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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning
Circuit Court Judge

Case No. 2017-CP-40-1699
Appellate Case No. 2018-1291

RECEIVED
AUG 29 2018
SC Court of Appeals

The City of Columbia,

Appellant,

v.

Shasha Rawlinson,

Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

For the reasons stated herein, Respondent Shasha Rawlinson (Rawlinson) hereby moves to dismiss the City of Columbia's ("COC") Appeal for the following reasons:

I. THE CITY FAILED TO PROPERLY PERFECT ITS APPEAL IN THIS MATTER.

The Court of Appeals should dismiss the COC's appeal for failure to timely perfect its appeal because the COC failed to meet the filing requirements by not filing proof of service with the court within ten (10) days of serving Rawlinson. According to the South Carolina Appellate Court Rules, "notice of appeal shall be served on all respondents within thirty (30) days after

receipt of written notice of entry of the order or judgment.” Rule 203 (b)(1), *SCACR*. After the notice of appeal has been served, “[t]he notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days.” *Id.* at (d)(1)(B). The notice of appeal “**shall be accompanied**” by proof of service on all respondents. *Id.* at (d)(1)(B)(i) (**emphasis added**). As a consequence, “[i]f the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated.” *Id.* at (d)(3). Furthermore, “[t]he failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case.” *Great Games, Inc. v. South Carolina Dept. of Revenue*, 339 S.C. 79, 82, 529 S.E. 2d 6, 7, n.5 (2000).

Here, the COC filed its appeal from the Circuit Court with the South Carolina Court of Appeals on July 11, 2018, which was two (2) days before expiration of the filing deadline. Likewise, service was made on Rawlinson at the same time as filing, July 11, 2018. However, in violation of South Carolina Appellate Court Rule 203, the COC failed to file the proof of service that, as explicitly stated in the rules, “shall” accompany the notice of appeal when an appeal is filed. Therefore, because the COC has not properly filed a notice of appeal per the explicit language of Rule 203, *SCACR*, this court has no appellate jurisdiction over the present matter and, as a result, should dismiss this appeal.

II. A RETRIAL IN THIS MATTER WOULD SUBJECT RAWLINSON TO DOUBLE JEOPARDY IN VIOLATION OF HER 5TH AMENDMENT DUE PROCESS RIGHTS.

Any grant of a retrial in this matter (COC’s recommended remedy) would violate Rawlinson’s due process right to not be twice subjected to jeopardy of life or liberty as defendants have a right to a fair and complete trial by the first jury impaneled to try them. According to the United States and South Carolina constitutions, no person shall be “subject for the same offense to be twice put in jeopardy of life or liberty.” U.S. Const. amend. V; *see also*

S.C. Const. art. I, § 12. Under the law of South Carolina, “a defendant may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial.” State v. Coleman, 365 S.C. 258, 263, 616 S.E.2d 444, 446 (Ct. App. 2005). Courts are clear; when a conviction is overturned based on trial error, jeopardy has not yet been suspended and any retrial is not in violation of the Constitution. See U.S. v. DiFrancesco, 449 U.S. 117, 131, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980) (“It would be a high price indeed for society to pay were every accused granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction.”).

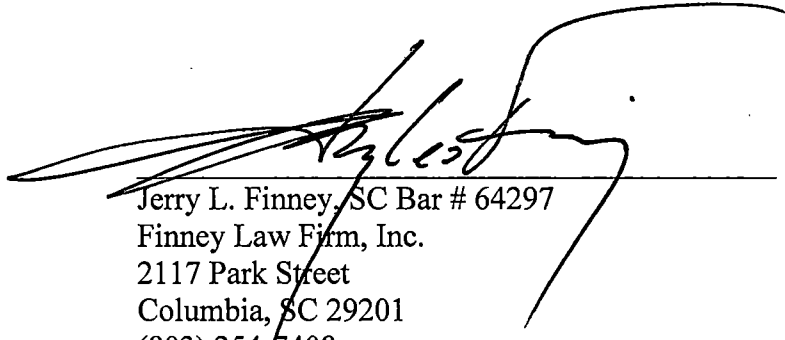
Nonetheless, there are many instances where retrial does constitute a double jeopardy constitutional violation. See Oregon v. Kennedy, 456 U.S. 667, 676, 102 S.Ct. 2083, 2089 (1982) (“[w]here the governmental conduct in question is intended to ‘goad’ the defendant into moving for a mistrial . . . a defendant [can] raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion.”); see also Crist v. Bretz, 437 U.S. 28, 34, 98, S.Ct. 2156, 2160 (1978) (“jeopardy may attach in a criminal trial that ends inconclusively”). As an important foundation of Fifth Amendment Due Process protections for criminal defendants, courts should remember that “[o]ne of the principal threads making up the protection embodied in the Double Jeopardy Clause is the right of the defendant to have his trial completed before the first jury impaneled to try him” Id. at 673, 102 S.Ct. at 2088; see also Illinois v. Somerville, 410 U.S. 458, 471, 93 S.Ct. 1066, 1073 (1973) (holding “the determination by the trial court to abort a criminal proceeding where jeopardy has attached is not one to be lightly undertaken, since the interest of the defendant in having his fate determined by the jury first impaneled is itself a weighty one.”).

Here, by not preserving the trial record for appeal, the State and the COC have deprived defendant of her right, which is a “weighty one,” to have the first jury impaneled to try her decide her fate and have therefore violated her Fifth Amendment due process rights. Because there is no trial record for this Court to consider on appeal, by no wrongdoing of her own, Rawlinson in this matter is suffering the consequences of public embarrassment and indignity from a justice system that expects her to wait, yet another unknown period of time, for a retrial resulting from its own shortcomings and unconstitutional treatment of defendants. Not only has the failure to preserve the trial record here created a constitutional concern, it additionally carries significant policy considerations that should be addressed. Hundreds of criminal proceedings occur in municipal courts around South Carolina on a daily basis, and of those hundreds, many are appealed to the Circuit Court as the case *sub judice*. Not only is it exploitive of defendants when municipal courts fail to preserve their records in preparation of appeals, but it is also a great waste of judicial resources. Any burden of that blunder should be placed on the trial court and not upon the defendant.

The COC may attempt to represent the puzzling loss of the trial record as a “trial error,” thus suggesting that jeopardy was never suspended and that no Fifth Amendment violation may occur. However, the loss of a trial record is not trial error, but instead is an unfortunate clerical misstep by the government that unfairly puts the defendant here in the precarious situation of facing an improvident retrial. In fact, other than those objections surrounding evidence presented at trial by the prosecution that was never produced during discovery, nothing of a procedural nature during the trial itself is in contention. Rather, the issue here is the COC’s deprivation of Rawlinson’s right to have her fate decided by the jury first impaneled to try her, as is protected by the Fifth Amendment. Depriving a defendant of a “principal thread[] making up the

protection embodied in the Double Jeopardy Clause” certainly should be considered a violation of her Constitutional rights.

For these reasons, Rawlinson respectfully requests that this Court dismiss the COC’s appeal in this matter.

A handwritten signature in black ink, appearing to read "Jerry L. Finney", is written over a horizontal line. The signature is stylized and extends above and below the line.

Jerry L. Finney, SC Bar # 64297
Finney Law Firm, Inc.
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Columbia, SC 29201
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Attorney for Respondent

August 29, 2018

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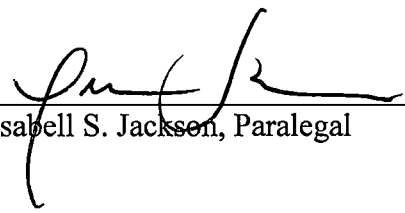
Shasha Rawlinson,

Respondent.

PROOF OF SERVICE

I, the undersigned employee of The Finney Law Firm, Inc., hereby certify that pursuant to Rules 240 and 262, *SCACR*, have served Respondent's *Motion to Dismiss Appeal* in this matter on counsel for the Appellant by mailing a copy, United States Mail, postage prepaid, on August 29, 2018, to the following address:

Jessica Mangum, Esquire
P.O. Box 667
Columbia, SC 29202


Isabell S. Jackson, Paralegal

THE FINNEY LAW FIRM, INC.

Attorneys and Counselors at Law
thefinneylawfirm.com



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ATTORNEY AT LAW

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IN MEMORIAM

RETIRED CHIEF JUSTICE
SOUTH CAROLINA SUPREME COURT
ERNEST A. FINNEY, JR.
1931-2017

August 29, 2018

Please Reply to Columbia Office

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *The City of Columbia v. Shasha Rawlinson*
App. Case #: 2018-001291

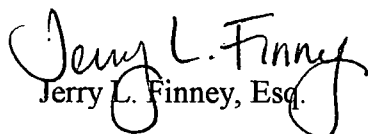
Dear Ms. Kitchings:

Enclosed are an original and six (6) copies of *Respondent's Motion to Dismiss Appeal* in the above-captioned matter along with the requisite *Proof of Service* thereof. Also enclosed is a check for the required filing fee of \$25.00 for this motion.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions or concerns.

With kind regards, I remain

Sincerely,


Jerry L. Finney, Esq.

Enclosures as stated

cc: Jessica Mangum, Esquire

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SC Court of Appeals

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