

IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO. 2015-0403-CRO

HENRY N. VAUGHN, SR.

DEFENDANT

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
THIS CASE WITH PREJUDICE FOR LACK OF JURISDICTION, AND/OR
ALTERNATIVELY, TO DISMISS THIS CASE WITH PREJUDICE ON
THE GROUND OF DOUBLE JEOPARDY

COMES NOW, THE DEFENDANT, HENRY N. VAUGHN, SR., by and through his undersigned attorney of record, Roy A'. Perkins, Esquire, and files this his Memorandum of Law In Support of his Motion To Dismiss This Case With Prejudice For Lack of Jurisdiction, and/or Alternately, To Dismiss This Case With Prejudice on the Ground of Double Jeopardy; and, the Defendant respectfully offers the following as his Memorandum of Law in support of his said Motion, to-wit:

INTRODUCTION

The Defendant's above-referenced Motion To Dismiss This Case, including the appeal regarding this case, is set for a hearing at 9:00 a.m., on January 19, 2016, at the Oktibbeha County Circuit Court Annex in Starkville, Mississippi, before Circuit Court Judge, Honorable Lee S. Coleman.

There is no constitutional and statutory authority that allows this Honorable Court to hear an appeal from the Oktibbeha County

Justice whereby the Defendant, Henry N. Vaughn, Sr., was found "Not Guilty" on September 4, 2015, on the charge of Driving Under the Influence of Alcohol (First Offense) after the said lower Court heard sworn testimony at the trial. The Constitution and the laws of this State do not allow any such appeal. Further, the Constitutional provision against double jeopardy clearly and absolutely precludes the State of Mississippi from appealing the September 4, 2015, "Not Guilty" decision involving the Defendant, Henry N. Vaughn, Sr., from the Oktibbeha County Justice Court to the Oktibbeha County Circuit Court. There is no law or constitutional provision that allows said appeal regarding the facts of this case.

On September 4, 2015, at the criminal trial on the merits at the Justice Court of Oktibbeha County, Mississippi, in a case styled, **State of Mississippi v. Henry N. Vaughn, Sr.**, **Docket No. 316, Pages 33-34**, two (2) witnesses gave sworn testimony on behalf of the State of Mississippi and said witnesses were cross-examined by the undersigned attorney for the Defendant during the State's case in chief. At the conclusion of the State's case in chief, the undersigned attorney for the Defendant made an Ore Tenus Motion For A Directed Verdict. After hearing the arguments from the attorneys of record, the Oktibbeha County Justice Court sustained the Defendant's Motion For A Directed Verdict regarding the charges of Driving Under the Influence of Alcohol (First Offense) and careless

driving. As a result, the said criminal case was concluded fully favorable to the Defendant. **See the attached documents as Exhibit "A" from the Oktibbeha County Justice Court; and, said cumulative Exhibit shall be and is hereby incorporated herein by reference as if fully copied herein in words and figures.**

On or about September 30, 2015, the County's Special Appointed Prosecutor filed a Notice of Appeal with this Court which was an attempt by the State of Mississippi to appeal the September 4, 2015, "Not Guilty" decision of the Justice Court of Oktibbeha County, Mississippi, with regard to the misdemeanor charge of Driving Under the Influence of Alcohol (First Offense) that was pending against the Defendant, Henry N. Vaughn, Sr.

In the Notice of Appeal that was filed in this case, it is stated, in part, that, this appeal is being filed pursuant to Rule 5.04 of the Uniform Rules of Circuit Court Practice and pursuant to section 99-35-103 of the Mississippi Code of 1972, as amended.

ARGUMENT

That Rule 5.04 of the Uniform Rules of Circuit Court Practice pertains to "civil actions" only. Section 99-35-103 of the Mississippi Code of 1972, as amended, clearly does not authorize and allow the appealing of a "Not Guilty" verdict from Justice Court to a Circuit Court. Section 99-35-103 authorizes and allows appeals only from Circuit Court to the Supreme Court in certain cases. The said statutory provision states, among other things,

that "The state or any municipal corporation may prosecute an appeal from a judgment of the circuit court in a criminal cause in the following cases:....". As a result, this statute clearly does not apply to the instant case at hand; and, the attempted appeal by the State from the Oktibbeha County Justice Court to the Oktibbeha County Circuit Court regarding this matter is clearly not allowed by law and the Rules of this Court and the appeal should be totally barred and disallowed.

The State of Mississippi is without authority to appeal this case from the lower Court to this Court. The United States Supreme Court has held in 1892 that the government could not take an appeal in a criminal case without express statutory authority. **United States v. Sanges, 144 U.S. 310, 36 L.Ed. 445, 12 S.Ct. 609 (1892)**. There is no statutory authority for the State to appeal a "Not Guilty" verdict with respect to this case from the Oktibbeha County Justice Court to the Oktibbeha County Circuit Court.

Appeals from Justice Court or Municipal Court regarding a criminal case is governed by Rule 12.02 of the Uniform Rules of Circuit Court Practice. The said Rule states, in part, that, **"Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court having jurisdiction, then to circuit court by filing simultaneously a written notice of appeal, and both a cost bond..."** It is absolutely clear from this said Rule and the laws of this

state that the State is not legally authorized and empowered to appeal a "Not Guilty" verdict from the Justice Court to the Circuit Court. It is further absolutely and abundantly clear that only a person adjudged guilty of a criminal offense by a Justice Court may appeal to Circuit Court in Oktibbeha County in light of the fact that there is no County Court in Oktibbeha County. This Rule does not allow the State to appeal to this Court because the Defendant, Henry N. Vaughn, Sr., was found "Not Guilty" by the Oktibbeha County Justice Court; and, as a result, the State clearly and absolutely lacks the authority to appeal the said "Not Guilty" verdict to this Court.

In the case of **State v. Correro, 231 Miss. 155, 94 So.2d 911 (1957)**, the Trial Court sustained a Motion for a Directed Verdict at the end of the prosecution's case and the State appealed, alleging error in directing the verdict. In holding that the prosecution was without authority to appeal, the Mississippi Supreme Court said: "Such an appeal by the State does not lie. **State v. Brooks, 102 Miss. 661, 59 So. 860 (1912)**. The **Brooks case and the Correro case** are cited in the case of **State v. Insley, 606 So. 2d 600 (Miss. 1992)** .

In the case of **State v. Insley, 606 So. 2d 600 (Miss. 1992)**, the Mississippi Supreme Court held that: "the prosecution is allowed to take an appeal only to the extent that a statute confers the right." Section 99-35-103 of the Mississippi Code of 1972, as

amended, is the statute that controls the right of the State to appeal. This statutory provision does not authorize the State to appeal a "Not Guilty" decision of the Oktibbeha County Justice Court to the Oktibbeha County Circuit Court.

In the case of **State v. Wingo, et. al., 221 Miss. 542, 73 So. 2d 107 (Miss. 1954)**, the Mississippi Supreme Court held that the state or any municipal corporation may prosecute an appeal from a judgment of the circuit court in a criminal cause in the cases that are set forth in section 99-35-103 of the Mississippi Code of 1972, as amended. The said cases are not applicable to the instant case; and, as a result, this appeal is not allowable to the Oktibbeha County Circuit Court.

Given the foregoing, in applying the law (statutory law, case law and constitutional law) as it is written to the instant matter at hand, this appeal is not allowable because this Honorable Court lacks jurisdiction to accept this appeal. In light of the fact that this Court lacks jurisdiction over this appeal, this Court should dismiss this case with prejudice, including this appeal.

Further, this Court should dismiss this case, including this appeal, based on the doctrine of Double Jeopardy. The Supreme Court of the United States has held that the guarantee against double jeopardy protects against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same

offense." **State v. Deed, 27 So. 3d 1135, 1139 (Miss. 2009) (citing U.S. v. DiFrancesco, 449 U.S. 117, 129 (1980)).** "The first step of this analysis is to define the point at which jeopardy attaches for purposes of invoking the protections of the Double Jeopardy Clause. The U.S. Supreme Court has held that the protections afforded by the Double Jeopardy Clause are implicated only when the accused has actually been placed in jeopardy. This state of jeopardy attaches when a jury is empaneled or sworn, or, in a bench trial, when the judge begins to receive evidence." **Id. (quoting U.S. v. Martin Linen Supply Co., 430 U.S. 564, 569 (1977)).** "The United States Supreme Court has consistently adhered to the view that jeopardy does not attach until 'the defendant is put to trial before the trier of the facts, whether the trier be a jury or a judge.'" **Id. (quoting U.S. v. Jorn, 400 U.S. 470, 479 (1971)).**

In the instant case at hand, jeopardy attached at the Oktibbeha County Justice Court because the said Court, in a bench trial on September 4, 2015, received sworn testimony regarding the herein referenced charge of Driving Under the Influence of Alcohol (First Offense). As a result, jeopardy definitely attached; and, the Defendant, Henry N. Vaughn, Sr., shall not be tried and prosecuted for the same offense after acquittal in the Oktibbeha County Justice Court based on the Double Jeopardy Clause.

CONCLUSION

In applying the law as it is written, this Honorable Court

should dismiss this case with prejudice, including the State's appeal, based on all of the foregoing reasons, arguments and law.

Given all of the forgoing, this Court lacks jurisdiction over this case, including the appeal from the Oktibbeha County Justice Court and this case should also be dismissed with prejudice based on the Double Jeopardy Clause.

The Defendant prays for this Honorable Court to dismiss this case with prejudice and tax all costs to the State of Mississippi.

The Defendant further prays for this Honorable Court to enter an Order that immediately directs and Orders the State of Mississippi, being the Oktibbeha County Board of Supervisors, to immediately pay the attorney's fees and expenses of the undersigned attorney for having to respond to and defend against the State's frivolous appeal from the Oktibbeha County Justice Court to this Court without any constitutional and statutory authority whatsoever. The Oktibbeha County Board of Supervisors appointed the Special Prosecutor for this case. As a result, this Honorable Court should immediately Order the Oktibbeha County Board of Supervisors to immediately pay the attorney's fees and expenses incurred by the undersigned attorney for the Defendant with respect to this case.

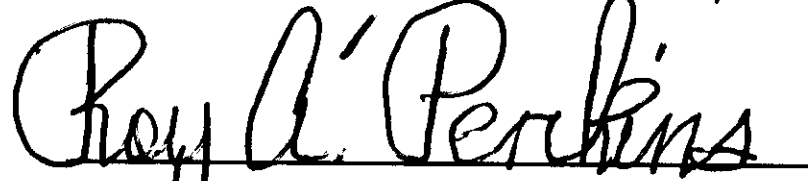
The Defendant further prays for this Court to deny this appeal and any and all other relief requested by the State of Mississippi regarding this case.

The Defendant further prays for this Court to award him any

and all other relief, either general and/or specific, that this Honorable Court may deem to be necessary and proper.

THIS, THE 25TH DAY OF NOVEMBER, 2015.

RESPECTFULLY SUBMITTED,



**ROY A. PERKINS, ESQUIRE
ATTORNEY FOR DEFENDANT
POST OFFICE BOX 678
STARKVILLE, MS 39760-0678
BUS PHONE: (662) 324-7300
MISS. BAR NUMBER 4118**

CERTIFICATE OF SERVICE

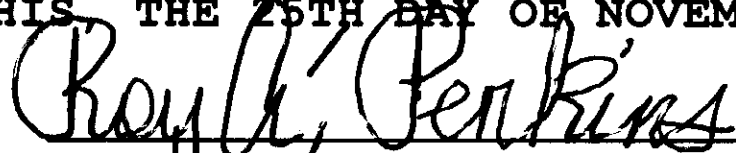
I, ROY A. PERKINS, ESQUIRE, ATTORNEY FOR DEFENDANT, do hereby certify that I have this day, forwarded by United States Mail, postage prepaid, a true and correct copy of the foregoing Defendant's Memorandum of Law, to the following persons, to-wit:

**Honorable Lee S. Coleman
Circuit Court Judge
16th Circuit Court District
Post Office Drawer 1033
West Point, Mississippi 39773**

**George M. Mitchell, Jr., Esquire
Attorney at Law
Post Office Drawer J
Eupora, Mississippi 39744**

**Brandon Langford, Esquire
Law Clerk II
16th Circuit Court District
Post Office Box 1679
Starkville, Mississippi 39759**

SO CERTIFIED, THIS, THE 25TH DAY OF NOVEMBER, 2015.



**ROY A. PERKINS, ESQUIRE
ATTORNEY FOR DEFENDANT**

