 -- how he messed up was because if he -- when
25 -- when the Trial Judge Thomas Cooper dismissed

1 the allegation alleging while engaged in an
2 ongoing gun battle, inherently a dangerous
3 felony, because the evidence was insufficient to
4 convict. That comes from the acquittal on that
5 -- on that allegation and indictment. That --
6 that -- when he dismissed that allegation, it
7 also comes to the acquittal on the first element
8 requires it to constitute felony murder, because
9 -- which is I was in the commission of
10 committing an ongoing gun battle, inherently a
11 dangerous felony, 'cause there was no longer an
12 ongoing gun battle, inherently a dangerous
13 felony to constitute the first element. And to
14 constitute acquittal on the second element,
15 because there was no ongoing gun battle to prove
16 that the victim's death was the approximate
17 result of -- in order to constitute the second
18 element. And that constituted an acquittal on
19 the third element, which is acting with intent
20 to commit an ongoing gun battle, because there
21 was no longer an ongoing gun battle for me to
22 act with intent to commit, in order to
23 constitute the -- the -- the third -- the third
24 element. So the indictment doesn't charge me
25 with the elements of any other crime, so his

1 actions of dismissing it for the allegation --
2 no allegation of ongoing gun battle, inherently
3 a dangerous felony, because the evidence was
4 insufficient to convict constituted an acquittal
5 on all the elements required to constitute a
6 crime on the indictment I was charged with.
7 Q. Right. Now, you – you've said that
8 several times, and that's why I'm telling you I
9 understand that argument. I understand your
10 position with regard to that, okay?
11 A. Okay, yeah.
12 Q. I do understand that, so you don't need
13 to talk anymore about that ---
14 A. Okay.
15 Q. -- okay?
16 A. So I don't have to support that? I've
17 got case law to support it.
18 Q. I -- I understand that. We're gonna
19 let your lawyer ask you another question, okay?
20 BY MS. MARTO:
21 Q. So I think in your amendment you also
22 raised issues with maybe a truck photo being
23 entered; is that correct?
24 A. Yeah, but that's -- I'm gonna -- I'm --
25 the next issue I wanted to argue was the other

1 -- the other constructive amendment of the
2 indictment.
3 BY THE COURT:
4 Q. You've already argued that.
5 A. No, it's -- another one had occurred.
6 Q. Okay.
7 A. At the -- at the ---
8 BY MS. MARTO:
9 Q. Sir?
10 A. -- when he instructed the jury on the
11 crimes to decide on, he instructed the jury on
12 the third unindicted crime.
13 BY THE COURT:
14 Q. Okay, that's probably an issue for
15 direct appeal that's already been had, so ---
16 A. He failed to object to that.
17 Q. Okay, what -- what was the portion of
18 the instruction that he failed to object to?
19 A. He -- he failed to object when the --
20 when the Trial Judge Thomas Cooper instructed
21 the jury on the crime to decide on he -- instead
22 of instructing the jury on the -- that the State
23 had to prove I was guilty beyond a reasonable
24 doubt of committing the elements required to
25 constitute a crime of felony murder, by the

1 felony murder for three that I was indicted on,
2 and the jury was sworn on, he instructed the
3 jury on the crime of murder, alleging I killed
4 the victim with malice and aforethought. That
5 there is no indictment charging me with -- see
6 this is the indictment with Isaac McDuffie
7 Stone, Your Honor.
8 Q. Yeah.
9 BY MS. MARTO:
10 Q. Sir ---
11 A. This is indictment drafted by Isaac
12 McDuffie Stone.
13 BY THE COURT:
14 Q. I -- I got it. I got it here.
15 BY MS. MARTO:
16 Q. Sir, the Judge is telling you that he
17 understands your indictment, and also that you
18 talked about ---
19 A. But I -- I'm -- I've got ---
20 Q. Sir, sir, I'm still talking. You have
21 1,600 pages worth of amendments, and ---
22 A. I've got a constructive amendment issue
23 that I've got to argue.
24 Q. They were sent to the Judge, he's going
25 to read all of that, okay? You don't need to

1 tell him.
2 A. I have to argue that.
3 Q. We'll move on.
4 THE COURT: I -- I have your petition here.
5 What I want your attorney to do, and what she's
6 trying to do, is get to the crux of the matter,
7 because you -- you're -- you're repeating a lot
8 of stuff that -- that doesn't need to be
9 repeated. And I realize the constructive
10 amendment argument that you are making, and I
11 will address that ---
12 WITNESS: That's a different issue to
13 argue.
14 THE COURT: The indictment -- the
15 indictment charged you properly, okay, as far as
16 what the crime was that was involved here. Now,
17 that said, I understand your constructive
18 amendment, and that you're arguing that your
19 lawyer made a mistake in not correcting the
20 judge or not objecting to the way that the judge
21 ruled at the directed verdict stage, so I -- and
22 I -- I understand all of that.
23 WITNESS: But he -- when he instructed the
24 jury on the crime to decide, that was another --
25 he instructed the jury on a different crime that

1 -- that -- that there was a third unindicted
2 crime.
3 THE COURT: Okay.
4 WITNESS: And also he failed to object to
5 that. I don't -- I don't have an indictment
6 charging me alleging that I killed the victim
7 with malice and aforethought. So this was at --
8 at pretrial hearing stated that the issue of who
9 shot and killed the victim was not relevant, it
10 was not controlling the law to determine whether
11 I was guilty or not of a crime of felony murder,
12 he stated that at pretrial hearing. So I was
13 held to answer for a third unindicted crime that
14 -- that -- that there's no indictment charging
15 me with either.
16 THE COURT: And -- and I understand your
17 position on that. All that ---
18 WITNESS: And the elements for that ---
19 THE COURT: All that is right here, okay?
20 I've got all of it right here, see?
21 WITNESS: And they have two different --
22 they have different elements. The elements are
23 not included into the crime of felony murder
24 that I was indicted on for the crime of murder,
25 alleging I killed the victim with malice and

1 aforethought.
2 THE COURT: I understand. Your lawyer's
3 gonna ask you a question, please answer her
4 question, okay?
5 BY MS. MARTO:
6 Q. Now, another issue you have is
7 concerning the admission of the photograph of
8 the truck, correct?
9 A. Yeah, that's one issue.
10 Q. Okay. And why did you think that he
11 needed to object to that?
12 A. Because when he submitted the
13 photograph of -- of a trampoline with a -- with
14 a four-wheeler by the trampoline, and he -- he
15 -- he had a stand, and he had a picture on the
16 stand the whole time through the trial, so -- so
17 the jury saw -- saw that, so he was using it to
18 pitch it as testimonial, and I -- and I didn't
19 know at the time, I wondered why he did it, but
20 at -- but when got in closing argument he
21 referred to that -- to that picture, but when --
22 when -- when -- when -- when -- while -- the
23 whole time while trial's going on, he never --
24 the Solicitor never submitted -- never put a
25 witness on the stand to testify to -- to the

1 picture, and never allowed me to cross-examine
2 the witness who took the -- the person who took
3 that picture; but in my motion in discovery, I
4 got another picture of the same crime scene that
5 was tooken as -- as soon as they came on the
6 crime scene, and that four-wheeler was never
7 part of that. The reason why he put -- he used
8 that picture with the four-wheeler in it,
9 because in closing -- because the evidence that
10 he submitted at trial proved that I was on the
11 far right side of the victim at the time the
12 victim was shot and killed. The bullet hit the
13 victim on the left side, traveled left to right
14 towards my direction. The only people who was
15 on the left side of him was the people who was
16 trying to kill me, Aaron Young, Jr., and Aaron
17 Young, Sr. So all the witnesses testified that
18 the victim ran -- ran towards home. The victim
19 never turned around and came back, so the
20 victim's left side was never facing me, the --
21 which was the left side that the victim was shot
22 and killed on, so the Solicitor Isaac McDuffie
23 Stone knew that. So after all the witnesses
24 testified, and they testified that the victim's
25 left side was facing towards Aaron, Sr. and

1 Aaron Jr. who was shooting -- trying to kill me,
2 he didn't -- he didn't have any evidence, or any
3 testimony from anybody to prove to how -- how
4 people said the -- the left side of the victim
5 was shot and killed and was facing me. So what
6 he did, he told the jury that the victim would
7 have turned around and came back to get the
8 four-wheeler, and that's how the victim's left
9 side would be facing me and got shot, but that
10 was a -- a event that never occurred, 'cause the
11 witnesses testified that the victim never turned
12 around, the victim ran in one direction, and --
13 and -- and was shot and killed in that
14 direction, so the victim's left side was facing
15 Wild Horse Road the whole time when the victim
16 was shot and killed. And in the -- in the -- in
17 the -- like I said, in my motion for discovery I
18 had a picture of the crime scene that showed
19 that the four-wheeler was never parked there, so
20 he fabricated that evidence and then used it
21 against me to get me convicted on -- on a -- on
22 a incident that never occurred. That he -- own
23 -- that he injected his own personal testimony
24 to -- and got -- and got me -- and got -- got --
25 tricked the jury to decide on it, and -- and got

1 me convicted on. That the witness is
2 contradictory to the -- to the testimony of all
3 the witnesses who testified at my trial. So --
4 and -- and by doing that, he -- that violated my
5 federal Fourth Amendment right. And -- and
6 Attorney Arie Bax the whole time at trial he
7 never objected to the picture, and he never
8 objected and -- and -- and asked for the -- for
9 the -- them to put the witness up on the stand
10 who took the picture, so that he could present
11 the original picture of the crime scene when
12 they were first tooken that -- showing that the
13 four-wheeler was never parked there, you know
14 what I'm saying? So -- and so I got -- he
15 caused me to get convicted and prejudiced me,
16 because the jury used that picture as testimony,
17 and then convicted me on a false incident and a
18 false -- that never occurred. And -- and you've
19 got the evidence proving it never occurred.
20 Q. Okay. And correct me if I'm wrong, but
21 I think another one of your issues was you
22 wanted counsel to more, I guess, effectively
23 argue that you were the victim of the co-
24 defendants; is that correct?
25 A. I was the victim of the co-defendants?

1 Q. You were the victim of the Youngs?
2 A. What's the issue with that?
3 Q. I think that's something that you were
4 looking to raise; is that correct? That you --
5 whatever you did was in self-defense?
6 A. I raised -- no, I raised the issue that
7 I -- my Fourth Amendment violation issue.
8 Q. Okay. Can you expand on that a little
9 bit?
10 A. Well, I wasn't -- I wasn't going to
11 raise that issue again.
12 Q. Okay. Is there any other issue that
13 you haven't already addressed the Court with
14 today?
15 A. Yeah. I am -- I have a due process
16 issue. I mean ---
17 Q. Okay.
18 A. I'll raise an issue that my counsel was
19 ineffective for failing to claim my federal
20 Fifth and Fourteenth Amendment right to due
21 process, because he -- he -- he -- 'cause the
22 State failed to prove I was guilty beyond a
23 reasonable doubt of all the evidence required to
24 constitute the crime I was charged with.
25 Q. And what could counsel have done that

1 would have meant that you wouldn't have been
2 found guilty, as it pertains ---
3 A. Well ---
4 Q. -- to that specific issue right there?
5 A. Yeah, but this is what I'm saying,
6 y'all are trying to shorten -- shorten my --
7 shorten this hearing, and making it as short as
8 possible, but how can I argue this issue, but
9 I've got to go through the trial transcript and
10 explain what the witnesses testified to, to show
11 that there was -- that the State failed to prove
12 me guilty beyond a reasonable doubt of all the
13 evidence in the -- in the -- of the crime I was
14 charged with.
15 THE COURT: Is -- is there some portion
16 during the trial transcript where you feel like
17 your lawyer should have objected to any of the
18 testimony of the witnesses or should have made
19 some other motion -- some other motion that you
20 haven't already talked about? Was there
21 something else that he -- he should have done?
22 WITNESS: Pertaining to this issue?
23 THE COURT: Generally speaking, is there
24 some other failure on the part of your attorney
25 to do so something that you feel like he should

1 have done?
2 WITNESS: Well, I mean for one thing he --
3 he was ineffective 'cause he failed to object to
4 -- and -- and my -- when they put on my defense
5 for me.
6 THE COURT: Yes, sir.
7 WITNESS: It was time for him to put on my
8 defense. Instead he could have submitted
9 witnesses in my defense that would testify in my
10 favor, and to support my -- what I'm saying, how
11 I'm not guilty, right? He -- he -- he
12 subpoenaed a -- a witness to -- at -- at my
13 trial, he subpoenaed J. S. [redacted]. He put
14 him -- he put a witness on the stand to testify
15 against me in my defense.
16 THE COURT: And what was that witness' name
17 again, please?
18 WITNESS: J. S. [redacted].
19 THE COURT: Jonathan who?
20 WITNESS: J. S. [redacted]. And he -- and
21 the witnesses testified in my defense, and the
22 witness accused me of being the one that shot
23 and killed the victim, and -- and -- and that
24 prejudiced my defense, because the State used
25 that to bolster their case and convict me on --

1 on -- on testimony from a witness that was put
2 up in my defense to help me, that he used to
3 help the State and convict me.
4 THE COURT: Ms. Marto.
5 MS. MARTO: Yes, your Honor.
6 THE COURT: Oh, J. S.
7 .
8 WITNESS: Yeah, ---
9 THE COURT: Got it.
10 WITNESS: -- --
11 THE COURT: -- .
12 WITNESS: -- -- yeah.
13 THE COURT: Yes, sir.
14 WITNESS: .
15 BY MS. MARTO:
16 Q. And he was the one that was with you
17 that day; is that correct?
18 A. No, he wasn't with me. He was --
19 Jontu, Sr. was with me.
20 Q. Okay.
21 A. That -- this J. S. he's -- he's -- he's
22 a Junior.
23 Q. Gotcha.
24 A. Yeah, but he -- he -- he -- he -- so I
25 told him at trial not to subpoena this witness.

1 He -- and I told him if he was gonna put that
2 witness on the stand, to please -- because this
3 witness went before a forensic expert, and they
4 did an interview with this witness. At the
5 original hearing this witness testified to that
6 date that he never saw who shot and killed the
7 victim. He never saw anybody shoot. He
8 explained all this on the video, you see what
9 I'm saying? So I told everybody, I said if
10 you're gonna subpoena that -- that person, that
11 he need -- I wanted to play that video, because
12 he -- 'cause he -- because he would -- he would
13 not -- he wouldn't listen to me. I said don't.
14 I begged him not to put that witness on the
15 stand in my defense. If the State wanted to
16 call him, let them call him, and I would impeach
17 his testimony through his -- through the video
18 evidence from the forensic video where he told
19 the forensic expert that he never saw who shot
20 and killed the victim. He never -- he don't
21 know nothing about it.
22 THE COURT: Okay, Mr. Robinson, you may be
23 -- you may be thinking -- you may not be
24 recalling this correctly, but it was the State
25 who called Jontu Singleton ---

1 WITNESS: Yes, they called -- they
2 called ---
3 THE COURT: Right.
4 WITNESS: -- Jontu Singleton, Sr.
5 THE COURT: Senior?
6 WITNESS: There's two Jontu Singletons,
7 there's two different Jontus.
8 THE COURT: Okay, you're saying there was a
9 Junior that your attorney ---
10 WITNESS: Yeah.
11 THE COURT: -- called?
12 WITNESS: This one is a -- is a Junior. As
13 a matter of fact this is Jontu Singleton Sr.,
14 the one who the State called -- the Jontu that
15 the State called, this ---
16 THE COURT: That must be ---
17 WITNESS: -- is his son.
18 THE COURT: Okay, this must be J.S. that
19 was called at 779 ---
20 WITNESS: The State called him.
21 THE COURT: And he ---
22 WITNESS: And -- and -- and in my defense
23 Arie Bax called his son.
24 THE COURT: Okay, I understand.
25 WITNESS: Yeah. And his son made -- made

1 -- test -- made that testimony in my defense,
2 but he was ineffective for -- for doing that,
3 'cause that prejudiced me, effected the outcome
4 of my trial, because he used my defense to my
5 lawyer who was supposed to be representing me to
6 get me off, 'cause I pled not guilty, used my
7 defense to -- to put a witness up against me to
8 convict me for the State. And inside my --
9 inside that argument, I cited case law to
10 support that from the Supreme Court.
11 BY MS. MARTO:
12 Q. Are there any other witnesses that
13 counsel called that you wish he didn't call?
14 A. Not that was the only -- that was the
15 only witness he called.
16 Q. That was the only one.
17 A. And I told him not to call that
18 witness.
19 Q. Right. Are there any witnesses that
20 you wanted him to call?
21 A. Yeah, but -- but we -- well, we called
22 -- he -- he -- he didn't subpoena Melvin, but
23 Melvin didn't -- he didn't want to testify, so,
24 you know.
25 Q. Did you feel like counsel prepared you

1 to testify at trial?
2 A. Did -- did I feel he did what?
3 Q. He prepared you to testify at trial.
4 A. That he prepared me to testify? No, I
5 prepared myself.
6 Q. Do you feel like counsel met with you
7 enough and talked to you enough about the case?
8 A. I mean he -- he met with me, but I
9 can't say it was enough, because he was -- he
10 had -- I mean his caseload, he worked for the
11 Public Defender's Office. He had a heavy
12 caseload. There was times he would kind of come
13 and -- and meet with me at night for about an
14 hour or two, just to briefly talk. And, you
15 know, so I mean -- I mean he talked with me, you
16 know, but he couldn't -- I can't say it was
17 enough, because he had too much a caseload.
18 Q. Did he review all the discovery with
19 you enough that you felt comfortable with it
20 all?
21 A. I -- I reviewed discovery myself. At
22 -- at the first part of this case, I -- I
23 represented myself, and then I allowed -- I
24 allowed him to represent me. At the first trial
25 I represented myself, that was one that he --

1 when he said they moved for a motion for the
2 severance in the second trial, and that's when
3 he represented me at -- at trial. But I have --
4 I don't -- but I mean -- I mean I'm gonna be
5 real with you, I'm gonna be honest on -- on
6 that, I don't feel that -- that I'm really
7 getting a fair hearing right now, because I
8 can't -- I'm not -- y'all are not allowing me to
9 argue my issues. I've got a due process -- I --
10 issue I can't -- y'all are not allowing me to
11 argue -- and I was acquitted on the crime
12 charged in the indictment. I was tried -- when
13 he -- when I got convicted on the crime of
14 murder, alleging I killed the victim with malice
15 and aforethought, that constituted an acquittal
16 on the crime of felony murder by the felony
17 murder of three that I was -- that I was
18 indicted and -- and -- and tried on. Murder
19 with malice and aforethought is not lesser
20 included offense crime. Cited in the case of --
21 the State of Nebraska vs. Calvin White, cited at
22 577 N.W. 2d 741, where it states, there could be
23 no dispute that premeditated murder and felony
24 murder do not contain the same elements to
25 support a conviction for -- for -- for first

1 degree murder. Premeditated murder requires
2 premeditated and deliberate malice, which is not
3 required for felony murder. The very basis of
4 felony murder is that the -- the -- that -- that
5 -- the very basis of felony murder is that in
6 the commission -- the underlying felony or
7 attempted felony results in a killing, which is
8 not required for premeditated murder.
9 Additionally, felony murder requires the intent
10 to commit a felony, and premeditated murder does
11 not. Felony murder requires the intent to
12 commit a felony. Premediated murder requires
13 the intent to kill if they place -- those
14 elements are not included with each other and
15 can't support a conviction in a case where a
16 person who is tried who is charged with felony
17 murder. And that's what happened to me, I was
18 charged with felony murder, and I was convicted
19 on -- on -- on murder, alleging I killed with
20 intent to commit a felony with malice and
21 aforethought, which is not a lesser included
22 crime. And when I was convicted on that -- on
23 that -- on the crime of murder that I killed the
24 victim with malice and aforethought, which is
25 not a lesser included crime, it constituted an

1 acquittal again on the crime of felony murder by
2 the felony murder rule of three that I was
3 indicted on, and that's supported by the Supreme
4 Court of the State of South Carolina in the case
5 of State v. Lewis English Fuller, cited at 552
6 S.E. 2d 282, where it states if accessory after-
7 the-fact does not charge an indictment, but is
8 instructed to clarify being prejudiced, if
9 finding an accessory after-the-fact is
10 equivalent to a verdict of not guilty. So how
11 -- I'm standing in prison and how -- how I went
12 to trial for felony murder for the crime charged
13 in the indictment. We got to the jury, he
14 instructed the jury on a crime that --
15 unindicted crime that is not a lesser included
16 crime. I got convicted on that. It constituted
17 an acquittal on the crime. Then when he
18 discharged the jury from trial, he discharged
19 the jury and never instructed the jury to decide
20 on any other elements required to constitute the
21 crime of felony murder by felony murder of
22 three. And he just charged the jury, and didn't
23 allow the jury to decide on the crime charged in
24 the indictment that I was tried on. That
25 constituted another acquittal on the crime

1 charged in the indictment I was tried on by the
2 Supreme Court of the State of South Carolina ---
3 THE COURT: You -- sir, sir, forgive me for
4 interrupting. You've already made that
5 argument.
6 WITNESS: But now this case it's short.
7 State vs. ---
8 THE COURT: Cite the case.
9 WITNESS: State vs. Richardson, cited at 25
10 S.E. 220, which states where we might say after
11 the jury was charged with the trial of this
12 case, they hadn't been discharged without any
13 lawful cause to prisoner is acquitted. So I was
14 acquitted on felony murder, and I'm still -- and
15 I'm doing -- I'm doing the time for it.
16 THE COURT: I -- I understand.
17 BY MS. MARTO:
18 Q. Are there any other new issues that you
19 haven't talked about today that you want the
20 Court to hear from you? They have all of your
21 file.
22 A. I still -- well, we still didn't -- the
23 issue of fabricated evidence.
24 Q. Okay. What evidence was fabricated?
25 A. Well, where you fabricated the

1 trajectory of the bullet. He fabricated the
2 evidence of the trajectory of the bullet. Trial
3 counsel ineffectively -- failed to object, and
4 allowed him to fabricate evidence of -- of -- of
5 the trajectory of the bullet because when --
6 when it -- when we was at trial, like I said,
7 all of -- all of the witnesses in my case they
8 testified that -- they testified that the victim
9 ran in one direction, and the victim never
10 turned around, all right? The -- the -- what
11 about pathologist or whatever the lady who
12 testified about the trajectory of the bullet,
13 she testified that the bullet hit the victim on
14 the left side, traveled left to right inside the
15 -- the victim's body. Okay, so when -- when he
16 got -- I don't know whether it was just a dummy
17 that they had with a stick in it that showed the
18 trajectory of the bullet, right? All right, he
19 had that when he brought that up with the jury.
20 Arie Bax told the jury -- he testified to the
21 jury that explained that, hey, my client should
22 be found not guilty, because the evidence proved
23 at the time that -- that he was running, that
24 the bullet hit him on the left side, traveled
25 from left to right, and the evidence proved --

1 all the evidence submitted proved my client was
2 on the far right, on the far, far right at the
3 time he was shot and killed. And the -- the --
4 the people who were attacking me were on the
5 left side of him, and -- and he showed through
6 the dummy where the trajectory of the bullet,
7 the little thing sticking in it, that the bullet
8 was on the left side. So Mr. Isaac McDuffie
9 Stone, he used that -- that picture with the
10 four-wheeler, and he used a dummy, and he turned
11 the dummy around and said, well, he ran -- he
12 ran in that direction, but he would have ran
13 back and got his four-wheeler. And he -- when
14 he turned the dummy around, he told them --
15 explained to the jury he turned the trajectory
16 of the bullet towards my direction, which was
17 inconsistent with the evidence, and he -- he
18 used -- he fabricated the trajectory of the
19 bullet, because all the witnesses told him that
20 the person was shot and killed running home in
21 the left -- and the bullet was on the left side
22 facing towards the people who were shooting at
23 -- at -- at me. If he would have never used
24 fabricated -- if he would never have submitted
25 that four-wheeler -- that picture of that four-

1 wheeler, which was of the crime scene that was
2 not of the crime scene at the time -- at the
3 time they came to the crime scene. And if he
4 would have -- would have argued the case
5 according to what -- the testimony of what the
6 witnesses said -- explained, that the person was
7 shot and killed while running towards my
8 direction, then the jury would have had to find
9 me not guilty, but when he fabricated the
10 evidence and subjected his own testimony to it,
11 and -- and turned the trajectory of the bullet
12 based on his -- his testimony, or his assertion
13 of what -- what should have happened, he
14 violated my due process -- my right to due
15 process, and violated my due right to due
16 process, and Arie Bax failed to object to that
17 and allowed it to happen, when he -- all he had
18 to do was object, he could have stopped that.
19 So that was the outcome of my trial, and it
20 caused me to be convicted, when I -- I felt the
21 jury would have -- if -- if that wouldn't have
22 happened, the jury couldn't -- they could not
23 have convicted me because the evidence proved I
24 was never on the left side when he got shot and
25 killed I was to the right. That's the State

1 evidence that they submitted.
2 THE COURT: I understand.
3 WITNESS: Your Honor, can I ask you a
4 question?
5 THE COURT: I'm sorry?
6 WITNESS: Can I ask you a question?
7 THE COURT: Yes, sir.
8 WITNESS: 'Cause -- are you gonna read
9 these arguments that I -- that I submitted?
10 THE COURT: I -- I have it all here, I have
11 it all ---
12 WITNESS: No, what I'm saying is, when you
13 make your decision, are you gonna read them?
14 THE COURT: Yes, I'm not gonna decide this
15 today, I'm gonna look at this harder.
16 WITNESS: But you will -- you -- you --
17 THE COURT: Yes, I'm gonna -- I -- I look
18 at everything in this trial.
19 WITNESS: Yes, sir, I ain't trying to make
20 you mad, I just want -- I'm trying to get --
21 'cause I mean I'm not really getting all -- all
22 the other issues like I have, you see what I'm
23 saying?
24 THE COURT: You've got 2,000 pages of
25 material here, you're gonna ---

1 WITNESS: That's all my arguments.
2 THE COURT: No, no, hear me out, hear me
3 out. I was not able to look at all of that
4 before today, okay?
5 WITNESS:
6 THE COURT: I was not gonna look -- I was
7 not able to look at all that ---
8 WITNESS: Yeah, I understand.
9 THE COURT: -- before today.
10 WITNESS: I understand that.
11 THE COURT: But I don't rule without
12 looking at the record, okay? And it's all in
13 the record, and so ---
14 WITNESS: But -- so your -- is your -- your
15 decision, is -- is it gonna be based on -- on --
16 on my arguments? Are you gonna, like, read my
17 arguments and see whether my arguments are
18 correct or not?
19 THE COURT: Yes, I -- I have them here. I
20 will consider everything ---
21 WITNESS: That's what I just want.
22 THE COURT: -- that is put forward. Now,
23 what you've got to understand is what we're
24 focused on here today ---
25 WITNESS: Right.

1 THE COURT: -- is your attorney and what
2 your attorney --
3 WITNESS: His ineffectiveness.
4 THE COURT: -- may have done wrong at
5 trial, okay?
6 WITNESS: Ineffectiveness of counsel.
7 THE COURT: Right, and that's why we're
8 trying to steer you, and your attorney's trying
9 to do a good job of getting you back to like
10 things, like you were just explaining, that your
11 lawyer should have objected to the manner by
12 which the bullet was depicted as going into --
13 WITNESS: The direction of the bullet.
14 THE COURT: -- the child that was struck,
15 so ---
16 WITNESS: Right.
17 THE COURT: -- that -- that's -- that's
18 more germane to -- to the issues that we're here
19 for today, okay? So let me see if she has any
20 additional questions of you, all right?
21 WITNESS: All right.
22 THE COURT: And, buddy, I promise you,
23 every case that I get, I know that this is
24 serious, I know you're looking -- you -- you're
25 doing life, I'm gonna look at this record. I'm

1 not gonna just blithely pop this thing aside
2 without taking a hard look at it, okay? 'Cause
3 you're doing life in prison. You will never get
4 out, I know that, and that's in my book
5 something that deserves a great deal of
6 attention from the Court, period, end of story,
7 okay?
8 WITNESS: Okay.
9 THE COURT: Fair enough?
10 WITNESS: Yeah, that's fair. That's fair,
11 I mean I just wanted you ---
12 THE COURT: Good enough.
13 WITNESS: Yeah, I mean -- yeah.
14 THE COURT: All right.
15 Yes, ma'am?
16 MS. MARTO: Yes, sir.
17 BY MS. MARTO:
18 Q. Is there anything else that you haven't
19 already talked about today that you feel like
20 you need to tell the Court? Again, he's gonna
21 read everything you wrote, so you don't need to
22 do it verbatim, you don't need to do it word-
23 for-word, but just highlight the issue, so that
24 we can get it, and the court reporter can get it
25 on the record.

1 A. Well, I mean -- I mean not really. I
2 just -- I just -- I just -- I just want -- I
3 want to make sure that my arguments that I
4 submitted, that they get decided on, because I
5 don't just want -- want to have this hearing,
6 you know, and then -- 'cause I -- what I -- I --
7 my arguments are like case laws, and a lot of
8 stuff to support it, ma'am. I know it's a lot
9 of reading, but my case involved a lot of
10 complex issues.
11 THE COURT: Mr. Robinson, what happens is,
12 if I -- if I don't rule on an issue that you
13 bring up, the Supreme Court basically says,
14 Judge Addy, you didn't rule on that issue, we're
15 gonna remand it back down to you, you've got to
16 rule on that issue, that's how that works. So
17 if something is raised here which is
18 meritorious, which has -- which has a basis in
19 the law ---
20 WITNESS: Right.
21 THE COURT: -- and I don't rule on it, and
22 they feel like I should have ruled on it, they
23 will then remand it back down to me, and I have
24 to rule on it, okay? That's how that works.
25 WITNESS: Okay.

1 THE COURT: Okay?
2 WITNESS: Yeah.
3 THE COURT: All right, we're good.
4 MS. MARTO: No further questions.
5 THE COURT: All right. Ms. ---
6 MS. DIXON: Nothing from the State.
7 THE COURT: All right, very good. All
8 right, you can step down, sir. Be careful -- be
9 careful stepping down, that can be a little bit
10 steep, okay?
11 WITNESS: All right. What's your -- what's
12 your name?
13 THE COURT: Addy, Frank Addy.
14 WITNESS: Frank Addy?
15 THE COURT: Yes, sir.
16 WITNESS: Okay, nice meeting you.
17 THE COURT: I'm from Greenwood. Good to
18 meet you, sir.
19 MS. MARTO: No further witnesses.
20 THE COURT: No additional witnesses, and
21 we've already established that the
22 unavailability of counsel, so nothing from the
23 State?
24 MS. DIXON: No, we have Sean Thornton.
25 THE COURT: Oh, you do? Okay, go ahead.

1 MS. DIXON: Yes, Your Honor, I'm sorry.
2 THE COURT: Sorry.
3 MS. DIXON: There were some allegations of
4 prosecutorial misconduct I'm sure he would like
5 to respond to.
6 THE COURT: That's fine, very good.
7 MS. DIXON: It's not framed that way,
8 but ---
9 THE COURT: Right.
10 MS. DIXON: -- allegations that ---
11 THE COURT: Gotcha.
12 MS. DIXON: -- they fabricated evidence.
13 WITNESS: You said I can step down?
14 THE COURT: Yes, sir.
15 * * * * *
16 **Sean Thornton,**
17 **having been duly sworn,**
18 **testifies as follows:**
19 * * * * *
20 **DIRECT EXAMINATION**
21 BY MS. DIXON:
22 Q. Mr. Thornton, how are you today?
23 A. Fine, ma'am.
24 Q. And what was your role in this case?
25 A. I sat second chair. I'm the Chief

1 Deputy Solicitor for the Fourteenth Circuit, and
2 my direct supervisor is Solicitor Issac McDuffie
3 Stone, III, who is the elected Solicitor. He
4 was lead counsel on this case, I sat second
5 chair.
6 Q. So you were involved in the
7 prosecution ---
8 A. Yes, ma'am.
9 Q. -- in this case? And just a basic
10 quick question before we get started, was Mr.
11 Robinson indicted by a grand jury?
12 A. He was.
13 Q. Okay, and in terms of once he was
14 indicted, can you tell us about the first trial
15 where the State was going to try him with his
16 co-defendants?
17 A. Yes, ma'am, and I'll be as brief as
18 possible. There were three defendants, co-
19 defendants, in this case, Mr. Robinson, and then
20 Aaron Young, Sr., and Aaron Young, Jr. The
21 State's original intent was to try them all at
22 the same time. Once we got to the actual trial
23 date, at that time Mr. Robinson was representing
24 himself. He had standby counsel, Mr. Bax, who
25 was I believe at that point was still standby

1 counsel. The lawyers for Mr. Aaron Young, Sr.,
2 and Mr. Aaron Young, Jr., had moved for
3 severance of the cases. There was an issue of a
4 video of like a bodycam or a body-cam
5 audio/video that didn't deal with Mr. Robinson,
6 it actually dealt with one of the co-defendants,
7 which based on that necessitated the severance,
8 so we actually -- the State actually joined in
9 the motion for severance at that point. I
10 believe Mr. Robinson objected to the continuance
11 of his case, but because we obviously had
12 planned on doing them all together, we asked for
13 a continuance, and it was set for the -- I think
14 the very next term, or pretty close after that.
15 So at that point the three trials were severed,
16 and we proceeded against Mr. Robinson first.
17 Q. And regarding that first time that the
18 case was called, was the jury sworn in that
19 case?
20 A. No, ma'am, it was selected, but as I
21 know Your Honor is familiar, nobody ever swears
22 the jury until we're actually getting started,
23 because sometimes stuff like this happens.
24 Q. Uh-huh.
25 A. So the jury in that case was never

1 sworn, and it was properly sworn at Mr.
2 Robinson's next trial.
3 Q. Okay, and then at his trial what
4 evidence did the State have against Mr.
5 Robinson?
6 A. So I know there was a lot of talk from
7 Mr. Robinson about the -- about felony murder,
8 and the felony murder rule, and things like
9 that. It was an interesting case, and as -- as
10 I believe His Honor might be familiar with this,
11 we ended up proceeding against each of the
12 Youngs under the theory of mutual combat, which
13 hadn't been used in South Carolina since about,
14 I don't know, 1913, or something like that.
15 Because the -- the contention was, and our
16 evidence proved at trial was, that Mr. Robinson
17 and the Youngs had had some issues prior to
18 this. That Mr. Robinson went over to the
19 Youngs' house. Mr. Robinson fired a .38 caliber
20 pistol in -- in their general direction, if not
21 directly at them. One of the -- that's
22 relevant, because one of the bullets was
23 retrieved out of a wall and analyzed by now
24 retired Agent Dan DeFreeze of SLED. So the
25 Youngs then chased after -- chased after Mr.

1 Robinson after he left their -- their home in
2 his vehicle. They had what -- what looked to be
3 a clone of a Mac 10 submachine gun. It was not
4 a machine gun, it was a semi-automatic, but it
5 certainly looked like one. It had an extended
6 magazine that I think carried 33 rounds. They
7 chased after him. There was testimony that they
8 either did shoot at him, or certainly attempted
9 to shoot at him, him being Mr. Robinson, down --
10 I think it was Wild Horse Road. And they ended
11 up over by Allen Road. Mr. Robinson was at
12 Allen Road. He had gone to a relative of his,
13 and using various amounts of profanity about
14 those people didn't know who they were messing
15 with. She saw that he had a black handle
16 sticking out of his waistband, which she
17 identified as a pistol. Another witness saw him
18 actually wave the pistol around, which he
19 described as a revolver. The Youngs obviously
20 also described it as a revolver. Then they, for
21 lack of a better word, I think we actually --
22 one of the witnesses said this at trial, but
23 they Swiss cheesed his car that they found
24 riddled it with bullets. It had numerous bullet
25 holes in it. And then at some point as they are

1 driving away in a -- in a gray truck, Mr. -- Mr.
2 Robinson fired -- I think it was three shots.
3 It was more than one shot at them, and he struck
4 K. S. near the trampoline that you've
5 heard about, and there was a four-wheeler next
6 to it, because it was his four-wheeler -- it was
7 K. S. 's four-wheeler he was on.
8 Q. So was there any dispute as to which
9 gun actually killed K. S.?
10 A. Not -- not in our -- not in our
11 position, because the -- the -- the bullet that
12 was pulled out of K. S.'s body was a .38
13 caliber bullet. The bullet pulled out of the
14 wall at the Youngs was a .38 caliber bullet,
15 although there was too much damage to be able to
16 -- to give conclusive that they were both fired
17 from the same gun, they were both consistent in
18 caliber, and they were both -- I think it was
19 eight grooves with a right twist. So they --
20 they both had their -- they both had identical
21 characteristics, but not enough where he could
22 say for certainly to -- to a degree of
23 scientific certainty that they were fired from
24 the same gun, but they certainly matched in
25 every way possible.

1 Q. And now you were at this trial, do you
2 recall if Mr. Robinson proceeded on self-
3 defense?
4 A. Yes, ma'am, and he did -- there --
5 there was -- there was talk of that. Mr. Bax
6 raised that. And the only other thing, I'm
7 sorry, I meant to say was that it was pretty
8 conclusively from all the evidence, the Youngs',
9 the Mac 10 clone I talked about was the gun that
10 they had, it's a .9 millimeter. All the casings
11 that were found inside their truck as -- as they
12 were shooting were .9 millimeter. There was --
13 there was nothing -- the only .38 that anybody
14 -- was a .38 revolver that was carried by Mr.
15 Young.
16 Q. Okay. And going back to Mr. Bax,
17 because you were at this trial, generally
18 speaking, did he appear to understand the
19 evidence that the State had?
20 A. Yes, ma'am. And -- and he even
21 questioned -- there was a witness, Dominique
22 Griffin, that he challenged and asked to be
23 removed, because he didn't -- he indicated at a
24 pretrial hearing that he didn't -- didn't have
25 proper notice of that witness, and what that

1 witness was gonna say. We were able to -- to
2 satisfy the Court that we had provided that, but
3 he certainly was going through it witness-by-
4 witness-by-witness because he was challenging
5 us, you know, on certain witnesses that -- that
6 he was not familiar with. And Dominique Griffin
7 actually was not a witness who -- who was found
8 by law enforcement originally, they were found
9 later, which as I think everybody in the court
10 understands does happen fairly -- fairly often
11 in complex cases where witnesses are located and
12 identified after the fact. So he certainly was
13 prepared enough and knew enough about the case,
14 even at pretrial, that he knew that that was not
15 a name he recognized. And there were probably,
16 you know, 30 or 40 or more names on our witness
17 list.
18 Q. Did he make a motion -- any motions
19 pre-trial or during the trial?
20 A. I know he made several motions. He
21 argued -- I actually reviewed the transcript
22 again. Sometimes it's hard to remember these
23 after a few years have passed, but he did appear
24 to make numerous motions. He did bring up the
25 -- the issue as to the -- the -- the inherently

1 dangerous activity being a shootout language in
2 the indictment during the directed verdict
3 phase, and the Judge ruled against him,
4 basically saying that at -- at worst the
5 language was superfluous. I mean, obviously,
6 all the elements for murder were in the
7 indictment, which is the unlawful killing of
8 another with -- with the -- with the malice
9 aforethought, so that was actually in the
10 indictment. Now, there was the language also
11 about being involved in a shootout, and -- and
12 that that is an inherently dangerous activity,
13 but I think the Judge's -- I think in the
14 transcript the Judge actually says that the
15 person that Mr. Robinson has a complaint about
16 testifying, J. S. [redacted], at one point he
17 actually goes up to Dominique Griffin, and
18 someone else as well, but goes up to Dominique
19 Griffin, points to Tyrone Robinson and says he
20 shot my friend. And the Judge's statement was
21 had that been the only evidence, it would go to
22 the jury.
23 Q. Okay, and that was at the directed
24 verdict motion?
25 A. Yes, ma'am, that was at the directed

1 verdict phase.
2 MS. DIXON: And, Your Honor, just for the
3 record, the directed verdict motion is at page
4 664, the ruling begins at page 672. I believe
5 those are the big numbers on the record on
6 appeal.
7 THE COURT: Thank you.
8 BY MS. DIXON:
9 Q. Now, he's made some allegations about a
10 gun battle that I guess the Judge didn't
11 consider the gun battle portion of the
12 indictment when ruling on the directed verdict.
13 Let me just ask, basically, what evidence did
14 y'all present of the ongoing of gun battle?
15 A. I mean there was witness testimony
16 about multiple groups of shots, including from
17 residents there, including Mr. Robinson's -- I
18 think -- I think it's his cousin, Charlese, but
19 she -- she actually was related I think to both
20 sides in this incident. So there were multiple
21 witnesses who talked about not just different
22 sets of shots, but that they sounded different.
23 Anybody that's, you know, familiar with those,
24 it's a Mac -- that kind of Mac 10 clone shooting
25 .9 millimeter shells is gonna sound

1 substantially different than .38s, and -- and
2 especially in how fast or slow they are shot.
3 So there was certainly evidence of that. There
4 was evidence that -- that the Youngs came after
5 him. There was evidence that he started this by
6 shooting at the Youngs at their home. I would
7 also point out that -- that kind of the
8 cornerstone in -- in the Youngs' cases for
9 mutual combat is an ongoing gun battle, and that
10 went all the way to the Supreme Court when they
11 were making a determination if this was -- if --
12 if the Youngs' cases could be substantiated on a
13 theory of mutual combat. So, you know, I think
14 certainly there was plenty of evidence in all
15 three cases that was presented that would
16 justify an ongoing gun battle.
17 Q. And do you recall 911 calls?
18 A. Yes, ma'am, there was a 911 call. Mr.
19 Robinson actually was -- was early on at the
20 scene as well, and was -- you could actually
21 hear him talking and other people talking, and
22 pointing at him saying there's the guy that did
23 it, while somebody was, you know, on the phone
24 already with 911. And they -- the original
25 officer, I think it was Martin, actually got

1 him, and got him -- got Mr. Robinson separated,
2 then went ahead and took him in, and they
3 questioned him at that point.
4 Q. Moving on to he has alleged that you
5 and Solicitor Stone fabricated evidence. Did
6 y'all fabricate any evidence?
7 A. No, ma'am. The picture he's talking
8 about is the picture of a four-wheeler. There
9 was absolutely a four-wheeler on-scene by the
10 trampoline. The, you know, we -- we -- the FBI
11 actually came down and did a large model, which
12 we used as a demonstrative, we don't actually
13 introduce them as evidence, but, one, because
14 the Clerk's Office does not have the kind of
15 room it would take to store that is the main
16 reason; but the FBI came down and -- and they
17 actually do a scale -- a to scale model of -- of
18 this neighborhood really, and they only include
19 things that are located in -- in the area at the
20 time. So they used all the crime scene photos,
21 and then they come out, do measurements, do all
22 that stuff, and on the model was a miniature
23 four-wheeler. So the picture was not the only
24 place that -- that the jury was shown a four-
25 wheeler, it was also used in our demonstrative,

1 'cause there was testimony that he had been up
2 there on a four-wheeler. I mean there's no
3 question that the four-wheeler was there, and we
4 did not fabricate any photos.
5 Q. And then in terms of the pictures
6 themselves, were these pictures taken by law
7 enforcement and investigators after the ---
8 A. Yes, ma'am, and I did not go back
9 through to -- to see who would have -- who we
10 would have introduced crime scene photos
11 through, but we often don't introduce them
12 through the person who took them since that's
13 not a requirement. Normally, we do it, it just
14 has to be somebody, as I'm sure everybody knows,
15 that is a -- can say it's a fair and accurate
16 representation, so it would not be unusual for
17 us not to call the person who -- who took a
18 picture. I'm not sure if we did or not in this
19 case.
20 Q. Now, he's described a dummy that y'all
21 may have used to show trajectories of the
22 bullets through the victim's body; do you
23 recall ---
24 A. I don't recall that. I don't have any
25 independent recollect -- recollection of that in

1 this case, but that is very common. The
2 Solicitor will use -- either we have a full-size
3 mannequin that is moveable. We also have used
4 the wig heads, for lack of a better word, to
5 show wounds on a body, but if it's a body shot,
6 typically, we will either use the diagrams as
7 part of the pathology report, or we will use the
8 dummy, or a combination of the two. So it -- it
9 would not be at all surprising, and we have rods
10 that are inserted that -- that -- that -- where
11 the pathologist can show a certain trajectory of
12 a bullet.
13 Q. And, of course, the rods, what -- what
14 is used to determine like where the rods should
15 be inserted in the dummy?
16 A. The -- the pathologist's testimony.
17 They testify, you know, and, usually, we will
18 ask that the pathologist step down, and they
19 will actually place the rods for us.
20 Q. Now, there's been some testimony today
21 that y'all, I guess, misled the jury, or
22 fabricated evidence that the victim was running
23 back to his four-wheeler. Do you recall witness
24 testimony about that particular point?
25 A. Yes, ma'am. I -- the -- most of the

1 witnesses that I recall basically indicated that
2 -- that two of them, in particular, Ms.
3 Charlese, she -- her child was one of the
4 children originally playing with J. S. and
5 K. S. on the trampoline actually. And when
6 they heard a set of shots, they had ordered the
7 kids in the house, and her child came back to
8 her house, and the other two children she
9 thought had gone back to -- back to where they
10 stayed. And then there were more shots, and
11 then she goes, you know, then they look out and
12 they see K. S.. So most of the people did not
13 see the final act of the shooting. It was -- it
14 was based on the fact that he had left his four-
15 wheeler there, and -- and where he was found in
16 -- in proximity to the trampoline that we --
17 that we argued, and I think it was a fair
18 argument based on the facts, and just as I think
19 it was fair for Mr. Bax to argue the other way,
20 'cause I think he actually pointed out
21 specifically in his argument, and talked to the
22 pathologist about what he thought the evidence
23 showed with the trajectory, but our -- our
24 argument to the jury and belief on the basis of
25 the facts was that J. S. had turned to come back

1 -- to come back to the four-wheeler. I don't
2 think there was any testimony definitively one
3 way or the other, I think it was a fair argument
4 on the facts.
5 Q. So these were reasonable inferences
6 from the evidence?
7 A. Yes, ma'am, that would be my opinion.
8 Q. Okay. Now, he's raised an issue with
9 his lawyer calling J.S. as a witness; do
10 you recall who J.S. was?
11 A. Yes, ma'am. So just to clear this up,
12 so Jontu, Sr., was actually with Mr. Robinson
13 when -- when -- when he went to the Youngs, and
14 he was actually a witness we called to testify
15 that Mr. Robinson had fired the initial shot,
16 and, frankly, that the Youngs then chased after
17 him with a weapon. J.S. was actually on-
18 scene and is listed in the -- in the trial
19 transcript, I think it's J.S. So he was
20 actually with the victim, K.S., one
21 of the two children that he was playing with,
22 and we had already gotten J.S.'s statements in,
23 that Mr. Bax objected. There was a Crawford
24 analysis, as well as hearsay analysis about
25 J.S.. One of the things that J.S. did, and I

1 think I alluded to this earlier was, he walked
2 up, he was walking behind Mr. Robinson, as Mr.
3 Robinson approached to get into his car that had
4 been shot up and leave the area. And he pointed
5 -- J. S. pointed to Tyrone
6 Robinson and said he shot my friend or something
7 to that effect. So there was already testimony
8 in the record that we wanted. We, you know, we
9 were not gonna put him up, we -- we actually put
10 him -- put his statements in through other
11 people. And based on the fact the Judge ruled,
12 it was not testimony on -- it was, you know, an
13 excited utterance, and -- and also present sense
14 impression frankly. So Mr. Bax did call him,
15 and I -- I actually went back because that was
16 something I had forgotten, but I went back into
17 the transcript. I would point out that one of
18 the things that J. S. said on -- during his
19 testimony, which I now -- I remembered after
20 reading it, which we found not particularly
21 helpful was that he said, well, I don't think
22 he, meaning Mr. Robinson, meant to do it. And,
23 you know, he says that two or three times. So
24 that's not, you know, obviously, there's a legal
25 matter that may not matter, but to a jury it

1 might matter when we're talking about
2 transferred intent, and the intent to kill, and
3 all these other things, and I'm certainly not in
4 Mr. Bax's head, but I mean re-reading it I
5 certainly -- I -- I don't find that to be a bad
6 strategy to get -- to get the -- one of the
7 witnesses to say I don't think he meant to do
8 that when you're talking about the intent to
9 kill.
10 Q. And, now, when you say that wasn't
11 helpful, just to clarify, you mean not
12 helpful ---
13 A. Wasn't helpful for me, and that's
14 frankly the only -- the only side that I care
15 about, other than making sure everybody's
16 constitutional rights are protected, which I'm
17 required to do, but I, you know, our side is the
18 one I'm concerned with at trial, and that I did
19 not find that to be particularly helpful.
20 Q. Okay, okay.
21 MS. DIXON: Nothing further.
22 THE COURT: Cross?
23 MS. MARTOS: Yes, Judge.
24 **CROSS-EXAMINATION**
25 BY MS. MARTOS:

1 Q. So you didn't represent Mr. Robinson,
2 right?
3 A. No, ma'am.
4 Q. And you weren't privy to any of the
5 conversations Mr. Bax had with him?
6 A. No, ma'am.
7 Q. And you stated that you didn't live in
8 Mr. Bax's head, correct?
9 A. No, ma'am, I did not.
10 Q. So you can't personally, I guess,
11 fathom what decisions or strategies he decided
12 to move forward on?
13 A. No, ma'am, I cannot.
14 Q. Okay. Then really the only thing that
15 you can go based on, when it comes to counsel,
16 is what happened in the transcript; is that
17 correct?
18 A. Yes, ma'am. Just -- I'm just basing
19 that off what I read in the transcript, and just
20 my experience kind of on both sides of the
21 fence. I was a public defender for five years
22 prior to being a prosecutor for the last twenty-
23 twoish, so I just -- just -- that's just my kind
24 of looking at it, and kind of reviewing it, and
25 looking at the transcript, that that would be

1 it.

2 Q. Is there a reason why Mr. Robinson

3 wasn't charged with another felony beyond

4 murder?

5 A. I -- I remember us having the

6 discussion, I don't -- I -- I think it -- one of

7 the things that is difficult to do, and I'm

8 sorry, this is probably gonna be a roundabout

9 way to answer your question. One of the hardest

10 things that I have to do, and it's tough for me

11 to teach the young lawyers in our office to do

12 this is, that you really have to simplify cases

13 to the extent you can. And when we were

14 prepared to go forward on this case, it was

15 originally designed as we were gonna do all

16 three together. And so having -- we wanted the

17 focus to be on what we -- who we considered to

18 be the true victim in the case, which was K.S.

19 . We did not want cross-claims

20 necessarily against all three with attempted

21 murder on, you know, which one, and then, you

22 know, you've got the specific intent issues

23 involved, and attempted murder, because,

24 obviously, the Youngs didn't die, and Mr.

25 Robinson didn't die. The only person that died,

1 unfortunately, was -- was K.S. . So -- so I --
2 as best as I can recall, I think it was mainly
3 just trying to keep an already very complicated
4 trial as simple as possible.
5 MS. MARTO: Nothing further.
6 THE COURT: Okay.
7 MS. DIXON: Nothing further.
8 WITNESS: Thank you, Your Honor.
9 THE COURT: Thank you, sir.
10 MS. DIXON: And, Your Honor, the State has
11 no other witnesses. I do want to just direct
12 you to a couple of transcript pages that I think
13 relate to some of the testimony today.
14 THE COURT: Sure.
15 MS. DIXON: There's an allegation that the
16 Judge removed words related to the ongoing gun
17 battle, and I would just direct Your Honor to
18 page 983, which is the beginning of the jury
19 charge. And I believe there was an allegation
20 related to something having to do with malice,
21 and that was charged at page 993 to 94. I think
22 the rest of it pretty much is in the record and
23 it speaks for itself, and I did want to direct
24 you to those pages, and I believe those are the
25 record on appeal pages.

1 THE COURT: Right. Okay, very good. All
2 right, anything else? No?
3 MS. DIXON: Nothing further from the State.
4 THE COURT: All right. As I indicated
5 earlier -- anything further, Ms. Marto? No?
6 MS. MARTO: I was just gonna again request
7 for the Court to consider everything that Mr.
8 Robinson has filed, and, you know, find him
9 credible. Thank you.
10 THE COURT: Very good, thank you. All
11 right, as I indicated I would do, I will take it
12 under advisement, and it will take me some time
13 to -- to review this, and I can't remember when
14 my next chambers week might be. It's -- I think
15 it may be two or three weeks from now. I hope
16 to be able to do it then, but you -- I'll have
17 it done within 30 days, but don't expect it
18 before then if y'all could, okay?
19 MS. MARTOS: Thank you, Your Honor.
20 MS. DIXON: Thank you, Judge.
21 THE COURT: Thank y'all. All right, Mr.
22 Robinson, take care of yourself, sir.
23 MR. ROBINSON: Thank you, sir.
24 THE COURT: Yes, sir, thank you.
25 (The hearing was concluded.)

1 - - -END OF TRANSCRIPT- - -

2 **CERTIFICATE OF REPORTER**

3

4 I, Cathy L. Young, CVR-M, for the
5 Fourteenth Judicial Circuit of the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of
8 introduced in the hearing of the captioned case,
9 relative to appear, in the Circuit Court for
10 Beaufort County, South Carolina, on the 16sth day of
11 April, 2025.
12 I do further certify that I am neither of
13 kin, counsel nor interest to any party herein.
14
15
16 ____________________________
17 Cathy L. Young, CVR-M
18 Court Reporter and Notary
19 Public in and for South Carolina
20 My Commission expires: 3-28-2029
21
22
23
24
25

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT
Tyrone Lorenza Robinson, #235104, Applicant, v. State of South Carolina, Respondent.	) CASE NO. 2021–CP–07–00820 **ORDER OF DISMISSAL**

2025 JUL 14 PM 1:24
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT by way of applications for post-conviction relief (PCR) filed by Tyrone Lorenza Robinson (Applicant) on April 22, 2021. An evidentiary hearing was convened on April 16, 2025. At that hearing, Applicant was present and represented by Chelsey F. Marto, Esquire, and Assistant Attorney General Danielle Dixon represented the State. At the hearing, the Court heard testimony from Applicant and Deputy Solicitor Sean Thornton. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In October 2012, the Beaufort County Grand Jury indicted Applicant for murder (2012–GS–07–01935). This charge arose from the fatal shooting of eight-year-old K. S. on September 1, 2013.[1]

[1] Applicant was indicted with co-defendants Aaron Young, Sr. and Aaron Young, Jr. On April 21, 2014, the State called the case to trial with all three co-defendants. Before the jury was sworn, however, the State joined the defendants' motion to sever, and the trials were severed and continued.

On September 15–19, 2014, Applicant proceeded to a jury trial before the Honorable Thomas G. Cooper, Jr. Applicant was represented by Arie D. Bax, Esquire. Solicitor Duffie McDuffie Stone, III. and Deputy Solicitor Sean Thornton prosecuted the case. The jury convicted Applicant as indicted, and Judge Cooper sentenced Applicant to life.

Applicant filed a motion to reconsider the sentence, which was denied on October 12, 2017.[2] Applicant filed a timely notice of appeal, which was perfected by Appellate Defender David Alexander through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967).[3] The Court of Appeals dismissed pursuant to Anders, and the remittitur was sent December 16, 2020.

CURRENT APPLICATION

On April 22, 2021, Applicant filed this current PCR application totaling 414 pages. In his application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
2. Prosecutorial Misconduct
3. The Circuit Court lacked Subject Matter Jurisdiction
4. Double Jeopardy
5. Actual Innocence[4]

On June 4, 2021, Applicant filed an amended application totaling 427 pages, including 303 handwritten pages of argument. Applicant alleged the following:

1. Ineffective Assistance of Counsel
2. Due Process Violations

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[2] Applicant initially filed a notice of appeal on September 29, 2014, but he withdrew that appeal due to the pending motion to reconsider. See Appellate Case No. 2014-002138.

[3] While Applicant's motion to reconsider was pending, Applicant filed his first PCR application (2015-CP-07-2053). That application was dismissed without prejudice on December 12, 2019.

4 The State construed Applicant's argument of failing to satisfy the elements of "felony murder rule theory" and due process violations for "failure to prove elements of murder beyond a reasonable doubt" as an argument of actual innocence.

On August 27, 2021, Applicant filed a second amended application totaling 119 pages, including 85 handwritten pages of argument. Applicant alleged the following:

1. Ineffective Assistance of Counsel
2. Due Process Violations
3. Prosecutorial Misconduct
4. Double Jeopardy
5. The Circuit Court lacked Subject matter jurisdiction.
6. Actual Innocence

On June 20, 2022, Applicant filed a third amended application totaling 596 pages, including 132 handwritten pages of argument. Applicant alleged the following:

1. "Violation of Federal Sixth Amendment right of effective assistance of counsel; Ineffective Assistance of Counsel"
2. "Violation of Federal Fifth and Fourteenth Amendment rights of Due Process of Law; and deprived out of Federal Due Process right to notice."
3. "Lack of Jurisdiction over the Crime."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

At the outset, this Court notes Applicant's PCR filings are extensive and extremely repetitive. As promised at the hearing, the Court has endeavored to review his filings and divine the nature of Applicant's grounds. At the hearing, the Court made an effort to guide Applicant so

that his presentation and complaints were more comprehensible, and to an extent, this effort was somewhat of a success. Based upon a review of the filings, this Court has categorized Applicant's allegations to the best of its ability and will address his claims as outlined below:

1. Lack of jurisdiction;
2. Sentence void for lack of jurisdiction;
3. Counsel was ineffective for not arguing lack of jurisdiction;
4. Lack of jurisdiction over the crime;
5. Prosecutorial misconduct for pursuing conviction under the felony murder rule;
6. Double jeopardy.
7. Counsel was ineffective for not objecting to picture of four-wheeler;
8. Counsel was ineffective for not objecting when the solicitor fabricated the trajectory of the bullet;
9. Counsel was ineffective for not eliciting further testimony from J.S., a minor at the time of the trial.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudiced applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Jurisdictional and indictment issues[5]

Applicant's arguments in this regard center on his belief that the State improperly changed its theory of the case and, in doing so, did not put him on notice of the charges he faced. These allegations patently lack merit. As a threshold matter, the circuit court clearly had subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. ***Circuit courts obviously have subject matter jurisdiction to try criminal matters***." (emphasis added)).

Further, this Court has reviewed the indictment and finds it was sufficient to put Applicant on notice of the charge. See id. at 102–03, 610 S.E.2d at 500 ("The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17–19–90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.") Because the indictment was sufficient, there was no basis for counsel to object to the indictment itself. However, trial counsel *did* move to quash the indictment and, by doing so, advanced many of the same arguments Petitioner raises now. (ROA 228-45). Further, counsel raised this argument again at the directed verdict staged and properly argued the directed verdict motion. (ROA 664-75, 1021-23). This Court finds counsel was not deficient in interposing any objection as to any structural amendments of the indictment. Much of Applicant's argument

[5] This section combines allegations 1-4, as outlined above.

centers on his mistaken belief that the State improperly changed its theory of the case. In many respects, the legal theory pursued by the State broke new ground. However, trial counsel adequately preserved the record and objected appropriately in challenging the State's legal and factual theory. The South Carolina Supreme Court ultimately found the State's theory of the case to be valid and legally supported under the law. Based on the foregoing, Applicant has not shown counsel was ineffective for not further objecting to the indictment or arguing the court lacked jurisdiction.

Prosecutorial Misconduct

When alleging prosecutorial misconduct, an applicant bears the burden of proof. Alabama v. Smith, 490 U.S. 794 (1989). Although a PCR applicant may present a claim based on constitutional violations other than ineffective assistance of counsel, such constitutional violations may only be alleged if the issue could not have been raised at trial or on direct appeal. Gibson v. State, 329 S.C. 37, 41 496 S.E.2d 426, 428 (1998); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("[A]an application for post-conviction relief is not a substitute for an appeal."); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel."); but see Fortune v. State, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019) (addressing issue of prosecutorial misconduct that implicated due process and was not adequately raised as a claim of ineffective assistance of counsel).

This Court finds Applicant has not met his burden of proving prosecutorial misconduct. Again, his argument here centers on his mistaken belief that the State improperly changed its theory of the case and/or presented a theory that he believes was not supported by the indictment. As noted, the South Carolina Supreme Court ultimately found the State's theory of the case to be

valid and legally supported under the law. It is incredulous to aver the State engaged in misconduct in pursuing a legal theory that was ultimately affirmed by the South Carolina Supreme Court. Applicant has not met his burden in this regard, and this claim is denied.

Double jeopardy

Applicant next contends his trial violated the double jeopardy clause, and counsel was ineffective for not objecting on this basis. This claim lacks merit. Although Applciant's case was initially called to trial in April 2014 with Applicant's co-defendants, it was severed and continued before the jury was sworn. This Court finds credible Deputy Solicitor Sean Thornton's testimony that the jury had not been sworn when the court severed and continued the first trial. This testimony is consistent with the April 2014 transcript, which does not indicate the jury was sworn. Because the jury was not sworn, jeopardy did not attach. See State v. Rowlands, 343 S.C. 454, 457, 539 S.E.2d 717, 718 ("Generally, jeopardy attaches when a jury *is sworn* and impaneled . . . ." (emphasis added)). Thus, Applicant failed to prove counsel was ineffective for not raising a double jeopardy issue. For the same reason, Applicant did not prove any constitutional violation, and this claim is denied.

Picture of Four-Wheeler

Applicant contends counsel was ineffective for not objecting to a picture of a four-wheeler used by the State at trial. This Court finds the picture was authenticated by Charlese Mitchell, who testified it depicted the scene outside her home that day. (ROA 326-27). Applicant has not set forth a valid, legal objection to this picture that would have reasonably excluded its use. Applicant thus did not prove deficiency. Further, in this self-defense case, it is not reasonably probable the outcome would have been different had this picture had been excluded. Applicant has not shown deficiency or prejudice in this regard, and this claim is denied.

Trajectory of Bullet

Applicant asserts counsel was ineffective for not objecting when the solicitor fabricated the trajectory of the bullet. This claim lacks merit. Initially, the solicitor's argument relating to the trajectory of the bullet was a reasonable inference based on the pathologist's testimony, and Applicant did not show this argument was fabricated. (R. 574-78, 968-69). Further, counsel argued his own theory about what the bullet's trajectory showed—which was also based upon reasonable inferences from the evidence. (R. 948-50). Counsel's performance was reasonable under prevailing professional norms and not deficient. Applicant did not set forth a valid, legal objection to the solicitor's argument and did not prove deficiency or prejudice. Thus, this claim is denied.

Testimony of J.S.

Applicant asserts counsel was ineffective for not eliciting further testimony from J.S., a minor who testified at trial. However, J.S. (who never identified Applicant as the shooter) testified he didn't think the shooter meant to shoot the victim. (R. 785-89). This testimony hurt the State, and Applicant has failed to set forth what more counsel should have done in this regard. Applicant thus did not prove deficiency. Likewise, Applicant did not submit any credible evidence of what J.S. would have said upon further questioning, thereby leaving this Court to speculate about what that testimony would be. Applicant did not prove deficiency or prejudice, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203,

SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 1st day of July, 2025.

FRANK R. ADDY, JR.
Presiding Judge
Fourteenth Judicial Circuit

Greenwood, South Carolina

2329

WITNESSES

Inv. L. Albertin-BCSO

ARREST WARRANT NUMBER

2012A0720300114

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: OCT 18 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. **2012GS0701935**

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2012

THE STATE

vs.

Tyrone Robinson

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I ______________________

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0701935

At a Court of General Sessions, convened on October 18, 2012, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about September 1, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim K. S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC, and that K. S. did die in Beaufort County as a proximate result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE VS. Tyrone Robinson

AKA:

Race: AFRICAN AM ESex: M Age: 39

DOB: [redacted] SS#: [redacted]

Address:

City,State,Zip:

DL#: SID#:

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2012GS0701935

A/W#: 2012A0720300114

Date of Offense: 9/1/2012

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _______ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST [signature]

Swanson Hunter / Isaac Stone

SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,

for a determinate term of Life Imprisonment days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years and/or to pay a fine of $ _______, provided that upon the service of — days/months/years and/or payment of $ — ; plus costs and assessments as applicable*; the balance is suspended with **probation** for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONCESUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _______ plus 20% fee: _______ $ _______

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enf rce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _______

_______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _______

May serve W/E begining _______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _______ beginning _______

$ _______ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk April B. Winston

Court Reporter: Bonnie Kelly

Presiding Judge [signature]

Judge Code: 054

Sentence Date: 9/19/13

SCCA/217 (03/2011)