

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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APPEAL FROM BEAUFORT COUNTY  
Common Pleas

Marvin H. Dukes III, Master-In-Equity

**RECEIVED**

**Jul 05 2024**

**SC Court of Appeals**

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Appellate Case No. 2024-000929

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State of South Carolina,  
*Respondent*

v.

Ben Hays,  
*Appellant*

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**INITIAL BRIEF OF APPELLANT**

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William S. Hammett, III, Esq. (SC Bar #100627)  
Cobb Dill & Hammett, LLC  
222 W. Coleman Boulevard  
Mt. Pleasant, SC 29464  
(P) 843-936-6680  
(M) 864-426-8293  
(F) 843-353-2529  
[whammett@cobbhammett.com](mailto:whammett@cobbhammett.com)

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## STATEMENT OF FACTS

This is an appeal from a Magistrate Court (“Trial Court”) conviction, that was then appealed to the Honorable Marvin Dukes III (“the Court”).

Appellant was convicted of Entering Premises after Notice or Refusing to Leave on Request pursuant to S.C. Code Ann. § 16-11-620 *Order Affirming Conviction* at 1 paragraph 1.

Appellant raised three issues with the conviction: (1) the lack of a record necessitated a new trial, or in the alternative, the record would have to be confined to the Magistrate’s Return and the stipulated facts, which the State stipulated to at the hearing, (2) the order fails to include facts that were stipulated to, (3) a reasonable jury could not have found Appellant guilty because the evidence established a legal cause and good excuse for entering the property in question, and (4) the order concludes that the conviction is affirmed because Appellant could have directed a third party to the Premises in lieu of going himself. *Id.* and *Motion to Reconsider Order Affirming Conviction and Dismissing Appeal*, p. 1, paragraph 1.

The undisputed facts are as follows:

On or about June 27, 2023, Appellant was found on the premises of 225 Tarpon Boulevard, Fripp Island, in Beaufort County, South Carolina. *Id.* paragraph 2.

One day prior, on June 26, 2023, Appellant was issued a formal notice of trespass by the Beaufort County Sheriff’s Office (hereinafter “BCSO”) for the same premises. *Id.*

Appellant had been warned in writing he was not to enter the premises in question without permission. *Id.*

On June 27, 2023, the day of his arrest, Appellant sent an email to Fripp Island with completed forms for registration of golf carts he owns that are an expressed benefit he guarantees to his customers when they enter a short-term vacation lease contract to one of his residential properties. *Id.* p. 2, paragraph 1.

Shortly [after sending the email and receiving a response], the same Appellant, with golf cart in tow, arrived on the premises of the Fripp Island Offices for which he had been officially trespassed by BCSO. *Id.*

Fripp Island Security Officers requested BCSO assistance. BCSO arrived, investigated, and cited Appellant for violation of S.C. Code 16-11-620 for trespassing onto 225 Tarpon Boulevard, Fripp Island. *Id.*

At trial, Appellant presented evidence that one of his short-term vacation lease contract clients received a citation while operating an unregistered golf cart belonging to Appellant. *Id.* paragraph 3.

Appellant argued his presence was necessary because the golf cart had to be inspected at this location; 225 Tarpon Boulevard on Fripp Island. *Id.*

At the close of evidence, Appellant moved for a directed verdict on the ground that legal cause or good excuse existed for the violation of the trespass notice. The motion was denied, the question submitted to the jury, and the jury found Appellant guilty. *Id.*

Appellant filed his Notice of Appeal from the Magistrate Court to the Court of Common Pleas on September 26, 2023.

The Magistrate's Return was filed September 27, 2023.

The Court of Common Pleas confirmed the conviction on May 3, 2024. *Order Affirming Conviction and Dismissing Appeal.*

Appellant sought reconsideration of that decision on May 13, 2024. *Motion to Reconsider Order Affirming Conviction and Dismissing Appeal.*

The Court of Common Pleas denied Appellant's motion on June 3, 2024. See *Order* filed June 3, 2024.

This appeal follows.

## STANDARD OF REVIEW

1. Appellant states that the standard of review for this case is abuse of discretion. *State v. Moore*, 374 S.C. 468, 649 S.E. 84 (Ct. App. 2007). On appeal from a denial of directed verdict motion, the reviewing court is required to consider the evidence in the light most favorable to the State. *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011).

## ARGUMENT

### I. **When the Record was incomplete and the State stipulated to limit the Record to the Magistrate's Return and stipulated facts, it was error for the Court to deny a new trial.**

1. Appellant argued to the Court the lack of the Trial Court's recording necessitated a new trial (especially if the State would rely on facts established at trial but for which there was no record), or, in the alternative, the State stipulated at the March 26, 2024 hearing that the Record would be confined to the Magistrate's Return and stipulated facts. *Motion to Reconsider Order Affirming Conviction and Dismissing Appeal*, p. 1, paragraph 1, *Final Appellant Brief* p. 5, paragraphs 7-8, *Transcript*, p. 5, ll 2-7 and p. 15, ll 20-25 and *3.20.24 email*.

2. Notwithstanding same, the State argued extensively about facts outside the Magistrate's Return and stipulations, including the point about Appellant's ability to enlist assistance from a family member to bring the golf cart to the premises negating (per the State's argument) any legal cause he may have to present himself at the premises. *Id.* p. 9, l 14 – p. 10, l 22 and p. 13, ll 12-18.

3. In response, Appellant reiterated that the confined record (Magistrate Return + stipulations) did not reflect much of what the State was arguing. *Transcript*, p. 14, ll 7-10. All of the State's argument that Appellant's wife could have transported the golf cart or staff of the premises could have gone to Appellant's home to inspect it directly contradicted the Magistrate Return and stipulations, and this cannot be circumvented by the mere fact Appellant's wife appeared at the premises once he was arrested. *Id.* ll 22-25.

4. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See *Whitehead v. State*, 352 S.C. 25, 574 S.E.2d 200 (2002), and *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968). See also *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007), where the Court granted the appellant's motion to set aside his conviction and remand for a

new trial when attempts to reconstruct the incomplete trial transcript were unsuccessful, thus denying appellant meaningful appellate review.

5. Therefore, Appellant moved the Court for reconsideration and specifically, a new trial to reconstruct the record which the Court denied. *Order* filed May 3, 2024.

6. Because the Court erred in addressing Appellants motion to reconstruct the record or grant a new trial, Appellant seeks this court to order reconstruction of the record or in the alternative, a new trial.

**II. When the State stipulated to certain facts, it was error for the Court to fail to include them in the list of undisputed facts.**

7. Appellant secured stipulated facts from the State that were omitted from the Court's *Order Affirming Conviction and Dismissing Appeal*. *Transcript*, p. 4, ll 18-23. Those facts were specifically<sup>1</sup>:

- a. Appellant's paying guest, staying in one of Appellant's rental units had been stopped and ticketed the day before Appellant was arrested for appearing at the Premises, because the registration on the Appellant's golf cart in question had expired;
- b. the golf cart in question is an advertised feature of the Appellant unit's rental, and providing guests with an unregistered golf cart exposed Appellant to liability for breach the rental contract with his guest;
- c. Appellant had no balance due to the HOA as of June 27, 2023, thus there was no barrier to the golf cart being inspected;
- d. Appellant's golf cart was in fact inspected on June 27, 2023, immediately prior to his arrest; and

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<sup>1</sup> See *Motion to Reconsider Order Affirming Conviction and Dismissing Appeal*, p. 2, paragraphs 2(a)-(e).

e. there was no mechanism for Appellant's golf cart to be inspected other than to transport it to the Offices.

8. These stipulations were essential to Appealant's trial and appeal.

9. The Court correctly references the common law doctrine of necessity as freeing a person subject to a no-trespass when compliance would create a greater harm than non-compliance. *Order Affirming Conviction and Dismissing Appeal*. p. 3, paragraph 2. See *Com. v. Magadini*, 474 Mass. 593, 600, 52 N.E.3d 1041, 1049 (2016).

10. The referenced stipulations explained why Appellant's compliance with the no-trespass would create a greater harm than non-compliance (i.e. via subparagraphs a and b, Appellant was threatened with unlimited liability to contracted guests of his rental properties).

11. The referenced stipulations also explained how transporting the golf cart to the premises was necessary (subparagraphs c – e explain that the premises are equivalent to a taxing authority which Appellant had to comply with in order to receive the inspection and avoid further citations regarding the golf carts).

12. Because the Court erred by omitting stipulated facts that were material to Appellant's defense of necessity, Appellant seeks the stipulated facts be included in the list of undisputed facts and based on that record, his conviction be overturned.

**III. When it found Appellant could have enlisted a third party to transport the golfcart to the premises, the Court erred because 16-11-620 does not apply to these facts.**

13. The Court held "evidence existed that a member of [Appellant's] family could, and did respond to the location, only after his arrest." *Order Affirming Conviction and Dismissing Appeal*, page 4 of 5, paragraph 2.

14. As stated previously, because this fact is not stated in the Magistrate Return or stipulations<sup>2</sup>, it was error for the Court to include this finding of fact as a basis to affirm Appellant's conviction. In the alternative, if it is appropriate to include this finding of fact, Appellant's position was that it was not legally possible for a jury to find that the State had proven beyond a reasonable doubt that [Appellant] had violated the trespass notice without justification. *Transcript*, p. 4, ll 14-17.

15. Per the State, Appellant argued this point extensively at trial. *Id.* p. 9, ll 9-13.

16. Legal cause is a matter of law for the Court to decide. *Id.* p. 7, ll 3-17.

17. Per the State, it was the State's obligation to prove Appellant did not have a legal cause to be there. *Id.* p. 10, ll 14-18.

18. Upon information and belief, the a government / quasigovernmental office such as the premises cannot impose a burden with both civil and criminal liability that can only be satisfied by Appellant securing the assistance of a third party, because 16-11-620 does not apply to the premises. See *State v. Hanapole*, 255 S.C. 258, 178 S.E.2d 247 (1970) (the State Supreme Court ruled that Section 16-11-620 applies only to private property and has no applicability to public property). In that case, the Court further stated that since the trespass statutes "...applies only to private property, a conviction thereunder for an alleged trespass upon public property is not warranted and cannot be sustained." *Ibid.*

19. Upon information and belief, there are no reported cases or relevant statutory amendments which would revise this statement of law.

20. Upon information and belief, the civil penalty was the fines that Fripp Island was imposing for not having the golf cart registered and the larger civil liability was from Appellant's renting tenants who had a lease contract that allowed them to use the golf cart and had actually received the ticket for the cart not being inspected. *Transcript*, p. 7, l 18 – p. 8, l 10.

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<sup>2</sup> It was an exhibit, submitted with the Magistrate Return on a zip drive, consisting of the arresting officer's body camera footage.

21. The Court took note of the fact the premises constituted a legal office. *Id.* ll 11-12.

22. Upon information and belief, if a governmental / quasigovernmental office has the ability to place those within its jurisdiction on a trespass notice, it must either allow said persons to satisfy any and all obligations imposed remotely, or said person coming to the government / quasigovernmental office to satisfy any and all obligations must constitute *legal cause or good excuse* to enter an otherwise restricted premises.

23. It cannot be correct that the law can force persons to enlist the services of a third party to comply with such requirements.

24. Upon information and belief, because the premises had governmental / quasigovernmental powers, it should be treated as public property.

25. Even if the premises is not considered public property, upon information and belief, the Court erred in finding Appellant's wife being able to transport the golf cart for Appellant defeated his legal cause / good excuse to be there.

26. Because the Record as modified with the inclusion of Appellant's requested stipulations demonstrates *legal cause or good excuse* to enter the premises, the Court erred in confirming Appellant's conviction and Appellant seeks reversal on this point and that his conviction be overturned.

**IV. When Appellant informed staff of the premises in advance that he was coming to the premises to register his golf cart and the staff responded and failed to inform Appellant he could not, the Court erred in finding Appellant did not have good excuse to appear on the premises.**

27. On June 27, 2023 at 8:36 a.m., Appellant informed Chief Gonzales he was coming to have his golf cart registered. *Transcript*, p. 20, ll 11-15 and *Magistrate Return*. Chief Gonzales responded reminding Appellant he had an outstanding balance on his POA account that needed to be cleared before security can register the golf cart in question. *Id.* ll 16-22, *Final Appellant Brief* p. 5, paragraphs 11, and *Magistrate Return*. At trial, Chief Gonzales testified Defendant was at the premises to comply with regulations of Fripp Island. *Final Appellant Brief* p. 6, paragraphs 13 and *Magistrate Return* at 2.

28. Appellant argued staff of the premises allowed Appellant to return with an appointment which he

clearly interpreted as having to let them know in advance of returning. *Id.* p. 22, ll 8-20.

29. Because the Record as limited demonstrates *legal cause or good excuse* to enter the premises, the Court erred in confirming Appellant's conviction and Appellant seeks reversal on this point and that his conviction be overturned.

### **CONCLUSION**

Because the Court erred in confirming his conviction, Appellant is entitled to reversals and an order overturning his conviction, or, in the alternative, reconstruction of the record and / or a new trial.

Respectfully Submitted,

William Sylvester Hammett III  
S.C. Bar No. 100627  
Cobb Dill & Hammett, LLC  
222 W. Coleman Blvd.  
Mt. Pleasant, South Carolina  
843-936-6680  
843-353-2529  
[whammett@cobbhammett.com](mailto:whammett@cobbhammett.com)

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**PROOF OF SERVICE**

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Appellant's Initial Brief was served on counsel of record contemporaneously with filing, via email to: Caroline Collins at [CCollins@scag.gov](mailto:CCollins@scag.gov); Mary Jordan Neal at [maryjordanneal@gmail.com](mailto:maryjordanneal@gmail.com); Brian Kiel at [bkiel@charlestonlaw.edu](mailto:bkiel@charlestonlaw.edu) and [brian.kiel@bcgov.net](mailto:brian.kiel@bcgov.net); Mary Lempesis at [mjlempesis@scsolicitor14.org](mailto:mjlempesis@scsolicitor14.org); and Mark Farthing at [mfarthing@scag.gov](mailto:mfarthing@scag.gov).

William S. Hammett, III, Esq. (SC Bar #100627)  
Cobb Dill & Hammett, LLC  
222 W. Coleman Boulevard  
Mt. Pleasant, SC 29464  
(P) 843-936-6680  
(M) 864-426-8293  
(F) 843-353-2529  
[whammett@cobbhammett.com](mailto:whammett@cobbhammett.com)