

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

Appeal Case No. 2013-002580

Christopher A. Wellborn, Appellant,

v.

The City of Rock Hill, Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

The facts in the Respondent's brief are inaccurately stated. On page (4) four of the Respondent's brief the following is stated, "After a warning from the Court after he apologized to the jury for being late, Mr. Wellborn completed his open". The testimony from the contempt hearing contains no record of a warning from the Court during Mr. Wellborn's opening. The Contempt Order for contempt of court does not reference such a warning. There is no record that such a warning occurred.¹ Referring a conversation with Anna Miller, the Solicitor on the case, the Appellant testified that if the case was going to trial, she has informed him that she would let him know.²

A. **THE COURT ERRED IN FINDING THE APPELLANT IN CONTEMPT WHEN THERE WAS NO RECORD OF THE PROCEEDINGS.**

The Respondent stated in its brief that there was evidentiary support in the Trial Court's decision. There was no record of the trial proceedings so there was no evidentiary support for the Court's decision. In a case in which there is a record of the trial proceedings there can be no dispute about what conduct occurred although there may be a question of whether the conduct constitutes contempt. In the present case there was no record of the Appellant's alleged disobedience to a court order. There was a factual dispute as to both the nature of the order and the conduct engaged in by the Appellant. Therefore there was no evidentiary support on the records for the decision.

¹ Although not an issue in this appeal, it was disputed whether or not the Appellant was actually notified of the trial date. Although the Order of Contempt refers to numerous orders of the Rock Hill Municipal and refers to the composite exhibit 3, the exhibit 3 contains a memorandum. Exhibit 3 furthermore sets forth that the Solicitor's office will set the date certain for that particular term. Contempt of Court Order Exhibit 3.

² Transcript p. 20, line 14- P. 21, line 1.

B. THE TRIAL COURT JUDGE ERRED IN FAILING TO RECUSE HIMSELF FROM HEARING THIS CASE.

The Appellant does not disagree with the Trial Court's order that neither a Summary Court Judge nor any other members of the unified judicial system are to be prohibited from punishing conduct as contemptuous when it violates a direct order of the court. The issue in this case is not whether it is proper for the court to punish for contempt but whether or not there was a proper determination that the contempt actually occurred. Since there was no record of the trial proceedings the Trial Judge was the judge of the factual issue as to whether or not the contempt occurred. No witnesses testified as to the response of the Appellant's alleged contemptuous action. The Trial Judge based his decision on his observations. In the present case there was a factual dispute between the Trial Judge and the Appellant, who is an officer of the court, as to what occurred. By making a factual determination based on a disputed fact which he witnessed, the Trial Judge violated every tenant of fairness. The Appellant was charged with criminal contempt. The Appellant was unable to exercise his Sixth Amendment right to confrontation because the Trial Judge did not give sworn testimony and avail himself for cross examination. Without a record of the trial proceedings and without the ability to confront the witnesses against him the appellant was denied his right to present a defense. The Sixth Amendment of the U.S. Constitution as well as Article 1, Section 14 of the South Carolina Constitution, provides for the right of an individual to be confronted with the witnesses against him. Article 1, Section 14 of the South Carolina Constitution further provides that an individual has the right to be fully heard in his defense by himself or by Counsel or by both. By acting as the person making allegations and at the same time acting as the binder of fact the trial judge denied the Appellant the

confrontation and his right to present a defense. The Trial Judge should have recued himself so that an impartial judge could have heard the facts and made a determination about the factual issues of this case.

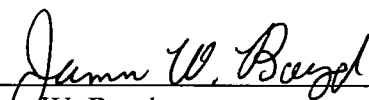
C. THE ALLEGED CONDUCT OF THE APPELLANT DID NOT COME WITHIN THE PREVIEW OF THE SOUTH CAROLINA CODE SECTIONS 22-3-950 OR 40-5-510.

The alleged conduct of the Appellant did not come within the preview of the South Carolina Code §22-3-950 or 40-5-510. In its brief the Respondent quotes State v. King, 306 S.C. 335, 412 S.E. 2nd 375 (S.C. 1991) that, “conduct which tends to bring authority and the administration of the law into disrespect.” The Respondent further quotes United States v. Peoples. 698 F.3d 185 (4th Circ. 2012) that, “Courts repeatedly have found that offensive words directed at the court may form the basis for a contempt charge.” The Respondent’s brief points out that offensive words directed to the Court may form the bases for a contempt charge. The Respondent’s brief points out that in the Peoples case the contemptuous conduct was an outburst that was threatening and directed at the court. The conduct in Peoples is not relevant to this case. There was no allegation that the Respondent directed offensive words at the Court or engaged in an outburst or made any threats at the Court. The Respondent’s brief fails to address the issues made in Appellant’s brief that addressed why Respondent’s alleged behavior did not violate §22-3-950 or 40-5-510.

CONCLUSION

For all the foregoing reasons the Appellant request that this case be reversed.

Respectfully Submitted,



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