

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4603719

City of Rock Hill

Jerry D Usher

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

ORDER

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

RECEIVED

APR 15 2014

SC Court of Appeals

8/John C Hayes, 999

2049

2/19/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **February 20, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **February 20, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Edward Barton 201 East Main Street 3Rd Floor
Rock Hill, SC 29730

Harry P. Collins PO Box 2541 Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Defendant being under arrest at the time and taken pursuant to the South Carolina Implied Consent Law (§ 56-5-2950, South Carolina Code of Laws, 1976, as amended).

The blood sample at issue was taken pursuant to a South Carolina Law Enforcement Division – Urine/blood collection report. This report, signed by a City of Rock Hill police officer, stated that the Defendant was arrested on July 13, 2012, at 0001 a.m., and the blood test was taken on July 13, 2012, at 2001 a.m. The report also indicates that the Defendant was under arrest for one of a number of offenses, including driving under the influence. In sum, the sample in question was obtained solely on the basis that the taking of the sample was authorized by South Carolina Statutory law.

The City argues several alternative grounds to support the authorization of the taking of the sample, but each ignores the factual basis on which the sample was obtained. The sample was not taken under any common law theory and the taking of the sample cannot be dressed up in new clothes to salvage a sample taken solely pursuant to presumed statutory authority for obtaining the sample.

It must also be observed that the record does not reflect that positions set forth at numbers four through nine were argued to the Court below and were clearly not ruled on by the trial judge. Without any record to support that these issues were raised in the Court below and in the absence of the trial court addressing any of the asserted grounds, this Court cannot assign error to these claims. If not made below, they cannot be made on appeal for the first time. If made in the Court below, the record contains no ruling on these arguments and no motion before the Court below asking for specific rulings on these grounds.


In sum, a City of Rock Hill police officer obtained a sample of Defendant's blood in North Carolina upon representation to the North Carolina medical provider that Defendant was

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under arrest. This was done by the officer solely based on South Carolina statutory law. The sample was improperly obtained as held by the Court below.

In essence, the City wants a mulligan. Its initial attempt has landed in the rough and it argues it may now tee it up again and take a second whack. Therefore, the City of Rock Hill's Appeal is DISMISSED.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

#3

February 19th, 2014
York, South Carolina

FORM 4

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 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

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Submitted by: The Court

Attorney for: Plaintiff Defendant
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s/John C. Hayes, III
 Circuit Court Judge

2049

3/10/2014

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **March 10, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **March 10, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Edward Barton 201 East Main Street 3Rd Floor
Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

Harry P. Collins PO Box 2541 Rock Hill, SC 29732

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

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Municipal Court. In the Order below is the noted observation by the Court in the February 19, 2014 Order, is perhaps confusing and was certainly not necessary for the Court's ruling in said Order. The observation was simply made since the record, unobjected to by the City, did not reflect that the Municipal Court had ruled or even considered arguments the City presents on appeal.

If the City needed a better record it was incumbent on it to seek the same. The record (file) in this case contains no motion that the Court remand the case for a more complete or more accurate return. The only party that would know it would rely on unaddressed matters is the City. The City accepted the record as present to this Court and cannot now, again, request a mulligan.

The City's Motion to Alter or Amend this Court's order of February 19, 2014, is denied.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #62

March 6th, 2014
York, South Carolina