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AUG 02 2013

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPRME COURT

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Lee S. Alford, Circuit Court Judge

Case No. 2012-213281

City of Fort Mill,

Appellant,

v.

Colin Duane Fitzgerald,

Respondent.

RESPONDENT'S REPLY TO APPELLANT'S MOTION TO CERTIFY CASE  
TO SUPREME COURT; VACATE CIRCUIT COURT RULINGS; REMAND  
FOR A NEW TRIAL; OR ACCEPT JURISDICTION AND GRANT  
EXTRAORDINARY RELIEF

Respondent, through undersigned counsel, would respectfully ask this Court to deny Appellant's Motion to Certify Case to the Supreme Court; Vacate Circuit Court Rulings; Remand for a new Trial; or Accept Jurisdiction and Grant Extraordinary Relief, as certification for review nor extraordinary relief is necessary or required to adjudicate the issues in this appeal.

**Procedural History**

This Appeal results from a conviction of Driving with an unlawful alcohol concentration (DUAC) under section 56-5-2933 of the South Carolina Code (Supp. 2011). Prior to trial, Respondent made several motions to dismiss the charge against the Respondent based on the

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**SC COURT OF APPEALS**

7

numerous violations and the City's failure to comply with the video recording statute, section 56-5-2953 of the South Carolina Code. All motions to dismiss raised by Respondent were denied.

Respondent was convicted by the jury, but the municipal Judge failed to have the jury make a finding of fact as to the Respondent's BAC level for sentencing purposes. Rather than impose a sentence within the range allowed by statute as required when there is no BAC level, the municipal Judge declared a mistrial. The municipal Judge did so without motion from either party. Respondent appealed this conviction.

The appeal was considered by the Honorable John C. Hayes, III, who set aside the mistrial and remanded the case for sentencing. The order of Judge Hayes was filed with Clerk of Court for York County on June 27, 2012. (Exhibit A). The Appellant filed no appeal of Judge Hayes' order.

The Clerk for the Fort Mill Municipal Court, Nancy Butler, sent notice to all parties via email that sentencing of the Respondent would occur on July 17, 2012.(Exhibit B). Respondent was sentenced on that day to a fine of \$997 or 30 days. (Exhibit C).

Appellant never appealed the ruling of Judge Hayes to set aside the mistrial. Instead, Respondent filed a second appeal which was heard before the Honorable Lee S. Alford. This second appeal was heard on September 7, 2012. At no point did the Appellant allege that Judge Hayes improperly set aside the mistrial.

Appellant filed, with the Court of Appeals, a Motion to Hold this Appeal in Abeyance pending the outcome of State v. Philip Wesley Sawyer, Op. No. 2011-UP-263 (S.C. Ct. App. Filed June 7, 2011) currently before the South Carolina Supreme Court. The Court of Appeals denied Appellant's Motion to Hold Appeal in Abeyance. Appellant then filed a Motion to Vacate

Circuit Court Rulings; Remand for a New Trial; and Dismiss Appeal without Prejudice. The Court of Appeals issued an Order denying Appellant's Motion on June 20, 2013. (Exhibit D).

### Merits

Appellant submits that this entire matter should be remanded for a new trial on the grounds that Respondent's appeal was premature. Appellant contends that Respondent was wrong to appeal, and Judge Hayes and Judge Alford were wrong in their rulings on those appeals. While at the same time, Appellant never actually appealed any of these erroneous rulings.

Appellant cites the case of State v. Smith, 383 S.C. 159, 679 S.E.2d 176 (2009) as precedent that this Court has to vacate the ruling of Judge Hayes. However, there is a very great difference between Smith and this current appeal. In Smith, the State actually appealed the rulings from the Circuit Court and Court of Appeals. In that instance, the State believed that the Circuit Court and Court of Appeals erred in their respective rulings and the State followed the correct procedural measures to challenge those rulings. *Id.* But in Respondent's present appeal, Appellant never appealed or challenged either Circuit Court's authority to hear the matter or issue a ruling. Appellant left these matters completely uncontested at the time of its appeal to the Court of Appeals. (Exhibit E). If Appellant believed that Judge Hayes was without authority to set aside the mistrial, Appellant should have appealed that order. Instead Respondent was convicted, sentenced and then filed a new appeal, which at that point was timely and proper. As Appellant states in its motion "section 14-25-95 requires the party appealing to set forth the ground for appeal in Notice of Appeal." (Appellant's Motion to certify for review page 5.) If Appellant believed that Judge Hayes had erred, it should have raised that issue during the appeal

before Judge Alford. At the very least, Appellant should have at least raised the issue when it appealed Judge Alford's ruling to the Court of Appeals. Instead, Appellant only appealed the order of Judge Alford overturning the conviction for violation of section 56-5-2953. (Exhibit F). Appellant has yet to raise nor preserved for appellate review whether or not Judge Hayes erred in setting aside the mistrial. If Judge Hayes' order was erroneous, then it was the responsibility of the Appellant to say so and appeal that decision. Instead Appellant proceeded with sentencing in a case that Appellant now contends was a mistrial in which no sentence could have actually been imposed.

Appellant submits to this Court that Respondent's appeal was premature and in a sense interlocutory. However, Respondent was convicted by a jury and sentence was imposed, meeting the requirements of a timely appeal. Respondent, as well as Appellant were given notice of sentencing.(Exhibit B). Respondent was also given the option by the Court not to be present at sentencing, as per the Clerk of Court. The Respondent had notice of sentencing and exercised his choice not to be present. Therefore, Respondent's sentence is not null and void as submitted by Appellant.

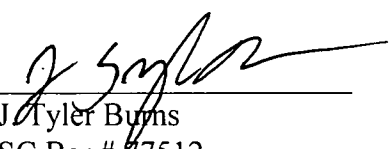
This case presents no "significant public interest or a legal principle of major importance" to warrant a grant of review by this Court. Rule 204 SCACR. There was nothing extraordinary about this case when Appellant filed its appeal before the Court of Appeals. There was no mention of the need for this Court to grant extraordinary relief until the Court of Appeals denied this same motion. To grant Appellant's motion for review of this case at this point would be interlocutory, a claim Appellant has raised concerning Respondent's appeal to the Circuit Court.

Judicial economy also cautions that this Court not grant review or extraordinary relief in

this appeal. To remand this case to the Municipal Court would solve none of the actual issues at the heart of this case. A new jury would be sworn, testimony would be given and a verdict rendered. But what is at contest in this appeal is matters of the law, not of fact. Remanding the case to the Municipal Court would do nothing to change the fact that the City of Fort Mill violated section 56-5-2953. Such a remand would instead require the waste of judicial resources only to bring all parties back to this same position. The true essence of this case is whether the charge against the Respondent should have been dismissed for the City's violation of section 56-5-2953. This is no issue that could be solved with a new jury, at a new trial, even if such an extraordinary measure was proper in this case.

WHEREFORE, for the above mentioned reasons, Respondent prays this Court deny Appellant's Motion to Certify Case to the Supreme Court or Accept Jurisdiction and Grant Extraordinary Relief.

July 31, 2013

  
\_\_\_\_\_  
J. Tyler Burns  
SC Bar # 77512  
PO Box 1297  
Fort Mill, South Carolina 29716  
(803) 579-4492  
Fax: 803-548-7050

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Lee S. Alford, Circuit Court Judge

Case No. 2012-213281

City of Fort Mill,

Appellant,

v.

Colin Duane Fitzgerald,

Respondent.

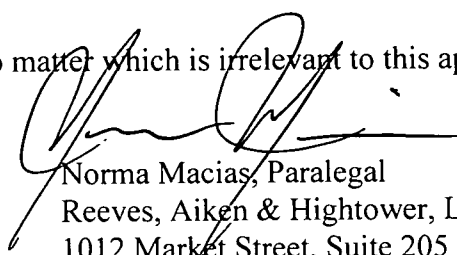
PROOF OF SERVICE

I, Norma Macias, certify that I have served Respondent's Reply to Appellants Motion to Certify Case to the Supreme Court; Vacate Circuit Court Rulings; Remand for a new Trial; or Accept Jurisdiction and Grant Extraordinary relief on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to :

Mr. William Blich  
Office of the Attorney General  
PO Box 11549  
Columbia, SC, 29211

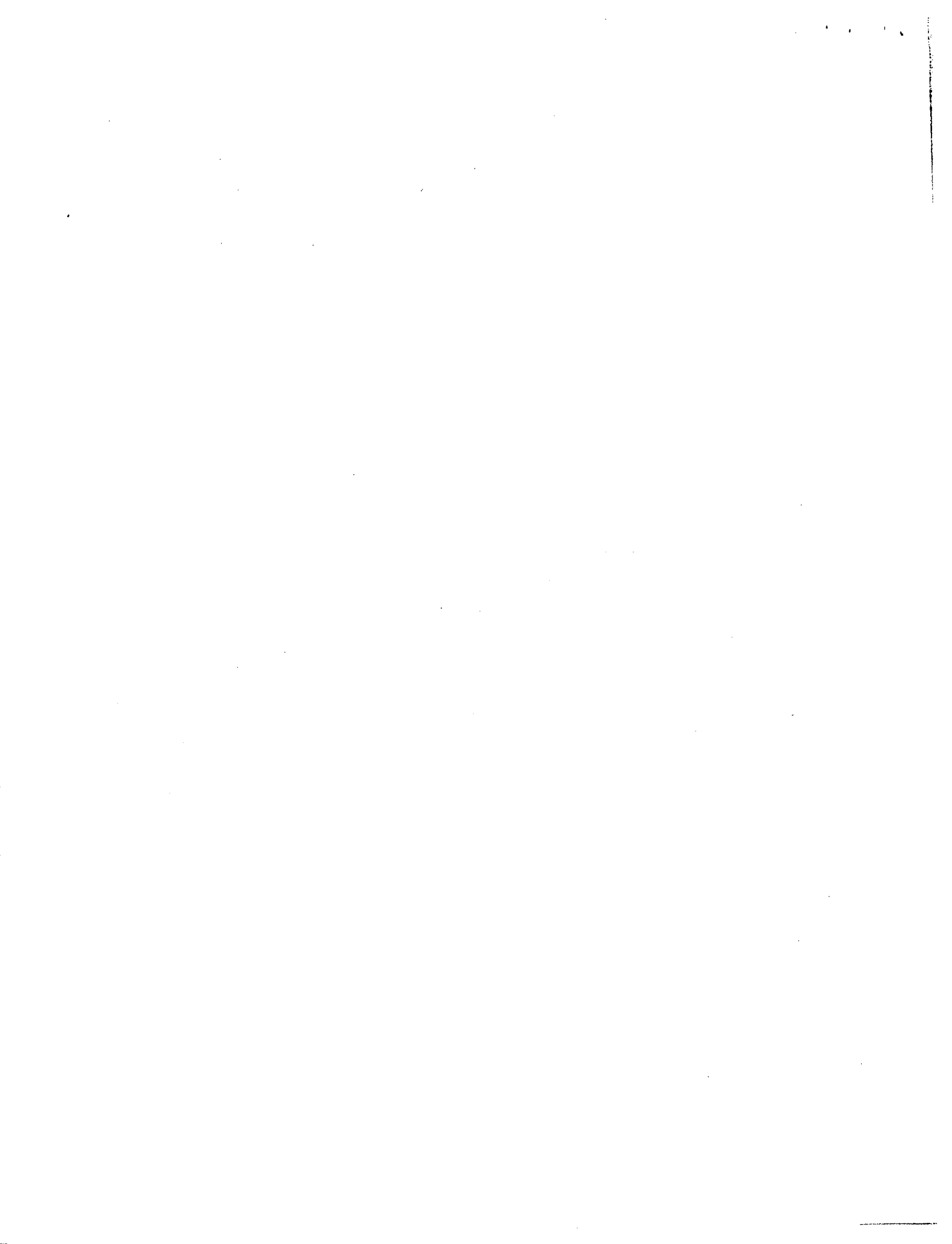
I certify that this designation contains no matter which is irrelevant to this appeal.

July 31, 2013

  
Norma Macias, Paralegal  
Reeves, Aiken & Hightower, L.L.P.  
1012 Market Street, Suite 205  
Fort Mill, SC 29708  
P.O. Box 1297  
Fort Mill, SC 29716  
(803) 548-7943 Direct Dial  
(803) 548-7050 Fax

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AUG 02 2013  
SC Court of Appeals

**EXHIBIT A**



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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP4601625

FILED-RECEIVED

2012 JUN 28 PM 12:26

Fort Mill City of

Colin Duane Fitzgerald

DANIEL HAMILTON  
C.C.P. & ES  
YORK COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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.

- ACTION DISMISSED (CHECK REASON):
  - Rule 43(k), SCRCP (Settled);
  - Rule 12(b), SCRCP;
  - Rule 41(a), SCRCP (Vol. Nonsuit);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRCP;
  - Bankruptcy;
  - Other: \_\_\_\_\_

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed;
- Reversed;
- Remanded;
- Other: \_\_\_\_\_

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

ORDERED AND ADJUDGED:

- See attached order; (formal order to follow)
- Statement of Judgment by the Court

*RESTRICTION set aside as improvident, granted  
Remanded for sentencing according to the verdict of the trial jury*

ORDER INFORMATION

Order  ends  does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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, enter "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)

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 a 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 judgment 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.

Court Judge

*Jah C. H. ...*

2049  
Judge Code

*6/27/12*  
Date

M4M

For Clerk of Court Office Use Only

This judgment was entered on 6-28-12, and a copy mailed first class or placed in the appropriate attorney's box on 6-28-12, to attorneys of record to parties (when appearing pro se) as follows:

Jenny E. Desch  
York County Solicitor's Office  
1675-1A York Hwy  
York, SC 29745

Tyler Burns  
1012 Market St  
Fort Mill, SC 29716

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Reporter : Karen Ambroziak

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# **EXHIBIT B**



Tyler Burns <tyler.rjrlaw@gmail.com>

---

## Fitzgearld

1 message

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**Nancy Butler** <nbutler@comporium.net>  
To: Jenny Desch <Jenny.Desch@yorkcountygov.com>  
Cc: Tyler.rjrlaw@gmail.com

Thu, Jul 19, 2012 at 8:01 AM

Judge Lenzi will sentence Mr. Fitzgerald at 12:00 Noon today in Rock Hill. His cell phone number is 803-385-8093.

Thank you.

Nancy

# **EXHIBIT C**

STATE OF SOUTH CAROLINA  
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Fort Mill VERSUS

FIRST NAME Colin MIDDLE NAME Duane LAST NAME Fitzgerald

STREET AND NO 1022 Millhouse Dr CITY Rock Hill STATE SC ZIP CODE 29730

STATE LICENSED SC DRIVER'S LICENSE NO 102294578 CDL  YES  NO OFF LIC CLASS D

VEH LIC NO HNF 907 STATE SC MAKE OF VEH INFI YEAR 08 COMB VEH  APTD  M PSDR VEH  COMB   
HAZ MT  MOPED  MTRCYCL  OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Lenzi STREET AND NO 111 Academy St.

DATE OF TRIAL 10/19/2011 TIME OF TRIAL 5:00 PM CITY FT MILL STATE SC ZIP CODE 29715

VIOLATION - COURT APPEARANCE REQUIRED  YES  NO VIOLATION SECTION NO 56-5-2930

OWNER OF VEHICLE Crystal Ann Fitzgerald DATE OF ARREST 10/9/2011

ADDRESS OF OWNER SAME DATE OF VIOLATION 10/9/2011

BAIL DEPOSITED 201 NAME OF ARRESTING OFFICER WJ Baird RANK PFC

DESCRIPTION OF ACCUSED B M 5' 3 1/2" 145 lbs 5'10" 150 lbs COUNTY York NUMBER 46  
BADGE 403 TROOP 4

CASE BEFORE: MAGISTRATE  MUN COURT  CIRCUIT COURT  FAMILY COURT  FEDERAL COURT   
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE: Doby's Bridgford

DEFENDANT DID NOT APPEAR  APPEARED   
DISTANCE IN FEET FROM INTERSECTION Tom Hill St

NOLLE PROSSED  DISPOSITION: GUILTY  FORFEITED BOND  PLED NOLO CONTENDERE   
MILES .01 N 1 E 3 S 4 W 4

TRIAL BY: TRIAL JUDGE  JURY   
HWY NO SC 160 E CITY FT MILL

VERDICT OF TRIAL IF ANY: GUILTY  NOT GUILTY   
DATE OF TRIAL IF ANY 4/24/12

JAIL 30 SUSPENDED 997 AMT COLLECTED 0 AMT SUSPENDED 0

COMMITTED TO: Vehicle Searched  Arrest as Result of Collision   
OFFENSE CODE 99 B A LEVEL .16

CERTIFIED CORRECT: [Signature] DATE 7/25/12 46773 FT

DRIVER'S RECORD COPY  
499

\$997.00

POCKET NO

AUG 0-6 2012

# **EXHIBIT D**

# The South Carolina Court of Appeals

City of Fort Mill, Appellant,

v.

Colin Duane Fitzgerald, Respondent.

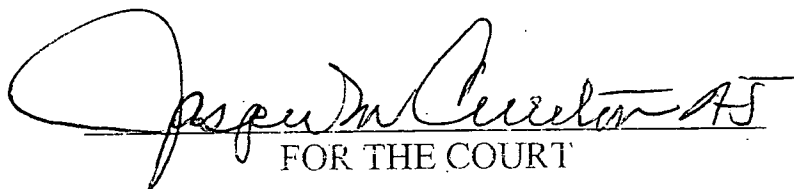
Appellate Case No. 2012-213281

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## ORDER

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After careful consideration, Appellant's motion to vacate the circuit court rulings, remand for a new trial, and dismiss the appeal without prejudice is denied.

  
FOR THE COURT

Columbia, South Carolina

cc:

James Tyler Burns

William M. Blich, Jr.

Alan McCrory Wilson

**FILED**

10/20/13 CA

**EXHIBIT E**

NOTICE OF APPEAL FROM COMMON PLEAS REGARDING  
A CONVICTION IN FORT MILL MUNICIPAL COURT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 2012-CP-46-02640

RE: Ticket # 46773FT

The State of South Carolina, Appellant,


v.

Colin Duane Fitzgerald, Respondent.

NOTICE OF APPEAL

The State of South Carolina, by and through Assistant Solicitor Jenny Desch, appeals the Order of the Honorable Lee S. Alford dated September 28, 2012, which reversed the conviction of Respondent Colin Duane Fitzgerald in Fort Mill Municipal Court and dismissed the charge. Appellant received notice of the Order on or about October 2, 2012. Appellant hereby appeals the ruling in that Order.

October 2, 2012

  
Jenny E. Desch  
Bar # 72806  
Assistant Solicitor  
Sixteenth Judicial Circuit  
1675-1A York Hwy  
York, South Carolina 29745  
(803) 818-5994  
Attorney for Appellant

Other Counsel of Record:  
J. Tyler Burns, Esq.  
Attorney at Law  
Reeves, Aiken and Hightower  
Post Office Box 1297  
Fort Mill, South Carolina 29716  
Attorney for Respondent

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OCT 30 2012

SC Court of Appeals

DAVID HAMILTON  
C.C.P. & J.  
YORK COUNTY, SC

2012 OCT -2 PM 4:37

FILED-RECEIVED

# **EXHIBIT F**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

City of Fort Mill,

Respondent,

vs.

Colin Duane Fitzgerald,

Appellant.

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

C. A. No. 2012-CP-46-02640

ORDER

FILED-RECEIVED  
2012 SEP 29 PM 2:29  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

This matter is before the Court on Appeal from the City of Fort Mill Municipal Court. Colin Duane Fitzgerald, Defendant (Appellant), was represented by J. Tyler Burns of the law firm of Reeves, Aiken and Hightower, LLP. The City of Fort Mill was represented by Jenny Desch of the Sixteenth Circuit Solicitor's Office.

Factually and procedurally, this is an unusual case. Fitzgerald was stopped in the City of Fort Mill by a York County Sheriff's Deputy. The deputy was transporting someone in his vehicle at the time, and he called in a Fort Mill policeman to investigate the matter. The police vehicle driven by the city officer did not have a working video recorder. The county deputy remained on scene with his video recorder on. However, the microphone was attached to his person, and when he got into his vehicle, there was no audio recording of the field sobriety test or Miranda warnings being given by the arresting officer.

#1  
2012

Fitzgerald was charged with DUI and went to trial on a DUAC charge. Defense counsel made pretrial motions for dismissal on the grounds that the State failed to comply with the requirements of Section 56-5-2953. The motions were denied.

The case was tried before a judge and jury on April 24, 2012. The jury found Fitzgerald guilty of DUAC. The jury was dismissed. Before sentencing, it was brought to the attention of the trial judge that the required verdict form in which the jury was required to make a finding as to alcohol content was not submitted to the jury and no finding was made by the jury. The trial judge realized the oversight and ordered a mistrial, sua sponte, and placed the case back on the jury trial docket.

Fitzgerald appealed to the Circuit Court on June 27, 2012. Judge John C. Hayes, III, ordered the mistrial to be set aside as improvidently granted and remanded back to the trial court for sentencing according to the jury verdict. Fitzgerald was subsequently sentenced by the trial judge.

#### Issues on Appeal

1. The Court erred in not dismissing the case for failure by the arresting officer to comply with S. C. Code Ann. § 56-5-2953 (B) to provide a sworn affidavit to explain why no video of the incident site could be provided.
2. The Court erred in not dismissing the case for failure of the non-arresting officer to comply with S. C. Code Ann. § 56-5-2953 (B) to provide a sworn affidavit to explain why no audio was included in his video of the incident site.
3. The Court erred in not dismissing the case for violation of S. C. Code Ann. § 56-5-2953 in that the video at the incident site does not show the Appellant being advised of his Miranda warnings.

Section 56-5-2953 provides in pertinent part as follows:

- (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 **must** have his conduct at the incident site and the breath test site video recorded.
- (1)(e) The video recording at the incident site **must**:
- (ii) include any field sobriety tests administered; and
  - (iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and shows the person being advised of his Miranda rights. [Emphasis added]
- (B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933 or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945, if the arresting officer submitted a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition \_\_ or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances, including but not limited to, road blocks, traffic accident investigations, and citizens arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the Court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

Section 56-5-2953 was amended in 2008 and rewrote subsection (A) and substituted "video recording" for "videotape," "videotapes" and "videotaping," throughout.

# 3  
2008

### Discussion

The visual part of the video recording of the administration of the field sobriety tests is included in the video recording at the incident site. However, the audio part of the video recording of the field sobriety tests, Miranda warnings, and verbal communication by Fitzgerald is not included. Therefore, the wording of any Miranda warnings, instructions by the officer administering the field sobriety tests, and verbal responses by Fitzgerald are not included.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. The determination of legislative intent is a matter of law. State v. Landis, 362 S.C. 97; 606 S.E. 2d 503 (Ct. App. 2004).

The 2008 amendment to Section 56-5-2953 by the legislature must have been made for a reason and purpose. The only logical and rational basis for the amendment is a legislative intent to require the video at the incident site and the breath test site to include audio of those procedures in the videos.

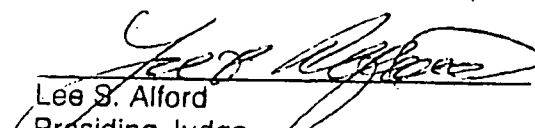
The arresting officer did not provide an affidavit to the trial court which provides information creating an exception to the video recording required by Section 56-5-2953 (B). Failure to install operative video recording equipment does not meet the requirements of that section. See Town of Mt. Pleasant v. Roberts, 393 S.C. 332 (S.C. 2011). In fact, no sworn affidavit by the arresting officer was offered to the Court.

The remedy for failure to provide a video recording or an affidavit of the arresting officer which meets the requirements of Section 56-5-2953 is a dismissal of the charge. City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E. 2d 879 (S.C. 2007).

Conclusion

The State has failed to provide a video recording or an affidavit of the arresting officer creating an exception, as set forth in Section 56-5-2953. The conviction in the Fort Mill City Municipal Court of Colin Duane Fitzgerald on a charge of DUAC is reversed and the charge is dismissed.

**IT IS SO ORDERED.**

  
Lee S. Alford  
Presiding Judge  
of the Sixteenth Judicial Circuit

York, South Carolina

September 25, 2012

HS  
2012

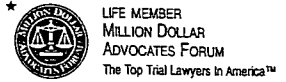
ROBERT J. REEVES +\*\*\*  
ARTHUR K. AIKEN +\*  
A. BEA HIGHTOWER +  
J. TYLER BURNS +



**Reeves, Aiken & Hightower LLP**  
INJURY AND CRIMINAL ATTORNEYS

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+Licensed in SC \*Licensed in NC

PLEASE REPLY TO: Fort Mill

July 31, 2013

**Via US Mail:**

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
PO Box 11330  
Columbia, South Carolina 29211

Re: City of Fort Mill vs. Colin Duane Fitzgerald  
Court of Appeals Appellate Tracking No. 2012-213281

Dear Mr. Shearouse:

Enclosed please find the original and six copies of Respondent's Reply to Appellants Motion to Certify Case to the Supreme Court; Vacate Circuit Court Rulings; Remand for a new Trial; or Accept Jurisdiction and Grant Extraordinary Relief along with proof of service of filing in the above-mentioned appeal.

Sincerely,

J. Tyler Burns

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AUG 02 2013

**S.C. SUPREME COURT**

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AUG 02 2013

**SC Court of Appeals**

OFFICES

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MOUNT PLEASANT, SC 29464