THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

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2013-CP-28-358

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Richard Hough,

Appellant,

vs.

Angela Hough

Respondent.

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# APPELLANT'S INITIAL BRIEF

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TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases:**



**Rules:**

## STATEMENT OF ISSUES ON APPEAL

**I. DID THE LOWER COURT ERR BY FAILING TO SET ASIDE THE ORDER OF DISMISSAL IN THE MAGISTRATE COURT WHICH PREVENTED A PRIVATE CITIZEN, APPELLANT, FROM PERSONALLY PROSECUTING A COURTESY SUMMONS SIGNED BY A MAGISTRATE JUDGE?**

## STATEMENT OF CASE

On February 3, 2011 Appellant Richard Hough signed an affiant warrant and requested that a courtesy summons be issued for petit larceny against the Respondent Angela Hough. The Honorable Eugene Hartis, a magistrate judge in Kershaw County signed the courtesy summons and it was served on Respondent on February 9, 2011. On the date of the jury trial, April 12, 2013, Respondent, through defense counsel, made a motion to dismiss for lack of prosecution and the motion was granted by the Honorable William D. Corbett. Appellant filed a Notice of Appeal and a hearing was held on October 16, 2013 in front of the Honorable Roger M. Young. On December 4, 2013, an Order Affirming Dismissal was issued by the Honorable Roger M. Young. Appellant received written notice of the entry of the order on December 12, 2013. Appellant Richard Hough timely filed this Notice of Appeal from the order affirming dismissal on January 10, 2014.

## STATEMENT OF FACTS

On January 23, 2011, Appellant Richard Hough witnessed Respondent Angela Hough removing "No Trespassing" signs Appellant had purchased and placed on the property that he owned jointly with Albert Hough. Upon witnessing Respondent remove the signs from the property, Appellant signed an affiant warrant for petit larceny against Respondent and requested that a courtesy summons be issued by the magistrate in Kershaw County. Judge Eugene Hartis signed the courtesy summons and it was served

on Respondent on February 9, 2011. Respondent requested a jury trial in the matter. The solicitor for the County of Kershaw refused to prosecute the courtesy summons. Appellant was then denied the opportunity to retain private counsel to assist in the prosecution of the courtesy summons against Respondent. As a result, Appellant had no choice but to pursue the matter pro se. At the trial on April 12, 2013, Respondent was represented by attorney William Tetterton. Prior to trial, Mr. Tetterton made a motion to dismiss for lack of prosecution. This motion was almost solely based on *In re Richland County Magistrate's Court*, 389 S.C. 408, 699 S.E.2d 161, (2010). The Honorable William D. Corbett heard oral arguments on the motion to dismiss and ultimately ruled in favor of Respondent, dismissing the action for lack of prosecution. Appellant appealed the court's decision. The Honorable Roger M. Young agreed with the lower court and issued an Order Affirming Dismissal on December 12, 2013.

## ARGUMENT

### I. THE LOWER COURT ERRED BY FAILING TO SET ASIDE THE ORDER OF DISMISSAL IN THE MAGISTRATE COURT WHICH PREVENTED A PRIVATE CITIZEN, APPELLANT, FROM PERSONALLY PROSECUTING A COURTESY SUMMONS SIGNED BY A MAGISTRATE JUDGE.

South Carolina Code of Laws § 22-5-115 sets forth the guidelines and requirements for a courtesy summons to issued based on a sworn statement of an affiant who is not a law enforcement officer. This statute allows non-law enforcement individuals to give a sworn statement to a summary court judge establishing probable cause that an alleged crime was committed. If the summary court judge finds that there is probable cause, they must then issue a courtesy summons to appear for trial and that summons must be personally served upon the accused. S.C. Code Ann. § 22-5-115 (2007). "The law recognizes the right of natural persons to act for themselves in their own affairs, although

the acts performed by them, if performed for others, would constitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer." *State ex rel. Daniel v. Wells,* 191 S.C. 468, 480, 5 S.E.2d 181, 186 (S.C. 1939) citing *Clark v. Austin,* 340 Mo. 467, 101 S.W.2d 977, 982 (Mo. 1937). *In re Richland County Magistrate's Court* restricts a corporation or an employee of a corporation from representing the corporation in a court proceeding. In that case, the Court determined that it was the unauthorized practice of law for an agent or employee to represent the corporation in court. *In re Richland County Magistrate's Court* 389 S.C. 408, 699 S.E.2d 161 (S.C. 2010).

The case at hand is distinguishable from *In re Richland County Magistrate's Court* because the Appellant is not a corporation and the underlying case was initiated through a courtesy summons. Appellant is an individual and filed an affiant warrant with the Kershaw County Magistrate's Court as an individual. The affidavit was in relation to personal property, in particular to some "No Trespassing" signs that were purchased by Appellant and placed on some trees located on property owned by Appellant. The affiant warrant and courtesy summons that followed were properly filed and served, in accordance with S.C. Code Ann. § 22-5-115 (2007). At trial, Respondent, through counsel, made a motion to dismiss the charge. The foundation of that motion was the argument that *In re Richland County Magistrate's Court* should be directly applied and the case should be dismissed because an individual is not permitted to prosecute a criminal case. Respondent's counsel argued that as a result of that ruling, the sole responsibility for prosecuting criminal cases in South Carolina is on the Solicitor's office. The Solicitor's office refused to participate in the prosecution of this case on behalf of the

Appellant, even after the Appellant was allowed to swear out an affiant warrant and a courtesy summons was issued. Appellant had no choice but to prosecute the case himself.

While the decision in *In re Richland County Magistrate's Court* does not directly apply to the case at hand, the lower court here relied entirely on that opinion. That opinion centered around whether or not a non-lawyer representative for a corporation was participating in the unauthorized practice of law by prosecuting bad checks in magistrates court. The dissenting opinion disagreed with how the majority viewed the unauthorized practice of law. In discussing what constitutes the practice of law, the minority opinion, authored by Justice Hearn and with which Chief Justice Toal concurred, Justice Hearn stated "Today, in a marked departure from prior jurisprudence of this Court as to what constitutes the practice of law, the majority focuses on the status of the individual presenting the evidence rather than on the character of the services rendered,...". *In re Richland County Magistrate's Court*, 389 S.C. 408, 699 S.E.2d 161, (2010) Justice Hearn goes on to explain,

> "...non-lawyer representatives are responsible for marshalling and presenting evidence the corporation has against the defendant. The character of these services is more similar to those performed by a fact witness testifying at trial, rather than to services provided by an attorney or a solicitor. Significantly, the compilation, maintenance, and presentation of evidence does *not* require legal analysis or prosecutorial discretion."

*Id.* at 417. Furthermore, the South Carolina Supreme Court has permitted non-attorney police officers to prosecute criminal cases and traffic offenses in magistrate court. *See State v. Messervy,* 258 S.C 110, 187 S.E.2d 524 (1972) and *State ex rel. McLeod v. Seaborn*, 270 S.C. 696, 244 S.E.2d 317 (1978). In those cases the prosecuting officer was considered a State actor, however the character of the services being rendered

was the same as the character of services being rendered by Appellant in this situation. As a matter of fact, law enforcement officers are allowed to prosecute tickets in which probable cause was not found by an independent magistrate prior to the arrest. *See* S.C. Code of Laws Ann. §56-7-10. In this case, Appellant actually obtained the courtesy summons only after probable cause had been found by a magistrate. Appellant did not hold himself out to the public as an attorney, he was merely an individual pursuing a lawful action in a lawful manner in accordance with South Carolina Code of Laws § 22-5-115.

The majority opinion in *In re Richland County Magistrate's Court* also emphasizes the difference in a civil proceeding versus a criminal proceeding. The majority in that case points out that the prosecutor has unfettered discretion to prosecute a criminal case. *In re Richland County Magistrate's Court*, 389 S.C. 408, 411, 699 S.E.2d 161, 163, (2010). That is not in question when the criminal case is brought in General Sessions court. However, as Justice Hearn points out in the minority opinion, citing *State v. Duncan,* 269 S.C. 510, 514, 238 S.E.2d 205, 207 (1977), Magistrate's court is not a court of record and is summary by its nature. *In re Richland County Magistrate's Court*, 389 S.C. 408, 419 699 S.E.2d 161, 167, (2010). The Solicitor's office is also under no duty to prosecute a case brought under the original jurisdiction of the magistrate's court, therefore it is not required that a State prosecutor prosecute criminal misdemeanor charges in magistrate's court. *Id.*

The majority in *In re Richland County Magistrate's Court* believes with certainty that "the interests of the private party will influence the prosecution" and that allowing an individual to prosecute in magistrate's court "...would do irreparable harm to our

criminal justice system." 389 S.C. *In re Richland County Magistrate's Court*, 389 S.C. 408, 412, 699 S.E.2d 161, 163. (2010). Justice Hearn, however, disagreed in her dissenting opinion by stating, "While I am mindful of the pitfalls that could potentially accompany the decision to allow representation by non-lawyers in this context, these concerns are, in my view, wholly speculative." *Id.* at 419. Even if a non-attorney individual is presenting the evidence in the case, "the magistrate judge retains complete control over the pursuit of justice in his or her courtroom." *Id.* A non-lawyer would still be subject to the same level of scrutiny as a State prosecutor. *Id.* at 420.

Magistrate's Court was created as the "peoples' court", allowing easier and faster dispositions for a layperson in certain grievances and offenses. *In re Richland County Magistrate's Court*, 389 S.C. 408, 420, 699 S.E.2d 161, 167 (2010). Magistrates are not even required to be attorneys. The statute specifically dealing with Magistrate criminal jurisdiction allows for the practice of courtesy summons, which is exactly what Appellant was allowed to request and exactly what was issued to Respondent. Law enforcement and the Solicitor's office did not want to get involved based on the petty nature of the matter. If a crime was committed, however, it was committed even if the value was de minimus. If Appellant is not allowed to prosecute the courtesy summons, and no one else is willing or permitted to prosecute the courtesy summons, then there is no purpose for allowing Appellant to even file the affiant warrant and issue a courtesy summons.

## CONCLUSION

For the foregoing reasons, Appellant Richard Hough respectfully requests that this Court reverse the lower court and set aside the Order of Dismissal against the Appellant and remand this case for a trial in Magistrate's Court.

Respectfully submitted,

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May 27, 2014