

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

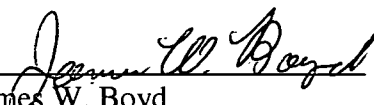
Case No. 2013-CP-46-01178

Christopher A. Wellborn, Appellant,
v.

The City of Rock Hill, Respondent.

NOTICE OF APPEAL

Christopher A. Wellborn appeals the Order of the Honorable John C. Hayes, III dated September 25, 2013 which affirmed the Order of the City of Rock Hill Municipal dated March 28, 2013. Appellant received written notice of the Order dated November 6, 2013 denying Appellant's Motion to Reconsider on November 14, 2013.


James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

November 20, 2013

Other Counsel of Record:

Christopher Barton, Senior Solicitor
Paul Knox Brown, Assistant Solicitor
201 E. Main Street,
3rd Floor,
Rock Hill, SC 29730
Attorneys for Respondent

RECEIVED

NOV 25 2013

SC Court of Appeals

JAMES W. BOYD

Attorney at Law

1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732

(803) 328-2600 Telephone

(803) 328-5747 fax

November 19, 2013

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211


RE: Christopher A. Welboun v. City of Rock Hill Municipal Court
C.A. No.: 2013-CP-46-01178

Dear Ms. Kitchings:

Enclosed is a Notice of Appeal, Proof of Service and the filing fee in the amount of One Hundred (\$100.00) Dollars for the above-entitled matter. Please file with the court and return a clocked copy to the Law Office of James W. Boyd in the provided self-addressed stamped envelope. Thank you for your attention to this matter.

With kind regards, I am

Sincerely,


James W. Boyd
Attorney for Appellant

JWB/klc

Enclosures

cc: Christopher Barton, Senior Solicitor
Paul Knox Brown, Assistant Solicitor
City of Rock Hill Municipal Court
John C. Hayes, III, Circuit Court Judge

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Case No. 2013-CP-46-01178

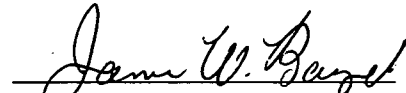
Christopher A. Wellborn, Appellant,
v.

The City of Rock Hill, Respondent.

PROOF OF SERVICE

I, James W. Boyd, certify that I served a Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to its attorney of record, Christopher Barton, Senior Solicitor & Paul Knox Brown, Assistant Solicitor, 201 E. Main Street, 3rd Floor, Rock Hill, SC 29730, on November 20, 2013.

I further certify that all parties required by Rule 203 to be served have been served.

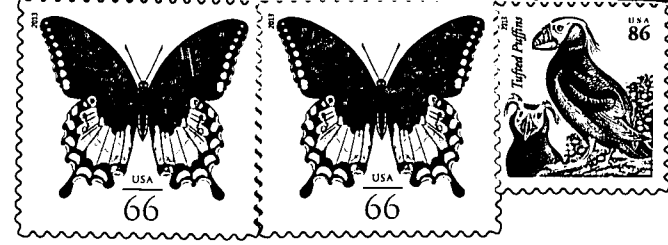
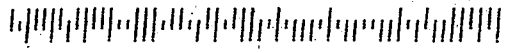

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1544 Ebenezer Road
Post Office Box 36425
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Attorney for Appellant

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James W. Boyd
PO Box 36425
Rock Hill, SC 29732

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The Honorable **Jenny Abbott Kitchings**
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)
_____)

IN THE ROCK HILL
MUNICIPAL COURT

ORDER
CONTEMPT OF COURT

THIS MATTER was called for hearing on March 25, 2013 on the Verified Petition Alleging Contempt of Court filed by the undersigned on or about March 6, 2013. Present were the Respondent, Christopher A. Wellborn and his counsel, James W. Boyd. The Petition specified in five numbered paragraphs facts which the undersigned alleged constituted contemptuous conduct by the Respondent during his representation of David H. Cullen on a charge of Reckless Driving on January 16, 2013. A copy of the Verified Petition is attached hereto and made a part hereof by reference marked Exhibit 1.

Counsel for the Respondent filed a Motion for Recusal on or about March 20, 2013, mailed on March 21, 2013 and it was received by the Court on Friday, March 22, 2013. The Motion is attached hereto and made a part hereof by reference marked Exhibit 2. Mr. Boyd was allowed to argue his Motion and that Motion was denied.

Counsel for the Respondent called two witnesses; to-wit, the Respondent Christopher A. Wellborn, Esquire and James Morton, Esquire. Mr. Wellborn responded to each of the issues of alleged contemptuous conduct outlined in the Verified Petition, after introducing himself and reviewing both his experience as a criminal defense attorney and his membership in various legal organizations. Mr. Wellborn admitted that he had received notice that his case was set for trial on January 16, 2013 at 9:00 a.m. He testified concerning various conversations that he had with Anna Timothy Miller, the Rock Hill City Solicitor assigned to his case. Mr. Wellborn testified further that he did not get a call from Ms. Miller that the case would be called and as a result, he scheduled car repairs in Charlotte, North Carolina on the morning of January 16, 2013. There was no testimony offered from Mr. Wellborn that he, pursuant to numerous Orders of the Rock Hill Municipal Court (see composite Exhibit 3 attached hereto and made a part hereof by reference), sought or received protection for either he or his client on the date of his client's trial.

Mr. Wellborn testified that he, in fact, had a conversation with Anna T. Miller at approximately 10:00 a.m. on January 16, 2013. Mr. Wellborn confirmed that Ms. Miller advised him that she was calling at the behest of Judge Lenzi who requested that she contact Mr. Wellborn in order to determine where he was and why neither he nor his client were present to pick a jury. Mr. Wellborn took issue with Ms. Miller's recollections of that conversation which

were outlined in an Affidavit submitted by Ms. Miller with the Verified Petition. Although Mr. Wellborn acknowledged that the possibility of a "PCR" was raised in that conversation, Mr. Wellborn testified that the remark was not intended to be disrespectful or as a threat.

The Defendant admitted the Court inquired of him outside of the jury's presence as to why he was more than two hours late for his Jury Trial nor did he deny stating in response to that question "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here." Mr. Wellborn concluded that he meant no disrespect by his response, that since the question was posed by the Court, he was required to answer the question in an honest and forthright manner and that is all that he did.

Again, the Defendant admitted he requested permission from the Court to explain to the jury during his Opening Statement why neither he nor his client were present for jury selection. The Respondent and the Court agree that request was denied and Mr. Wellborn was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence. After Opening Statement it is agreed that Mr. Wellborn asked permission to go into the hallway so as to determine whether or not his client had arrived, and that request was granted. However, as he was leaving the courtroom and in the jury's presence, he once again requested permission to explain to the jury why he and his client were late for Court. Mr. Wellborn's explanation as reflected by his testimony was that he believed that the Court had limited his ability to make such comments in the jury's presence only during Opening Statement.

Finally, the Verified Petition accuses the Respondent of disobeying the Court's Order to cease making facial expressions and mutterings under his breath in response to adverse rulings regarding the introduction of evidence. Mr. Wellborn did not deny that he was admonished by the Court to stop making facial expressions and mutterings and had no recollections of making facial expressions or mutterings.

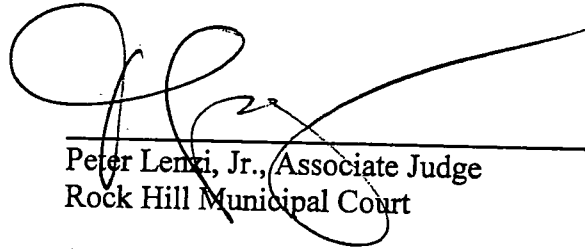
The Court finds the Respondent in contempt of Court concerning his conduct on two matters raised by the Verified Petition alleging Contempt of Court. The Court finds that his remark to the Court when asked why he was more than two hours late, to-wit: "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here" was, at best, impudent and, at worst, insolent and impertinent. Such conduct has a chilling effect on the administration of justice and the judicial process. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00

The Court find the Respondent in contempt of Court concerning his violation of the Court's Order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury. The Court's admonition to counsel was clear, Mr. Wellborn nevertheless asked again to explain why he and his client were late for Court while exiting to see if his client had arrived and this request was made in the jury's presence, in clear violation of the Court's Order. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00

EXHIBITS:

1. Verified Petition Alleging Contempt of Court
2. Motion for Recusal
3. Orders of The Rock Hill Municipal Court

DONE AND ORDERED this 28 day of March, 2013.



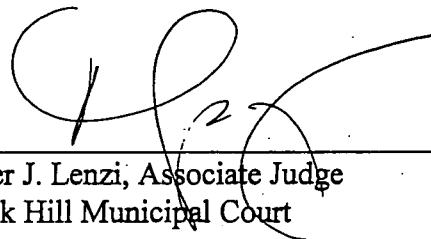
Peter Lenzi, Jr., Associate Judge
Rock Hill Municipal Court

CC: James W. Boyd, Jr., Attorney for Respondent

that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."

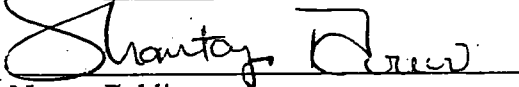
4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for Court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

5. Mr. Wellborn disobeyed a Court ruling with his behavior. During both Mr. Wellborn's cross examination of the City's chief witness and his direct examination of the Defendant, Mr. Wellborn was observed to be making facial expressions and mutterings under his breath in response to adverse rulings on objections raised by the Solicitor. The Court admonished Mr. Wellborn in front of the jury to refrain from the gestures and mutterings. Notwithstanding the Court's instructions, Mr. Wellborn continued to make facial gestures and continued to mutter under his breath in reaction to adverse evidentiary rulings on at least one other occasion.



Peter J. Lenzi, Associate Judge
Rock Hill Municipal Court

Sworn to and subscribed before
me this 16th day of March, 2013.



Notary Public

State of South Carolina

My commission expires: 9-1-2016

F.N.1 (For purposes of context, it must be noted that the undersigned in his capacity as Associate Rock Hill Municipal Court Judge conducts a Docket Call each month, usually on the Wednesday or Thursday before the beginning of the Jury Trial term on the following Monday. Counsel is routinely reminded that unless their attendance has been excused by either Judge Modla or Judge Lenzi that counsel is expected to be present with the Defendant on the assigned date and time that the matter is scheduled for Jury Trial. In addition to verbally reminding counsel of their

obligation to be present at the appointed time, memos have been sent out over the past several years. Attached hereto and made a part hereof by reference are memos dated September 3, 2008 and January 23, 2012 as well as notices originally setting the case for trial on December 7, 2012 and continuing the case to January 16, 2013 at 9:00 a.m. all of which address issues pertinent to these proceedings.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)
_____)

IN THE ROCK HILL
MUNICIPAL COURT

AFFIDAVIT

On January 16, 2013 at approximately 10:00 a.m. I contacted Mr. Wellborn in regard to a trial scheduled that day. Mr. Wellborn at that time was in North Carolina having his car serviced. The Court had instructed me to contact Mr. Wellborn regarding his absence. Pursuant to my conversation Mr. Wellborn indicated that if the case proceeded that it would be appealed or in the alternative grounds for a PCR. It is important that the defendant was also absent. The case proceeded to be called and a jury was struck.

Anna Timothy Miller
Anna Timothy Miller
Rock Hill City Solicitor

Sworn to and subscribed before
me this 6th day of March 2013.

Shantay Crew

Notary Public

State of South Carolina

My Commission Expires: 9-1-2016

(iii) is known by the judge to have a more than a de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Rule 501 SCACR.

The Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) because he is likely to be a material witness in the proceeding. This is an action for criminal contempt. The respondent has the Sixth Amendment right to confront the witnesses against him. As a material witness, Judge Lenzi will be subject to cross examination. A judge cannot be a witness, be subject to cross examination and still act as an impartial judge in the same matter. The Honorable Jane Modla is disqualified under Canon 3.E.(1)(d)(i) because she is the Chief Judge of the Municipal Court and, in that capacity, is the supervisor of Judge Lenzi. An additional ground for the recusal of Judge Modla is that she may have knowledge of the facts of this case in her capacity as Chief Judge. Respondent would show that it is in the interest of justice that an impartial York County Magistrate be chosen to hear this matter.

Respectfully submitted,

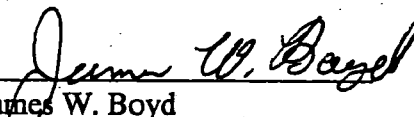

James W. Boyd
Attorney for Respondent
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
Phone (803) 328-2600
Fax (803) 328-5747

EXHIBIT 3

MEMORANDUM

TO: Defense Attorneys practicing in the Court
Chief John Gregory
Chief Frank Zebedis (Winthrop)
Captain Steve Parker
Captain Mark Bollinger
Captain Chris Watts
Lt. David Biggers
Sgt. Chris Hefner

CC: Diane Anderson, Clerk of Court
Chris Barton, Solicitor/Staff
Court Staff

FROM: Judge Jane Pittman Modla

DATE: January 23, 2012

RE: New Jury Trial Procedures

Please see the attached document in regards to the New Jury Trial Procedures that will be used in the Rock Hill Municipal Court.

If you have any questions, please call Shantay Greer at 803-329-8796.

In keeping with the Chief Justice's Order requiring the Summary Courts to dispose of all jury trials within 120 days of the filing of the charge, this Court must implement a **new scheduling procedure**. Henceforth, the Court will set the term of trial for every case, the Solicitor's Office will set the date certain during that particular term. The goal is to have all cases on a jury trial docket and none languishing in la-la land.

Therefore, effective immediately, jury trial requests will automatically be placed on the jury trial docket approximately TWO MONTHS out and the Court will send notice for the particular term immediately so that you can give your clients and witnesses plenty of notice. After the exchange of discovery and plea negotiations, the Solicitor will set a date certain for the trial during that term. That notice will go out approximately two weeks prior to trial. Any cases that cannot be heard during that term will automatically roll over to the next term - with the idea that no case will be continued more than two terms and will be disposed of in the required 120 days. The cases pending prior to January 2012 will be added slowly to each term, as well, until the running docket is current.

The Pre-Trial Telephone Conferences will continue to be held the Thursday prior to the jury trial term. You or someone in your office **MUST** participate in this conference and **MUST** inform the Court at that time :

- 1) IF you no longer need a jury because the disposition will be a guilty plea, PTI, a nolle prosee, etc.
- 2) IF you need a continuance and why.
- 3) IF you have a lengthy pre-trial motion that can be heard prior to the jury strike.
- 4) IF you have discovery issues.
- 5) ANYTHING else that will help the Court judicially and economically dispose of the case.

The Court is trying to avoid requiring the mandatory appearance of the solicitors, attorneys, witnesses and defendants at pre-trial conferences. If both sides are prepared at the telephone conferences we should be able to avoid this.

Guilty plea affidavits and guilty plea appearances can be taken at any court session prior to the trial date (as opposed to the Friday before) as long as the Court knows ahead of time that you will not need a jury. The goal is to make sure the Court does not waste your tax dollars paying for a jury that you don't use. Also, if your client needs time to pay we must be advised it is a definite plea prior to the trial date. Furthermore, the cases can no longer be continued waiting for the guilty plea to occur. Attorneys, if your client is not in Court on the trial date and no plea has been entered and no affidavit is in the court file, then a BENCH WARRANT may be issued for failure to appear. Likewise, the diversion programs. If your client is going to participate, we need confirmation of the appointment date by the trial date. If we have no confirmation, and your client is not in Court, a BENCH WARRANT may be issued for failure to appear.

In order to help us all adjust to this new and fast-paced schedule, the Court will not schedule any attorney cases for the February, 2012 jury trial term. Hopefully this system will help us comply with the Chief Justice's Order without being too burdensome for all concerned.

MEMORANDUM

TO: Defense Attorneys
FROM: Judge Jane P. Modla
RE: Jury Trial Docket
DATE: September 3, 2008

Dear Defense Attorneys,

This is to inform you that I am making some changes in scheduling Jury Trials in the Rock Hill Municipal Court. I am reducing the number of cases on each days docket to less than 20. Theoretically, they will be divided up equally between the 3 Solicitors. I will no longer number the cases, but generally the older cases will be called first. You may participate in the ordering of each days cases during the telephone conference with Judge Lenzi and the Solicitors. This conference will take place the week before the term.

Any requests for a continuance must still be in writing and will be discussed during the conference. Unless you have written approval from Judge Lenzi or myself, your client must appear in Court on the given Court day and time. I will no longer accept guilty plea affidavits except in unusual circumstances.

As always, my goal is to move these cases using our time and tax dollars as efficiently as possible. If you have any questions, I can be reached at 329-5694.

Thank you for your cooperation.

cc: City Solicitors
Judge Lenzi

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: September 26, 2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL , SC 29730

REF:

Defendant: DAVID HAROLD CULLEN
Citation Number: 020889FT
Charge: RECKLESS DRIVING


Dear: CHRISTOPHER A. WELLBORN

We are in receipt of your request for a Jury Trial in the above-referenced case. This case will be called for Jury Trial during the DECEMBER 3 - DECEMBER 7, 2012 term of Court. You will receive a date certain for the Jury Trial once the Solicitor assigned to the case has provided the Court the date. Unless your appearance has been excused by either Judge Modla or Judge Lenzi, your client must appear.

If you will not need a jury on the trial date you need to let the Judge know at the Pre-Trial Conference.

Thank you for your attention to this matter.

Sincerely,



Shantay R. Greer
R.H. Municipal Court Assistant

cc: City Solicitor

For questions, please contact: Shantay at 329-8796

City of Rock Hill Municipal Court
120 E. Black Street
Rock Hill, SC 29730

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: 12/20/2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL , SC 29730

N O T I C E O F C O N T I N U A N C E

Defendant: DAVID HAROLD CULLEN

Citation Number: 020889FT

Charge: RECKLESS DRIVING

This letter has been sent to notify you that the court case referenced above has been continued until January 16, 2013 at 9:00 AM in the Rock Hill M Court House, 120 E. Black Street, Rock Hill, SC, for reason listed below:

JT

Thank you,



Clerk of Court