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I N D E X

WITNESS/DESCRIPTION PAGE NUMBER

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JANUARY 26, 2021

2 (WHEREUPON, the proceedings began at 2:28 p.m.)

3 THE COURT: Let's see here. All right. It looks like
4 I have a call-in here, Dawn.

5 THE CLERK: Yes, sir.

6 THE COURT: And I don't know if that's --

7 THE CLERK: That's Michelle Cross.

8 THE COURT: I can't make them a panelist for whatever
9 reason.

10 THE COURT REPORTER: You've got Chester Cross there
11 too.

12 THE COURT: Here it is. He's on here and I can't make
13 him a panelist.

14 THE CLERK: Does it have a number that we can call
15 them?

16 THE COURT: Let's see. Is this Ms. Cross or Mr. Cross?

17 MR. CROSS: Yes. Yes.

18 THE COURT: Okay.

19 THE CLERK: If they called in, they may not be able to
20 have video. There was a -- there's an access phone number
21 they can do audio only.

22 THE COURT: All right. Let me get back to Mr.
23 Mitchell. Let's see if I see -- here he is right here.

24 All right. Mr. Mitchell, are you there?

25 MR. MITCHELL: I am, Judge. I don't know why my -- oh,

1 there, there's my video.

2 THE COURT: All right. Ms. Mitchell, are you there?
3 Mr. -- or Mr. Cross? Let's see here.

4 MR. CROSS: Yes.

5 THE COURT: Who am I speaking to?

6 MR. CROSS: Cross, Chester Lee Cross.

7 THE COURT: This is Chester Cross?

8 MR. CROSS: Yes, sir.

9 THE COURT: Okay. All right. Mr. Mitchell, are you
10 ready to proceed?

11 MR. MITCHELL: I am, Your Honor.

12 THE COURT: All right. This is your motion. I'll be
13 happy to hear from you, sir.

14 MR. MITCHELL: Thank you, Judge Brown. May it please
15 the Court.

16 This is defendant's motion in -- motion to dismiss.
17 Just by way of a brief procedural history, Your Honor, this
18 motion was previously heard on December 2nd of 2020 by Judge
19 Jocelyn Newman. The matter was scheduled for that date. I
20 attended, and Mr. Cross was not present. Judge Newman
21 granted my motion and then later vacated -- vacated the --
22 her order granting my motion as it appears that Mr. Cross
23 never received notice of the actual hearing.

24 So I'll go into the facts of the case just a little
25 bit, Judge. The plaintiff, pro se plaintiff, filed a

1 summons and complaint with the Florence County Magistrate
2 Court on July 6th of 2020, and in that report he makes the
3 allegation -- he states that he is making this complaint
4 because his property was stolen by the defendant.

5 This case stems from -- from an arrest on July 24th of
6 2018 for resisting arrest after a foot pursuit, and in my
7 memorandum -- and I don't know if Your Honor has my
8 memorandum or not. The facts are located in the memorandum,
9 but in this particular case, it basically says that the
10 plaintiff was being pursued because of an outstanding
11 warrant for shoplifting. The incident report also stated
12 that the plaintiff's excess property that he had on his
13 person was returned to his household.

14 And like I said, as a result of this, the plaintiff
15 filed a summons and complaint with that one sentence. And
16 so in response to that summons and complaint that was filed,
17 I filed a motion to dismiss on August 5th of 2020 based on
18 South Carolina Rule of Civil Procedure 12(b)(6), that the
19 complaint fails to state facts sufficient to constitute a
20 cause of action against the defendant.

21 And in my memorandum, Your Honor, it's relatively
22 simple. It basically lays out some case law which argues
23 that there needs to be sufficient facts in the complaint in
24 order for to make it proper. And so as a result, I filed
25 this motion to dismiss because of that, Your Honor.

1 And that's -- that's essentially it. This is not an
2 overly technical issue. I filed a motion to dismiss because
3 of that, because of the one-word sentence that was contained
4 in the actual complaint and that we didn't believe that this
5 complaint was sufficient enough to constitute a cause of
6 action under the pleading laws in South Carolina.

7 And with that, Your Honor, I'm happy to answer any
8 questions or turn it over to Mr. Cross to -- to respond.

9 THE COURT: Okay. Thank you, Mr. Mitchell.

10 Mr. Cross, I'd be happy to hear from you, sir.

11 MR. CROSS: Yes. I mentioned I didn't get my paper
12 stating when I go to court, you know, so that's why I'm
13 trying to figure out now, like, you know, because I want to
14 go to trial.

15 THE COURT: Well, the defense has filed a motion to
16 dismiss. Is there anything you want to -- because you
17 failed to state a claim for which relief can be granted
18 under our Rules of Procedure. That's what their -- their
19 motion is here today. Do you have any response in regards
20 to the motion to dismiss?

21 MR. CROSS: I want to continue.

22 THE COURT: Well, it --

23 MR. CROSS: I want it continued.

24 THE COURT: And your grounds requesting that it be
25 continued is why?

1 MR. CROSS: Because I missed my court date.

2 THE COURT: Well, you're here for your court date
3 today.

4 MR. CROSS: I didn't get my papers. I didn't get my
5 papers.

6 THE COURT: Which papers are you referring to, Mr.
7 Cross?

8 MR. CROSS: For when I go to court. They went to the
9 wrong address.

10 THE CLERK: That's why we're here today.

11 THE COURT: Well, I'm looking at an email that was sent
12 to your wife on January 19th as well, and it's evidently put
13 you on notice because you appear -- you're appearing here
14 via telephone today to be here. And whatever papers you're
15 talking about, I mean it would simply advise you of today's
16 court date at 2 o'clock, and it appears that Mr. --

17 MR. CROSS: I have talked to him on the Internet, sure.
18 That's why I'm having a hard time on the Internet because
19 I'm using the phone. I've been trying for the last three
20 minutes on the Internet, sir. I see you, but I can't hear
21 you but through my phone.

22 THE COURT: Well, I was advised by my clerk's office
23 here that you all came by here and picked up notices the day
24 that the roster was published.

25 MR. CROSS: Yeah, when I found out I missed it, sir.

1 THE COURT: That was your last court date. I'm talking
2 -- we're talking about today's court date. And your last
3 court date --

4 MR. CROSS: I'm trying to get on, sir. Your Honor, I
5 tried to get on, but I couldn't get on to where you're
6 supposed to get on and see me and stuff.

7 THE COURT: Well, and --

8 MR. CROSS: I'm having this conversation with my
9 computer.

10 THE COURT: Well, and I'm permitting you to participate
11 via telephone here today.

12 MR. CROSS: And I also got pictures and stuff of him
13 taking my stuff.

14 THE COURT: Well, I mean what this has to do with is
15 Mr. Mitchell has alleged in his motion to dismiss that your
16 complaint does not comply with our rules of procedure and,
17 therefore, since your complaint does not comply with our
18 rules of procedure, it ought to be dismissed. Okay? Now,
19 that's kind of the layman's terms of way -- way of putting
20 it here. Okay?

21 MRS. CROSS: His -- his com -- his complaint does not
22 comply with what?

23 THE COURT: The South Carolina Rules of Civil
24 Procedure.

25 MRS. CROSS: Which complaint is that?

1 THE COURT: The complaint that he filed seeking damages
2 in this case. Okay?

3 MRS. CROSS: Uh-huh.

4 THE COURT: So what I'm going to do, Mr. --

5 MRS. CROSS: So --

6 THE COURT: And, ma'am, tell me your name?

7 MRS. CROSS: He's telling me why -- when you --

8 THE COURT: Hold on a minute. Ma'am, tell me your
9 name, please?

10 MRS. CROSS: My name is Michelle Taylor Cross. I'm his
11 wife.

12 THE COURT: Okay. What I'm going to do --

13 MRS. CROSS: And why don't it comply?

14 THE COURT: Ma'am?

15 MRS. CROSS: Why doesn't his rules comply with South
16 Carolina?

17 THE COURT: Well, the only thing I can do is direct you
18 to the rules.

19 MRS. CROSS: At the top?

20 THE COURT: I can direct you to your rules. I mean I
21 can't give you legal advice, but I will say that under Rule
22 8(a) of Rule 8 of the Rules of Procedure, the pleadings --
23 and I'll go ahead and say this.

24 Rule 8(a) mandates that a complaint shall contain a
25 short, plain statement of the grounds, including facts and

1 statutes, upon which --

2 MRS. CROSS: Because when we talked to Dawn --

3 THE COURT: Ma'am --

4 MRS. CROSS: -- she told us --

5 THE COURT: Ma'am --

6 MRS. CROSS: -- we didn't need anything.

7 THE COURT: Ma'am, let me finish and then I'll hear
8 from you.

9 MRS. CROSS: Dawn said --

10 THE COURT: Let me hear -- let me finish and I'll hear
11 from you. Okay?

12 MRS. CROSS: Okay. Yes, sir.

13 THE COURT: Again, Rule 8(a) -- Rule 8(a) of the South
14 Carolina Rules of Civil Procedure mandates that a complaint
15 shall contain, one, a short and plain statement of the
16 grounds, including facts and statutes, upon which the
17 Court's jurisdiction depends, and that's pursuant to
18 *Sullivan v. Hawker Beechcraft Corporation*, 397 S.C. 143.

19 Furthermore, the Rules of Civil Procedure determine the
20 sufficiency of a pleading and require in pertinent part a
21 short and plain statement of the facts showing that the
22 pleader is entitled to relief and, three, a prayer for
23 demand for judgment or the relief to which he deems himself
24 entitled. That's pursuant to *Watson v. Howell Builders* --
25 excuse me -- *Watson and Howell Builders v. Billingsley* at

1 310 S.C. 39. Also --

2 MRS. CROSS: Okay. We heard that.

3 THE COURT: Also, pursuant to *Watts v. Metro Security*
4 *Agency*, 346 S.C. 235, that case stands for the proposition
5 that Rule 8 of the South Carolina Rules of Civil Procedure
6 mandates that a pleading contain ultimate facts rather than
7 evidentiary facts to state a cause of action. Ultimate
8 facts fall somewhere between the verbosity of evidentiary
9 facts and the sparsity of legal conclusions.

10 MRS. CROSS: As to facts, Dawn said you didn't need
11 none. Okay. Now, okay. We understand and we heard
12 everything you said. Now, when Ms. Dawn hand delivered
13 those papers for the second -- for the second court date, I
14 went up there specifically and I asked her. I said do he
15 have to submit anything or do he have to answer anything,
16 and she stated no.

17 THE COURT: Well, I mean the clerk's office can't give
18 you all legal advice on what you need to do. Okay?

19 MRS. CROSS: The clerk's office can't give us no legal
20 advice so what do we need to do? Because we have -- we do
21 bringing a law action. We want to have a lawyer. What is
22 our rights if we don't have a lawyer?

23 THE COURT: Well, you're certainly --

24 MRS. CROSS: What is our rights?

25 THE COURT: You're certainly entitled to represent

1 yourself. However --

2 MRS. CROSS: Yeah, we are. But still know the rights
3 would be how can you represent yourself? You're going to do
4 just exactly what you're doing now --

5 THE COURT: Well --

6 MRS. CROSS: -- telling us that we need all this stuff.

7 THE COURT: You can go to the --

8 MRS. CROSS: It's not right.

9 THE COURT: You can go to the --

10 MRS. CROSS: (Unintelligible cross-talk due to noise
11 interference.)

12 THE COURT: You can go to the --

13 MRS. CROSS: That's foolishness.

14 THE COURT: Ma'am --

15 MRS. CROSS: I asked her do we need to sign anything,
16 and we should have went right upstairs to the clerk of
17 office and signed that paper.

18 THE COURT: Ma'am --

19 MRS. CROSS: And that's not right.

20 THE COURT: You can go to the South Carolina Judicial
21 --

22 MRS. CROSS: And this is -- not letting no cops -- let
23 me tell you one thing about the dirty cops, sir. Do you
24 understand me? My husband is not no shoplifter and was
25 wanted for no warrant for no shoplifting. You know who's a

1 shoplifter --

2 THE COURT: Ma'am --

3 MRS. CROSS: -- and wanted for shoplifting?

4 THE COURT: I'm going to --

5 MRS. CROSS: (Unintelligible cross-talk.)

6 THE COURT: -- end this hearing at this point.

7 MRS. CROSS: -- that's them cops. Those are the ones
8 that are shoplifters.

9 THE COURT: Mr. Mitchell, I'm going to take a look at
10 your memo, and I will look at the complaint. I will tell --
11 where'd that email go?

12 THE CLERK: It's right here.

13 THE COURT: Ms. Cross, I will tell you that you can go
14 to the South Carolina Judicial webpage and it has all the
15 rules on there that you all can look at, but I will look at
16 Mr. Mitchell's memo, as well as the complaint filed in this
17 case, and I'll make a decision and I'll let you all know.
18 Okay?

19 MR. MITCHELL: Judge, just so you also know, within
20 that email that I sent with the memorandum, I also sent a
21 copy of the transcript of the first hearing for your review
22 as well.

23 THE COURT: Okay. I will take a look at it.

24 MR. MITCHELL: Thank you, Your Honor.

25 THE COURT: Thank you. Y'all have a good day.

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MR. MITCHELL: You too. Bye-bye.

THE COURT: All right.

(WHEREUPON, the proceedings ended at 2:41 p.m.)

--- END REQUESTED TRANSCRIPT ---



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SEP 20 2021
SC Court of Appeals

State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

Krystal J. Smith
Circuit Court Reporter

P.O. Box 13563
Florence, SC 29504
843-245-7551
krsmith@sccourts.org

September 17, 2021

Court of Appeals
Attn: Jenny Abbott Kitchings, Clerk
1220 Senate Street
Columbia, SC 29201

Re: Chester Lee Cross v. Russell Christopher
Appellate Case Number 2021-000244

Ms. Kitchings:

Enclosed please find the transcript with regards to the above referenced matter. The plaintiff, Mr. Cross, asked that I send this to you directly.

Sincerely,

A handwritten signature in cursive script that reads "Krystal J. Smith".

Krystal J. Smith

Enclosure



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