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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Circuit Court

Honorable R. Keith Kelly, Judge

Trial Court Case No. 2021-CP-11-00609
Appellate Case No. 2022-000687

Benjamin Paul Hannon, _____, Appellant,

v.

State of South Carolina, _____ Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP1100609

Benjamin Paul Hannon		State	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit)
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, SC
 2022 JAN 26 PM 1:02
 BANDY W. MOBILE

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court: *attached*
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

<i>R. Keith Kelly</i> Circuit Court Judge	#2165 Judge Code	25 JAN 2022 1/18/2022 Date
----------------------------------------------	---------------------	----------------------------------

For Clerk of Court Office Use Only

This judgment was entered on 01/26/2022, and a copy mailed first class or placed in the appropriate attorney's box on 1/26/2022, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Michael Bain 221 East Floyd Baker Blvd.
Gaffney, SC 29340

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julie A. Cendroski

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

** see attached **

Appellant came before the Court on 19 January 2022 by way of appeal from his convictions in the Magistrate Court, the Honorable Robert B. Howell, presiding. Judge Howell timely prepared and filed a Return to the Notice of Appeal. In this action, this Court reviews the record for errors of law or an abuse of discretion. This Court does not conduct a *de novo* hearing.

The charges made against appellant and the dates and times are contained in the Notice of Appeal and the Return and are omitted here; they are not in controversy. Under South Carolina law, the Return prepared by the trial judge is the record on appeal and this Court is without authority to examine witnesses or receive evidence not in the Return. (S.C. Code Ann. § 18-3-70).

Appellant's first issue on appeal is he was not offered reasonable accommodations or an alternative to wearing a mask in the courtroom. The record on appeal is clear and unambiguous that when confronted by the Judge, not only did appellant refuse to wear a mask, he declined to wear a face shield as well. Furthermore, he opined that the South Carolina Supreme Court's order applied to the Judge but not him.

Appellant's second issue on appeal is the trial Judge abused his discretion in trying the cases in appellant's absence. The record on appeal is clear and unambiguous that the trial Judge advised appellant if he refused to comply with the face covering requirement, the Court would proceed without him where, as here, the case had been continued in the past to allow appellant to retain a lawyer and proceed to a jury trial. Interestingly, appellant appeared *sans* a lawyer. Counsel for appellant argues this notice should have been on the record. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730). The record is the Return.

Appellant's third issue on appeal is whether or not appellant waived his right to a jury trial. Again, the record on appeal is clear and unambiguous that appellant verbally stated he did not need a d*** jury trial as he walked out the door. The trial Judge found the appellant's words and actions constituted his voluntary and intelligent waiver of his previously asserted right to a jury trial. Counsel for appellant argues this should have been on the record. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730). The record is the Return.

This Court finds appellant refused to wear any type of face covering as required by refusing to acknowledge the applicability of the South Carolina Supreme Court's order to himself; that he acknowledged the cases would be tried in his absence if he did not comply with the South Carolina Supreme Court's order; and, that he knowingly and voluntarily waived his right to a jury trial by his words and actions.

The learned Magistrate Judge is **AFFIRMED**.

FILED IN OFFICE OF
CLERK OF COURT
CHRISTOPHER W. BENTLEY, CL.
2022 JAN 25 PM 1:02
ROBERT B. HOWELL

R. Keith Kelly
#2165
25 January 2022

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Benjamin Paul Hannon)
APPELLANT)
VS)
State of South Carolina)
RESPONDENT)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

ORDER DENYING MOTION TO RECONSIDER

Docket-2021-CP-00609

This matter came before the court upon the motion of the appellant, Benjamin Paul Hannon, seeking to reconsider this court's order, Matt Kendall represented the State and Chris Bain represented the Appellant. Pursuant to the South Carolina Supreme Court's order from January 28, 2022, this matter was handled without an additional hearing.

Upon reviewing the case before the court, this court finds that the order as previously submitted is appropriate. Therefore, the defendant's motion is hereby DENIED. Moreover, the appellant requested clarification regarding a recording taken by the defendant. As this was not made part of the record from the magistrate's court, this recoding was not considered on appeal.

Therefore, the Appellant's motion to reconsider is hereby DENIED.

IT IS SO ORDERD

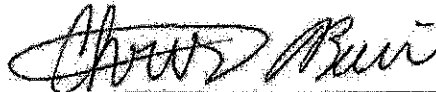
s/ R. Keith Kelly
The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Judicial Circuit

April 19, 2022
Spartanburg, SC

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 APR 19 PM 3:26
RANDY W. MCBEE

- shows he was being denied a right to a jury trial for not wearing mask and not based on any statement he made outside the courtroom.
2. The Appellant ask the Court to consider the statement "Well if I'm not going to jail I don't need no damn jury trial", if made, could only be made in response to the Appellant being told what the outcome of his case would be ... "fine only, no jail time." The Appellant ask the Court to take this into consideration in making a determination whether his statement was a knowing and voluntary waiver of his right to a jury trial.
 3. The Appellant ask the Court to consider the Return does not contain any analysis into the Appellant's background or experience required by *Spoon v. State*, 379 S.C. 138, 142, 665 S.E.2d 605, 607 (S.C. 2008) to determine if the Appellant made a knowing and voluntary waiver of his right to a jury trial.
 4. The Appellant ask the Court to consider all the statements contained in the Return by Appellant were made without the Appellant being fully informed of his right(s) and made with the Appellant not being placed under oath by the Magistrate Court.
 5. The Appellant ask the Court to consider all statements contained in the Return were made outside of the courtroom and that out of court statements should not be considered part of the record.
 6. The Appellant seeks clarification on whether a recording his counsel provided to the Court was considered in the Judgement.

For the reasons set forth above, Appellant, Ben Hannon moves this Honorable Court to alter or amend its Order dated January 25, 2022 pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure and/or Appellant be granted a rehearing. Further, the Appellant seeks clarification on whether a recording provided to the Court was considered.



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Gaffney, South Carolina
February 2, 2022.

THE STATE OF SOUTH CAROLINA
APPEAL FROM CHEROKEE COUNTY
MAGISTRATE COURT

Robert B. Howell, Presiding Judge

State of South Carolina,

Respondent,

Vs.

Benjamin Paul Hannon

Defendant, Appellant

NOTICE OF APPEAL

The Appellant, Benjamin Paul Hannon, appeals from the verdict rendered in the Magistrate Court on or about August 20, 2021 and the rulings of the Honorable Robert B. Howell, Magistrate Court Judge, applicable thereto.

The appeal is on the following grounds:

1. That on or about June 13, 2020 the Defendant was issued tickets for Speeding, 10 mph or less over the speed limit (Citation No. 20202350056796), Seatbelt Violation (Citation No. 20202350056797), Operating Vehicle on Highway Without Registration and License Due to Delinquency (20202350056798), and Operating Motor Vehicle Without License in Possession (Citation No. 20202350056799);
2. That the trial date was August 20, 2021;
3. That the Appellant has a medical condition that prevents him from wearing a mask;
4. That on the trial date the Appellant was denied entry to the courthouse for failure to wear a mask;
5. That Appellant requested a jury trial and requested the magistrate court make accommodations for his inability to wear a mask;

- 6. That the court found the Appellant guilty at a TIA Bench Trial.
- 7. That the Defendant never knowingly or voluntarily waived his right to a jury trial;
- 8. That Defendant would assert that this appeal is timely as it has been filed and served within ten (10) days of his discovery of his conviction. A notice of his conviction was sent to his address and post marked 09/03/2021.
- 9. The Defendant would assert that a right to a trial and especially a trial by jury is a substantial and important right. That due process of law requires the Defendant have the opportunity to knowingly and voluntarily waive his right to a jury trial.
- 10. Further, the Defendant would assert that in order to proceed with a trial in his absence the State was under an affirmative duty showing that the Defendant had knowingly and voluntarily waived his right to trial. The State made no such showing in this case and the Defendant's conviction should be reversed and the case remanded to the Magistrate's Court for a new trial.

WHEREFORE, the Defendant having set forth his Appeal, requests that the verdict be reversed and the case remanded for a new trial.

S/Christopher Bain
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Attorney for Defendant – Appellant

Gaffney, South Carolina
September 13, 2021.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
2021-CP-11-00609

Benjamin Paul Hannon,)
APPELLANT,)

VS)

RETURN

State of South Carolina,)
RESPONDENT)

IN THE MAGISTRATE'S COURT

UTT 20202350056796
20202350056798
20202350056799

BRANDY W. MCBEE

2021 SEP 16 PM 5:33

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

DATE OF HEARING: August 20, 2021
TRIAL JUDGE: Robert B. Howell
RESPONDENT: Trooper R. D. Levitt
ATTORNEY FOR APPELLANT: Pro Se

The Appellant was charged on June 13, 2020 with Driving without a license (56-01-0190), Operating a vehicle on highway without registration and license due to delinquency (56-03-0840), Speeding; 10 mph or less over the speed limit (56-05-1520 (G) (1)), and Resisting Arrest (warrant 2020A1110200208).

This matter was originally set for trial on July 20, 2020 (before the South Carolina Supreme Court Order was issued on July 30, 2020, (Exhibit A), attached)). The Appellant appeared and requested a jury trial and time to retain an attorney. His continuance was granted.

The Appellant's case was reset for trial on August 20, 2021 and the Appellant appeared Pro Se. This Court was contacted by security shortly after the Appellants arrival being that he was refusing to wear a mask. Security was not letting him pass through the lobby pursuant to South Carolina Supreme Court Order dated July 30, 2020.

This Court immediately went to the lobby, with mask and robe, to speak with the Appellant. This Court informed the Appellant that the South Carolina Supreme Court had issued an Order requiring all people conducting business in a County or Municipal Courthouse to wear a mask. The Appellant responded "that Order only applies to you, not to me." This Court then asked the Appellant could he put on a face shield? The Appellant replied "I don't have to wear shit." The Appellant at no time ever said, implied, or produced any claim to a medical condition he may have had (This Court would agree that if he had produced any medical documentation this Court would have had to made accommodations pursuant to the ADA or continue this case).

This Court informed the Appellant that since this was his second court appearance for trial and he is willfully refusing to comply with a South Carolina Supreme Court

RBH

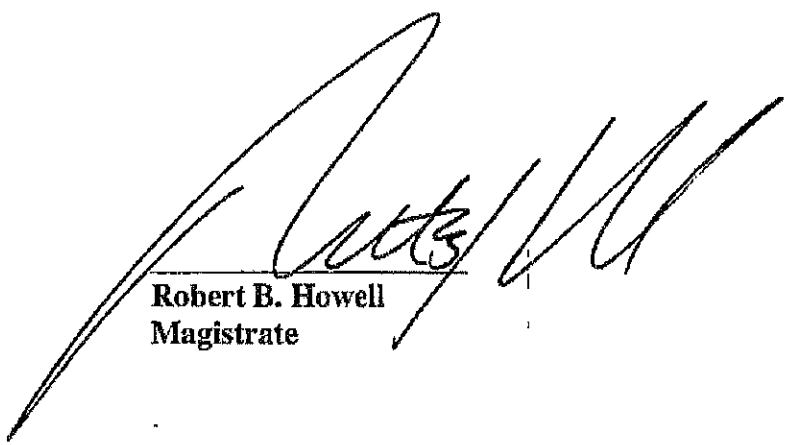
Order, this Court would have no other option than to call his case and try him in his absence for his charges. And furthermore, these UTT's would be found guilty, fine only, no jail time and reported to the State Department of Motor Vehicles as nonpaid.

The Appellant responded "So I'm not going to jail?" This Court responded "No sir."

The Appellant stated on his way out the front door of the building "Well if I'm not going to jail I don't need no damn jury trial."

This Court took the Appellant statement as his waiver to a jury trial and the Appellant was tried in his absence and found guilty on all three UTTs as fine only no jail time.

Gaffney, South Carolina
September 15, 2021



Robert B. Howell
Magistrate

2020-07-30-01

Exhibit "A"

The Supreme Court of South Carolina

RE: Required Use of Protective Masks in County and Municipal Courthouses

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2021 SEP 16 PM 5:32
BRANDY W. MCBEE

ORDER

The number of COVID-19 infections in South Carolina is rapidly increasing and has reached an alarming positive test rate. In order to protect the health and safety of members of the public and judicial staff, and in order to maintain the operation of the South Carolina Unified Judicial System, I find it now necessary to issue this Order to effectuate a statewide mandate requiring a mask or other facial covering in county and municipal courthouses statewide.

Early on in the COVID-19 pandemic, I, as well as Court Administration, communicated with County Executives and Clerks of Court inquiring as to the availability of personal protective equipment (PPE) for court facilities. Specifically, I requested County Executives to inquire whether their Clerks of Court had access to necessary supplies and, if not, to provide assistance that would allow them to operate safely and effectively. More recently, Clerks of Court and summary courts statewide were notified that an Order requiring the use of masks or other facial coverings while in courthouses would be forthcoming.

In response to the initial communications with County Executives, Clerks of Court, and summary courts regarding the availability of PPE, it appeared that not all counties had adequate PPE such as masks and hand sanitizer to help ensure the safety of members of the public and court staff, particularly as courts attempt to resume normal function.

Now that there has been adequate time to gather necessary supplies, a statewide mandate for the use of PPE in county and municipal courthouses statewide is both practicable and necessary. Some local governments and Clerks of Courts recognized the efficacy of facial covering and have already instituted mask requirements. Additionally, the Governor recently announced the requirement for the use of facial covering in state government buildings. The statewide mandate contained in this Order will ensure uniformity throughout the South Carolina Unified Judicial System.

Pursuant to Article V, Section 4 of the South Carolina Constitution,

~~UNDISORDERED~~ all persons employed in, conducting business in, or otherwise visiting, or present for any reason, in county and municipal courthouses statewide are required to wear a protective mask or other facial covering while inside the courthouse, subject to the following provisions:

- During courtroom proceedings, the judge may require the removal of masks or face coverings for a brief period of time for the fair presentation of the case. In such instances social distancing should be observed.
- Judges and court reporters may remove their masks while in the courtroom in order to fulfill their duties. In such instances clear face shields should be worn if available and social distancing should be observed to the extent practicable.
- Face coverings need not be worn by judges and courthouse personnel while in private work areas where the person is not likely to come within six feet of other staff.

- Persons may be required by judges, courthouse staff, or law enforcement to briefly remove their mask when necessary for identification purposes.

~~IT IS FURTHER ORDERED~~ all persons employed in, conducting business in, or otherwise visiting or present for any reason in county and municipal courthouses statewide shall be screened for fever by courthouse staff using an infrared or temporal thermometer. Anyone who registers a temperature of 100.4 degrees Fahrenheit or above shall not be admitted. However, if a person believes their temperature is temporarily elevated due to warm weather or a medical condition, they may be retested after allowing for a brief period of time to cool off. If the person was there to attend a court proceeding, the court should be notified of the person's name and the proceeding they were to attend, and the judge may continue the matter. Any thermometer or other equipment used to screen visitors shall be regularly disinfected.

To ensure that proper social distancing may be maintained, and that there are sufficient supplies for those who must be present in courthouses, Clerks of Court and Chief Judges for Administrative Purposes or presiding judges may limit the number of non-litigants allowed inside courthouses.

~~Any person who refuses to comply with these directives is subject to contempt for violation of this order.~~ This order does not prohibit anyone from wearing other PPE, including but not limited to gloves, in addition to their mask or other facial covering.

This order supersedes the previous order regarding Use of Personal Protective Equipment in County Court Facilities dated May 26, 2020. The provisions of this order are effective immediately and remain in effect unless amended or revoked by subsequent order of the Chief Justice

s/Donald W.

Beatty

Donald W. Beatty

Chief Justice of South Carolina

~~Columbia, South Carolina~~

~~July 30, 2020~~

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
)
BENJAMIN PAUL HANNON,)
)
Plaintiff,)
)
vs.)
)
THE STATE OF SOUTH CAROLINA,)
)
)
Defendant.)

IN THE COURT OF
COMMON PLEAS
OF THE SEVENTH
JUDICIAL CIRCUIT

TRANSCRIPT OF RECORD
2021-CP-11-00609

ORIGINAL

January 19, 2022
Gaffney, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S

CHRISTOPHER M. BAIN, ESQUIRE
For The Plaintiff

GEORGE MATTHEW KENDALL, ESQUIRE
For Defendant

Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

I N D E X

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EXHIBITS

	<u>MARKED</u>	<u>ENTERED</u>
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NO EXHIBITS PROFFERED

1 BENJAMIN PAUL HANNON VS. THE STATE OF SOUTH CAROLINA

2 THE CLERK: Our next case is 2021-CP-11-609,
3 Benjamin Paul Hannon versus The State of South Carolina.
4 The plaintiff's attorney is Christopher Bain and the
5 State is represented by Matt Kendall.

6 THE COURT: Okay. We're here on Benjamin Paul
7 Hannon vs. The State; 2021-CP-11-00609. Good morning,
8 gentlemen. I'm gonna tell you ahead of time that I've
9 already read the file. I've read the motion and I
10 understand it, so I'll hear from counsel.

11 Yes, sir, Mr. Bain.

12 MR. BAIN: Thank you, Your Honor, may it please
13 the Court?

14 THE COURT: Yes, sir.

15 MR. BAIN: Your Honor, I think this case
16 highlights some of the difficulties the court systems
17 have during the pandemic. It's certainly not something
18 right out of law school I thought I would be arguing
19 before the Court.

20 But this stems out of four traffic tickets that
21 were handled in magistrate court. Mr. Hannon had
22 requested his right to a jury trial, and once he
23 requested that, that becomes a fundamental right under
24 South Carolina law. And I believe the case law is clear
25 on that.

1 The trial date was set for August 28th, '21. On
2 that day when he, when Mr. Hannon appeared at the
3 magistrate court, the guard required him to -- required
4 him to wear a mask. Mr. Hannon has a medical condition
5 that prevents him from wearing a mask, so he refused to
6 put one on.

7 At that time, the Honorable Judge Howell came out
8 in the lobby area of the magistrate court and there was
9 a conversation between him and Mr. Hannon. There is a
10 varying -- there's a difference in what was said, what
11 was not said. Mr. Hannon says he has a recording that
12 encompasses that entire conversation.

13 In the brief conversation, Mr. Kendall, I'm not
14 sure what he's gonna argue, but I think it's clear that
15 there is no real transcript or colloquy or anything like
16 that between the defendant and the judge in the lobby,
17 Your Honor. According to Judge Howell, he said if I'm
18 not going to jail, I don't need no damn jury trial. And
19 Judge Howell took that as a waiver to his right to a
20 jury trial.

21 Your Honor, in the brief, you were able to look
22 at it, there's three things we allege. One, is this
23 even a proper remedy for the mask because the Supreme
24 Court left the power of contempt within the Court's
25 hands? Could he have appeared virtually at the jail? I

1 know we do that. Or could he wear a face shield, like
2 he's wearing right now, Your Honor?

3 The second argument was, was the trial in absence
4 appropriate or not? Case law is clear that trial in
5 absence is appropriate in several different
6 circumstances. I know Your Honor handled one in General
7 Sessions. The magistrate court, when people fail to
8 appear, it keeps the magistrate court rolling. They,
9 they routinely try people in their absence.

10 But thirdly, Your Honor, and I think this is
11 where the case becomes -- or this is the strongest
12 argument without having to do all this research or
13 create a novel concept here. Your Honor, if someone was
14 to say if I'm just gonna get time served then I should
15 plead guilty and walk out of the courtroom, I don't
16 think any court in the state would take that as a guilty
17 plea. That is knowingly, voluntarily, or anything.
18 There's no colloquy. You're not taking the different
19 things that are required in the case law, Your Honor.

20 In Spoone v. South Carolina, it requires to look
21 at the defendant's background, educational history in
22 order to determine whether a person's waiver was
23 voluntarily, knowingly, and intelligently made.

24 I think Mr. Kendall is going to argue, I'm just
25 anticipating to save some time, that we don't have

1 enough of a factual basis for what occurred that day,
2 that there is a dispute. But, Your Honor, even taking
3 it in the light of what the return by the magistrate
4 said, that he said if I'm not going to jail I don't need
5 a damn jury trial, I don't think that raises to the
6 level of a knowingly, voluntarily waived right,
7 fundamental right. We wouldn't allow any other right to
8 be waived that way, Your Honor, without colloquy on the
9 record.

10 I understand Judge Howell was put in a tough
11 position that day since he didn't believe he could allow
12 Mr. Hannon in the courtroom to create the colloquy.
13 However, Your Honor, I do think that this should be
14 remanded for a new trial, because I don't think that Mr.
15 Hannon's fundamental right, he didn't get his
16 fundamental right to a jury trial, and I don't believe
17 he waived it, regardless of if that line was said.

18 I will say he adamantly denies ever saying that
19 he didn't need a jury trial, Your Honor. So that is the
20 dispute. And I know you're not here to determine the
21 facts, but I guess my argument, to kind of streamline
22 this is, even taking the light most favorable to the
23 return by the magistrate, I don't think that it meets
24 the standard, Your Honor. Thank you.

25 THE COURT: Well, let me ask this, because I'm

1 interested in that recording, do you have it?

2 MR. BAIN: Your Honor, may we go to chambers?

3 THE COURT: Sure.

4 (*Chambers conference was held off the record.*)

5 THE COURT: Okay. Mr. Kendall.

6 SOLICITOR KENDALL: Yes, sir, Your Honor. Before
7 the Court, I mean the State's position on this is that
8 what's at issue is whether or not the magistrate court
9 used their discretion in complying with Supreme Court
10 mandates, applying with court rules.

11 It's not disputed that the defendant was aware
12 that there was a trial that day. It's not disputed that
13 there was a rule in place that required him to wear a
14 mask that day. You need to wear that. That was a court
15 rule.

16 So the question becomes for the Court, the first
17 question is whether or not the magistrate abused their
18 discretion in the application of that rule. Nothing was
19 presented to that magistrate, no medical documentation
20 or anything like that would suggest that it was needed
21 for some sort of special medical accommodation.

22 The magistrate in return does acknowledge they
23 did offer a face shield in accordance with that. But
24 even if they had not, there's been nothing that's
25 presented to them to get to that point of needing a

1 special accommodation that's being made. This took
2 place on the day of trial. It was continued from
3 another term.

4 The decision to continue a case is in the
5 magistrate's discretion. Absence an abuse of
6 discretion, I don't think, based on the fact that no
7 evidence was ever given to them, it constitutes an abuse
8 of that discretion. It's -- it also proves the
9 defendant didn't stick around.

10 The State's second position is that this case is
11 not right for appeal. The requirement at a trial in
12 absence afford at the first opportunity to raise the
13 objection to the trial in absence. The State would
14 assert that in this particular case where the defendant
15 was there, he was aware the trial was about to take
16 place, that the first opportunity to object was not when
17 the final order was issued but when -- at that time.
18 That was when the appropriate time for objection would
19 be made that we do not want a trial in absence.

20 Not only does this require, if we were to go with
21 what the defendant suggested, not only would this
22 require some sort of accommodation and everything else
23 like that, it would also require a continuance,
24 conceivably, which there's no evidence it was ever asked
25 for or anything like that, and it would be continued

1 again.

2 So the State's position is that, number one, that
3 it's not right. It hasn't been filed in the right
4 place; that this was waived when he didn't file it then.
5 He certainly knew that there was some sort of trial that
6 was going on then, if not because the judge actually
7 said it, as he indicates in his, I think in his return,
8 if I'm not mistaken, but also just as a practical
9 matter, that there was a trial scheduled then and
10 nothing happened that made that trial not scheduled.
11 There was nothing that -- the fact that the defendant
12 leaves, I don't think is fair for him to assume that
13 there wouldn't be a trial. If we were allowed to do
14 that, we wouldn't have any trial. They'd find that the
15 criminal defendant was health ridden and they could just
16 leave and that would just vacate the entire trial. He
17 was where a trial was that day.

18 So the question becomes did he waive his -- and I
19 don't think that -- I do believe he was given proper
20 notice. And based on the fact that he showed up for
21 that trial, that that was taking place. The question
22 then becomes, did he waive his right to a jury trial?

23 The magistrate in his return asserts that
24 basically he left and said, if I'm not going to jail, I
25 don't need no jury trial. And that's what the

1 magistrate took as him being noncompliant.

2 Now, Mr. Bain has brought up that that's not the
3 same as a guilty plea. Respectfully, I don't believe
4 that's the same standard. Whether or not the defendant
5 voluntarily chooses to go to court is very different
6 then if a defendant is actually entering a guilty plea.
7 In this case he did not enter a guilty plea. He denied
8 guilt to some degree over here. He just simply refused
9 to come into the courtroom and comply with the rules.

10 There is significant case law allowing courts to
11 go forward with criminal proceedings in the absence of,
12 you know, what is typically disruptive behavior. Most
13 cases deal with, and I'll just acknowledge it, far more
14 disruptive behavior than this. It usually involves
15 somebody throwing a temper tantrum in the courtroom.
16 This was not the case in this case, but it does kind of
17 go to the same issue of were you compliant with
18 courtroom rules?

19 If someone is not compliant with courtroom rules,
20 whether that be because they're not following standard
21 procedures in the courtroom and they're yelling and
22 doing disruptive things, or they don't comply with the
23 basic rules of court, what you wear at the appropriate
24 time. We won't let people in the courthouse if they're
25 wearing shorts.

1 This is a disease that's, you know, coming up on
2 many people in the United States. Certainly, the
3 decision to wear a mask is much more significant than
4 someone wearing short pants.

5 You know, so the second question becomes whether
6 or not the defendant waived his right to a jury trial.
7 And, I think, the magistrate determined, based on his
8 understanding of what took place, what the defendant
9 said, was that he did not wish to challenge this. That
10 he was going to jail, he didn't need a jury trial. I
11 believe that there's some exclusion there, but based on
12 that I think that constitutes in accordance with his
13 actions of just leaving a scheduled proceeding that he
14 did not wish to go forward with that jury trial.

15 To hold otherwise, I think, puts the magistrate
16 in a very difficult spot, because the other remedy for
17 this would be issuing a bench warrant for somebody who
18 was standing in the lobby of the courthouse, which seems
19 somewhat absurd that they can go and arrest him and
20 bring him to jail. He clearly was there. He clearly
21 knew what was happening. He clearly knew there was a
22 trial that was getting ready to take place.

23 There was an issue of whether he wore a mask or
24 not. I certainly understand that. And, you know, I
25 don't know if I need to go into what the defendant's

1 medical condition would be, but there was nothing
2 presented to the magistrate kind of confirming that that
3 would be the case.

4 And so the question becomes to the first question
5 is, did the magistrate act reasonably in doing this? I
6 think that not having any medical documentation and the
7 defendant's behavior would suggest that it was
8 appropriate to go forward with the case. You know, at
9 no time, it doesn't appear, a continuance was requested
10 from the return or for the thing, for the second
11 proceeding. I think it's perceivable to go forward.

12 Of course, the second he leaves becomes, you
13 know, did the defendant waive his right to a jury trial
14 that he previously asserted? I think the magistrate's
15 understanding of what he said to the magistrate, I
16 think, would be an appropriate waiver of that jury
17 trial, both the words themselves and the actions taken
18 by the defendant. He just left.

19 And we would just ask that a verdict be upheld.
20 We find that to be an appropriate remedy in this case.
21 Not remedy, but the appropriate action taken in this
22 case. And to the extent the magistrate's in a difficult
23 situation because there wasn't a significant colloquy on
24 the record, there's really no way for him to do that.

25 I mean, the whole issue was that he didn't come

1 into the courtroom. He never made it there where they
2 could have put something on the record where a record
3 could have been established. It was conducted in the
4 lobby of the magistrate court because he wouldn't comply
5 with the rules to come into the magistrate court.

6 You know, certainly there are things that, if
7 there is a medical condition, that he could have
8 asserted, but it wasn't asserted. The question becomes,
9 based on what the magistrate was looking at, did they
10 abuse their discretion in refusing to, I guess, either
11 continue the case or provide some sort of medical,
12 alternate medical thing? And I don't think that the
13 answer to that is yes.

14 I think that the magistrate should be given raw
15 discretion, as with any judge in making these
16 determinations. Obviously every single one of them is
17 different. There are people that have very serious
18 medical conditions. There are people that do not have
19 medical conditions.

20 The Court sees that it's something that has to be
21 taken up case-by-case. They have to look at what the
22 situation is, what the facts are, what's been presented
23 to the court to adequately assess that, and the
24 defendant didn't do that.

25 This was a second continuance. There was no

1 motion made, as far as I can tell, for a second
2 continuance. He just simply left. And so, I don't
3 think there's anything that continued that case.

4 And as I've stated, based on what the magistrate
5 understood the statements to be, coupled with his
6 actions down there, I think that there's a reasonable
7 assumption he's waiving his right to a jury trial. We'd
8 ask that the verdict be upheld, Your Honor.

9 THE COURT: Okay. Anything further?

10 MR. BAIN: Your Honor, briefly. I'll point the
11 Court to Moore v. State. And I sympathize with Mr.
12 Kendall's arguments. I understand the Court's put in a
13 tough position because of this pandemic. And although
14 we disagree on the proper remedy on the trial in
15 absence, I agree that's a closer call.

16 What should have been done here is if they felt
17 like the Court was put in a position where Mr. Hannon
18 couldn't appear in court, then he should have been tried
19 in his absence. He shouldn't have been tried in his
20 absence, but they should have picked a jury. And there
21 should have been testimony, and it should have gone
22 through a trial and not just a TIA guilty at bench
23 trial.

24 And I, as to State vs. Moore, because Mr. Kendall
25 was talking about jury trials and all that. And I'll

1 read a few passages from it. The citation is
2 399 S.C. 641. 732 S.C. 2d 871.

3 It says: A defendant's waiver of the right to a
4 jury trial must be knowing, voluntary, and intelligent.
5 A defendant's knowing and voluntary waiver of statutory
6 or constitutional rights must be established by a
7 complete record, and may be accomplished by a colloquy
8 between the court and the defendant, between the court
9 and the defendant's counsel, or both.

10 Here, this Court reversed and held that the
11 defendant's knowing and voluntary waiver of statutory or
12 constitutional rights must, emphasis added, be
13 established by a complete record and may be accomplished
14 by a colloquy between the court and defendant, between
15 the court and defendant's counsel or both.

16 In order to determine whether the agreement is
17 knowing and voluntary, the Court examines the particular
18 facts and circumstances in the case, including the
19 background, experience, and conduct of the accused. In
20 applying this framework to the defendant in that case,
21 this Court found his waiver was made knowingly and
22 voluntarily.

23 The validity of a defendant's waiver does not
24 turn on his communication with counsel, but rather on
25 the presence of a record supporting the validity of that

1 waiver. The record reflects that there was no colloquy
2 between the Court and Petitioner trial counsel or
3 Petitioner regarding the waiver.

4 Your Honor, it also goes on to talk about
5 voluntariness of a guilty plea. It says: This standard
6 applies the waiver of fundamental rights, including the
7 right to trial by jury.

8 So, Your Honor, I go back to the example if a
9 defendant says, well, if I'm not going to jail, you can
10 just time serve me and walks out of the courtroom, I
11 don't think the Court would find that person guilty. I
12 don't think that the colloquy is met for the record.

13 What's unique about this case, Your Honor, and
14 why I say it's a closer call had they just picked a jury
15 and tried it in his absence in front of a jury, is the
16 Court felt like they were put in a position where they
17 could not allow him in the courtroom due to a legitimate
18 pandemic. And I sympathize with the Court, but I also
19 have to sympathize with my client and his condition and
20 his position.

21 But the way it should have been done, and I think
22 Mr. Kendall's analysis makes an eloquent argument up to
23 the point that they decide not to pick a jury. I don't
24 think he asked for that right. If we did this in
25 General Sessions it would be a TIA, but it would still

1 be in front of a jury.

2 I think that's where this case stems, and I think
3 that's where the strongest argument for us is, is that
4 had they just picked a jury, this would be a way closer
5 call and obviously more novel issue. But since there's
6 no record of him knowingly and voluntarily waiving his
7 rights, there's no analysis, there's just one line that
8 may or may not have been said, I don't think it reaches
9 the standard.

10 Your Honor, as we talked in chambers, I have
11 discussed with my client, he has given me permission to
12 turn over that recording to the Court. I will make it
13 an exhibit, Your Honor. I'll let Mr. Kendall listen to
14 it. And if it's okay with you, Mr. Kendall, I'll just
15 submit it to the Court off the record once you've had a
16 chance to review it?

17 SOLICITOR KENDALL: Uh-huh, yes.

18 MR. BAIN: And that's all from our side, Your
19 Honor.

20 THE COURT: Let me ask you -- let me ask both of
21 you something, and I might be wrong here. I often am.
22 But the magistrate and municipal courts are summary
23 courts and they are not a court of record. In fact, the
24 return becomes the record. There is no transcript.
25 There would be no transcript if 100 questions had been

1 asked. The return is the record that's before me on
2 appeal, right?

3 SOLICITOR KENDALL: Yes, sir, I believe so, Your
4 Honor.

5 MR. BAIN: Yes, Your Honor. And that's why my
6 arguments stem from if the statement was made, it didn't
7 rise to the level of waiving it.

8 THE COURT: Okay. Well, I'm gonna listen to the
9 exhibit that's gonna be forthcoming.

10 Sir, it's under advisement. Your lawyer will
11 have some information for you in the near future. It
12 might not be today. It might not be this week, but I'm
13 on admin next week. We're in chambers next week because
14 the bar meeting, the state bar meeting is tomorrow,
15 Friday to Saturday and it's mandatory for us to appear,
16 so I'm gonna be here.

17 SOLICITOR KENDALL: And if I could just briefly
18 reply, Your Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR KENDALL: I have not heard this yet, so
21 I don't know what circumstances, what could be on there,
22 what would be additional to it, whether it was cut off,
23 anything like that. So I would disagree with this being
24 necessarily a complete recording of what took place,
25 having not heard it, if that makes sense, Your Honor.

1 THE COURT: I understand. And if anybody wants
2 to be heard, we can do that virtually probably. But
3 anyway, we'll - it is what it is. We'll see you next
4 time.

5 MR. BAIN: Thank you, Your Honor.

6 SOLICITOR KENDALL: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Court's Exhibit Number 1, Audio Recording, was
9 marked for identification.)

10 (Court's Exhibit Number 1 was entered into the
11 record.)

12 (Hearing concluded at 9:47 a.m.)

13

14 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Cherokee County, South Carolina, on the 19th day of January, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

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Mar 28 2023

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 28, 2023



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