

SACKUN, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
GRAND GEDEH COUNTY.

Argued October 26, 27, 1970. Decided January 21, 1971.

1. No judge has the right to arbitrarily imprison a jury overnight as a form of punishment for disobeying his instructions, for it evinces total disregard of the law by mockery.
2. A judge may not order the discharge of a defendant in a criminal case *sine die*, and enter judgment to that effect, after he has set aside a jury's verdict of guilt and ordered a new trial. Such discharge, and the judgment based thereon, are mere nullities.
3. Therefore, when such defendant is subsequently re-tried for the same offense, he cannot plead double jeopardy occasioned by the attempted discharge and judgment therein, for they are void *ab initio*.
4. The sole trier of the facts determining the guilt or innocence of a defendant, is the jury.
5. Mere comment by a prosecutor is not sufficient to constitute undue influence upon a jury to the prejudice of the defendant; the test is impropriety on the prosecution's part.
6. In general, if an indictment is drawn clearly enough to enable a defendant to plead double jeopardy, it will be deemed sufficient to sustain the charge.

At the defendant's first trial, the jury found him guilty of murder in the first degree, contrary to the judge's charge. He set aside the verdict and ordered the defendant remanded for a new trial which he ordered *sua sponte*. Thereafter, he revoked his order of two days before, and discharged the defendant *sine die*, a final judgment being entered to that effect. Again, the trial judge reversed his conduct, and ten days after final judgment, ordered the defendant rearrested and retried. At the second trial the defense of double jeopardy was raised and denied by the court. The jury returned a verdict finding the defendant guilty of manslaughter. An appeal was taken from the judgment of the court. Judgment affirmed.

a monkey and he shot her. For whatever this might be worth judicially it does not, in his opinion, warrant any legal defense; consequently, he makes this submission and submits."

In view of the above, coupled with the cogency of uncontroverted facts to the effect that the act was knowingly committed by the appellant, the Court has no other alternative but to affirm the judgment of the court below.

Affirmed.