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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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COURT OF APPEALS

ROBERT SHULER SMITH

PETITIONER

VS.

CAUSE NO.: 2017-m-818

THE STATE OF MISSISSIPPI

RESPONDENT

ROBERT SMITH'S SECOND PETITION FOR INTERLOCUTORY APPEAL
BY PERMISSION

ORIGINAL

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MOTION#

2017

2314

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROBERT SHULER SMITH

PETITIONER

VS.

CAUSE NO.: _____

THE STATE OF MISSISSIPPI

RESPONDENT

ROBERT SMITH'S SECOND PETITION FOR INTERLOCUTORY APPEAL
BY PERMISSION

INTRODUCTION

Pursuant to MISS. R. APP. P. 5, Hinds County District Attorney Robert Shuler Smith (hereinafter "Smith") requests that this Court grant an interlocutory appeal from the Hinds County Circuit Court's Order on "*Defendant Robert Smith's Renewed Motion to Bar Retrial on Grounds of Double Jeopardy*," attached hereto as Exhibit "A."

As required by MISS. R. APP. P. 5, Smith provides the following information:

1. The current status of the case is that Robert Smith is set for a second trial on July 31, 2017.
2. This Court has authority to consider this Petition because the Petition is filed within twenty-one (21) days from the order upon which review is sought. *See Order on "Defendant Robert Smith's Renewed Motion to Bar Retrial on Grounds of Double Jeopardy,"* Exhibit "B."
3. A Petition for Interlocutory Appeal is currently pending before this Court in Cause No. 2017-M-00377, which was filed on March 17, 2017.

4. The questions of law to be presented in this interlocutory appeal upon which there exists a basis for a difference of opinion, and which will resolve issues of general importance to the administration of justice are:

- A. Whether the Double Jeopardy Clause of the United States Constitution, Amendment Five, bars a new trial when a juror, who is employed as a Jackson police dispatcher, intentionally provokes a mistrial.
- B. Whether a juror - employed by the Jackson Police Department, was a “governmental actor,” when she provoked a mistrial?

FACTS

Hinds County District Attorney Robert Shuler Smith was tried for three weeks, from December 19, 2016, until January 4, 2017, on an Indictment alleging two counts of conspiracy to hinder prosecution and one count of unlawfully consulting, advising, and counseling a criminal defendant.

During jury deliberations, a juror sent a note which read as follows: “What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence?” Approximately an hour after this note was sent, all jurors agreed that further deliberations would not be productive. The court, therefore, declared a mistrial. A new trial is set for July 31, 2017.

After the trial, the state filed a “*Motion for Leave to Interview Jurors or, in the Alternative, Motion to Reconvene Petit Jury for Individual Examination.*” Exhibit “C.” The State alleged that there had been “conjecture in media reports that Juror No. 4 was somehow ‘deliberately’ or ‘improperly’ allowed to sit on the petit jury in this case.” Exhibit “C,” p. 2. The State urged the court that, “[l]ack of candor from jurors in the jury selection process cannot be tolerated”,

Exhibit “C,” p. 4, and requested to interview the jurors to determine whether there had been juror misconduct. Exhibit “C,” p. 5.

Similarly, Smith filed “*Defendant Robert Smith’s Motion for Relief Based Upon Juror Misconduct and Upon State Efforts to Provoke Mistrial.*” Exhibit “D.” Smith also quoted the juror note concerning a juror’s having a “previously formed opinion” of Smith, and also quoted an article from the Jackson *Clarion Ledger*, in which a juror had “made comments in deliberation about various prosecutable drug charges ‘disappearing’ once they get to the district attorney’s office.” Exhibit “D,” p. 2. The *Clarion Ledger* quoted the jurors as having said: “That didn’t come up during the trial. That was all previous knowledge of him.” Exhibit “D,” p. 2.

After being heard by counsel, the Circuit Court of Hinds County (L. Roberts, Special Judge) denied, without prejudice, Smith’s Motion for Relief Based Upon Juror Misconduct and Upon State Efforts to Provoke Mistrial. Exhibit “E,” *Order Denying Without Prejudice Defendant Robert Smith’s Motion for Relief Based Upon Juror Misconduct and Upon State Efforts to Provoke Mistrial.* The Court, however, entered an “Order Granting Leave to Interview Jurors.” Exhibit “F.”

Thereafter, Assistant Attorney General Robert Anderson, and Smith’s counsel, interviewed two (2) jurors. The jurors made similar, though not identical, statements under oath about the misconduct by the juror, who was a police dispatcher. The most detailed information was from Juror Anna Scott. “*Defendant Robert Smith’s Renewed Motion to Bar Retrial on Grounds of Double Jeopardy,*” Exhibit “A” thereto. The substance of Juror Scott’s sworn interview is that the police dispatcher juror had “previous knowledge” of Robert Smith. *See* Interview of Juror Anna Scott, pp. 16, 18. Scott told other jurors that when cases go to Robert Shuler Smith, “they just kind of disappear.” Interview of Juror Anna Scott, p. 14. According to Juror Scott, the police dispatcher

juror was “constantly saying . . . let’s do a mistrial, let’s do a mistrial. We’re not going to agree, do a mistrial.” Interview of Juror Anna Scott, p. 26. According to Juror Scott, the police dispatcher juror was “trying to make us all agree with her and when she saw that it wouldn’t work then it’s, just do a mistrial, because she was not going to listen to anything else.” Interview of Juror Anna Scott, p. 26. All jurors were “listening to everyone else except for the one juror.” Interview of Juror Anna Scott, p. 27. Juror Scott told the Assistant Attorney General that it was her “sense” that if the court had substituted one of the alternates, then “ya’ll might have been able to reach a verdict,” Interview of Juror Anna Scott, p. 25, and there would “[d]efinitely” have been a verdict “on at least one of the counts.” Interview of Juror Anna Scott, p. 25.

Despite the evidence that a juror had intentionally provoked a mistrial based upon matters she knew were not evidence in the case, the court denied Defendant Robert Smith’s Renewed Motion to Bar Retrial on Grounds of Double Jeopardy. *See “Order on Defendant Robert Smith’s Renewed Motion to Bar Retrial on Grounds of Double Jeopardy,”* Exhibit “B.” While the Order does not state the basis of the motion, a transcript of the hearing will demonstrate that the circuit court denied the motion on the grounds that the police department dispatcher was not a “state actor,” for purposes of the Fifth Amendment.

REASONS WHY THIS COURT SHOULD GRANT AN INTERLOCUTORY APPEAL

ARGUMENT I.

THE INTERLOCUTORY APPEAL SHOULD BE ALLOWED BECAUSE OTHERWISE, SMITH’S UNITED STATES CONSTITUTION AMEND. 5 RIGHT TO BE FREE FROM DOUBLE JEOPARDY CANNOT BE PROTECTED.

Abney v. United States, 431 U.S. 651 (1977) held that denying a motion to dismiss on grounds of double jeopardy is a “final decision” and immediately appealable. The decision rested both upon the Federal Rules of Criminal Procedure and upon constitutional grounds. As to the constitutional grounds, the Supreme Court wrote:

“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, as well as enhancing the possibility that even though innocent he may be found guilty.” *Green, supra*, 355 U.S., at 187-188, 78 S.Ct. 221, 223.

Obviously, these aspects of the guarantee's protections would be lost if the accused were forced to “run the gauntlet” a second time before an appeal could be taken; even if the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit. Consequently, if a criminal defendant is to avoid exposure to double jeopardy and thereby enjoy the full protection of the Clause, his double jeopardy challenge to the indictment must be reviewable before that subsequent exposure occurs.

Abney, 431 U.S. at 661-662.

Until this Court’s decision in *Terrell v. State*, 160 So.3d 213 (2015), this Court had agreed with *Abney* by holding that the denial of the double jeopardy claim is treated as a final judgment. *Beckwith v. State*, 615 So.2d 1134, 1146 (Miss. 1992) (“Because of the unique nature of the denial by a circuit court of a colorable double jeopardy claim, involving as it does the Constitutional right not to be prosecuted for the offense, it is final.”). *Cox v. State*, 134 So.3d 712, 714 (Miss. 2014) (“The denial of a double-jeopardy claim is treated as a final judgment. . . .”).

In disapproving both *Cox* and *Beckwith*, this Court, in *Terrell v. State*, 160 So.3d 213 (2015), failed to cite *Abney* or to note that *Abney* rested, in part, upon federal constitutional grounds, since

it found that, “[t]o avoid exposure to double jeopardy and thereby enjoy the full protection of the [Double Jeopardy] Clause, his double jeopardy challenge to the indictment must be reviewable before that subsequent exposure occurs.” *Abney*, 431 U.S. at 662.

This Court is compelled to follow the decisions of the United States Supreme Court by virtue of the Supremacy Clause of the United States Constitution. *See Czekala-Chatham v. State ex rel. Hood*, 195 So.3d 187 (2015). Because there is a federal constitutional right to “enjoy the full protection of the [Double Jeopardy] Clause,” the double jeopardy denial “must be reviewable before that subsequent exposure occurs.” *Abney*, 431 U.S. at 662.

ARGUMENT II.

THIS CASE SHOULD BE HEARD ON INTERLOCUTORY APPEAL BECAUSE THE JUROR/POLICE DEPARTMENT EMPLOYEE IS A “STATE ACTOR” FOR PURPOSES OF THE FIFTH AMENDMENT.

The well-known general rule regarding mistrials when the jury has been unable to agree is that there is no “bar [to] 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.’” *Green v. United States*, 355 U.S. 184, 188 (1957). “The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions.” *United States v. Dinitz*, 424 U.S. 600, 611 (1976).

There are a huge number of cases holding that double jeopardy bars a new trial when a prosecutor, or a judge, takes conduct either deliberately intended, or through gross negligence, resulting in a mistrial. *See “Double jeopardy as bar to retrial after grant of defendant’s motion for mistrial,”* 98 A.L.R.3d 997, §§ 4-6. There are, however, no cases addressing the issue of whether

a juror's misconduct intended to provoke a mistrial, would bar a new trial. Logically, there can be no distinction between a judge or prosecutor and a juror. *United States v. Dinitz*, 424 U.S. 600, 611 (1976) held: "The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests" (Emphasis Added). Thus, there is no basis to distinguish misconduct by a prosecutor or a judge, from misconduct by a juror. The jurors, like prosecutors and judges, are "governmental actors."

In the process of holding that even a private litigant, in a civil case, was a governmental or a "state actor," *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 621-622 (1991) determined that whether a person is a "governmental actor" depends upon "whether a particular action or course of conduct is governmental in character"; "whether the actor is performing a traditional government function. . . ."; and "whether the injury caused is aggravated in a unique way by the incidents of governmental authority" Quite obviously, a juror who gets her information from her position as a police department employee is a "governmental actor." She earns her living from the government, since she is a police department employee, and she is paid for her time as a juror. She performs a traditional government function, since only governments utilize jurors. The injuries she inflicts in the causing of the judge to declare a mistrial, is "aggravated in a unique way" by the incidence of her governmental authority, since it is only her position as a juror that allowed her to keep the jury from reaching a verdict. According to the *Edmonson* test, a juror/police department employee is a "governmental actor." Her actions in provoking the mistrial are attributable to the government.

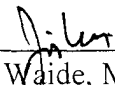
CONCLUSION

This case should be heard on interlocutory appeal, since Smith has a valued right not just to be acquitted, but to be free from the rigors of a second lengthy trial. Further, the Court should hear the case on interlocutory appeal, to determine whether this Court's decision in *Terrell v. State*, 160 So.3d 213 (2015) is correct, in view of the United States Supreme Court's determination that one is entitled to an immediate appeal from denial of a double jeopardy motion by the United States Supreme Court in *Abney v. United States*, 431 U.S. 651 (1977).

RESPECTFULLY SUBMITTED, this the 13th day of June, 2017.

ROBERT SMITH, Petitioner

By:



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CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Petitioner has this day filed the above and foregoing with the Clerk of the Court, and served via email and/or via U.S. Mail, a complete copy of the foregoing to the following:

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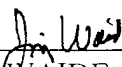
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SO CERTIFIED, this the 13th day of June, 2017.



JIM WAIDE

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

**DEFENDANT ROBERT SMITH'S RENEWED MOTION TO BAR
RETRIAL ON GROUNDS OF DOUBLE JEOPARDY**

Defendant Robert Smith (hereinafter "Smith") renews his motion [Docket 190] to bar any retrial on the grounds that a retrial would violate the double jeopardy clause of U.S. Const. Amend. 5.

"The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions." *United States v. Dinitz*, 424 U.S. 600, 611 (1976).

A juror, Jackson police dispatcher Sharon Sullivan, a governmental actor, took actions specifically intended to provoke a mistrial. This is demonstrated by the sworn interview of juror Anna Scott, which is attached hereto as Exhibit "A."

RESPECTFULLY SUBMITTED, this the 22nd day of May, 2017

ROBERT SMITH, Defendant

By: /s/ Jim Waide
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CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

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SO CERTIFIED, this the 22nd day of May, 2017.

/s/ Jim Waide
JIM WAIDE

1 IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
2 OF HINDS COUNTY, MISSISSIPPI

3
4 STATE OF MISSISSIPPI PLAINTIFF

5 VS. CAUSE NO. 25CI1:16-CR-836

6
7 ROBERT SHULER SMITH DEFENDANT

8
9 *****

10 INTERVIEW OF JUROR ANNA SCOTT

11 *****

12
13
14 Taken at the Mississippi Bar Center
15 643 North State Street
16 Jackson, Mississippi
17 on Wednesday, May 17, 2017
18 beginning at approximately 3:45 p.m.

19
20 *****

21
22 AW REPORTING
23 338 Indian Gate Circle
24 Ridgeland, Mississippi 39157
25 (601)898-9990

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TABLE OF CONTENTS

PAGE

Title Page.....	1
Appearance Page.....	2
Table of Contents.....	3
Exhibit Page.....	4
Interview of Anna Scott.....	4
Certificate of Court Reporter.....	29

1 MR. WAIDE: MS. Scott, I'm Jim Waide,
2 if you don't remember, and this is Bob
3 Anderson if you don't remember.

4 MS. SCOTT: Yes.

5 MR. WAIDE: And this is Paulynn Raley,
6 our court reporter. I earlier called you
7 and explained that we were asking you to
8 talk with us and the judge had allowed us to
9 interview you but that you weren't required
10 to. And I also asked you if you would mind
11 if we swore you in to give sworn testimony.

12 MS. SCOTT: That's fine.

13 MR. WAIDE: Okay. Basically we're
14 going to ask you some questions about what
15 went on in the jury room. You were quoted
16 in the Jackson paper as saying some things,
17 and that's really why you were chosen for us
18 to talk to you.

19 What telephone number is the best way
20 to reach you?

21 MS. SCOTT: It's the (601)278-9090.

22 MR. WAIDE: Okay.

23 MS. SCOTT: I know you said you guys
24 have been trying to contact me. I don't
25 answer phone numbers unless I know them and

1 I haven't been getting voice mails from like
2 -- I finally got your voice mail which is
3 why I called back.

4 MR. WAIDE: I see.

5 MS. SCOTT: But I was just, like, I
6 don't know who this person is but I'm not --
7 because I don't know if you're a robot or a
8 real person or what.

9 MR. ANDERSON: Somebody wanting you to
10 donate some money or something?

11 MS. SCOTT: Yeah. I got conned into
12 that a few times with people trying to stop
13 me and I'm, like, oh, no, no thank you.

14 MR. WAIDE: where do you work, Ms.
15 Scott?

16 MS. SCOTT: Officially I am a contract
17 translator for Canopy Children's Solutions,
18 which is a place where they do, like,
19 therapeutic interventions for children so 17
20 and under. And I'm also interning with them
21 as well.

22 MR. WAIDE: I see. what is your
23 educational level?

24 MS. SCOTT: I am in grad school right
25 now to get my master's in social work.

1 THE COURT REPORTER: Would you like me
2 to swear her in?

3 MR. WAIDE: Oh, I'm sorry. Yes. Would
4 you go ahead and swear her in since she
5 doesn't mind being sworn in.

6 (WITNESS SWORN.)

7 MR. WAIDE: And what is your full name,
8 please?

9 MS. SCOTT: Anna Lauren Scott.

10 MR. WAIDE: All right. Ms. Scott, you
11 were on the Robert Smith jury.

12 MS. SCOTT: Yes.

13 MR. WAIDE: And you made some
14 statements to the newspaper to the effect
15 that one of the jurors indicated some prior
16 knowledge of the case or basing her opinion
17 on some prior knowledge of the case.

18 MS. SCOTT: Yeah.

19 MR. WAIDE: Do you happen to remember
20 what her name was, that juror?

21 MS. SCOTT: No, because the entire time
22 I did not know what her name was. And she
23 wasn't, like, super friendly really with
24 anyone so she kind of kept to herself the
25 entire time. So it wasn't really someone

1 that I bonded with, per se. All I found
2 out, you know, once we started deliberating
3 was that she was a Jackson police
4 dispatcher.

5 MR. WAIDE: Did she tell the jury that?
6 Or how did you find that out?

7 MS. SCOTT: During -- she put, I think,
8 during whenever we were doing, you know,
9 like the elimination kind of thing, who can
10 be a juror and who cannot, she had put that
11 she was a dispatcher. And I think only one
12 other person knew that in the jury. Like
13 out of the jurors only one person knew that
14 it was for the Jackson police. And she
15 hadn't really said anything about -- you
16 know, she made comments during the whole
17 trial saying that, you know, she didn't
18 really believe what Robert Smith was saying
19 or things like that, which, you know, isn't
20 like a red flag moment really.

21 But it wasn't until we were
22 deliberating she made a statement to the
23 effect of, you know, a lot of cases that go
24 to Robert Shuler Smith disappear. And, you
25 know, he's been under the radar. Or things

1 like, he's been on the radar. Or, you know,
2 making comments saying that, like, previous
3 actions is why she thinks, you know, no
4 matter what he did it was guilty. So that's
5 how we really realized that she had a lot of
6 prior knowledge.

7 MR. WAIDE: I see. Do you remember
8 anything specific she said other than cases
9 that go to Robert Smith disappear?

10 MS. SCOTT: I mean, that was the main
11 thing. She just kept saying that, you know,
12 he was guilty. He was guilty for
13 everything. We would try and -- you know,
14 during deliberations if you feel a certain
15 way, you're supposed to prove your points
16 using the evidence. Well, she would, you
17 know, kind of base it on prior knowledge
18 combined with the evidence. And then when
19 we would try to show our side she just kind
20 of knocked it down every time. She would
21 just seem to kind of get more agitated as we
22 were trying to prove our points. And -- oh,
23 goodness, there was something else I was
24 going to say. Now I'm trying to see if I
25 can rejog it in my brain. It'll probably

1 come to me in a minute.

2 MR. WAIDE: Did anybody ask, How do you
3 know when cases go to Robert Smith they get
4 knocked down?

5 MS. SCOTT: I mean, I think she had
6 mentioned at that time that, you know, she
7 works with the Jackson police. I didn't
8 know she was a dispatcher. She just said
9 she worked with the Jackson police.

10 MR. WAIDE: I see. She told the jurors
11 that?

12 MS. SCOTT: I want to say it was that,
13 I work with the Jackson police, because I
14 remember her mentioning something about the
15 Jackson police and then one of them
16 clarified, like, Yeah, she's a dispatcher
17 for the Jackson police or something like
18 that.

19 MR. WAIDE: Well, you know, we asked
20 y'all a bunch of questions while the jury
21 was being selected. Do you feel like it was
22 made clear to the jury that you should base
23 your verdict just on what you hear in the
24 courtroom and not on anything that happened
25 or you heard outside of the courtroom? Did

1 y'all understand that?

2 MS. SCOTT: I understood it to that
3 effect, and it seemed like a lot of people
4 did.

5 MR. WAIDE: Did understand that?

6 MS. SCOTT: Uh-huh.

7 MR. WAIDE: You're answering yes?

8 MS. SCOTT: Yes. Sorry.

9 MR. WAIDE: Okay. Did any jurors other
10 than her indicate they had some other
11 knowledge of the case outside of what came
12 in there?

13 MS. SCOTT: Not that I'm aware of. No
14 one has really made any comments to the
15 effect of that they knew anything besides
16 what was going on in the courtroom.

17 MR. WAIDE: All right. What was the
18 final vote on how y'all voted? Do you
19 remember?

20 MS. SCOTT: Oh, it was -- I know we
21 never officially came to an agreement. I
22 think it was almost like a split vote
23 between, you know, guilty, not guilty.

24 I guess to me the frustrating part
25 during that was even some of the people who

1 were saying, you know, guilty, people who
2 thought not guilty they would try to prove
3 their point and some of them, you know, they
4 would listen, accept the information and
5 then try to continue deliberation, and she
6 was the reason that we had to do the
7 mistrial because she would not let us
8 continue.

9 MR. WAIDE: What do you mean by that?

10 MS. SCOTT: She started just getting
11 angry, irritated. Body language sometimes
12 almost came off, not very aggressive but
13 almost, like, slightly aggressive. Like,
14 she would just get really upset, like, you
15 know, Oh, I'm ready to go. Just say
16 mistrial. You know, like, we're not going
17 to agree. Let's go, let's go. And that's
18 what she just continued with so we all just
19 realized, you know, it would have been a
20 waste.

21 MR. WAIDE: Okay. So let me ask you
22 something. Are you saying that -- I'm not
23 supposed to be putting words in your mouth
24 so try to speak for yourself and don't let
25 me put words in your mouth. Are you saying

1 that jurors might have gone ahead and
2 reached a verdict if it had not been for
3 her?

4 MS. SCOTT: I feel like there would
5 have been a better chance of reaching a
6 verdict. You know, it could have still come
7 up, you know, split verdict, but I feel that
8 there was more of an opportunity of reaching
9 a unanimous verdict if it were not for
10 having one person just -- you know, kind of
11 just getting angry with everything.

12 MR. WAIDE: And that was this one
13 person?

14 MS. SCOTT: Yeah. I mean, I want to
15 say at one point -- it wasn't an actual
16 fight, but, I mean, there were, like,
17 arguments starting in it between her and
18 like another person, I mean, another juror.
19 So, I mean, it was just getting -- it was
20 not becoming a good environment pretty
21 quickly.

22 MR. WAIDE: I see. When you say it was
23 not becoming a good environment, do you mean
24 it was becoming hostile?

25 MS. SCOTT: Yes.

1 MR. WAIDE: All right. And do you
2 attribute any of that to any of the other
3 jurors other than her, the hostile
4 environment?

5 MS. SCOTT: I mean, most of the
6 hostility was coming from her and I believe
7 the argument was because -- well, I know it
8 was because one juror was talking to another
9 and made a comment about something and she
10 just assumed that he was talking about her.
11 I don't know if he was or wasn't. But she
12 assumed he was talking about her and that's
13 where, like, the arguing started. And it
14 just started becoming a little bit hostile.

15 MR. WAIDE: Okay. Is she the only
16 juror that you can remember saying, Let's
17 just go for a mistrial? We're not going to
18 agree? Is she the only one that said that?

19 MS. SCOTT: At first, yes. She was the
20 one that was pushing it. And after a while
21 everyone was, like, okay, let's just do
22 mistrial because we can't get anywhere.

23 MR. WAIDE: Okay. So in your opinion
24 had she not been in the jury, would the jury
25 have been able to reach a verdict?

1 MS. SCOTT: I think there was a lot
2 better chance of reaching a verdict, yes.

3 MR. WAIDE: All right. I don't mean to
4 keep -- in your opinion if she had not been
5 on the jury would the jury have reached a
6 verdict?

7 MS. SCOTT: I think yes, that we would
8 have reached a verdict.

9 MR. WAIDE: Okay. And you've already
10 answered this once but tell me again. What
11 was her statement about her knowledge about
12 Robert Smith again?

13 MS. SCOTT: That, you know, cases, if
14 they go to Robert Shuler Smith they just
15 kind of disappear, so he's been on the radar
16 because of that. So basically that people
17 have already been looking into him.

18 MR. WAIDE: I see.

19 MS. SCOTT: And that was her prior
20 knowledge from what --

21 MR. WAIDE: Did anybody say to her,
22 You're not supposed to be basing it on prior
23 knowledge?

24 MS. SCOTT: We told her that and then
25 she claims that she was basing it on the

1 evidence, but then we pointed out that
2 talking about, you know, cases that
3 disappear under Robert Shuler Smith was
4 nowhere in the evidence so that is prior
5 knowledge. So she kind of tried to argue it
6 back that she was basing it on evidence but
7 with the way that she was treating, you
8 know, the whole deliberation it seemed more
9 that it was based on, you know, some
10 evidence, some prior knowledge.

11 MR. WAIDE: I see. Was it pointed out
12 to her that y'all had been instructed that
13 you're not supposed to base it on anything
14 other than the evidence? Did anybody tell
15 her that?

16 MS. SCOTT: I know we told her it has
17 to be on evidence. I don't know if anyone,
18 you know, put it in those words, like, you
19 know, the judge said do this or that.

20 But whenever we got the letter back we
21 did, you know, kind of read it to the group.
22 So at that point was when, you know, it
23 would have been a reminder that the judge
24 states base it off of evidence.

25 MR. ANDERSON: You mean when y'all sent

1 your note down?

2 MS. SCOTT: Yeah. The note and he
3 wrote back. Sorry. When I wrote the note
4 and he sent that back. And so we read that
5 out to the group.

6 MR. ANDERSON: And were you serving as
7 the foreperson or was somebody else?

8 MS. SCOTT: I think it was another
9 person that was the foreperson.

10 MR. ANDERSON: Okay. Did that person
11 ask you to write the note or did you decide
12 to write it yourself? How did that happen?

13 MS. SCOTT: It was -- when she started
14 kind of going off on her little bit of a
15 tangent about, you know, Robert Shuler Smith
16 and, you know, the previous knowledge and
17 everything, she was on, like, say this is
18 the jury room, she was on this side of the
19 room and I was over here with other jurors
20 and we had decided just to write a note to
21 the judge to see what he decides on that
22 because we didn't really know what to do
23 with the situation.

24 MR. ANDERSON: So you and some of the
25 other jurors decided to let's do this and

1 see what the judge tells us?

2 MS. SCOTT: Yeah. Let's see what the
3 judge tells us because we tried to bring it
4 up to the bailiff, and he basically told us
5 we just had to write a note to the judge.

6 MR. ANDERSON: During the time when she
7 was being disruptive and not letting y'all
8 really do your work, did she bring out any
9 specifics about, I've seen this case or I've
10 seen this particular case, or was it just
11 her stating her opinion that I know that
12 things have happened and cases have not gone
13 anywhere?

14 MS. SCOTT: I honestly cannot recall if
15 she said anything, like, for a specific
16 case. I remember her making that kind of
17 general statement. You know, that was in
18 December and there's been a lot that's
19 happened since then.

20 MR. ANDERSON: Yeah, yeah.

21 MS. SCOTT: But from what I can recall
22 from my memory is more just general
23 statements of she knows that he's up to
24 something is what she was pretty much
25 telling us, is that she knows he's not in it

1 -- oh, that was a specific thing that she
2 said was, like, you know, I know he's not
3 innocent on anything because of that -- you
4 know, things going under the radar. That's
5 what she was telling us. So because of that
6 she knows he's not innocent.

7 MR. ANDERSON: Did you get a sense that
8 she had not been truthful in the jury
9 selection process? Y'all were all plainly
10 asked if you had any prior knowledge of Mr.
11 Smith, if you had formed any opinions about
12 the case. And from what you're telling us,
13 it sounds like she had prior knowledge and
14 she had formed an opinion.

15 MS. SCOTT: Yeah. The only time I
16 remember her standing up to say that she had
17 done anything previously was, like, for she
18 was a juror for a previous case. I don't
19 remember her saying that she -- I don't
20 remember her standing up and letting you
21 guys know that she had prior knowledge at
22 all.

23 But, I mean, after everything that
24 happened a lot of us jurors had kind of
25 talked more about just everything that

1 happened because we were frustrated that it
2 was a mistrial after all of that time, and,
3 you know, just kind of taken aback with how
4 it had happened. And, I mean, that was
5 something that we all just agreed on was
6 that she should have told you guys from the
7 beginning that she knew about Robert Shuler
8 Smith because I think she was hiding that
9 she had prior knowledge about him.

10 MR. WAIDE: Am I right in saying none
11 of the other jurors indicated they had any
12 prior knowledge?

13 MS. SCOTT: None of them had indicated
14 it, so you're right.

15 MR. ANDERSON: After the judge declared
16 a mistrial, were you approached by the
17 television station or by -- I don't remember
18 who you talked to. Was it Anna Wolf or Ross
19 or --

20 MS. SCOTT: I had gotten phone calls
21 and I ended up answering it and then --
22 yeah.

23 MR. ANDERSON: Oh, okay. Okay. So
24 they called you and reached out to you.

25 MS. SCOTT: Uh-huh. Uh-huh.

1 MR. ANDERSON: Anybody else reach out
2 to you, any other jurors or anybody else
3 connected with the case that you know of?

4 MS. SCOTT: Jurors, I have a couple of
5 them as Facebook friends but we don't really
6 talk about that.

7 MR. WAIDE: You never have talked to
8 the other jurors about what happened?

9 MS. SCOTT: I mean, it was basically,
10 right after the court case, after there was
11 a mistrial, like, a fair number of us had
12 gathered in the parking lot because, you
13 know, we all parked in the same area and we
14 stood outside talking for a while. I mean,
15 we even saw them leave so...

16 MR. WAIDE: Who, Mr. Anderson?

17 MS. SCOTT: Yeah. Mr. Anderson and
18 then the other --

19 MR. ANDERSON: Yeah. I saw several of
20 y'all talking over --

21 MS. SCOTT: Yeah, yeah. We were just
22 talking about how all of that went and so...

23 MR. ANDERSON: Were you Facebook
24 friends with these other jurors before the
25 trial or has that been since the trial?

1 MS. SCOTT: Before the trial, no.
2 During the trial, I think we might have -- I
3 think one of them we might have added each
4 other during the trial but that was about
5 it. And then the other one, I believe we
6 became friends after the trial.

7 MR. ANDERSON: And then y'all just kept
8 in contact that way? Or at least as much as
9 you do on Facebook.

10 MS. SCOTT: Right, right.

11 MR. WAIDE: Would you mind telling me
12 who they were? Who were the jurors you
13 became Facebook friends with?

14 MS. SCOTT: Amy Montez was my Facebook
15 friend. And Sonya, I think is her name.
16 She was a teacher. But like I said, we
17 don't really talk on Facebook. It's just
18 more like looking at everyone else's
19 pictures and liking them and that kind of
20 stuff but that's about it.

21 MR. ANDERSON: And did you tell us this
22 was your first time to serve as a juror?

23 MS. SCOTT: This was my second time to
24 serve as a juror.

25 MR. ANDERSON: Oh, okay.

1 MS. SCOTT: I had done it -- because
2 you guys had done the cutoff at two years,
3 but I had done it, I think, maybe three
4 years prior. It was for another case that
5 was really boring, but it was about I think
6 them saying that someone who had become,
7 like, the mayor of Terry was unfair and that
8 they had cheated or something like that.

9 MR. ANDERSON: Unfortunately most
10 jurors feel that way about most of our
11 cases.

12 MS. SCOTT: Yeah, but that was really
13 bad. And that one I think was a mistrial,
14 too, but that was because there wasn't
15 sufficient evidence. The judge decided the
16 jury didn't even get to deliberate.

17 MR. WAIDE: Do you remember, was her
18 knowledge that Robert had -- that cases had
19 gone through the cracks or that he hadn't
20 taken care of cases or whatever, this
21 adverse opinion she had for Robert, could
22 you tell whether that came from her
23 experience as a police dispatcher or did it
24 come from some other source?

25 MS. SCOTT: That would come from her as

1 a police dispatcher. The way she was just
2 talking it seemed, like, you know, she had
3 seen it at work. She knows that --

4 MR. WAIDE: From her work?

5 MS. SCOTT: Yeah.

6 MR. WAIDE: All right. Did she ever
7 mention any particular names of police
8 officers that may have given her that
9 information?

10 MS. SCOTT: Not that I'm aware of.

11 MR. ANDERSON: And she didn't mention
12 any specific cases that you recall?

13 MS. SCOTT: I don't recall any specific
14 cases. Now, she might have mentioned,
15 because I remember them talking about
16 something that was a case that didn't have
17 to do with the Robert Shuler Smith case, but
18 I can't recall if that would have been
19 something that he had covered or if they
20 were just, you know, using examples of
21 different cases to -- you know, that kind of
22 -- there was a lot of conversation going on.
23 So, you know, trying to keep up with all of
24 it was a little bit difficult.

25 MR. WAIDE: Okay. Anything else

1 significant about the jury deliberations
2 that you feel like you ought to tell us that
3 you thought was significant about it? So
4 far as it not being properly done I guess is
5 what I'm asking.

6 MS. SCOTT: I mean, as far as the jury
7 deliberation, I mean, this was my first time
8 to actually deliberate.

9 MR. WAIDE: Yeah.

10 MS. SCOTT: And, I mean, I think
11 overall it really was going well because
12 even though people obviously had different
13 opinions we were trying to, you know,
14 respectfully kind of show our points and
15 bring up evidence to back it up and such.
16 And, I mean, I was really disappointed that
17 -- I was hoping the judge could have
18 possibly, like, traded out the woman who had
19 prior knowledge with, like, one of the bench
20 jurors, but apparently that was not an
21 option. So I was very disappointed that we
22 couldn't just come to a verdict that day
23 because I know nobody wanted to go through
24 that again.

25 MR. WAIDE: Right.

1 MS. SCOTT: I know the judge did not
2 want to go through that again. I mean, that
3 was really my hope, though, was that he was
4 going to possibly, like, swap someone out or
5 just do something like that so that it gives
6 more of a chance of --

7 MR. WAIDE: Reaching a verdict?

8 MS. SCOTT: Yeah.

9 MR. ANDERSON: Your sense is, then, if
10 he had substituted one of the alternates
11 that y'all might have been able to reach a
12 verdict?

13 MS. SCOTT: Yes.

14 MR. ANDERSON: Is that true do you
15 think of all of the counts or do you think
16 you could have reached a verdict on one of
17 the counts? What is your sense of that?

18 MS. SCOTT: Definitely on at least one
19 of the counts. But, like I said, I mean,
20 with the deliberation even people who were
21 kind of set on one opinion, you know, I was
22 kind of just watching how they were reacting
23 when people were explaining their points and
24 showing the evidence and they were giving it
25 consideration and just, you know, everyone

1 was just kind of talking out their points
2 and trying to, you know, get everyone from
3 the same side pretty much.

4 And so with the one juror there that
5 was just kind of getting agitated and
6 hostile, it really just kind of stunted the
7 whole process because when she saw that we
8 were not going to agree on guilty for all
9 counts like she wanted, it just went from
10 that to, you know, I've got a headache, I'm
11 tired, I want to leave, Let's go, I'm
12 hungry. You know, just things like that,
13 making complaints and just constantly saying
14 something to just, you know, Let's do a
15 mistrial, let's do a mistrial. We're not
16 going to agree, do a mistrial.

17 MR. WAIDE: So in your opinion was she
18 trying to provoke a mistrial, then, to get a
19 mistrial?

20 MS. SCOTT: It was either she was just
21 trying to make us all agree with her and
22 when she saw that it wouldn't work then
23 it's, Just do a mistrial, because she was
24 not going to listen to anything else. So it
25 was either -- I think for her it was

1 basically it's, you know, all or nothing.
2 So either you agree with me that he's guilty
3 on all counts or we're not coming to an
4 agreement.

5 MR. WAIDE: I see. Do you feel like
6 other than her, the other jurors, even the
7 ones voting guilty -- I take it you were
8 voting not guilty, correct?

9 MS. SCOTT: Yes.

10 MR. WAIDE: But even the ones voting
11 guilty, except for her was everybody else
12 listening to reason and talking about the
13 evidence?

14 MS. SCOTT: Yes, everyone else, because
15 I think one of the jurors from, like, the
16 first day of the trial had already kind of
17 started shifting her mind from guilty for --
18 I don't know for all of the counts or at
19 least one of the counts or things like that.
20 But, you know, even she was listening to
21 what we have to say and people were trying
22 to get their points across, you know, the
23 correct way where you respect everyone else.
24 So, you know, everyone was listening to
25 everyone else except for the one juror.

1 MR. WAIDE: Okay. That's all I have.

2 MR. ANDERSON: I don't have anything
3 else.

4 MR. WAIDE: Ms. Scott, I just really
5 appreciate you being willing to talk with
6 us.

7 MS. SCOTT: It's no problem.

8 (THE INTERVIEW CONCLUDED AT
9 APPROXIMATELY 4:15 P.M.)

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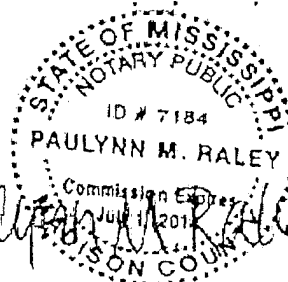
CERTIFICATE

I, PAULYNN M. RALEY, Court Reporter and Notary Public, Madison County, Mississippi, hereby certify that the foregoing pages, and including this page, contain a full, true and correct transcript of the testimony of the witness as taken by me by means of Stenograph machine at the time and place heretofore stated in the aforementioned matter and later reduced to transcript form by me to the best of my skill and ability.

I further certify that I placed the witness under oath to truthfully answer all questions in this matter under the authority vested in me by the State of Mississippi.

I further certify that I am not related to or in any way associated with any of the parties to said cause of action, or their counsel, and that I am event hereof.

IN WITNESS WHE
my hand this the 22nd d



PAULYNN M. RALEY, CCR
#1239

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

ORDER ON DEFENDANT ROBERT SMITH'S RENEWED MOTION TO BAR
RETRIAL ON GROUNDS OF DOUBLE JEOPARDY

This cause came on for hearing on May 24, 2017, on the motion of Defendant to bar retrial on grounds of double jeopardy. Having heard the arguments of the parties, the Court finds the motion is not well-taken. It is, therefore, denied.

ORDERED, this the 24th day of May, 2017.


CIRCUIT COURT JUDGE

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

STATE OF MISSISSIPPI

VS.

CAUSE NO.

16-836

ROBERT SHULER SMITH

DEFENDANT

**MOTION FOR LEAVE TO INTERVIEW JURORS OR, IN THE ALTERNATIVE,
MOTION TO RECONVENE PETIT JURY FOR INDIVIDUAL EXAMINATION**

COMES NOW, the State of Mississippi, by and through the Office of the Mississippi Attorney General and submits this its motion for leave to interview the petit jurors who heard this case but were unable to reach a verdict or, in the alternative, for the Court to reconvene the petit jury for individual examination by the Court and counsel. In support thereof the State of Mississippi would show the following:

- (1) On January 4, 2017, the petit jury in this case retired to begin its deliberations toward reaching a unanimous verdict in the case.
- (2) Approximately two hours after the petit jury began their deliberations, they sent out two separate notes to the Court. One of those notes read essentially as follows: "What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion about him and is basing her verdict on previous knowledge and opinion instead of current evidence?" In response to the note, the Court instructed the jurors to continue their deliberations, but approximately an hour later they indicated they could not reach a unanimous verdict. The Court returned the petit jury to the courtroom and polled them about whether they believed continued deliberations might result in a unanimous verdict. All the jurors indicated to the Court that they did not believe further deliberations would be productive. Thus, the Court declared a mistrial and later set this matter for retrial in June 2017.

(3) Subsequent to the release of the jury and the Court's declaration of a mistrial in this matter, it has been reported in news coverage that the juror with "previous knowledge of Robert Smith" was Juror No. 4. While her name has been reported in the media, counsel will not repeat that information in this pleading.

(4) Inquiry regarding the juror's place of employment reveals that her juror questionnaire reflected that she worked for "COJ" – and neither party was able to discern that "COJ" was apparently shorthand for "City of Jackson." Nor was either party able to discern that when Juror No. 4 reported that she was a "dispatcher" that she was, in fact, as media reports have suggested, a dispatcher for the Jackson Police Department. Both the State of Mississippi and the defense had equal access to and equal opportunity to pursue the juror's employment when she responded that she was a "dispatcher." The undersigned Special Assistant Attorney General's notes from the jury selection process reflect that Juror No. 4, who appeared in the venire as Juror No. 12 on Panel No. 1, responded that she had "read about the case" but that she could be fair and impartial as a juror. It does not appear that any further inquiry was made of Juror No. 4 regarding her employment, her involvement in law enforcement, or on any other issue of significance to this case by either the State of Mississippi or the defense. Although the Court and both parties inquired of the venire whether they had any involvement in law enforcement, it does not appear that Juror No. 4 responded directly to that inquiry or disclosed that she worked for the Jackson Police Department, if in fact she does. That is not reflected on her juror questionnaire, although it has been reported in the press as an established fact.

(5) There has been conjecture in media reports that Juror No. 4 was somehow "deliberately" or "improperly" allowed to sit on the petit jury in this case. Since most of the

reporting has been mere conjecture, no factual basis for the assumption that Juror No. 4 was “deliberately” or “improperly” allowed to sit as part of the petit jury exists at this point.

Speculation by the news media does not make it so.

(6) Juror misconduct is a serious matter, which should be dealt with seriously by the Court and by law enforcement authorities. Every member of a jury venire swears that the information on his/her questionnaire is true and correct; when the jury is being qualified, they take an oath to be truthful in their responses to the Court; and, when the venire is subjected to voir dire by the attorneys, they likewise take an oath to provide truthful answers to counsel. Once selected to serve as part of the petit jury, each juror again takes an oath to base his/her verdict solely on the evidence produced at trial, and not upon any extraneous information or any preconceived ideas or opinions about the case, about the parties, or about the defendant’s guilt or innocence. It appears that one of the jurors in this case may have violated her oath. At the very least, it appears that an inquiry, and possibly a full-blown investigation, is called for to determine whether a juror violated one or more of the oaths she took before begin empaneled as a part of the petit juror in this case.

(7) Since the petit jury in this case failed to reach a unanimous verdict on any of the three charges in the indictment, interviewing the petit jurors at this juncture would not violate the “general reluctance” to reconvene or question jurors after a verdict has been reached. *See Roach v. State of Mississippi*, 116 So.3d 126, 131 (Miss. 2013). Indeed, as the Supreme Court counseled in *Roach*, “[w]hen the trial court is made aware of potential juror misconduct or improper influence on the jury, the first step is to determine whether an investigation is

warranted.” *Id.* at 132 (*citing Gladney v. Clarksdale Beverage Co., Inc.*, 625 So.3d 407, 418 (Miss. 1993)). Plainly, there is good cause to conduct an investigation at this point.

(8) Because it appears that an investigation may be justified in this case, the State of Mississippi respectfully requests that investigators with the Mississippi Attorney General’s Office but not associated with the Public Integrity Division, which is prosecuting this case, be permitted to make contact with and to interview the petit jurors who retired to deliberate in this case. Alternatively, the State of Mississippi asserts that it has shown good cause to reconvene the petit jurors in this case. Thus, the State of Mississippi asks, in the alternative, that the petit jurors be recalled by the Court so that they may be individually examined by the Court and by counsel about all the issues touching on any alleged misconduct of Juror No. 4. These issues would include, but may not be limited to: (a) her apparent failure to make a full disclosure of her involvement in law enforcement, if that is the true state of the facts; (b) her apparent failure to provide truthful responses to questions put to her in voir direct examination about whether she had formed any opinions regarding the defendant’s guilt or innocence in this case, if that is the true state of the facts; and, (c) her apparent failure to follow the Court’s direct instruction that she base her verdict in this case solely on the evidence produced in open court at the trial of this matter, if she in fact ignored the Court’s instructions in this regard.

(9) Lack of candor from jurors in the jury selection process cannot be tolerated if juries are to serve their essential function in our criminal justice system. Nor can jurors be permitted to ignore the oath they have taken or the instructions they have been given by the Court regarding their duty to base their deliberations and their verdicts solely on the evidence produced in open court during the trial of a case.

(10) If a juror deliberately provided false information in the jury selection process, this might constitute a crime, up to and including perjury. At the juncture, there is insufficient information to determine one way or the other whether a juror violated the law. Without question, this is a matter which should be fully investigated by the Court and by appropriate law enforcement authorities.

Wherefore, premises considered, the State of Mississippi respectfully requests this honorable Court to issue an order granting investigators of the Mississippi Attorney General's Office not a part of the Public Integrity Division authority to contact and to interview the petit jurors in this case or, in the alternative, that the Court recall the petit jurors who retired to deliberate in this case and subject each of them to individual examination by both the Court and the parties on all issues touching on possible juror misconduct in this case.

THIS the 17th day of January, 2017.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: s/ *Robert G. Anderson*
Robert G. Anderson
Special Assistant Attorney General
MS Bar # 1589
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E-mail: rande@ago.state.ms.us

CERTIFICATE OF SERVICE

I, Robert G. Anderson, hereby certify that I have this day filed the above and forgoing Motion via the Court's electronic case filing process, which caused a copy to be served upon Jim Waide, Attorney for the Defendant, Robert Shuler Smith, at his usual e-mail address of waide@waidelaw.com.

This the 17th day of January, 2017.

s/ *Robert G. Anderson*

Robert G. Anderson
Special Assistant Attorney General
MS Bar No. 1589

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

DEFENDANT ROBERT SMITH'S MOTION FOR RELIEF BASED
UPON JUROR MISCONDUCT
AND UPON STATE EFFORTS TO PROVOKE MISTRIAL

Defendant Robert Smith (hereinafter "Smith") respectfully moves this Court for appropriate relief for juror misconduct and for possible efforts to provoke a mistrial. In support of his motion, Smith shows the Court as follows:

1. This case was tried beginning on December 19, 2016, and ending on January 4, 2017.

2. During the trial, an Assistant Attorney General asked a State's witness, "Too Sweet" Henderson, whether he had passed a polygraph examination, and obtained an affirmative response. This question was one which the Assistant Attorney General knew was improper, and had no apparent purpose except to provoke a request for a mistrial.

3. During jury deliberations, the jury sent out the attached note, Exhibit "A," reading:

What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence?

4. Thereafter, the jury announced it could not reach a verdict, and the Court declared a mistrial.

5. After trial, the Attorney General issued a press release, Exhibit "B," which states:

"I am disappointed that the jury was deadlocked in this case, but a mistrial was the only appropriate result after learning that a juror sat silently during jury questioning

before the trial, even though that juror knew the defendant. Unfortunately, we learned after a 2-1/2 week trial that a juror talked during deliberations about having known the defendant. A juror takes an oath to answer questions posed to them by the Court and the lawyers. Consequently, this case will need to be presented to another Hinds County jury as soon as possible. Any inappropriate conduct will be appropriately addressed. Jury service is the responsibility for all of us as citizens, and justice in any jurisdiction depends upon the integrity, courage and honesty of the citizens who sit on juries."

6. The Jackson *Clarion Ledger* published an article, Exhibit "C," indicating that a juror may have intentionally interfered with proper jury deliberations. The article reads:

"We did not have a chance to deliberate the way it should have been because of that one juror," said juror Anna Scott. "She tried to dominate the situation."

...

Scott told the *Clarion-Ledger* that Sullivan made comments in deliberation about various prosecutable drug charges "disappearing" once they get to the district attorney's office. Two jurors confirmed Sullivan said Smith was on the department's "radar," suggesting this supports his guilty.

"That didn't come up during the trial. That was all previous knowledge of him," Scott said.

...

Scott, who voted not guilty, said apart from Sullivan, the few jurors who were inclined to find Smith guilty seemed to have had an open mind and were willing to look back over the evidence. But Sullivan prevented any further discussion from happening," Scott said.

"She wasn't hostile at first but she started getting more aggressive, angry and bothered," Scott said.

7. Throughout the trial, the Court had stressed to the jury to consider only the evidence produced in court. A juror's urging on the jury matters outside the evidence presented in court may have been an attempt to intentionally cause an improper conviction of Smith or, at least, to cause a mistrial.

8. The juror at issue was an employee of the Jackson Police Department. The juror was, therefore, a "state actor," just as would be a judge or prosecutor for purposes of applying the Fifth and Fourteenth Amendments to the United States Constitution. Thus, if the juror's actions were

intended either to obtain a conviction based upon improper practice or to provoke a mistrial, a new trial should be barred under the double jeopardy provisions of U.S. Const. Amend. 5 and by Miss. Const. § 22. See *Oregon v. Kennedy*, 456 U.S. 667, 669 (1982) (“a defendant may invoke the bar of double jeopardy in a second effort to try him . . . [in] those cases in which the conduct giving rise to the successful motion for a mistrial was intended to provoke the defendant into moving for a mistrial”). Similarly, if the actions of the prosecutor in inquiring about the polygraph examination was intended to provoke Defendant into moving for a mistrial, then a new trial should be barred for the same reason. *Id.*

9. Smith requests an evidentiary hearing where the motives of the juror and the prosecutor may be explored and a determination made as to an appropriate sanction, if any.

10. In order to insure a fair determination of what occurred with the jurors, this Court should adhere to its post-trial ruling prohibiting the parties from questioning any juror outside of open court.

RESPECTFULLY SUBMITTED, this the 17th day of January, 2017.

ROBERT SMITH, Defendant

By: /s/ Jim Waide
Jim Waide, MS Bar No. 6857
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

Assistant Attorney General Robert Anderson
P. O. Box 220
Jackson, MS 39205
rande@ago.state.ms.us

VIA EMAIL:
Judge Larry Roberts
lroberts_judge@yahoo.com

VIA EMAIL:
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SO CERTIFIED, this the 17th day of January, 2017.

/s/ Jim Waide

JIM WAIDE

What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence?

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Judge declares mistrial in DA Robert Shuler Smith case

Published: Wednesday, January 4th 2017, 4:08 pm CST

Updated: Thursday, January 5th 2017, 10:15 am CST

Posted by Mary Grace Brantley, Digital Content Director

By Roslyn Anderson, Weekend Anchor

Posted by Howard Ballou, News Anchor

JACKSON, MS (Mississippi News Now) - The judge has declared a mistrial in the conspiracy case of Hinds County District Attorney Robert Shuler Smith.

Special Judge Larry Roberts made the announcement sometime before 4 p.m., Wednesday. The jury had only deliberated a couple of hours.

In the course of roughly two hours, the Judge Roberts was alerted to a juror's misconduct.

State prosecutors and defense attorney Jim Waide made their final pleas to the jury on Wednesday, the tenth day of the Smith trial. Smith took part in the closing arguments, addressing the jury and trying to convince them of his innocence.

Smith, choosing not to testify, but telling jurors, in his closing arguments, it's been one lie after the other.

"This is a high-tech lynching," Smith said.

Prosecutors accuse Smith of plotting with former Assistant District Attorney Ivon Johnson to hinder prosecution of a criminal defendant named Christopher Butler, Smith saying Butler was innocent.

Waide said he was disappointed the jury was unable to come to an agreement.

"There was a comment came out that a juror had some prior opinion of Robert," said Waide. "A note came out from the jury to that affect".

The state contends that Smith is guilty of consulting, advising and counseling criminal defendant Christopher Butler.

A big portion of the state's evidence centered on Smith's attempts to indict officials who kept him from dismissing charges against Butler.

The note asked the judge, "What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence."

Attorney General Jim Hood released a statement on the mistrial saying:

"I am disappointed that the jury was deadlocked in this case, but a mistrial was the only appropriate result after learning that a juror sat silently during jury questioning before the trial, even though that juror knew the defendant. Unfortunately, we learned after a 2-1/2 week trial that a juror talked during deliberations about having known the defendant. A juror takes an oath to answer questions posed to them by the Court and the lawyers. Consequently, this case will need to be presented to another Hinds County jury as soon as possible. Any inappropriate conduct will be appropriately addressed. Jury service is the responsibility for all of us as citizens, and justice in any jurisdiction depends upon the integrity, courage and honesty of the citizens who sit on juries."

RELATED: Nearly 20 subpoenas issued in DA Robert Shuler Smith's case

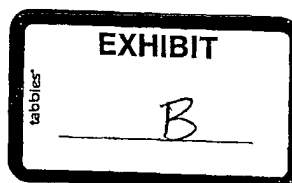
Hinds DA's trial finishes 8th day

Hinds County DA indicted on felony charges

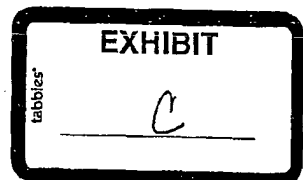
The court has set another trial for June 12.

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Juror: JPD employee sat on, influenced Hinds DA jury

Anna Wolfe, The Clarion-Ledger Published 1:06 p.m. CT Jan. 6, 2017 | Updated 46 minutes ago



A statement Attorney General Jim Hood released after the [judge declared a mistrial in his case](#) ([/story/news/politics/2017/01/04/hinds-da-trial-final-debate-focuses-illes-obstruction/96151234/](#)) against the Hinds County district attorney gave the impression that a "tainted" juror railroaded his case.

But jurors say the juror in question, a Jackson Police Department employee, argued against Hinds County District Attorney Robert Shuler Smith, not for him.

"We did not have a chance to deliberate the way that it should have been because of that one juror," said juror Anna Scott. "She tried to dominate the situation."

(Photo: Justin Sellers/The Clarion-Ledger)

On Wednesday, jurors could not come to a unanimous decision about whether Smith is guilty of conspiring to hinder the prosecution of criminal defendant Christopher Butler. Judge Larry Roberts, specially appointed to hear the case, set a new trial for June 12.

Scott said she wrote the note that tipped off the judge and attorneys (<https://www.scribd.com/document/335720105/Juror-Note>), which read: "What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence?"

The note referenced Sharron Sullivan, who works as a JPD dispatcher and had a preconceived opinion that Smith was guilty, jurors said.

RELATED: Judge declares mistrial in Hinds DA trial (</story/news/politics/2017/01/04/hinds-da-trial-final-debate-focuses-lies-obstruction/96151234/>)

Scott told The Clarion-Ledger that Sullivan made comments in deliberation about various prosecutable drug charges "disappearing" once they get to the district attorney's office. Two jurors confirmed Sullivan said Smith was on the department's "radar," suggesting this supports his guilt.

"That didn't come up during the trial. That was all previous knowledge of him," Scott said.

Sullivan did not return calls made by The Clarion-Ledger Friday morning.

Scott, who voted not guilty, said apart from Sullivan, the few jurors who were inclined to find Smith guilty seemed to have had an open mind and were willing to look back over the evidence. But Sullivan prevented any further discussion from happening, Scott said.

"She wasn't hostile at first but she started getting more aggressive, angry and bothered," Scott said.

When Roberts received Scott's juror note, state prosecutors requested the "tainted" juror, not identified at that time, be replaced. Smith's attorney, Jim Waide, argued the note was grounds for a mistrial. Since they couldn't agree on a response, Roberts ordered that the jury continue deliberating. Just minutes later, jurors announced they could not reach a unanimous decision.

Roberts said jurors were split down the middle on Smith's first charge, a felony count of conspiring to hinder the prosecution of Butler's drug charges. Jurors voted 8-4 on Smith's two other charges, a felony count of conspiring to hinder Butler's prosecution on white collar charges brought by the attorney general's office and a misdemeanor count of assisting a criminal defendant.

Roberts would not say which way the jurors leaned on counts two and three but two jurors confirmed the majority of jurors voted not guilty.

Now, Waide questions whether the state can retry the case.

"If this lady is in fact a city of Jackson employee and if she were deliberately interfering with the jury's legitimate deliberating process, there would then arise a question whether the attorney general has the authority to retry the case," Waide said. "If, on the other hand, the jury simply could not agree for legitimate reasons, the state has a right to retry."

The question is if Sullivan's influence kept the jury from reaching a unanimous decision and if, as a Jackson employee, her actions are attributable to the state.

"If what's called a 'state actor' deliberately caused a mistrial, then there cannot be a new trial," Waide explained.

RELATED: Observations from the Hinds DA trial (</story/news/politics/politicalledger/2017/01/04/hinds-co-da-trial-observations-courthouse/96131666/>)

After the trial concluded, Scott said she and other jurors wondered if Sullivan was placed on the jury on purpose to influence the outcome of deliberations.

Waide said Sullivan's work history must have been overlooked in the jury selection process, because "if I would have noticed she was a city employee, we would have exercised a challenge on her," he said.

JPD appears, to a certain extent, at the crux of Smith's legal troubles (</story/news/local/2016/09/26/jpd-pointed-fbi-cases-involving-alleged-da-conflict/90779150/>). Much of the state's case rested on Smith's secretly recorded conversations with former Assistant District Attorney Ivon Johnson, who recorded Smith while working as an FBI informant.

FBI Special Agent Robert Culpepper testified in March that a JPD sergeant approached him in 2015 about a number of cases the department "felt weren't getting properly prosecuted locally." Culpepper said he took the matter to the attorney general's office.

Hood's statement suggests the juror could have been dishonest during the jury selection process.

"Any inappropriate conduct will be appropriately addressed. Jury service is the responsibility for all of us as citizens, and justice in any jurisdiction depends upon the integrity, courage and honesty of the citizens who sit on juries," the statement reads.

Ultimately, Scott said, the state did not prove its case and a new trial would be a waste of time.

"What they have right now is not going to work," Scott said. "It will be mistrial after mistrial at this rate because it's kind of like a he said-she said ordeal."

Contact Anna Wolfe at 601-961-7326 or awolfe@gannett.com. Follow @ayewolfe on Twitter.

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A horizontal banner advertisement for Nordstrom. On the left, the word "NORDSTROM" is written in a bold, sans-serif font. To its right is a black and white photograph of a man wearing a dark jacket. Further right, the text "BEST COATS & JACKETS" is displayed in a large, bold, sans-serif font. Below this text, in a smaller font, is "SHOP NOW >". On the far right of the banner, there is a black rectangular box with white text that reads "FREE SHIPPING", "FREE RETURNS", and "ALL THE TIME." in a stacked format.

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Motions

25CI1:16-cr-00836-LER State of Mississippi v. SMITH CASE CLOSED on 01/12/2017

Mississippi Electronic Courts

Hinds County Circuit Court

Notice of Electronic Filing

The following transaction was entered by Waide, Jim on 1/17/2017 at 1:58 PM CST and filed on 1/17/2017

Case Name: State of Mississippi v. SMITH
Case Number: 25CI1:16-cr-00836-LER
Filer: Dft No. 1 - ROBERT SHULER SMITH
Document Number: 190

Docket Text:

MOTION for Relief Based Upon Juror Misconduct and Upon State Efforts to Provoke Mistrial by ROBERT SHULER SMITH. (Attachments: # (1) Exhibit A: Jury Note, # (2) Exhibit B: Attorney General Press Release, # (3) Exhibit C: Clarion Ledger Article) (Waide, Jim)

25CI1:16-cr-00836-LER-1 Notice has been electronically mailed to:

Frank W. Trapp trappf@phelps.com, kings@phelps.com

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Robert Gilmon Anderson rande@ago.state.ms.us

25CI1:16-cr-00836-LER-1 Notice will be delivered by other means to:

Marvin Lawayne Sanders

25CI1:16-cr-00836-LER-1 Parties to the Case:

State of Mississippi (Plaintiff)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:00309337.PDF

Electronic document Stamp:

[STAMP dcecfStamp_ID=1090522767 [Date=1/17/2017] [FileNumber=1004171-0]
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Document description:Exhibit A: Jury Note

Original filename:00309310.PDF

Electronic document Stamp:

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Document description:Exhibit B: Attorney General Press Release

Original filename:00309311.PDF

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Document description:Exhibit C: Clarion Ledger Article

Original filename:00309312.PDF

Electronic document Stamp:

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IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

ORDER DENYING WITHOUT PREJUDICE DEFENDANT ROBERT SMITH'S
MOTION FOR RELIEF BASED UPON JUROR MISCONDUCT WITH THE INTENT
TO PROVOKE MISTRIAL

This matter came on for hearing before the Court on February 24, 2017. Defendant alleges that a retrial in this case constitutes "double jeopardy" in violation of the United States Constitution and the Mississippi Constitution.

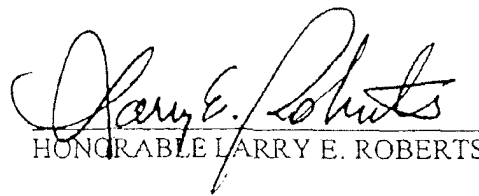
Defendant argued that a juror's presenting matters outside the evidence to other jurors may have been an attempt to intentionally cause an improper conviction of Smith, or to provoke a mistrial. Defendant argues that the juror is a "state actor" such that the juror's actions are attributable to the State under the Fifth and Fourteenth Amendments to the United States Constitution.

By separate Order, this Court has permitted the parties to conduct joint interviews of the jurors.

The Court finds that at this time, there is no factual basis to support Defendant's motion, and it is, therefore, denied without prejudice.

The Court grants leave to Defendant to reurge his motion, should he believe, after conducting juror interviews, that he has evidence to justify his motion.

SO ORDERED, this the 1st day of MARCH, 2017.


HONORABLE LARRY E. ROBERTS

APPROVED AS TO FORM:

Robert Anderson
ROBERT ANDERSON, ESQ.
Attorney for the State of Mississippi

Jim Waide
JIM WAIDE, ESQ.
Attorney for Defendant

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

STATE OF MISSISSIPPI

VS.

CAUSE NO. 25CI1: 16-CR-836

ROBERT SHULER SMITH

DEFENDANT

ORDER GRANTING LEAVE TO INTERVIEW JURORS

THIS CAUSE came before the Court on the Motion of the State of Mississippi For Leave to Interview Jurors or, in the alternative, Motion for the Court to Reconvene the Petit Jury for Individual Examination. The Court, having heard the arguments of counsel and considered the controlling law on this matters, rules as follows:

(1) The Court is not convinced that there has been an adequate showing of “good cause” to reconvene the petit jury for purposes of conducting a post-trial hearing on juror misconduct. In reaching this decision, the Court is concerned that there was no a verdict reached in this case and that there has not been an adequate showing of any outside or extraneous influence on the petit jury to support a post-trial hearing involving the reconvening of the petit jury.

(2) Notwithstanding the Court’s conclusion that no post-trial hearing is justified in this case, the Court does appreciate the arguments of counsel concerning their desire to interview the jurors on the issues pertaining to potential juror misconduct and/or perjury by one of the jurors. Thus, the Court will permit the attorneys for the parties to contact and interview the 12 petit jurors who deliberated in this case under the following guidelines and parameters:

(a) Counsel should first contact the jurors and request that they appear for a voluntary interview by the prosecutor and by defense counsel;


(b) Neither the prosecutor nor defense counsel shall conduct any interview of a juror without giving advance notice to counsel opposite about the time and place at which the interview shall be conducted so that counsel for each party may appear and participate;

(c) If counsel wish to have a court reporter present for the interviews, they may make the necessary arrangements to do so;

(d) Any juror interviews conducted are to be conducted in a professional manner, without any undue pressure being put on the jurors by the prosecutor or by defense counsel;

(e) The interviews should be conducted at a neutral site such as the Mississippi Bar Center, as suggested by counsel at the hearing.

SO ORDERED AND ADJUDGED this the 27th day of February, 2017.


HONORABLE LARRY E. ROBERTS
Special Circuit Court Judge

Prepared by:

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