

State of South Carolina In The Supreme Court of  
Terron Dizzley South Carolina

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Case No. 2020-000253

S.C. SUPREME COURT

Petitioner

v.

State of South Carolina  
Respondent

Motion For Immediate Release

Petitioner moves before this Honorable Court with a Motion For Immediate Release on the grounds that:

Petitioner is illegally being held "hostage" in the SCDC and has been illegally held "hostage" for 6 years in violation of his 5<sup>th</sup> Amendment Rights of the Double Jeopardy Clause of the United States Constitution and in violation of his 8<sup>th</sup> Amendment Right to be free from Cruel and Unusual Punishment.

#### Statement of Facts

Petitioner's first trial ended in an improvidently granted mistrial / hung jury after only 2 hours and 50 minutes of deliberations, portions of that time was consumed by a lunch break and several questions from the jury and time for answering these questions and that time accounted for approximately an hour. Which left only 1 hour and 50 minutes for deliberations. According to clearly established Federal and State Law. The judges decision to declare a mistrial was not dictated by a "manifest necessity" or "ends of public justice," which violated Petitioner's 5<sup>th</sup> Amendment right to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in. Petitioner contends that his second trial was barred by Double Jeopardy.

#### Manifest Necessity

State v. Prince, 279 S.C. 30 (1983), "Defendant was convicted in General Sessions Court, Sumter County, Ernest A. Finney, Jr., J., of distribution of marijuana, and he appealed. The Supreme Court, Little John, J. held that where jury had been deliberating only for approximately 4:30 in the afternoon until about ten o'clock at night, a portion of that time consumed by evening meals, mistrial which was ordered over defendant's objections after jury request testimony of two witnesses to be read and court was told that testimony would take approximately two hours and ten minutes was not dictated by manifest necessity or ends of public justice, and therefore retrial of defendant was barred by double jeopardy. Reversed. Citing Benton v. Maryland, 395 U.S. 784; Wade v. Hunter, 336 U.S. 684, Illinois v. Somerville, 410 U.S. 458; State v. Bilton, 153 S.E. 269; State v. Ravencraft, 71 S.E. 2d 798 (S.C. 1952); State v. Rowlands, 343 S.C. 454 (2000), Downum v. U.S., 372 U.S. 734 (1963); U.S. v. Razmilovic, 507 F.3d 130 (2007); U.S. v. Gordy, 526 F. 2d 631 (1976), "finding that record was insufficient to determine that no verdict could be reached, despite dialogue was developed with jurors individually and it could not be said with certainty that further deliberations would have proved futile."

### Acquittal, Termination of Case In Plaintiff's Favor

Petitioner contends that he received a ruling by the judge in his first trial according to clearly established Federal

Law and State Law supported by the United States Constitution, which was an "acquittal" and terminated his case and Double Jeopardy barred retrial. See (2012), Tr. p. 314, L13-18. "Now what you've told us is that you can't reach a unanimous decision, and I would say to you to that that's not a failure on your part. That's actually a strong message to the Prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict."

Petitioner contends that the trial judges ruling was based on insufficient evidence, that the State was "unable to meet the burden of proof." which established Petitioner's innocence and lack of criminal culpability. See United States v. Scott, 437 U.S. 82, 98 S. Ct. 2187 (1978), "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." Evans v. Michigan, 568 U.S. 313, 133 S. Ct. 1069 (2013), "An "acquittal," for double jeopardy purposes includes a ruling by the court that the evidence is insufficient to convict, a factual finding that necessarily establishes the criminal culpability, and other rulings which relates to the ultimate question of guilt or innocence. Labels do not control the analysis of whether a decision dismissing a criminal case bars retrial under Double Jeopardy Clause, rather the substance of the courts decision does. The U.S. Supreme

Court, Justice Sotomayor, held that midtrial directed verdict and dismissal, based on trial court's erroneous requirement of an extra element for the charged offense, was "acquittal" for double jeopardy purposes. Most relevant here, an "acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. See e.g. U.S. v. Scott, 437 U.S. 82, 98 S. ct. 2187, 5 L. Ed. 2d 65; Burks v. U.S., 437 U.S. 1, 10, 98 S. ct. 2141, 57 L. Ed. 2d 1. In contrast to procedural rulings which lead to dismissals or mistrials on a basis unrelated to factual guilt or innocence, acquittals are substantive rulings that conclude proceedings absolutely, and thus raise significant double jeopardy concerns. Scott, 437 U.S. at 91, 98 S. ct. 2187. Here, the trial court clearly "evaluated the state's evidence and determined that it was legally insufficient to sustain a conviction." Lee v. U.S., 432 U.S. 23, 97 S. ct. 2141 (1977), "Question as to whether double jeopardy clause prohibits retrial after the case has been terminated, after jeopardy has attached, without a finding on the merits does not depend upon whether the court labels its action a dismissal or declaration of "mistrial" but rather whether the order contemplates an end to all prosecution of the defendant for the offense charged. U.S. v. Martin Linen Supply Co., 430 U.S. 564, 97 S. ct. 1349 (1977), "The U.S. Supreme Court, Mr. Justice Brennan, held that double jeopardy clause barred appeal by U.S. from judgments of acquittal entered under rule 29(c) following discharge of jury which

is sufficient termination of criminal prosecution to

support a claim for malicious prosecution.

Petitioner contends that the record establishes that the trial judge clearly "evaluated the state's evidence and determined that it was legally insufficient to sustain a conviction." Thus, trial judge's ruling was an "acquittal," and Double Jeopardy barred retrial.

Petitioner contends that the record clearly establishes that the trial judge's decision to declare a mistrial was not dictated by a "manifest necessity" or "ends of public justice," which violated Petitioner's 5<sup>th</sup> Amendment right to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in, Petitioner contends that his second trial was barred by Double Jeopardy.

The Fifth Amendment of the Constitution of the United States, and Article 1, Section 12, of the South Carolina Constitution provides: "No person shall be subject for the same offense to be twice put in jeopardy of life or liberty..."

For the foregoing reasons Petitioner has shown that he is illegally being held "hostage" in the SCDC and has been held "hostage" illegally for 6 years in violation of his 8<sup>th</sup> Amendment rights to be free from Cruel and Unusual Punishment in violation of his 5<sup>th</sup> Amendment rights under the Double Jeopardy Clause of the United States Constitution. Therefore, Petitioner requests that he be immediately released from the South Carolina Department of Corrections.