

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**Jun 16 2020**  
SC Court of Appeals

Appeal from Charleston County

J. C. Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH LAMAR BROWN, JR.

APPELLANT

APPELLATE CASE NO. 2019-000781

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

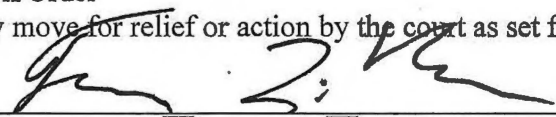
IN THE COURT OF GENERAL SESSIONS  
MOTION COVERSHEET

) WARRANT/TICKET/  
) INDICTMENT #'s 2016A1010206049; -6052;  
) K404187  
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) \_\_\_\_\_  
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) \_\_\_\_\_  
) \_\_\_\_\_

STATE OF SOUTH CAROLINA

-vs-

JOSEPH LAMAR BROWN, JR.  
DEFENDANT

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<input checked="" type="checkbox"/> MOTION HEARING REQUESTED <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: <u>Motion to Dismiss Armed Robbery Indictment as Required by Double Jeopardy Protectio</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of <input type="checkbox"/> Solicitor <input checked="" type="checkbox"/> Attorney for Defendant	<u>10/30/18</u> Date submitted

FILED  
2016 OCT 30 11 09:55  
JULIE J. ANDERSON  
CLERK OF COURT  
BY \_\_\_\_\_

EXHIBIT  
Court 4  
PEN GAD 800-631-6388

STATE OF SOUTH CAROLINA	)	<b>IN THE COURT OF GENERAL SESSIONS</b>
	)	<b>FOR THE NINTH JUDICIAL CIRCUIT</b>
COUNTY OF CHARLESTON	)	<b>Case No(s):</b> 2017-GS-10-04077, 2017-GS-10-
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	<b>Warrant No(s):</b> 2016A1010206049,
	)	2016A1010206050, 2016A1010206051,
STATE OF SOUTH CAROLINA	)	2016A1010206052, K404187
	)	<b>Charge(s):</b> Possession of a Firearm During the
v.	)	Commission of a Violent Crime, Kidnapping,
	)	Burglary (First Degree), Armed Robbery,
JOSEPH LAMAR BROWN, JR.,	)	Murder
	)	
Defendant.	)	<b>MOTION TO DISMISS ARMED ROBBERY</b>
	)	<b>INDICTMENT AS REQUIRED BY</b>
	)	<b>DOUBLE JEOPARDY PROTECTIONS</b>
	)	

Pursuant to the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and S.C. Const. Art. I, § 12, defendant Joseph Lamar Brown, Jr. respectfully moves to dismiss the armed robbery indictment.

During the week of June 11, 2018, the State tried Brown before The Honorable Kristi Harrington. The jury hung on the charges of Possession of a Firearm During a Violent Crime, Burglary (First Degree), and Murder, but did reach a unanimous verdict of not guilty on the charge of armed robbery. Now, the State seeks to try Brown again on the armed robbery indictment in violation of the Double Jeopardy prohibitions of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the South Carolina Constitution. This Court should dismiss the armed robbery indictment with prejudice.

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 JULIE J. ARMSTRONG  
 CLERK OF COURT

## FACTS

On December 23, 2016, at 12:56 PM, Hugh Pritchard asked a neighbor to call 911 and eventually reported to Dispatch that his cousin John “Johnny” Glenn Pritchard had been shot and robbed by an intruder into the victim’s home at [REDACTED] East Thomas Street in Lincolnville, South Carolina. Brown’s iPhone was found near the crime scene. Based primarily on that, officers arrested Brown on January 3, 2017. He was subsequently indicted on five charges: Possession of a Firearm During the Commission of a Violent Crime, Kidnapping, Burglary (First Degree), Armed Robbery, and Murder.

During the week of June 11, 2018, the state elected not to pursue the kidnapping charge but tried Brown on the four remaining charges. The jury was sworn on the afternoon of June 11, 2018. (Exhibit 1, Transcript Excerpt (“Tr.”) at 13). The trial proceeded through June 14, 2018, when the jury deliberations began at 12:18 p.m. (Exhibit 1, Tr. at 552). During the next five hours or so, the jury returned five notes and the testimony of Hugh Potter Pritchard was replayed at the request of the jury. *Id.* at 552-553. One of those notes indicated that the jury had reached a unanimous verdict of not guilty on armed robbery, but was unable to reach unanimous agreement on the other indictments. (Exhibit 2, Affidavit of Teresa L. Norris; Exhibit 3 Affidavit of Taylor J. Seman; Exhibit 5, Affidavit Addendum of Juror Heather Sharkey). At 4:51 p.m., after the jury indicated an inability to reach a verdict, Judge Harrington gave an *Allen* charge.<sup>1</sup> *Id.* at 553-555. After that time, two more jury notes were received by the court, before the jury was returned to the courtroom and the jury foreperson announced: “We, Your Honor, have just not been able to come to a unanimous decision on any of the indictments.” *Id.* at 556. The jury was then excused at 7:37 p.m. *Id.* at 557.

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<sup>1</sup> *Allen v. United States*, 164 U.S. 492 (1896).

The following day, however, Juror Heather Sharkey called defense counsel Taylor Seman to inform her that the jury had been unanimous in acquitting Brown of armed robbery and had never again discussed that charge after the *Allen* charge. (Exhibit 4, Affidavit of Juror Heather Sharkey). Juror Sharkey provided an affidavit that includes the following pertinent information:

- 10) Mr. Brown had four indictments: murder, armed robbery, burglary, and possession of a weapon during a violent offense. His trial lasted from mid-day on Monday, June 11, through the evening of June 14, when the jury foreperson reported that the jury had been unable to reach any verdict. The judge then declared a mistrial and excused the jury.
- 11) The following day, I called Taylor Seman, who was one of Mr. Brown's lawyers. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment. On the other three indictments at that time the vote was seven guilty and five not guilty.
- 12) The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
- 13) We continued deliberating after that for another 2 hours or so on the three indictments that we were disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in that last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
- 14) When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
- 15) Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.

*Id.* Juror Sharkey also provided a copy of her jury notebook, which includes a page indicating: "Armed Rob NG by UNI." (Exhibit 6, Affidavit of Juror Heather Sharkey with page from

notebook). Juror Lajune Hollins also provided an affidavit including substantially the same information. (Exhibit 7, Affidavit of Juror Lajune Hollins).

### ARGUMENT

Under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, no person may “be subject for the same offence to be twice put in jeopardy of life or limb.”<sup>4</sup> *See Benton v. Maryland*, 395 U.S. 784, 793 (1969). The South Carolina Constitution also prohibits double jeopardy. S.C. Const. Art. I, § 12 (“No person shall be subject for the same offense to be twice put in jeopardy of life or liberty”). While state courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution, South Carolina courts, interpreting double jeopardy protections, have thus far “declined to extend broader protection under our state constitution than that afforded under the federal constitution.” *State v. Easler*, 327 S.C. 121, 132, 489 S.E.2d 617, 623 (1997), *overruled on other grounds by State v. Greene*, 423 S.C. 263, 283, 814 S.E.2d 496, 507 (2018).

The Double Jeopardy prohibition “protects a man who has been acquitted from having to ‘run the gantlet’ a second time.” *Ashe v. Swenson*, 397 U.S. 436, 446 (1970) (quoting *Green v. United States*, 355 U.S. 184, 190 (1957)). “The Clause does not, however, bar a second trial if the first ended in a mistrial.” *Blueford v. Arkansas*, 566 U.S. 599, 601 (2012). This is so even where a jury is unable to reach a unanimous verdict after the trial court has given an *Allen*<sup>2</sup> charge and urged the jury to reach a verdict. *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004).

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<sup>2</sup> *Allen v. United States*, 164 U.S. 492 (1896).

The Federal Rules of Evidence specifically authorize the use of evidence from jurors in a situation like this one. As a general rule, juror testimony may not be the basis for impeaching a jury verdict. *State v. Pittman*, 373 S.C. 527, 555, 647 S.E.2d 144, 158 (2007); *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). But South Carolina recognizes exceptions in cases involving extraneous information or influence, as well as cases involving internal misconduct where necessary to ensure fundamental fairness, such as the influence of racial prejudice on a verdict. *State v. Franklin*, 341 S.C. 555, 560, 534 S.E.2d 716, 719 (Ct. App. 2000).

Specifically, Rule 606(b), SCRE, provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

At the time of adoption in September 1995, this rule was "identical to the federal rule." *Id.* Notes. The Federal Rule was amended in 2006, however, to recognize an exception allowing juror testimony "about whether . . . a mistake was made in entering the verdict on the verdict form." Fed. R. Evid. 606(b)(2)(C).

The Federal Rule was amended to conform with the exception already drawn by many courts recognizing that Rule 606(b) is not applicable where juror affidavits seek "correction in the transmission of the verdict rather than the impeachment of a verdict." *McCullough v. Conrail*, 937 F.2d 1167, 1169 (6th Cir. 1991). In other words, juror testimony is permitted where there is no inquiry "into the thought processes or emotional reactions of the jurors," *id.*, or the defendant seeks only inquiry into "what the jury decided and not why they did so," *Attridge v. Cencorp Div. of*

*Dover Techs. Int'l, Inc.*, 836 F.2d 113, 117 (2d Cir. 1987). The South Carolina rule simply does not address the situation where the court is asked only to “consider jurors’ testimony that through inadvertence, oversight, or mistake, the announced verdict was not the one to which the jurors had agreed.” *Karl v. Burlington N. R.R. Co.*, 880 F.2d 68, 74 (8th Cir. 1989). See also *United States v. Dotson*, 817 F.2d 1127, 1130 (5th Cir. 1987) (juror’s affidavit “admissible to show that the verdict delivered was not that actually agreed upon . . . but a juror may not subsequently impeach a verdict by stating how it was reached”); *Young v. United States*, 163 F.2d 187, 189 (10th Cir. 1947) (jurors are competent witnesses to show that through oversight, inadvertence, or mistake respecting the verdict announced was not the verdict reached in the jury room). This Court should extend the common-sense protections of the Federal Rules and allow the introduction of evidence from Brown’s first jury.

Here, the jury did actually reach a unanimous verdict of not guilty on the armed robbery indictment. This verdict was announced through a jury note to the court. This result of acquittal is not changed by the subsequent proceedings involved in the *Allen* charge and additional deliberations, as the charge by its very nature was to conduct additional deliberations on the charges on which the jury had been unable to reach a unanimous verdict. Indeed, as affirmed by Juror Sharkey and Juror Hollins, the additional time in deliberations was spent attempting to resolve the disagreement about other counts and the jury never returned to the discussion of the armed robbery indictment because a verdict had already been reached. (Exhibit 4, Sharkey Affidavit at para. 13); (Exhibit 7, Hollins Affidavit at para. 16).

Neither federal nor state courts have addressed the exact issue in this case. *Blueford v. Arkansas*, 566 U.S. 599 (2012), does not control because it is factually and legally distinguishable. In *Blueford*, the defendant was charged with capital murder. In charging the jury, the court

instructed the jury that it could consider lesser-included offenses. Under state law, the jury was required to acquit of the greater charger before considering the lesser charges. Specifically:

The trial court instructed the jury that the charge of capital murder included three lesser offenses: first-degree murder, manslaughter, and negligent homicide. In addition to describing these offenses, the court addressed the order in which the jury was to consider them: “If you have a reasonable doubt of the defendant's guilt on the charge of capital murder, you will consider the charge of murder in the first degree. . . . If you have a reasonable doubt of the defendant’s guilt on the charge of murder in the first degree, you will then consider the charge of manslaughter. . . . If you have a reasonable doubt of the defendant’s guilt on the charge of manslaughter, you will then consider the charge of negligent homicide.”

*Id.* at 602. The jury was given five verdict forms to choose from.

There were four separate forms allowing the jury to convict on each of the charged offenses: capital murder, first degree murder, manslaughter, and negligent homicide. A fifth form allowed the jury to return a verdict of acquittal, if the jury found Blueford not guilty of any offense. There was no form allowing the jury to acquit on some offenses but not others.

*Id.* at 603. A few hours into deliberations, the jury sent out a note asking what would happen if the jury was unable to reach a verdict. The court gave an *Allen* charge and deliberations resumed. After another half hour, the jury foreperson informed the court that the jury was “hopelessly deadlocked.” *Id.* The court then asked the foreperson to disclose the jury’s votes. The foreperson indicated that the juror was unanimous “against” capital murder and first degree murder; stuck at “[n]ine for, three against” on manslaughter; and, in accord with the court’s instructions, had not yet progressed to vote on negligent homicide. *Id.* at 603-604. The court gave another *Allen* instruction and sent the jury out of additional deliberations. *Id.* at 604. After another half hour, the jury foreperson informed the court that the jury “had not reached a verdict” and the court declared a mistrial and discharged the jury. *Id.*

When the state sought to retry Blueford on the capital murder charge, Blueford moved to dismiss the capital murder and first degree murder charges on the basis of double jeopardy. The trial court denied the motion and the Arkansas Supreme Court affirmed the trial court on interlocutory appeal. The United States Supreme Court granted certiorari review and affirmed. The Court held that the foreperson's announcement that the jury had voted unanimously against capital murder and first degree murder prior to the conclusions of the deliberations was not a "formal verdict" or "final resolution of anything." *Id.* at 606. "The fact that deliberations continued after the report deprives that report of the finality necessary to constitute an acquittal on the murder offenses." *Id.* In short, because the jury "was free to reconsider a greater offense, even after considering a lesser one," *id.* at 607, the Court could not say whether the jury had returned to considering capital murder and/or one of its lesser included offenses, *id.*

Here, the situation is significantly factually and legally distinguishable. In *Blueford*, the jury was considering and discussing one set of circumstances and one resulting indictment that involved the defendant's level of criminal responsibility, or lack thereof, for the death of one person. The only reason for the jury to continue deliberating would be to discuss that set of circumstances. But Brown's jury was not considering a single count with lesser-included offenses. Instead, Brown's jury was considering four distinct indictments. And, in considering those indictments, the jury was able to reach a unanimous not-guilty verdict on one of those counts. When the jury was given an *Allen* charge it was not, as in *Blueford*, directed to continue deliberating on the only indictment before it. Brown's jurors were instead told that they had "a duty to make every reasonable effort to reach a unanimous verdict" on each charge. (Exhibit 1, Tr. at 553). Because they had already reached a unanimous verdict of not guilty on the armed

robbery charge, and had informed the court of that fact, the jury did not return to deliberations on that charge.

At the conclusion of the deliberations, the foreperson announced that the jury was “not [] able to come to a unanimous decision on any of the indictments.” (Exhibit 1, Tr. at 556). This pronouncement was made only because of confusion on the part of the jurors that they had to reach a verdict on all counts or none. (Exhibit 4, Sharkey Affidavit at para. 15); (Exhibit 7, Hollins Affidavit at para. 18). While a misunderstanding of the law does not warrant relief absent a denial of fundamental fairness, *State v. Pittman*, 373 S.C. 527, 554, 647 S.E.2d 144, 158 (2007), *State v. Galbreath*, 359 S.C. 398, 406, 597 S.E.2d 845, 849 (Ct. App. 2004), retrial on an armed robbery indictment that a jury has voted unanimously for acquittal on is the epitome of a denial of fundamental fairness.

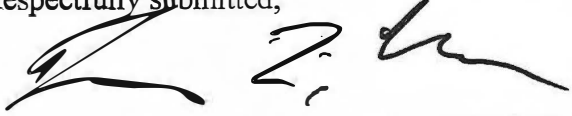
The only reason that this error was not corrected prior to the jury being excused on June 14, 2018, was that counsel and the court failed to inquire further. And, it is beyond question that trial counsel may be ineffective for failing to request that a confusing verdict be clarified. *Wertz v. State*, 349 S.C. 291, 294, 562 S.E.2d 654, 656 (2002). Likewise, it is beyond question that it is the trial court’s duty to clarify any confusion in the verdict. *Id. See also Roberts v. State*, 408 S.C. 123, 134, 757 S.E.2d 744, 750 (Ct. App. 2014). Regardless of where the blame lies in failing to clarify the record further on June 14, 2018, it is clear that Brown was acquitted of armed robbery and further prosecution on that indictment is prohibited.

### CONCLUSION

This Court must dismiss the armed robbery indictment with prejudice because Brown has already been acquitted of that charge and a new trial on that indictment would be in violation of

the prohibition of double jeopardy in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the South Carolina Constitution.

Respectfully submitted,



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October 30, 2018  
Charleston, South Carolina

FILED

2018 OCT 30 AM 9:53

JULIE J. ARMSTRONG  
CLERK OF COURT

BY \_\_\_\_\_

**Exhibit 1**

**MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS  
REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-04083

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2017GS1004077,
	)	04079, 04081, 04083
STATE OF SOUTH CAROLINA,	)	
	)	Transcript of Record
Plaintiff,	)	
	)	
vs.	)	
	)	Date: June 11, 2018 -
JOSEPH LAMAR BROWN,	)	June 14, 2018
JR.,	)	
	)	
Defendant.		

\* \* \* \* \*

B E F O R E:

The Honorable Kristi Harrington

\* \* \* \* \*

Denise J. Lauder, RPR  
Ninth Judicial Circuit

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6	State's EXH. 145, DVD	285	15
7	COURT'S EXH. 1, CD that was marked	66	14
8	Defendant's 1, with multiple clips		
9	COURT'S EXH. 5, DVD, Nautica Manigault	331	16
10	DFT. EXH. 2, Screen shots of dog	331	25
11	COURT EXH. 6, Jury note	552	21
12	COURT EXH. 7, Jury note	552	23
13	COURT EXH. 8, Jury note	552	25
14	COURT EXH. 9, Jury note	553	4
15	COURT EXH. 10, Jury note	553	6
16	DFT. 1 EXH. 11, Jury note	555	22
17	COURT EXH. 12, Jury note	555	24
18	STATE'S EXH. 61 in evidence	39	21
19	STATE'S EXH. 78 in evidence	51	22
20	STATE'S EXH. 1 - 12 in evidence	74	25
21	STATE'S EXH. 71 in evidence	78	6
22	STATE'S EXH. 132 in evidence	79	12
23	STATE'S EXH. 133 in evidence	79	13
24	STATE'S EXH. 63, iPhone, in evidence	87	18
25	STATE'S EXH. 98, DVD, in evidence	129	17

1	STATE'S EXH. 139 - 142, Screen shots, in	132	2
2	evidence		
3	STATE'S EXH. 62, Diagram, in evidence	136	13
4	STATE'S EXH. 77, Photograph, in evidence	147	14
5	STATE'S EXH. 17, 19, 20, 21, 22, 23, 24,	155	4
6	28, Photographs, in evidence		
7	STATE'S EXH. 15, 17, 19, 20, 21, 22, 23,	158	24
8	24, 26, 27, 28, Photographs, in evidence		
9	STATE'S EXH. 128, DVD, in evidence	164	17
10	STATE'S EXH. 64, Spent cartridge, in	175	15
11	evidence		
12	STATE'S EXH. 13, Photograph, in evidence	177	2
13	STATE'S EXH. 14, Photograph, in evidence	177	4
14	STATE'S EXH. 65, Projectile, in evidence	182	14
15	STATE'S EXH. 66, Hornady bullets, in	186	24
16	evidence		
17	STATE'S EXH. 67, Blazer bullets, in	187	1
18	evidence		
19	STATE'S EXH. 29 - 40, Photographs, in	188	16
20	evidence		
21	STATE'S EXH. 48 - 51, Photographs, in	188	24
22	evidence		
23	STATE'S EXH. 73 - 76, Photographs, in	195	6
24	evidence		
25	STATE'S EXH. 72, DVD, in evidence	197	18

1	STATE'S EXH. 43 - 47, Screen shots, in	198	11
2	evidence		
3	STATE'S EXH. 52, Photograph, in evidence	247	5
4	STATE'S EXH. 53, Photograph, in evidence	248	11
5	STATE'S EXH. 54, Photograph, in evidence	249	18
6	STATE'S EXH. 144, Photograph, in evidence	255	8
7	STATE'S EXH. 95, DVD, in evidence	264	9
8	STATE'S EXH. 97, DVD, in evidence	266	6
9	STATE'S EXH. 135, Screen shot, in	267	5
10	evidence		
11	STATE'S EXH. 136, Screen shot, in	267	7
12	evidence		
13	STATE'S EXH. 137, Screen shot, in	267	9
14	evidence		
15	STATE'S EXH. 138, Screen shot, in	267	11
16	evidence		
17	STATE'S EXH. 145 in evidence	285	22
18	STATE'S EXH. 130, Copy of a search	299	7
19	warrant, in evidence		
20	STATE'S EXH. 101 in evidence	301	3
21	STATE'S EXH. 108, Phone extraction	341	11
22	report, in evidence		
23	STATE'S EXH. 109, Phone extraction	342	23
24	report, in evidence		
25	STATE'S EXH. 112, Phone extraction	344	12

1	report, in evidence		
2	STATE'S EXH. 110, Phone extraction	345	21
3	report, in evidence		
4	STATE'S EXH. 113, Call log, in evidence	347	21
5	STATE'S EXH. 114, Phone extraction	348	17
6	report, in evidence		
7	STATE'S EXH. 115, Phone extraction	349	12
8	report, in evidence		
9	STATE'S EXH. 116, Phone extraction	351	7
10	report, in evidence		
11	STATE'S EXH. 117, Phone extraction	352	8
12	report, in evidence		
13	STATE'S EXH. 118, Phone extraction	353	11
14	report, in evidence		
15	STATE'S EXH. 119, Phone extraction	354	14
16	report, in evidence		
17	STATE'S EXH. 120, Images from iPhone, in	356	19
18	evidence		
19	STATE'S EXH. 121, Images from iPhone, in	356	21
20	evidence		
21	STATE'S EXH. 68, Call records, in	361	23
22	evidence		
23	STATE'S EXH. 127, Facebook certificate of	364	4
24	authenticity, in evidence		
25	STATE'S EXH. 79, Facebook business	365	5

1	record, in evidence		
2	STATE'S EXH. 80, Facebook business	365	7
3	record, in evidence		
4	STATE'S EXH. 88, Facebook business	365	9
5	record, in evidence		
6	STATE'S EXH. 89, Facebook business	365	11
7	record, in evidence		
8	STATE'S EXH. 90, Facebook business	365	13
9	record, in evidence		
10	STATE'S EXH. 92, Facebook business	365	15
11	record, in evidence		
12	STATE'S EXH. 93, Facebook business	365	17
13	record, in evidence		
14	STATE'S EXH. 134, ATF Trace Summary, in	390	20
15	evidence		
16	STATE'S EXH. 129, Verizon summary, in	396	2
17	evidence		
18	STATE'S EXH. 55 - 60, Autopsy	428	14
19	photographs, in evidence		
20	DFT. EXH. 1 in evidence	61	13

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1           (The following proceedings were had  
2 June 11, 2018, State v Brown, Charleston County  
3 General Sessions Court, 2:37 p.m.)

4           (STATE'S EXH. 1 - 143, Premarked for  
5 identification by the Solicitor's Office.)

6           THE COURT: All right. Anything, Ms.  
7 Seman?

8           MS. SEMAN: Yes, Judge, just very  
9 briefly. The way I understand the state of South  
10 Carolina law, at this point, I believe I have to  
11 make a contemporaneous objection during Mr.  
12 Durant's opening to preserve any of your pretrial  
13 rulings or preserve my record on your pretrial  
14 rulings, but I just wanted to let you know that I  
15 was planning on doing that so you will know where  
16 my objections will be coming from.

17           THE COURT: Okay.

18           MS. NORRIS: Your Honor, just one  
19 housekeeping matter. I don't recall Judge Dennis  
20 telling jurors this morning that lawyers would  
21 avoid them in the hallways, et cetera. And I  
22 almost ended up in an elevator with a juror, so I  
23 would like the Court to explain to them that we're  
24 not being rude.

25           THE COURT: Okay. All right. Thank

1 you. Are they all here? Are the jurors here?

2 BAILIFF: Yes, ma'am.

3 THE COURT: And they have their  
4 notepads? And you know Mrs. Fetterolf has been  
5 selected as the foreperson.

6 BAILIFF: The notepads are in their  
7 chairs, Your Honor.

8 THE COURT: All right. Thank you.  
9 Notepads in their chairs. All right. Bring them  
10 in. All right.

11 Ms. Seman, the rule of sequestration  
12 has been invoked. If you could please scan the  
13 audience and make sure that you are compliant.

14 MS. SEMAN: I believe we are compliant,  
15 Your Honor.

16 (Jury in, 2:31 p.m.)

17 BAILIFF: All jurors are present.

18 THE COURT: Thank you. Please be  
19 seated. Good afternoon, ladies and gentlemen. Did  
20 you comply with my instructions over the lunch  
21 hour? If you followed my instructions, please  
22 raise your right hand.

23 Thank you. All 14 jurors have  
24 indicated they have complied with the Court's  
25 instructions.

1                   Mr. Clerk, if you would please give  
2 them their oath.

3                   THE CLERK: Will the defendant please  
4 rise?

5                   Ladies and gentlemen, please rise and  
6 raise your right hand.

7                                   THE JURY,  
8 being first duly sworn, testified as follows:

9                   THE CLERK: Your Honor, let the record  
10 reflect the jurors have been sworn.

11                   THE COURT: Ladies and gentlemen, as I  
12 indicated before our lunch break, the case that  
13 we're about to try is the case of the State versus  
14 Joseph Lamar Brown, Junior, the defendant. What I  
15 now say is intended to serve as an introduction to  
16 the trial of this case. These remarks are not a  
17 charge on the law.

18                   I will instruct you on the law during  
19 the trial as it becomes applicable, but, most  
20 importantly, at the end of the trial before you  
21 retire to consider your verdict. This is merely an  
22 explanation of the procedures we'll be following so  
23 you may be better able to understand what is  
24 happening.

25                   The defendant is charged by four

1 door and indicate to the bailiff that you have  
2 completed your verdict on all four indictments.

3 To the first 12, is there any member of  
4 the jury panel, for whatever reason, you feel that  
5 you would not be able to begin and complete your  
6 deliberations in this case? If so, please stand.

7 Thank you. All 12 jurors have  
8 indicated that they are able to begin and complete  
9 their deliberations.

10 To my alternate, at this time, this  
11 completes your service to this case, but I will  
12 have you remain with us separate from the other 12  
13 until I release you.

14 Ladies and gentlemen, this is the last  
15 time that I will say this to you. Do not begin  
16 your deliberations; do not begin discussing this  
17 case amongst yourselves. We are gathering the  
18 evidence and the verdict form, and once we have  
19 done that, the bailiffs will indicate to you that  
20 you may begin your deliberations.

21 Please rise for the jury.

22 Make sure you take all of your  
23 belongings.

24 (Jury out, 12:02 p.m.)

25 THE COURT: Thank you. Be seated.

1                   Any objections, corrections to the  
2 charges read? From the State?

3                   MR. DURANT: No, ma'am.

4                   THE COURT: From the defense?

5                   MS. NORRIS: No, Your Honor.

6                   THE COURT: All right. And you've  
7 reviewed the verdict form. Do you want to look at  
8 them one more time?

9                   MS. NORRIS: You read them; the name is  
10 correct now.

11                   MR. DURANT: No, Your Honor.

12                   THE COURT: If you will come and just  
13 verify that all of the exhibits that we're putting  
14 in the box are the correct ones.

15                   All right. You agree that the evidence  
16 that is going back has been admitted.

17                   MS. NORRIS: Oh, yes.

18                   THE COURT: You may take the box.

19 Thank you.

20                   (Jury deliberating, 12:18 p.m.)

21                   (COURT EXH. 6, Jury note, was marked  
22 for identification.)

23                   (COURT EXH. 7, Jury note, was marked  
24 for identification.)

25                   (COURT EXH. 8, Jury note, was marked

1 for identification.)

2 (Testimony of Hugh Potter Pritchard  
3 played to the jury in the jury room.)

4 (COURT EXH. 9, Jury note, was marked  
5 for identification.)

6 (COURT EXH. 10, Jury note, was marked  
7 for identification.)

8 (Jury in, 4:51 p.m.)

9 THE COURT: Thank you. Please be  
10 seated. Ladies and gentlemen, you have indicated  
11 that you have been unable to agree on a verdict in  
12 this case. As I instructed you earlier, the  
13 verdict of the jury must be unanimous.

14 When a matter is in dispute, it isn't  
15 always easy for even two people to agree. So when  
16 12 people must agree, it becomes even more  
17 difficult. In most cases absolute certainty cannot  
18 be reached or expected; however, you have a duty to  
19 make every reasonable effort to reach a unanimous  
20 verdict.

21 In doing this, you should consult with  
22 one another; express your own views, and listen to  
23 the opinions of your fellow jurors; tell each other  
24 how you feel and why you feel that way; discuss  
25 your differences with open minds.

1                   Although the verdict of the jury must  
2 be unanimous, every one of you has the right to  
3 your own opinion. The verdict you agree to must be  
4 your own verdict, the result of your own  
5 convictions. You should not give up your  
6 firmly-held beliefs merely to be in agreement with  
7 your fellow jurors.

8                   The majority should consider the  
9 minority's opinion and the minority should consider  
10 the majority's opinion. You should carefully  
11 consider and respect the opinions of each other and  
12 reevaluate your position for reasonableness,  
13 correctness, and impartiality.

14                   You must lay aside all outside matters  
15 and re-examine the questions before you based upon  
16 the law and the evidence in this case.

17                   If you do not agree on a verdict, I  
18 must declare a mistrial. In that case, it does not  
19 mean anybody wins. It just means that at some  
20 future time I will try this case with some other  
21 jury sitting exactly where you are.

22                   The same participants will come in and  
23 the same lawyers will ask basically the same  
24 questions and get basically the same answers. We  
25 will go through this whole process again.

1                   You were selected in the same manner  
2 and from the same source as any future jury will  
3 be, and there's no reason for me to suppose that  
4 this case will ever be submitted to 12 more  
5 intelligent, impartial, and conscientious,  
6 competent jurors; or, that any more or clearer  
7 evidence will be produced on one side or the other.

8                   I ask you to return to your  
9 deliberations. Please rise for the jury.

10                   (Jury out, 4:54 p.m.)

11                   THE COURT: Any objection to the Allen  
12 charge?

13                   MR. DURANT: Not from the State, Your  
14 Honor.

15                   MS. NORRIS: No, Your Honor.

16                   THE COURT: Thank you. We'll be at  
17 ease.

18                   (A recess transpired.)

19                   THE COURT: Thank you. Be seated. All  
20 right. Let's bring in the jury. Please rise for  
21 the jury.

22                   (COURT EXH. 11, Jury note, was marked  
23 for identification.)

24                   (COURT EXH. 12, Jury note, was marked  
25 for identification.)

1 THE BAILIFF: All jurors are present.

2 THE COURT: Thank you. Please be  
3 seated. Madam Foreperson, what is the  
4 announcement?

5 THE FOREPERSON: We, Your Honor, have  
6 just not been able to come to a unanimous decision  
7 on any of the indictments.

8 THE COURT: All right. Thank you. You  
9 can have a seat. As I indicated to you, I will  
10 have to declare a mistrial at this time. And, as I  
11 indicated to you, that does not mean that anybody  
12 wins. It simply means that we're going to try the  
13 case again, calling the very same witnesses, and  
14 the same attorneys will appear.

15 I thank you for your service to  
16 Charleston County and for your contribution to the  
17 justice system. Your service to this case is  
18 complete. Your service is complete for the week.

19 Ladies and gentlemen, you may discuss  
20 this case with anyone at this time, but you also  
21 have the option not to discuss this case at any  
22 time.

23 You may receive a questionnaire from  
24 the attorneys involved in this case, and that  
25 simply is called the practice of law because

1 sometimes they like to know what they could have  
2 done differently. And so feel free to answer those  
3 questions, but also feel free not to.

4 You may now talk about this case, post  
5 about this case, do anything that you wish to do.

6 Again, I thank you for your service to  
7 Charleston County, and you are excused. Good luck  
8 to you all. Thank you.

9 Please rise for the jury.

10 You can take your notes with you or  
11 leave them and we'll shred, it's up to you.

12 (Jury out, 7:37 p.m.)

13 THE COURT: Thank you. Please be  
14 seated. Anything further from the State?

15 MR. DURANT: No, Your Honor.

16 THE COURT: Anything further, Ms.  
17 Norris.

18 MS. NORRIS: Your Honor, we have the  
19 bond issue. He was out on bond, and I would ask  
20 that he -- that his bond be continued. He's got an  
21 ankle monitor.

22 THE COURT: State's position?

23 MR. DURANT: I would ask that he be  
24 held without bond, Your Honor. I don't believe he  
25 should have been on bond to begin with. His bond

1 was set at a time when, admittedly, our case  
2 against him was weak.

3 Our case against him has gotten much  
4 stronger since then, which he is aware. In  
5 addition, at the time that he was arrested for this  
6 offense, he was already doing YOA probation for  
7 doing substantially the same thing. And we believe  
8 that under the circumstances that you should deny  
9 bond.

10 THE COURT: Okay. Based upon all of  
11 the factors, I am going to keep him in custody and  
12 deny your request to release him on bond.

13 MS. NORRIS: Are you ready for him to  
14 leave, Your Honor?

15 THE COURT: He appears to be ready.  
16 Good luck to you, sir.

17 (Defendant escorted out of the  
18 courtroom.)

19 THE COURT: And I believe that I've  
20 said this to the three of you before, but thank you  
21 for your very zealous representation, Ms. Norris  
22 and Ms. Seman.

23 It's unfortunate that your client  
24 didn't feel the need to stay, but he received more  
25 than appropriate and zealous representation, and

1 you should be very proud what you did for the  
2 client here today.

3 And, again, thank you for your  
4 contribution to the justice system. And, more  
5 importantly, the way the three of y'all worked  
6 together was tremendous and truly the epitome of  
7 professionalism for everyone involved. So thank  
8 you. Thank you, Investigator. Thank you.

9 MR. DURANT: Thank you.

10 THE COURT: We're at ease.

11 (These proceedings were concluded at  
12 7:58 p.m.)

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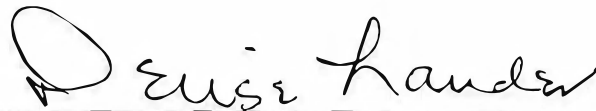
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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of August, 2018 at Charleston, Charleston County, South Carolina.



Carol Denise Lauder  
Registered Professional Reporter, CP  
My Commission expires February 27, 2028

## **Exhibit 2**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-04083

STATE OF SOUTH CAROLINA	)	<b>IN THE COURT OF GENERAL SESSIONS</b>
	)	<b>FOR THE NINTH JUDICIAL CIRCUIT</b>
COUNTY OF CHARLESTON	)	<b>Case No(s):</b> 2017-GS-10-04077, 2017-GS-10-
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	<b>Warrant No(s):</b> 2016A1010206049,
STATE OF SOUTH CAROLINA	)	2016A1010206050, 2016A1010206051,
	)	2016A1010206052, K404187
	)	<b>Charge(s):</b> Possession of a Firearm During the
v.	)	Commission of a Violent Crime, Kidnapping,
	)	Burglary (First Degree), Armed Robbery,
JOSEPH LAMAR BROWN, JR.,	)	Murder
	)	
Defendant.	)	
	)	<b>AFFIDAVIT</b>
	)	<b>OF TERESA L. NORRIS</b>
	)	
	)	

Personally appeared before me, TERESA L. NORRIS, upon being duly sworn, deposes and says as follows:

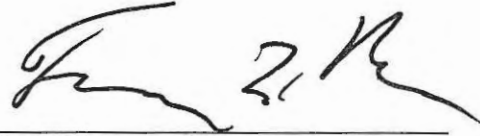
- 1) I am an attorney licensed to practice law and in good standing in South Carolina since November 1990. Since January 2017, as a member of the Charleston County Public Defender’s Office, I have represented Joseph Lamar Brown, Jr., who was indicted on charges of murder, kidnapping, armed robbery, burglary, and possession of a firearm during a violent crime.
- 2) During the week of June 11, 2018, the case was brought to trial before The Honorable Kristi Harrington. The State, through Deputy Chief Solicitor Bruce Durant, elected not to proceed with the kidnapping charge, but the trial proceeded to jury deliberations on the four remaining charges.
- 3) During the deliberations, which began at 12:18 p.m. on June 14, 2018, the jury sent out at least five notes, some of which had multiple parts. These notes were marked as Court Exhibits but not read into the record. One of those notes returned prior to the court giving an *Allen* charge

at 4:51 p.m. indicated that the jury had reached a unanimous verdict of not guilty on the armed robbery indictment but that the jury could not reach a verdict on the remaining charges.

- 4) Judge Harrington gave the *Allen* charge at 4:51 p.m. After the jury sent out several more notes, the jury was returned to the courtroom around 7:30 p.m. and the foreperson announced that the jury had been unable to reach any verdict. The court declared a mistrial and the jury was excused.
- 5) For whatever reason, whether it be tiredness after four long days in court or the lateness of the hour, I failed to request that the court inquire whether the jury had reconsidered its unanimous vote of not guilty on the armed robbery charge as announced earlier. Having never had a hung jury before, I also did not realize that the court exhibits would not be maintained by court personnel.
- 6) The next day, Juror Heather Sharkey contacted Taylor Seman, my co-counsel in the case, and informed her that the jury had not deliberated any more on the armed robbery charge after sending its note indicating that there had been a unanimous vote of not guilty on the armed robbery indictment.
- 7) At my direction, my team subsequently searched for the court exhibits. We were informed by the Clerk of Court's office, the court reporter, the Judge's chambers, and the Solicitor's office that none were in possession of the court exhibits. Thus, those notes are unavailable.
- 8) Juror Sharkey and Juror Lajune Hollins provided affidavits attesting to the unanimous not guilty verdict on armed robbery. Juror Sharkey also provided a copy of her jury notebook, which includes the attached page indicating: "Armed Rob NG by UNI."

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.



TERESA L. NORRIS

SWORN to and subscribed to before me this

30<sup>th</sup> day of October, 2018.



NOTARY PUBLIC for SOUTH CAROLINA

My Commission Expires: 8-5-2024

**Exhibit 3**

**MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS  
REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-04083

STATE OF SOUTH CAROLINA	)	<b>IN THE COURT OF GENERAL SESSIONS</b>
	)	<b>FOR THE NINTH JUDICIAL CIRCUIT</b>
COUNTY OF CHARLESTON	)	<b>Case No(s):</b> 2017-GS-10-04077, 2017-GS-10-
	)	04079, 2017-GS-10-04080, 2017-GS-10-04081,
	)	2017-GS-10-04083
	)	<b>Warrant No(s):</b> 2016A1010206049,
	)	2016A1010206050, 2016A1010206051,
STATE OF SOUTH CAROLINA	)	2016A1010206052, K404187
	)	<b>Charge(s):</b> Possession of a Firearm During the
v.	)	Commission of a Violent Crime, Kidnapping,
	)	Burglary (First Degree), Armed Robbery,
JOSEPH LAMAR BROWN, JR.,	)	Murder
	)	
Defendant.	)	
	)	<b>AFFIDAVIT</b>
	)	<b>OF TAYLOR J. SEMAN</b>
	)	
	)	

Personally appeared before me, TAYLOR J. SEMAN, upon being duly sworn, deposes and says as follows:

- 1) I am an attorney licensed to practice law since February 2015. I am in good standing in South Carolina. I participated as second chair in the trial of Joseph Lamar Brown, Jr., who was indicted on charges of murder, kidnapping, armed robbery, burglary, and possession of a firearm during a violent crime.
- 2) During the week of June 11, 2018, the case was brought to trial before The Honorable Kristi Harrington. The State, through Deputy Chief Solicitor Bruce Durant, elected not to proceed with the kidnapping charge, but the trial proceeded to jury deliberations on the four remaining charges.
- 3) During the deliberations, the jury sent out notes, some of which had multiple parts. These notes were marked as Court Exhibits but not read into the record. One of those notes returned prior to the court giving an *Allen* charge indicated that the jury had reached a unanimous verdict

of not guilty on the armed robbery indictment but that the jury could not reach a verdict on the remaining charges.

- 4) Judge Harrington gave the *Allen* charge. After the jury sent out several more notes, the jury was returned to the courtroom and the foreperson announced that the jury had been unable to reach any verdict. The court declared a mistrial and the jury was excused.
- 5) The next day, Juror Heather Sharkey called me and told me that the jury had not deliberated any more on the armed robbery charge after sending its note indicating that there had been a unanimous vote of not guilty on the armed robbery indictment.


That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.

  
 TAYLOR J. SEMAN

SWORN to and subscribed to before me this

30<sup>th</sup> day of October, 2018.

  
 NOTARY PUBLIC for SOUTH CAROLINA  
 My Commission Expires: 8-5-2024

## **Exhibit 4**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-04083



through the evening of June 14, when the jury foreperson reported that the jury had been unable to reach any verdict. The judge then declared a mistrial and then excused the jury.

11. The following day, I called Taylor Seman, who was one of Mr. Brown's lawyers. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous agreement on the armed robbery, and our verdict was not guilty. On the other three indictments at that time the vote was seven guilty and five not guilty.
12. The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
13. We continued deliberating after that for another 2 hours or so on the three indictments that we disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on the murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in the last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
14. When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
15. Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.

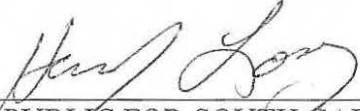
That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.

A handwritten signature in cursive script, appearing to read "Hava Shing", is written over a horizontal line.

SWORN to and subscribed to before me this

19 day of JUNE, 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-27-24

## **Exhibit 5**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-04083

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) **IN THE COURT OF GENERAL SESSIONS**  
) **FOR THE NINTH JUDICIAL CIRCUIT**  
) Case No(s): 2016-019282  
Warrant No(s): K-404187  
Charge(s): MURDER, ARMED  
ROBBERY, BURGLARY 1<sup>ST</sup>, POSSESSION  
OF A WEAPON DURING THE COMMISSION  
OF A VIOLENT CRIME

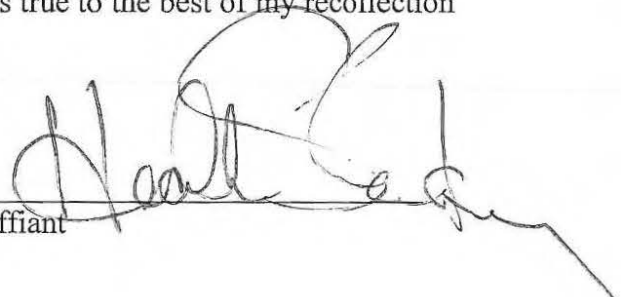
STATE OF SOUTH CAROLINA )  
)  
vs. )  
)  
JOSEPH LAMAR BROWN )  
)  
Defendant )  
\_\_\_\_\_ )

**ADDENDUM TO AFFIDAVIT OF  
HEATHER SHARKLEY**

Personally appeared before me, Heather Sharkley, upon being duly sworn, deposes and says as follows:

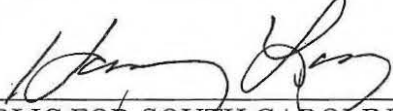
1. On June 19, 2018, I met with Investigator Harry Long with the Charleston County Public Defender's Office and signed my original affidavit.
2. I have read this addendum, and I am signing this addendum freely and voluntarily.
3. The following day, I called Taylor Seman, who was one of Mr. Brown's attorneys. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment.
4. **((ADDED) DURING DELIBERATIONS WE SENT OUT SEVERAL QUESTIONS TO THE COURT ASKING TO REHEAR VARIOUS BITS OF EVIDENCE, GET ADDITIONAL INSTRUCTIONS, ECT. ONE OF THE LAST NOTES WE SENT OUT INFORMED THE JUDGE THAT WE HAD ONLY BEEN ABLE TO REACH A UNANIMOUS AGREEMENT ON THE ARMED ROBBERY AND OUR VERDICT WAS NOT GUILTY.**

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

  
\_\_\_\_\_  
Affiant

SWORN to and subscribed to before me this

29 day of Oct, 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires. 3-27-24

## **Exhibit 6**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-0408

Berkeley County  
219 N. Hwy. 52, Suite E  
P.O. Box 1687  
Moncks Corner, SC 29461  
(843) 899-2777  
(843) 899-2701 Fax  
Cody J. Groeber  
Berkeley County Public Defender

# Ninth Circuit Public Defender

*Berkeley & Charleston Counties*

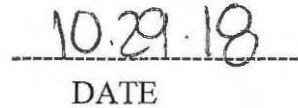
D. Ashley Pennington, Circuit Defender  
publicdefender@charlestoncounty.org  
(843) 958-1850

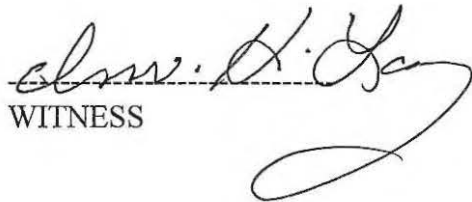
Charleston County  
O.T. Wallace Building  
101 Meeting Street, 5<sup>th</sup> Floor  
Charleston, SC 29401-2214  
(843) 958-1850  
(843) 958-1860 Fax  
Lorelle D. Proctor  
Charleston County Public Defender

10-29-18

I, Heather Starkley, have viewed the page out of my trial notebook shown to me by Investigator Harry Long, and I recognize it as my handwriting and the page came out of my trial notebook.

  
-----  
AFFIANT

  
-----  
DATE

  
-----  
WITNESS

Armed Rob

NG by

UNI

---

All other 3 w/cid  
w/ murder

## **Exhibit 7**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

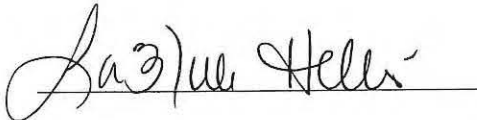
Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081,  
2017-GS-10-0408



10. During our jury's deliberation we unanimously voted NOT GUILTY on the armed robbery charge.
11. During deliberation there was much discussion on the lack of evidence to prove Mr. Brown guilty of the armed robbery.
12. We were under the impression that you had to vote guilty or not guilty on all charges, and that it could not be guilty of one charge and not guilty on another.
13. I do not know how it was reported to the Judge.
14. I just know we all were in agreement with the not guilty of the armed robbery.
15. The judge then instructed us that if we did not reach a verdict a mistrial would be declared and the entire case would be redone with another jury. She asked us to try again to reach a verdict.
16. We continued deliberating after that for another 2 hours or so on the three indictments that we disagreed on. Ultimately, we gave up with 10 jurors voting not guilty and two voting guilty on the murder, burglary, and possession of a weapon during a violent offense. We did not deliberate any more on armed robbery in the last two hours because all 12 of us had already agreed on that one and the foreperson had already signed that form.
17. When we were brought into the courtroom at the end, the foreperson informed the judge that we had been unable to reach any verdict. The judge then declared the mistrial and excused us.
18. Even though we had reached a unanimous verdict of not guilty on the armed robbery indictment, none of us said anything to contradict the foreperson. We all thought that we had to reach a verdict on all four indictments or none. We did not realize that we should have reported the not guilty verdict on armed robbery and that we were undecided only on the other three indictments.

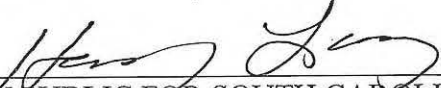
That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

Further affiant sayeth naught.

A handwritten signature in cursive script, reading "LaShae Heller", written over a horizontal line.

SWORN to and subscribed to before me this

25 day of July, 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-27-24

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF GENERAL SESSIONS  
MOTION COVERSHEET

WARRANT/TICKET/ )  
INDICTMENT #'s ) 2016A1010206049; -6052  
K404187 )

STATE OF SOUTH CAROLINA )

-vs-

JOSEPH LAMAR BROWN, JR. )  
DEFENDANT )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Solicitor: Bruce DuRant, Bar No. _____	Defendant's Attorney: Taylor J. Seman, Bar No. 101974
Address: 101 Meeting St., Charleston, SC 29401	Address: 101 Meeting St., Charleston, SC 29401
Phone: (843)958-1900	Phone: (843)958-1850
E-mail: bruce@scsolicitor9.org	E-mail: tseman@scsolicitor9.org
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: <u>Motion to Include Supplemental Exhibit</u>	
Estimated Time Needed: <u>10 minutes</u>	Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>Taylor J. Seman</u> Signature of <input type="checkbox"/> Solicitor <input checked="" type="checkbox"/> Attorney for Defendant	<u>10/31/18</u> Date submitted

FILED  
2018 OCT 31 PM 4:05  
TAYLOR J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON )

FOR THE NINTH JUDICIAL CIRCUIT

Warrant Nos.: 2016A1010206049;  
2016A1010206050;  
2016A1010206051;  
2016A1010206052;  
K404187

STATE OF SOUTH CAROLINA )

Charges: Poss. Firearm During a Violent Crime;  
Kidnapping; Burglary – 1<sup>st</sup>;  
Armed Robbery; Murder

VS. )

JOSEPH LAMAR BROWN, JR.  
Defendant. )

FILED  
2018 OCT 31 PM 4:05  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Motion to Attach Supplemental Exhibit

On October 29, 2018, Defendant Brown filed a Motion to Dismiss Brown's Armed Robbery Indictment as Required by Double Jeopardy Protections. The Motion included seven Exhibits. At this time, Brown submits an additional exhibit to be attached to the Motion. The additional Exhibit is labeled as Exhibit 8 and is enclosed here.

I SO MOVE:

*Taylor J. Seman*  
Taylor J. Seman  
Teresa L. Norris  
Attorneys for Defendant

Charleston, South Carolina.  
Dated: 10/31, 2018.

## **Exhibit 8**

### **MOTION TO DISMISS ARMED ROBBERY INDICTMENT AS REQUIRED BY DOUBLE JEOPARDY PROTECTIONS**

State of South Carolina

v.

Joseph Brown

Case Nos. 2017-GS-10-04077; 2017-GS-10-04079; 2017-GS-10-04080; 2017-GS-10-04081;  
2017-GS-10-0408

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS  
) FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

) Case No(s): 2016-019282  
) Warrant No(s): K-404187  
) Charge(s): MURDER, ARMED  
ROBBERY, BURGLARY 1<sup>ST</sup>, POSSESSION  
OF A WEAPON DURING THE COMMISSION  
OF A VIOLENT CRIME

STATE OF SOUTH CAROLINA

vs.

JOSEPH LAMAR BROWN

Defendant

)  
)  
) **ADDENDUM TO AFFIDAVIT OF LAJUNE**  
) **HOLLINS**  
)  
)  
)  
)

Personally appeared before me, LAJUNE HOLLINS, upon being duly sworn, deposes and says as follows:

*Handwritten initials: HL and DW*

1. On July 25, 2018, I met with Investigator Harry Long with the Charleston County Public Defender's Office and signed my original affidavit.
2. I have read this addendum, and I am signing this addendum freely and voluntarily.
3. ~~The following day, I called Taylor Seman, who was one of Mr. Brown's attorneys. Aside from providing her feedback on any questions she might have, I wanted to inform her that we HAD actually reached a unanimous verdict of not guilty on the armed robbery indictment.~~
4. **((ADDED) DURING DELIBERATIONS WE SENT OUT SEVERAL QUESTIONS TO THE COURT ASKING TO REHEAR VARIOUS BITS OF EVIDENCE, GET ADDITIONAL INSTRUCTIONS, ECT. ONE OF THE LAST NOTES WE SENT OUT INFORMED THE JUDGE THAT WE HAD ONLY BEEN ABLE TO REACH A UNANIMOUS AGREEMENT ON THE ARMED ROBBERY AND OUR VERDICT WAS NOT GUILTY.**

That the information supplied in the within Affidavit is true to the best of my recollection and knowledge.

*Handwritten signature: Lajune Hollins*  
\_\_\_\_\_  
Affiant

SWORN to and subscribed to before me this

30 day of October, 2018.

*Ken Long*

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-27-24

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

**RECEIVED**  
**Jun 16 2020**  
**SC Court of Appeals**

s/Susan B. Hackett  
Susan B. Hackett  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of June, 2020.