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DEC 23 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Judge Hayes, J. Mark II

Case No. 2013CP2304330

Tommy J. Moore.....Respondent,

v.

Thomas T. Perkins,.....Appellant.

[INITIAL] BRIEF OF APPELLANT

Thomas T. Perkins  
Apartment: 2G

415 North Main Street  
Greenville, South Carolina 29601  
(864) 630-6363  
*Pro Se*

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Arguments

1. Criminal convictions are proved by **BEYOND A REASONABLE DOUBT**, not by **A PREPONDERANCE OF THE EVIDENCE**
2. The defendant did not motion to require the Plaintiff to elect on the trial, to proceed on the ground of breach of contract or to proceed on tort.
3. Although there were eight corroborating exhibits, which could substantiate another error of fact, In addition to Plaintiff's testimony even if the Defendant had more witnesses it does not mean the Defendant's perception of the Truth was better.
4. In contrast to Plaintiff's testimony, eight exhibits, and Plaintiff catching the Defendant In numerous contradicting statements of the facts during the bench trial, Plaintiff introduced proper evidence in exhibits 2 through 7 of facts that Defendant caused Simple Assault and Battery regarding two pokes, then aggravated the damages through stare-downs over a period of approximately ten months. Defendant did not introduce any proper evidence that tends to controvert the facts of poking the Plaintiff's face and arm nor

stare-downs other than denials. To the contrary evidence of the Defendant's behavior should have upheld the truth of the Simple Assault and Battery.

5. Witness(es) for the defendant did not corroborate Plaintiff's claims although Plaintiff during cross examination of witness Michael R[au] proved that this witness's opinion is hearsay because Michael R[au] was not even present during either the presumption of fact of Defendant having AIDS, the Simple Assault and Battery incident of two pokes, or the stare-down stalkings; neither was the other witness, the fiancée of the Defendant, however the magistrate allowed the simple presence of these witnesses and their testimonies to be considered as greater evidence even though they were biased and hearsay. One witness is the fiancée of the defendant, the other witness dislikes the cause of the presumption of fact: Steve Tipton.

TABLE OF AUTHORITIES

CASES

Shramek v. Walker, 152 S.C. 88, 149 S.E. 331 (Supreme Court of S.C. 1929).

Hiers v. South Carolina Power Co., 198 S.C. 280, 17 S.E.2d 698 (Supreme Court of S.C. 1941).

Funderburke v. Johnson, 243 S.C. 430, 171 S.E.2d 597 (Supreme Court of S.C. 1969).

Mellen v. Lane, 659 S.E.2d 236 (S.C. Ct. App. 2008).

RULES

802 South Carolina Rules of Evidence, adopted effective 09/03/1995.

OTHER AUTHORITIES

United States Constitution, Article 3, Section 2 (2)  
Amendment VII, and/or  
South Carolina Constitution, Article 3, Section 2 (2)  
Amendment VII.

STATEMENT OF ISSUES ON APPEAL

- Are there ERRORS OF FACT, ABUSE OF DISCRETION? Are there ERRORS OF LAW, PREJUDICE OF THE PLAINTIFF?
- Was the Defendant's presumed disease a considered deadly weapon per se?
- Did the Defendant commit Simple Assault and Battery per poke?
- Were the nominal physical damages aggravated by the defendant?
- Are the damages sustained by the Plaintiff proximately caused by the Defendant?

- Is there a causal relationship between Plaintiff's damages, aggravation of those damages by the Defendant, and Defendant's malicious acts and/or negligence?
- Are the damages needed to win a judgment for Simple Assault and Battery for this case although S.C. Law indicates otherwise in Mellen v. Lane, 659 S.E.2d 236 (S.C. Ct. App. 2008) on page 13 [of brief submitted to Circuit Court on 09/12/2013]?
- Did the Magistrate Court err and abuse its discretion by dismissing appellant's case for Simple Assault and Battery and/or Simple Assault and Battery with a deadly weapon per se, since appellant proved a probable tort in his pleadings submitted, at trial, and testified in court as to experiencing probable injuries thereby establishing sufficient grounds to impose a judgment at least by Preponderance of the Evidence for monetary compensation per each Simple Assault and Battery **and/or** if evidence is deemed as clear and convincing, award punitive damages, as an injunction for up to 180 days in jail, 30 days per p.poke, and both requested to be trebled.
- Did Magistrate have jurisdiction for the punitive damages of jail time for the defendant, as indicated in Plaintiff's pleading on pages 3 and 13 of S.C. Code: 23-3-560, [of initial pleadings submitted to Magistrate: Gabriel Gibson, Yolanda] and as requested for jail time at trial?
- Did Circuit Court Judge J. Mark Hayes violate United States Constitution/South Carolina Constitution of Article 3, Section 2 (2) by not enforcing a jury trial? Same with Amendment VII?
- Did Magistrate: Gabriel Gibson, Yolanda violate United States Constitution/South Carolina Constitution of Article 3, Section 2 (2) by not enforcing a jury trial? Same with Amendment VII?

STATEMENT OF THE CASE

On 08/22/2013, Thomas Perkins, appellant filed and appealed Magistrate Civil 910: Civil Case No.: 2013CV2311002007 against defendant: Tommy Moore. Moore denied alleging innocence and countered with Perkins was stalking him, not that he was stalking Perkins. The appeal was

dismissed by Judge: Hayes, J. Mark II for reason(s)- not Rule 40J. No written notice of ruling was ever received by Perkins of who(m) requested it several times. Perkins did not appeal for reason of rule 40J, as seen in SCRCP rule 40 J. However, Judgment by Hayes, J. Mark II was entered on 11/11/2013.

Moore discontinued stalking, but only after being served by Magistrate Court. Perkins never stalked Moore, who uses this clever technique to get out of troubles, like he did when Barbara, a fellow resident, reported Moore for rape on numerous occasions. Possible Example: he didn't rape her, she raped him. Deny, Deny, Deny. At the hearing with his non-lawyer, legal advisor, Michael P. Rau, Tommy Moore said, "I'm not stalking him, he's stalking me, and I have witnesses."

Thomas Perkins, After providing the case regarding Shramek v. Walker, of the ninth paragraph, fourth sentence regarding number of witnesses v. truth, only heard Judge: Hayes, J. Mark II say to Tommy Moore, "I [Judge: Hayes, J. Mark II] believe you, you [Tommy Moore] are telling the truth."

FACTS

See facts in initial pleadings submitted to Magistrate: Yolanda Gabriel Gibson, as indicated in her answer received by Judge Horace Butler. J on or about August 12, 2013, signed by Judge Gaybriel Gibson on or about 08/19/2013. Pleadings were hand delivered to Circuit Court by Perkins sometime around 09/12/2013.

Arguments

I hereby affirm that I experienced about ten months of stalking after Tommy Moore committed Simple Assault and Battery on 08/23/2012. I reported to City Police. Moore got on his knees and begged saying it was an accident, he wouldn't do it again, he was sorry, and not to arrest him. Police let

him go. Then he began stalking me. I have silently suffered more than enough by his hand(s). I seek justice and refrain from giving him corporal punishment although he deserves more than that. I mean really, come on.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

Respectfully submitted,

December 18, 2013

/s/ Thomas T. Perkins  
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South Carolina Court of Appeals  
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P.O. Box 11629  
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