

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 James Stephen Patton, )  
 ) Appellant )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 ) Respondent )

IN THE MAGISTRATES COURT  
**RECEIVED**  
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**SC Court of Appeals**  
 RETURN OF CRIMINAL APPEAL MAGISTRATE  
 Common Pleas No. 2025-CP-46-02620  
 Magistrate Case No. 20243090139397

This matter is on appeal from the Magistrate Court for Catawba/Ebenezer Townships, York County, South Carolina, Jennifer S. Colton, Presiding Judge

**APPEARANCES:**

Appellant was represented by Leland B. Greeley, Esq. Respondent was represented by Gary Apfel, Special Prosecutor for the York County Sheriff's Office

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 YORK COUNTY, SC

**PROCEEDINGS:**

On September 28, 2024, the Defendant was arrested for violating S.C. Code § 16-11-0624, Entering Premises after Warning or Refusing to Leave on Request, after allegedly entering the property of the Selzers, located at 2609 Windswept Cover, York, South Carolina.

The Magistrate for the Bethel/Kings Mountain Court ordered that venue be changed to the Catawba-Ebenezer Court upon motion by the Appellant.

Appellant was convicted by a jury on June 30, 2025 and sentence to 30 days in Jail.

Notice of Appeal filed with the Court of Common Pleas and served on the Magistrate Court on July 3, 2025. This court granted an appeal bond to the Defendant on July 3, 2025.

**WITNESSES:**

Respondent called the following witnesses:

Deputy Shane Bryson

Kera Selzer

Appellant called the following witness:

Bill Hipp

**EXHIBITS:**

Parties stipulated to the admission of the following exhibits:

State's 1: Overview pictures of the property;

State's 2: Duke Energy Lake Permit Application/Approval Letter for Dock Expansion;

State's 3: A DVD containing 2 videos of the Appellant and the property;

State's 4: Picture of sand beach, retaining wall depicting the the Defendant standing on the retaining wall taking video;

State's 5: Duke Energies lake property guidelines;

State's 7: Body camera video (only published from time stamp 9:05 until the end of the recording);

Defendant's 1: Picture of fence going into Lake Wylie;

Defendant's 2: Picture of fence going into Lake Wylie; and

Defendant's 3: Original survey plat of the property.

**PRE-TRIAL MOTIONS:**

Motion for Change of Venue was granted by the Bethel/Kings Mountain Court.

Defendant's Motion in Limini to preclude a testimony related to a Restraining Order lawsuit and order granted by the Judge Douglas Sexton, Bethel/Kings Mountain Magistrate. This court granted the motion and testimony was regarding the aforementioned was precluded.

## TESTIMONY:

Deputy Boyson testified that State's 1 is an overview picture of the property. Deputy Boyson testified that State's 7 is body camera video of law enforcement's interaction with the Appellant at the crime scene. State's 7 was only published to the jury from time stamp 9:05 to the end of the recording per stipulation. State's 4 was a picture of the sandy area of the victim's shoreline behind the victim's home. Deputy Boyson testified that the Appellant was standing on the sand covered retaining wall behind the victim's home. Deputy Boyson reviewed State's 2, the Duke Energy Lake Permit Application Letter. State's 2 approved to the Selzer's (current property owners) of an expansion of a dock located on the property at issue and provided the following language. "Maintenance of the existing dock may include complete replacement within the same dimensions and footprint as the existing structure. The irrigation pump may not exceed 2 HP with the intake installed under the dock. All chain link fencing and old construction must be removed inside the lake boundary. Existing rip rap 10'x60', wood seawall 3'x50', sandy beach. In addition, the application contains the original application by Mr. Waller in 2017 to build the dock."

Deputy Boyson testified that Lake Wylie is owned by Duke Energy but that it is a public access lake. He also testified that Duke Energy owns the shore line of the lake. The public can access Lake Wylie but that state and local law controls conduct on the lake, citing examples such as boating under the influence and fish and wildlife ordinances which are enforced against the public accessing Lake Wylie.

Deputy Boyson was shown State's 2 and testified that this document was an approval letter from Duke Energy which granted the Selzer's permission to renovate the dock located on the property at issue. In addition, the application contains the original application by Mr. Waller in 2017 to build the dock. Waller sold the property to the Selzers in 2024. The original grant to Waller contained the following language: "Maintenance of the existing dock may include complete replacement within the same dimensions and footprint as the existing structure. The irrigation pump may not exceed 2 HP with the intake installed under the dock. All chain link fencing and old construction must be removed inside the lake boundary. Existing rip rap 10'x60', wood seawall 3'x50', sandy beach. Deputy Boyson testified that he relied on the documents that the

victims provided to show that the victims owned the property in question, including the rip/rap, retaining wall and dock upon which the Appellant was allegedly trespassing. Deputy Boyson testified that the Appellant was given a trespass notice in 2024 by Sergeant Wells and told not to go on the victim's property, rip/rap, and retaining wall. Deputy Boyson testified that the Appellant could go on the sand and water that represented the shoreline of the property.

Kera Selzer testified that she owned the property at 2906 Windswept Cove with her husband Dustin Selzer and that they moved into the property in August 2024. She testified that the Appellant was her neighbor and that when the Selzer moved in the Appellant 'busted through the gate with a cake'. She further testified that the Appellant came onto her property and sat on the rocks, dock, and beach behind her home. Ms. Selzer testified that the Appellant was told to ask (for permission) next time. The Appellant told Selzer that he (Appellant) could be here (i.e. the property) any time he wants. Ms. Selzer further testified that the first time the Seltzers told the Appellant not to come on the property was September 8, 2024 when he walked onto their property and sat on the sea wall. She also testified that the Appellant was given an official trespass notice warning on September 28, 2024 by law enforcement.

Ms. Selzer was asked who owns the sea wall and testified that she and her husband do. She testified that ownership of the wall was transferred to her and her husband. The court sustained the Appellant's hearsay objection to Ms. Selzer testifying that Duke Energy *told her* that she owned the property. Ms. Selzer testified that she and her husband told the Appellant they owned the seawall. Ms. Selzer testified that the Appellant's response was that he did not believe her. She testified that the water level of the lake was high on the 28<sup>th</sup> and that the Appellant was still continuing to walk on the property.

Ms. Selzer testified that she was given a notice of a compliant made by the Appellant regarding a fence the Selzers erected on the property that went into the lake on September 11, 2024. She stated Duke Energy told the Selzers to remove the fence. On Cross examination, Ms. Selzer testified that had the Appellant could access the shoreline, but that the Selzers' boat dock, rip/rap, retaining wall and the rocks are not the shoreline.

The State rested.

Bill Hipp was certified as an expert in surveying over objection by the State. This was allowed over the over the objection by the State. Mr. Hipp testified to the previously stipulated Defense exhibit 3. Mr. Hipp testified that Duke owned the lake and shoreline and that any property built on the lake or shore line needed applied for and permission granted by Duke, with subsequent ownership rights over those structures granted to the owners.

#### DIRECTED VERDICT MOTION:

At the close of the Respondent's case, Appellant moved for a directed verdict. Appellant argued that the Respondent failed to offer evidence that the Defendant's owned the property and that absent that evidence to the contrary, the property reverted to Duke Energy's ownership and thus was public land use property. Appellant contends that no one from Duke Energy testified that the property was transferred to the Selzers when they purchased the land in 2024 from Waller. Furthermore, the Respondent failed to enter a deed of transfer from Duke Energy directly to the Selzers, thus that the State failed to offer any proof that the property was the Selzers and not Duke Energy's. The Appellant argued that State's 2, the approval letter to renovate the dock, was an approval letter which merely includes the original 2017 documentation that that maintenance of the seawall, riprap, and existing beach that granted to the original owner Waller. In essence, the failure to prove evidence of a deed of transfer of the retaining wall, rip/rap, and dock to the Selzers meant that ownership of the property reverted to Duke Energy when Waller sold the property to the Selzer; and therefore, it was public land use property.

Viewing the evidence presented and all inferences that may be drawn therefrom in a light most favorable to the State, the court denied the motion for Directed Verdict. The court's concern in a Directed Verdict motion is with only the existence or non-existence of evidence, and not its weight. There mere fact that Duke Energy's testimony or other proof conveyance of the property documenting Duke's *specific* convenience was not elicited or could not be implied from State's 2 does not negate the testimony of the purchaser of the property that she did own the property. Ms. Selzer testified that she and

her husband were granted and subsequently remodeled the Dock subsequent to the approval letter from Duke. Appellant contends the absence of evidence by Duke Energy that of Duke's direct reconveyance of these items to the Selzers, requires a directed verdict. However, Ms. Selzer testified that the Selzers owned the dock, the rip/rap, seawall and rocks and that ownership was granted to the Selzers when they purchased the property. Ms. Selzer also testified that the Selzers sought permission to modify the dock from Duke Energy and that received approval (State's 2). She further testified that she was not authorized to build a fence that went into the lake and was found to be not in compliance for that structure, which was removed. Although the court sustained the hearsay objection and precluded Ms. Selzer from stating Duke Energy specifically *told* her that she and her husband owned the property, she testified that *she did own the seawall, rip/rap and dock and that the Selzers were responsible to maintain these structures*. The court found Ms. Selzer's sworn testimony of the purchase, maintenance, and ownership of the property by her and her husband is evidence of ownership, thus the court denied the motion for directed verdict.

JURY INSTRUCTIONS:

Appellant and Respondent consented to the Defendant's request to charge that were not included in the Court's proposed charge.

RENEWED MOTION FOR DIRECTED VERDICT

Denied for the reasons stated above which formed the basis for the denial of the Directed Verdict motion.

Respectfully submitted,

  
Jennifer S. Colton Magistrate

July 15, 2025