THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-22-1296

Willie Singleton.....Appellants,

v.

The City of Georgetown.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This appeal derives from a citation issued to the Appellant for maintaining a public nuisance under Article II, Section 11-26 of the City of Georgetown Code of Ordinances. Janet Grant, Code Enforcer for the City of Georgetown on October 28, 2010, issued the citation. A trial was held, *in absentia*, on July 13, 2011, even though the Appellant was provided notice of the trial. *See Summary Court Summons dated May 4, 2011.* A jury was selected and the Appellant was ultimately convicted by the jury of maintaining a public nuisance in violation of the Georgetown City Ordinance Article II. Section 11-26. The appellant filed his appeal on July 29, 2011, claiming several grounds for his appeal.

At trial, Janet Grant testified on behalf of the City of Georgetown and testified that she was the Code Enforcement Officer for the City of Georgetown. *See Trial Transcript Page 1.* She later testified the Appellant owned a vacant lot on South Merriman Road, on the corner of Emanuel and South Merrimam. *See Trial Transcript Page 1.* She further testified that the lot had a dilapidated home that was so overgrown with bushes to a point where you could not see the home. *See Trial Transcript Page 2.* Ms. Grant testified that the lot was in a dangerous condition and complaints were made to the City. *See Trial Transcript Page 2.* Ms. Grant testified that she started to write letters to the Appellant as well as speaking with him verbally about cleaning up the property and he kept saying that "I'll get it done." *See Trial Transcript Page 2.* Ms. Grant presented numerous letters to the Appellant and pictures of the property as exhibits at the trial. *See Trial Transcript Page 2 and 3.* Ms. Grant finally testified that she was the City of Georgetown Code enforcement officer who was authorized to issue citations to enforce the City Code. *See Trial Transcript Page 5.*

ARGUMENTS

I. APPELLANT WAS PROVIDED SUFFICIENT NOTICE OF TRIAL, FAILED TO APPEAR, AND WAS FOUND GUILTY IN ABSENTIA BY A JURY.

Pursuant to Rule 16 of the *South Carolina Rules of Criminal Procedure*, "a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the trial judge that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court."

Courts have indicated that the trial judge must make findings of fact that the defendant (1) received notice of the right to be present and (2) was warned the trial would proceed in his absence. *State v. Patterson,* 367 S.C. 219, 229, 625 S.E.2d 239, 240 (Ct. App. 2006). See also *State v. Fairey,* 374 S.C. 92, 99-100, 646 S.E.2d 445, 448 (Ct. App. 2007).

Appellant was provided with a summons to appear in the Georgetown Municipal Court for trial on October 28, 2010, his original court date. Said summons was delivered to Appellant's home address: 501 North Congdon Street, Georgetown, SC 29440. In response to said summons, Appellant requested a continuance from the Court that was granted. Appellant then received a Summary Court Summons for his new trial date and was set to appear before the Municipal Court Judge on July 11, 2011. This new Summons sent May 4, 2011, specifically included the following language: "Failure to appear by the defendant, without leave of Court, may subject the defendant to trial in absentia." Most demonstrative of Appellant's notice is that the second Summons was sent to the same address as the prior summons which Appellant received and responded to by requesting a continuance.

The trial judge, in his discretion, found that Appellant voluntarily waived his right to appear before the Municipal Court. The Appellant was tried before a jury in his absence and was found guilty of the Ordinance/Prohibition against maintaining a nuisance charge (Case No.: 1295). Finally, the record indicates the trial judge made a finding of fact regarding Appellant's notice by stating, "We always verify that the person is not incarcerated. The notice is sent to the address provided by the defendant."

II. APPELLANT FAILED TO FILE HIS APPEAL WITHIN THE TIME REQUIRED BY LAW.

The Circuit Court is without jurisdiction to hear an appeal not filed within the time as set forth by statute. No state court has the authority to extend the time for filing an appeal.

> "Any party shall have the right to appeal from the sentence of the municipal court to the Court of Common Pleas of the county in which the trial is held. Notice of intention to appeal, setting forth the grounds for appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is waived." (§ 14-25-95)

As an initial consideration, Appellant was found guilty of his charges on July 13, 2011. Appellant then wrote a letter to the Municipal Court Judge that fails under § 14-25-95 to qualify as a proper notice of intent on July 29, 2011. This letter, even if qualifying as a proper Notice of Intent to Appeal, was filed beyond the ten days after sentencing and thus Appellant waived his right to appeal.

Secondly, the Appellant cannot extend his time for filing a notice of intent to appeal simply by serving an improper motion. In a criminal matter, the only motion concerning the sufficiency of the evidence at trial that can be filed after conviction by a jury is a motion for a new trial. *State v. Follins*, 352 S.C. 235, 573 S.E.2d 812. Appellant has not filed such a motion.

Instead, Appellant has filed what can best be described as a motion "Judgment Not Withstanding The Verdict." Our courts have long held that a "Judgment Not Withstanding The Verdict" does not exist in criminal proceedings. *State v. Follins*, 352 S.C. 235, 573 S.E.2d 812. This motion is inappropriate in this case. As stated, Appellant has waived his right to appeal the Jury's verdict.

III. APPELLANT DID NOT PRESERVE ANY GROUNDS FOR APPEAL BECAUSE HE FAILED TO APPEAR AT TRIAL AND THUS FAILED TO MAKE A MOTION FOR A DIRECTED VERDICT AT THE CONCLUSION OF ALL TESTIMONY.

A defendant must make a motion for a directed verdict at the end of all testimony and the motion must be made with specificity. In addition, if a defendant presents evidence after denial of his motion for a directed verdict at the close of the state's case, he must make another motion for a directed verdict at the close of all evidence in order to appeal the sufficiency of the evidence. *State v. Bailey*, 368 S.C. 39, 626 S.E.2d 898. Appellant failed to make such a motion and therefore is precluded from raising the issues contained in his notice of appeal.

The Appellant failed to appear upon proper notice at his trial and thus failed to make a directed verdict motion at the conclusion of his case and cannot now attack the sufficiency of the evidence. Therefore, the motion filed with the trial judge was not only improper because it was a JNOV motion, but the trial court was without jurisdiction because the motion was based on the sufficiency of the evidence.

IV. APPELLANT DID NOT PRESERVE THE ISSUES RAISED IN HIS APPEAL BECAUSE HE FAILED TO MAKE A MOTION FOR A NEW TRIAL PRIOR TO SENTENCING, OR AFTER SENTENCE WAS IMPOSED.

Appellant did not make a motion for a new trial within the time prescribed by the Rules of Criminal Procedure and is therefore barred from raising the issues contained in his notice of appeal. Rule 29 South Carolina Rules of Criminal Procedure. This Court has held that "over a

century ago, our Supreme Court held that in a criminal case, a motion for a new trial is the only available post-trial motion addressing the sufficiency of the evidence." *State v. Scurry,* 322 S.C. 514, 473 S.E. 2d. 61, 63 (Ct.App. 1996).

V. DID THE TRIAL JUDGE COMMIT REVERSIBLE ERROR BY ASSERTING THAT THE APPELLANT OWNED THE PROPERTY.

Appellant's argument that the Trial Judge made a finding of fact of ownership in the property is completely unfounded. This matter was properly called to trial and the facts were presented to a jury for final determination. The only motion concerning the sufficiency of the evidence at trial that can be filed after conviction by a jury is a motion for a new trial. *State v. Follins*, 352 S.C. 235, 573 S.E.2d 812. The Appellant's failure to timely file a motion for new trial serves as a waiver of his right to appeal.

VI. DID THE TRIAL COURT ERR BY ASSESSING A FINE IN EXCESS OF STATE LAW.

Appellant's argument that the fine issued by the Court exceeded State Law is without merit, even if it were properly before the Court. The Appellant, in his brief, correctly points out to the Court that a violation of the Georgetown City Ordinance is $500.00.

The Appellant also correctly points out that Section 14-1-208 of the South Carolina Code of Laws provides that an assessment of an amount equal to 107.5 percent of the fine is to be paid to the State Treasurer. In this case the amount would be $537.50 for the state assessment.

However, the Appellant has failed to apply the Victim Advocate Fund's charge of $25.00 mandated by Section 14-1-211 of the South Carolina Code of Laws. Additionally, Appellant failed to apply the Criminal Surcharge fee of $25.00 mandated by Section 14-1-212 of the South Carolina Code of Laws. Finally, the Appellant has failed to apply the Criminal Justice Academy

fee surcharge of $5.00 mandated by Regulation 90.5 of the Temporary Provisions of the 2012-2013 General Appropriations Act.

In summary, the Appellant's fine was properly assessed at $1,092.50 which consists of (1) Fine of $500.00; (2) State Assessment of $537.50; (3) Victim Advocate Fund's charge of $25.00; (4) Criminal Surcharge fee of $25.00; and (5) Criminal Justice Academy fee of $5.00.

VII. DID THE TRIAL JUDGE COMMIT REVERSIBLE ERROR BY ASSERTING PUBLIC NUISANCE.

Appellant's argument that the Trial Judge made a finding of fact that a nuisance was created is completely unfounded. This matter was properly called to trial and the facts were presented to a jury for final determination. The only motion concerning the sufficiency of the evidence at trial that can be filed after conviction by a jury is a motion for a new trial. *State v. Follins*, 352 S.C. 235, 573 S.E.2d 812. The Appellant's failure to timely file a motion for new trial serves as a waiver of his right to appeal.

VIII. DID THE TRIAL COURT COMMIT ERROR BY NOT APPLYING THE STANDARDS OF *HAINES V. KERNER*.

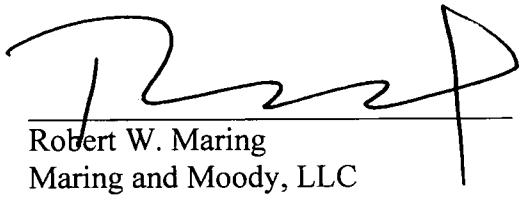
Appellant's reliance on *Haines v. Kerner,* 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-596, 30 L.Ed. 652 (1972) is completely unfounded. The United States Supreme Court's holding in this case addressed the appropriateness of a pro se pleading in a civil complaint and has no precedential value to this appeal.

Our Supreme Court has previously held that a pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law. *State v. Burton,* 356 S.C. 259, 265 (2003).

CONCLUSION

For the reasons stated herein, Appellant's Appeal should be denied by his failure to file any motions within 10 days of the conviction, failing to preserve any matters for appeal at trial or making any timely or appropriate post trial motions.

Respectfully Submitted,



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August 7, 2013

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CERTIFICATE OF SERVICE

I do hereby certify that I have served all parties/counsel in this action with a copy of the Initial Brief of Respondent by depositing a copy in the U.S. Mail, First Class Postage prepaid, on the 6th day of August, 2013, addressed as follows:

Willie Singleton
501 North Congdon Street
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Respectfully submitted,

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DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD OF APPEAL

Pursuant to Rule 208 South Carolina Appellate Court Rules, Respondent Proposes the following to be included in the Record on Appeal:

EXHIBITS

1. Letter dated July 29, 2011 from Appellant to Judge O'Donnell attempting to appeal the July 13, 2011 conviction.

2. Summary Court Summons to Willie Singleton dated May 4, 2011 providing notice of the term of Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have served all parties/counsel in this action with a copy of the Designation of Matters to be Included in the Record of Appeal by depositing a copy in the U.S. Mail, First Class Postage prepaid, on the 7th day of August, 2013, addressed as follows:

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