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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY

Court of Common Pleas

Roger M Young, Circuit Court Judge

2013-CP-28-358

Case No. 2014-000084

Richard Hough, Appellant

vs.

Angela Hough, Respondent

RESPONDENT'S INITIAL BRIEF

Angela Hough
42 Magnolia Lane
Lugoff, South Carolina 29078

Respondent Pro Se

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STATEMENT OF ISSUES OF APPEAL

1. **DID THE LOWER COURT ERR BY ALLOWING A PRIVATE CITIZEN TO BEGIN A CRIMINAL TRIAL AS THE PROSECUTOR?**
2. **DID THE LOWER COURT ERR BY ISSUING A COURTESY SUMMONS BASED ON THE SOLE TESTIMONY OF THE APPEALLANT WITH AN INJUCTION AGAINST THE HIM WITHOUT DUE DILIGENCE IN QUESTIONING THE OFFICER WHO RESPONDED TO THE SCENE OF THE ALLEGED CRIME?**
3. **DID THE LOWER COURT ERR BY FAILING TO DISMISS APPELLANT'S APPEAL OF THE MAGISTRATE COURT DECISION DUE TO APPELLANT'S FAILURE TO SERVE NOTICE ON THE RESPONDENT OR HER COUNCIL OF RECORD AS PROVIDED BY RULE 18 (a)?**

STATEMENT OF CASE

On October 19, 2010 Appellant Richard Hough began his extortion activities to force by threat Albert Hough to gift him land. When Albert Hough did not sign the deed papers gifting Appellant Richard Hough land, Appellant Richard Hough purchased a bulldozer and started destroying the property and attempted to deny Albert Hough access to the property. Albert Hough went through the Kershaw County Sherriff's office to stop the malicious vandalism and destruction of the property. In December 2010, Albert and Angela Hough served a courtesy summons on Richard Hough for destruction of water lines. The case was heard by Magistrate Judge Hartis. The Plaintiffs were pro se and Richard Hough was represented by his attorney, Zack Atkinson. Richard Hough did not appear at the trial only his attorney. Judge Hartis directed the Appellant Richard Hough to stop destroying water lines. Appellant Richard Hough responded with making 6 ft berms all around the property to deny access to the other owners. On January 24, 2011 Attorney William Tetterton representing Albert and Angela Hough went

before the Honorable Thomas Cooper who issued a Temporary Injunction restraining Appellant Richard Hough from destroying any more pastureland and denying the other owners access. A hearing was held on February 1, 2011, Judge Cooper issued an ongoing Injunction against Richard Hough. On February 2, 2011, Richard Hough went to the Kershaw County Sherriff's Office and gave a statement to an Officer, who did not respond to the call on January 23, 2011, to state that the farmland was all his property and signs in the amount of $8.75 were removed. On February 3, 2011, Appellant Richard Hough swore a statement and signed an affiant warrant requesting 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 March 2, 2011 Respondent Angela Hough through her attorney, William Tetterton, in writing before the court requested a jury trial. At trial on April 12, 2013, after the jury was sworn, 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 with Appellant represented by counsel, William Hodge and Respondent as pro se. On December 4, 2013, an Order Affirming Dismissal was issued by the Honorable Roger M. Young. Appellant Richard Hough filed the Notice of Appeal from the order affirming dismissal on January 10, 2014.

STATEMENT OF FACTS

Beginning in 1976 and continuing until 2009, Mr. and Mrs. Harold Hough gifted various undivided interest in their land to various family members in various percentage amounts. The final outcome of this action along with their final will distributions [which began in March and

April of 2011 being five months after Richard Hough started the bulldozing and the waste of their beloved farm land] resulted in the following distribution of the land: Albert 36.47%, Angela 0.32%, Richard 26.61%, George 25.09%, Joel 9.89%, and Mary Louise Hough Robinson 1.62%. The land is in various large tracts with about 77% being timber land and 23% being pasture land. The pasture land has been used since the 1940s for the raising of beef cattle. This has been done over the years under the management of Harold Hough and Albert Hough. Richard Hough bought cattle to raise, but then abandoned them at the farm where Mr. Harold Hough and Albert Hough had to manage and maintain them. Richard Hough has been an absentee owner for over 35 years maintaining a pattern of visiting the farm only three times per year for about four hours per visit. Richard Hough, the Appellant, never gifted any of his portion of land to other siblings nor did any of the others. Up until the extortion letter arrived there was calm between family members with no indication of a feud that Appellant Richard Hough speaks of in court. On October 19, 2010, Richard Hough mailed a letter to Albert containing a legal document drawn up by attorneys at Jones, Seth, Shuler and Killen in Sumter. The document was a gift deed from Albert to Richard. Upon that letter was a handwritten note by Richard Hough, the Appellant, stating, "Sign and mail back to me by Friday, Nov. 19, 2010. You have 30 days. Richard 10/20/10." When Albert did not sign the deed gifting Richard a portion of Albert's land, Richard Hough purchased a D6 Bulldozer on November 18, 2010 **for $81,620.00 –revealing his commitment to this action**- and had it trucked to the farm pasture land. To compensate for this expense Appellant Richard Hough filed his 2011 taxes as a farming business in order to depreciate the bulldozer on his yearly income taxes**; thus making him a business entity**. The cattle feed, hay and water well with pump and electricity are located on a 5.8 acre area which is

a peninsula shaped tract that was part of the pastureland. It was gifted to Albert Hough in 2007 as sole owner while the other land portions all remained as undivided interest in various percentages. Richard Hough began digging up the waterlines that watered the cattle on November 23, 2010 along with blocking the gate entrance used by Albert and Angela Hough to care for the cattle and farm. As Richard Hough did this, he would cover the gates belonging solely to Albert and Angela Hough with plastic yellow and red caution strips of about 4 to 5 feet in length which were put up like a barrier that would have to be removed before the gate could be used. Albert and Angela would repair the water lines and restore the road access. Richard Hough would return and repeat the same action. Albert and Angela Hough contacted the authorities. Since this was the first time dealing with the justice system, Albert and Angela Hough went through the Magistrate Court's courtesy summons procedure as they looked to obtain counsel. Albert Hough also tried contacting Richard Hough. Richard Hough, the Appellant, responded by escalating his actions of building 6ft berms in front of each gate Albert put in to access the farm, with 4 new gate areas in total. Each time Richard Hough would cover the gates with the red and yellow caution tape barrier and build 6ft berms in front of them. Soon Richard Hough began building berms in two layers on each side and six layers in the back around the corral area where the cattle were watered and worked thus surrounding the 5.8 acres owned by Albert Hough and the corral working area. At the same time Richard Hough also removed the main gate at the only other entrance to the pastureland with the exception of the gas line right of way. Richard Hough threw the gate to the side replacing it with his gates and locks. Richard Hough also did this same activity of placing locks on gates at other properties, as well as, constructing barriers to other farm tracts where no gates and fencing existed. Richard

Hough did this with posts, barbed wire and the caution tape strips making a barrier/fence with the caution tape and unsigned paper trespass signs, too. In total Richard intentionally and maliciously destroyed and wasted about 10 acres of land with his berms. During this time Albert and Angela pursued legal relief from the situation. The digging, on days Richard did not have to work at his home state of North Carolina, continued from November 24, 2010 until the junction stopping him was finally obtained on January 24, 2011. As there was no way to move the hay to feed the cattle left around the 5.9 acre entrance, Albert and Angela were forced to use the other entrance which is about 0.2 miles down the road and was the entrance Richard Hough used to access the property. This entrance sits off the road about 70 ft. It is surrounded on two sides by wire fencing to keep the cattle in the pastures. The sides are about 70 ft. long. At the end of the area is a gate to access the jointly owned property. In this box area are about 8 good sized trees of various kinds. This area also makes a smaller peninsula into the pasture land property. On Sunday, January 23, 2011 Richard Hough spent the day digging the 6 ft. berms in two layers in a semi-circle completely making this entrance impassable for any of the owners. He used duct tape to attach to the branches of the various trees- not the trunks- strips of the plastic red and mostly yellow caution tape in lengths of 5 to 6 feet long along with a few trespass paper signs not signed. Richard Hough did this in a barrier type way about every 3 to 4 feet apart. This was done on the rectangle entrance area outside the fenced pasture area. The trespass signs taped to the trunk of the trees lasted about 6 more months in varying degrees of decomposition due to the weather conditions and the tape application. Since the farm is worked on a daily basis no trespass problems had occurred. After over two months of dealing with this malicious, threatening, and vandalistic behavior along with an emergency surgery due to the stress this

caused to Angela Hough, the Respondent, causing Angela Hough to have a miscarriage, Angela Hough saw those caution strips strung in the trees for what they were another malicious action by Richard Hough which is believed to be his intent. This was at about 2:30 p.m. on a Sunday winter afternoon. Angela Hough knew that Mr. and Mrs. Hough had planned to visit the farm the next day. Angela Hough knew it would break their hearts to see those trashy, malicious signs strung in the trees. After Angela Hough called the police to report Richard Hough's continued harassing, malicious, and threatening behavior, she used a stick of about three feet long to shake the caution tape strips from the tree branches. Angela Hough could only reach the ends with the stick. Angela Hough placed the strips together in a ball. As Angela Hough was doing this Richard Hough ran over from his bulldozer and took pictures- so if you want to see what it looked like with the trees papered in caution tape just subpoena those pictures. Richard Hough has enlarged the pictures on huge boards which he brought twice to court. When the officer arrived, Officer Boone took Angela Hough's call first since he was responding in the order to which the calls came into the office. The officer knew about the situation and told Angela Hough when the report would be ready for pick up since we knew it was needed for the injunction hearing. Richard Hough kept insisting that Angela Hough be arrested. The officer requested that Angela Hough hand him the ball of items that had been removed from the jointly owned trees. Officer Boone handed the caution strips, tape, and a few trespass paper signs back to Richard Hough over the fence due to the fact that Richard's digging had prevented access into the farm by us or the police officers. The officer came back to Albert and Angela Hough requesting to deescalate the situation by leaving and giving Richard time to leave before feeding the cattle. It was already getting dark and by the time we would have accessed the farm

equipment and moved the supplies down the road 0.2 miles and though the only remaining entrance now available which was the gas line right of way- not to be used except for emergencies- it would be dark. Albert Hough decided it would be too dark to feed. Albert and Angela Hough returned home and the cattle did not get food or water. The next day was Monday, January 24, 2011 and our lawyer, Mr. Tetterton, went before Judge Thomas Cooper receiving an Order for a Temporary Injunction against Richard Hough to restrain him from building any more berms, destroying and wasting the pasture land, and to stop him from denying the other owners access to the property. Richard Hough was served that day in Charlotte, North Carolina and his bull dozer was also served in Kershaw County. On Tuesday, February 1, 2011 a hearing was held in Columbia before Judge Cooper and the restraining order of the injunction was extended until the land could be repaired and partitioned. . On Wednesday, February 2, 2011, Richard Hough went to the Kershaw County Sherriff's Office and gave a statement to an Officer, who did not respond to the call on January 23, 2011, to state that it was all his property and signs in the amount of $8.75 were removed. On Thursday, February 3, 2011 Richard Hough appeared before the Magistrate Judge Hartis and falsely testified that Angela Hough had stolen his caution tape and a couple of trespass signs. He now claims in all his papers to be trespass signs only. It was mostly the caution tape strips. The items were priced as a whole roll of caution tape, a roll of trespass signs, and duct tape of which only a small fraction was used on Sunday, January 23, 2011 finding it can be purchased for a total of $8.00 to $10.00. **Richard Hough reported the items cost $8.75** per incident report he filed on February 2, 2011, which has not been part of the record nor the file of this case. It is listed on the Appellant's list of DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON

APPEAL in his initial brief. The courtesy summons that was obtained through perjured testimony given by Richard Hough was served on Angela Hough at her residence on Wednesday, February 9, 2011. At the first hearing for the courtesy summons before Judge Hartis, Angela Hough though her attorney, Mr. Tetterton, requested in writing a jury trial. Later when the jury trial came up on the docket, the solicitor for the County of Kershaw refused to prosecute the case. At that hearing, those arguing at the Judge's bench were the solicitor; Mr. Tetterton, attorney for the Defendant; and Mr. Atkinson, attorney for Richard Hough. Richard Hough's request to have his attorney, Mr. Atkinson, prosecute the case was denied. The Appellant, Richard Hough, then requested the court in a motion hearing permission to allow him to hire private attorney, Mr. Atkinson to assist him in prosecuting the case. This was done on April 8, 2013. This motion was denied. Richard Hough's attorney, Mr. Atkinson, did sit in the back of the court room during the trial on April 12, 2013. Richard Hough did represent himself at the selection of jurors prior to the trial without attorney, Zack Atkinson, being there. The jury trial commenced on the morning of April 12, 2013 with the jurors being sworn. Mr. Tetterton presented the court with a motion. Judge Corbett sent the sworn jury out to wait while the motion was heard. The motion was based on the case of 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 from Mr. Tetterton and Mr. Hough. In his oral arguments, Mr. Hough did not stay on topic concerning the alleged stolen caution tape and a few signs or even Angela Hough's actions that day. Of the 2,239 words spoken at the trial by Richard Hough only 137 words were about the theft case which is 6% of his statements. Of the 137 words spoken only 93 reference the actions of that day and never the Respondent by name. Richard Hough choose instead to

bring up a list of unrelated items to slander his brother and the Respondent. It should be noted in this history that his "claims of ammunition" were all brought out in the Probate case in the Conservatorship for Joel Hough and shown to have no foundations. It was brought out by documents summited by Richard Hough along with Albert and Angela's lawyer, Mr. Brackett that the only nefarious conduct was committed by Richard Hough and that Richard Hough's allegations had been false and unfounded. Judge Corbett ruled in favor of the Respondent, stating his decision was based on the precedent of the case sited above, as well as, United States v. Standefer and Standefer v. United States following that with, "He [Mr. Tetterton] brings out the vengeance element. I think he has established his case, and quite frankly, by some of your comments, you [Mr. Hough] have established his [Mr. Tetterton] case also." The decision was **not based almost solely** on Richland County Magistrate's Court (2010). The jury was returned to the court room and the trial finished. Mr. Hough had his day in court with a sworn jury. The Appellant appealed the court's decision. Richard Hough, the Appellant, did not follow Rule 18 (a). The Respondent was not served notice of the appeal nor was the attorney of record. The Respondent, Angela Hough, learned of the appeal when the Clerk of Court sent a notice letter of the case rooster to her residence. The Honorable Roger M. Young heard the appeal with Richard Hough being represented by attorney, William Hodge, and Angela Hough being pro se. The Honorable Roger M. Young agreed with the lower court and issued the Order affirming Dismissal on December 4, 2013. Appellant Richard Hough filed his Notice of Appeal from the order affirming dismissal on January 10, 2014.

ARGUMENT

I. THE LOWER COURT ERR BY ALLOWING A PRIVATE CITIZEN TO BEGIN A CRIMINAL TRIAL AS THE PROSECUTOR.

South Carolina Code of Laws § 17-1-10 sets forth the manner of prosecuting criminal action. A criminal action is prosecuted by the State, as a party, against a person charged with a public offense, for the punishment thereof. South Carolina Code of Laws § 17-22-20 states, " 'prosecutorial discretion' shall mean the power of the circuit solicitor to consider all circumstances of criminal proceedings and to determine whether any legal action is to be taken and, if so taken, of what kind and degree and to what conclusion." In *Bokowsky v. State*, 111 N.H. 57, 58-59, 274 A.2d 785 (1971) it was decided that "public prosecutor may nol pros private prosecution over objection of private complainant." This is what the Kershaw County Solicitor did in this case.

In South Carolina the duty to regulate the practice of law lies with the State Supreme Court. S.C. Code § 40-5-10 and *In re Unauthorized Practice of Law*, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992) makes clear that the "Constitution commits to this Court [S.C. Supreme Court] the duty to regulate the practice of law in South Carolina "In 2013 WL 3762705 the conclusion is that State law vests our Supreme Court with the sole authority to regulate the practice of law. See S.C. Const. art. V, § 4 ("The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted") Consistent with such authority, the Court has specifically held that 'a non-lawyer's representation of a business entity in criminal magistrate's court runs afoul of South Carolina law, is repugnant to our system of justice and constitutes the unauthorized practice of law.' "In the courts decision on *In re Richland County Magistrate's Court*, 389 S.C. 408,

414, 699 S.E.2d 161, 165 (2010) the majority opinion supported its decision by stating "the purpose of a criminal court 'is to vindicate the public interest in the enforcement of the criminal law while at the same time safeguarding the rights of the individual defendant.'" The support went further with the inclusion of *Standefer v. U.S.*, 447 U.S. 10, 25, 100 S.Ct. 1999, 2008 (1980) "Noting that a prosecutor represents the interests of the community, the Court stated that 'allowing prosecution decisions to be made by, or even influenced by, private interests would do irreparable harm to our criminal justice system.'"

In Young v United States ex rel. Vuitton Et Fils S. A., 481 U.S. 787, the Supreme Court stated "prosecution by counsel with conflicting loyalties calls into question the objectivity of those charged with bringing a defendant to judgment and thus undermines confidence in the integrity of the criminal proceeding so fundamental and pervasive as to require reversal without regard to the facts or circumstances of the particular case, and is not subject to harmless-error analysis, because prosecution by someone with conflicting loyalties ...calls into question the objectivity..." They went on to state that anyone prosecuting criminal acts "should be as disinterested as a public prosecutor who undertakes such a prosecution..."

This case is tied to *In re Richland County Magistrate's Court*, 389 S.C. 408, 414, 699 S.E.2d 161, 165 (2010) due to the fact that the Appellant Richard Hough filed as a farming business for the tax year 2011 the year this incident happened making him a business entity. This case does distinguish itself from *In re Richland County Magistrate's Court*, 389 S.C. 408, 414, 699 S.E.2d 161, 165 (2010) in the degree with which the Appellant Richard Hough has pursued this prosecution and his paying of attorneys, Zack Atkinson and William Hodges. This behavior over $8.75 clearly ties this case to "*Waldron v. Tuttle*, 4 N.H. 149, 151 (1827) [263] (noting that private prosecutions

often originate from private quarrels, are intended to vex and harass an opponent, and often do not result in a public benefit justifying the expense); *Fletcher v. Merrimack County*, 71 N.H. 96, 102, 51 A. 271 (1901) (discussing the manner in which an interested prosecutor poses a threat to a defendant's rights); *Rogowicz v. O'Connell*, 147 N.H. 270, 274, 786 A.2d 841 (2001) (courts may not appoint the representative of an interested person to prosecute a criminal contempt action.)" In *State v. Martineau*, 148 N.H. 259 the court "conclude from a review of our case law that the common law does not authorize private prosecutions of criminal offenses which may be punished by imprisonment. Because the complaint in this case charges the defendant with a class A misdemeanor, which carries a potential prison term of up to a year, we hold that Premo is barred from prosecuting the complaint." In the course of this case decision they also listed this information, "Over time, in both England and the United States, the use of public prosecutors increased, and the use of private prosecutors began to fall into disfavor. Today, some States prohibit altogether the use of private prosecutors on behalf of interested parties. See, e.g., State ex. rel. Wild v. Otis, 257 N.W.2d 361, 364-65 (Minn. 1977), cert. denied 434 U.S. 1003, 54 L. Ed. 2d 746, 98 S. Ct. 707 (1978); State v. Harrington, 534 S.W.2d 44, 48 (Mo. 1976); Biemel v. State, 71 Wis. 444, 37 N.W. 244, 247 (Wis. 1888). Others allow private prosecutors to assist in the prosecution, but only if the public prosecutor consents and retains control over the case. See, e.g., Erikson v. Pawnee County Bd. of County Comm'rs, 263 F.3d 1151, 1154 (10th Cir. 2001), cert. denied 152 L. Ed. 2d 382, 122 S. Ct. 1438 (2002); Com. v. Hubbard, 777 S.W.2d 882, 883 (Ky. 1989); State v. Moose, 310 N.C. 482, 313 S.E.2d 507, 512 (N.C. 1984); State v. ex. rel. Koppers v. Intern. Union of Oil, Chemical and Atomic Workers, 171 W. Va. 290, 298 S.E.2d 827, 829-30 (W. Va. 1982); Ates v. State, 141 Fla. 502, 194 So. 286, 286-87 (Fla. 1939); Brown v. State, 242 Ga. 536, 250 S.E.2d

438, 439 (Ga. 1978); **State v. Addis, 257 S.C.** 482, 186 S.E.2d 415, 417 (S.C. 1972); People v. Farnsley, 53 Ill. 2d 537, 293 N.E.2d 600, 605 (Ill. 1973); State v. Basham, 84 S.D. 250, 170 N.W.2d 238, 241 (S.D. 1969); Veteto v. State, 8 S.W.3d 805, 817-18 (Tex. App. 2000)."

The Magistrate's Court does allow for the request for a courtesy summons to be issued by any affiant giving sworn testimony of the facts of the offense, but does not extend to the affiant the authority nor right to prosecute. In South Carolina the sole authority to prosecute criminal cases to trial lies with the local Solicitor. The principle behind this law is that the Solicitor is not fueled by private interest, but works for the community at large. The Solicitor is an officer of the court and represents the public at large. The duty of the Solicitor is to see that justice is done and that the constitutional rights and privileges are secured to the accused. Therefore since this case shows how easily a courtesy summons can be abused and easily lead into malicious prosecution, it seems that the practice of courtesy summons on criminal offenses should be abolished and serves no useful purpose just as the Appellant Richard Hough claims.

II. THE LOWER COURT ERR BY ISSUING A COURTESY SUMMONS BASED ON THE SOLE TESTIMONY OF THE APPEALLANT WITH AN INJUCTION AGAINST THE HIM WITHOUT DUE DILIGENCE IN QUESTIONING THE OFFICER WHO RESPONDED TO THE SCENE OF THE ALLEGED CRIME?

South Carolina Code of Laws § 16-13-30 states that "simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor,

triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days." In a criminal theft case the elements that must be proved are possession interest; wrongful taking; carried away; and intent to permanently deprive. The burden the State must meet is to prove beyond a reasonable doubt **all** of the elements of the alleged crime as supported by *People v. Burson*, 17 Ill. App. 3d 559, 308 N.E.2d 200, 202 (Ill. App. Ct. 1974) and in *State v. Lane*, 406 S.C. 118 Court of Appeals of South Carolina.

In *State v. Srnsky*, 213 W. Va. 412 Supreme Court of Appeals of West Virginia 2003, the court established that only "the owner, lessee or other person entitled to possession of unenclosed lands" are protected by the criminal sanctions for removal of signs from posted property... State v. Williams, 209 W.Va. 25, 543 S.E.2d 306 (2000) (conviction under W.Va. Code § 61-3-52 requires proof of ownership of land as an essential element of the offense of timbering on the lands of another) [which is the equivalent to South Carolina Code of Laws § 16-11-580] Consequently, an essential element of the offense of removing "posted" signs pursuant to West Virginia Code § 20-2-10 [which is the equivalent to South Carolina Code of Laws § 16-11-510 and 16-11-520] is proof that the property on which the signs were posted is owned by someone other than the person charged with the offense of removing or damaging the signs." The trees where the posted signs and strips of caution tape were taken down, handed to the police officer who handed them to the Appellant Richard Hough are on undivided jointly owned land where both the accused and the complainant are owners. Therefore, a charge of larceny cannot stand. The portion of the land which was the site of the incident is undivided joint ownership land where the

ownership percentages are Richard Hough owns 22.7 percent, George Hough owns 22.7 percent and Albert and Angela Hough own 54.6 percent. The police report prepared by the Responding Officer, Pat Boone, from the January 23, 2011 incident indicates that Richard Hough was engaged in activities denying access to the property by the other owners. In the injunction motion of January 24, 2011 and hearing of February 1, 2011, the Plaintiffs -were and still are since it continues even until this day- Albert, Angela, and George Hough and the Defendant was and is Richard Hough. *(For clarity the case has been amended to include all the portions of land and all parties for the resolution of damages from malicious destruction, waste, and nuance and then partition of the land in kind.)* Therefore, all the elements of the crime are not present so the lower court erred in issuing a courtesy summons for larceny. Officer Boone handed to the Appellant, Richard Hough the strips of caution tape and trespass signs; therefore the intent to permanently deprive cannot stand up to legal scrutiny. In the transcript of the Appeal Hearing in front of Judge Young shows that even attorney Hodges representing Appellant Richard Hough acknowledges this with his response, "well that would be brought out at trial." S.C. App. Ct. R. 407:8.4(d); S.C. App. Ct. R. 413:7(a)(5). Now they both boldly commence action to the next level of legal recourse.

The Appellant Richard Hough in the initial brief argument sites South Carolina Code of Laws § 22-5-115 for the requirements for obtaining a courtesy summons for a criminal charge. He correctly states that the statue allows an individual "to give a sworn statement to a summary judge" which provides the probable cause of a crime. Appellant Richard Hough by his paper trail did not get a police report from the Responding Officer at the scene. Richard Hough waited 10 days. After two injunctive orders against him, Richard Hough then goes to the Kershaw County Sherriff's Office and gives a statement to Officer Sellers stating "his brother's wife came onto his

property and removed numerous posted signs...They were valued at .35 cents each. He stated that approx. 25 signs were missing..." It should be noted here that Appellant Richard Hough stated the property was his. This is perjury since it is undivided jointly owned land. On all of the police reports from calls made from Nov. 25, 2010 through January 23, 2011 Angela and Albert Hough always refer the officers to this fact. The Appellant Richard Hough stated that the signs were removed and in the courtesy summons affidavit gives sworn testimony stating they were stolen. This is perjury as well since the Responding Officer at the scene handed the strips and signs to the Appellant Richard Hough. Albert Hough was also present and can testify to this. In the trial on April 12, 2013 the Appellant Richard Hough was the sole witness for his case. Respondent Angela Hough had as witnesses Officer Pat Boone, the Responding Officer to the scene, and Albert Hough. Both were in attendance at trial.

June 28, 2011 the Attorney General Letter addresses the crime of filing false police reports and reporting false information to other government and law enforcement agencies. He begins with the facts of law as spelled out by the code of law. "As provided in §16-17-722: (A) It is unlawful for a person to knowingly file a false police report. (B) A person who violates subsection (A) by falsely reporting a felony is guilty of a felony and upon conviction must be imprisoned for not more than five years or fined not more than one thousand dollars, or both. (C) A person who violates subsection (A) by falsely reporting a misdemeanor is guilty of a misdemeanor and must be imprisoned not more than thirty days or fined not more than five hundred dollars, or both. (D) In imposing a sentence under this section, the judge may require the offender to pay restitution to the investigating agency to offset costs incurred in investigating the false police report. Thus, a person commits the offense of filing a false police report pursuant to §16-17-722 if he or she

(I) knowingly (2) files a false police report, and (3) the false report relates either to a felony or a misdemeanor." He provides definition clarity in "As placed in § 17-17-722, the word "false" modifies the words "police report." The word "false" is defined as: "1. Untrue ... 2. Deceitful; lying ... 3. Not genuine; inauthentic ... " Black's Law Dictionary, 677 (91h ed. 2009); see also State v. Johnston, 149 S.C. 195, 146 S.E. 657, 659 (1929) [citing an earlier edition of Black's Law Dictionary, defining "false" as "something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud"]. We further note that while "report" is not defined by statute, the word "report" is defined in Black's Law Dictionary, 1414 (91h ed. 2009), as "[a] formal oral or written presentation of facts or a recommendation for action ... "Construing the statute in this light, a person would violate§ 17-17-722 if he or she files any communication with a law enforcement agency, knowing that such report is false. While the statute speaks of filing a false "police report," this proscription very clearly would apply to either written or oral communications to a law enforcement agency. The definition of "report" would not require that the communication always be made at the outset of any contact with a law enforcement agency. The definition could clearly cover subsequent communications as well. The conclusions is "giving a false statement or information in a police report would likely fall within the ambit of perjury under § 16-9-10(A) (2). This provision states: [i]t is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State. Also included is "The court determined the defendant's conduct violated Mich. Comp. Laws §750.41 la, which provides: " ... a person who intentionally makes a false report of the commission of a crime, or intentionally causes a false report of the commission

of a crime to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee of a contractor who is authorized to receive reports of a crime, knowing the report is false, is guilty of a crime .. . " The court concluded the statute was not limited to only those situations where the defendant reported false details about an actual crime to the police, **but that it also applied where no crime has been committed**."

The State of South Carolina gives authority to the Magistrate's Court to issue courtesy summons even for certain criminal charges. The affiant is required to give sworn testimony to acquire courtesy summons. The Affidavit stating such is signed by the court official and is part of the summons served on the defendant. This process does not allow for false statements and perjured testimony in obtaining such courtesy summons to go unpunished. When the Appellant cannot even call as a witness the Responding Officer to the alleged crime site, it should be clear that something with the Appellant's testimony is not right and cannot be collaborated. Again the case of *Waldron v. Tuttle*, 4 N.H. 149, 151 (1827) [263] " (noting that private prosecutions often originate from private quarrels, are intended to vex and harass an opponent, and often do not result in a public benefit justifying the expense)" applies to this case at hand. Obtaining a courtesy summons under false testimony does not provide the affiant/Appellant Richard Hough the authority to prosecute a case without the elements of the crime being established beforehand nor does it give him prosecutorial immunity nor immunity from the punishment for perjury.

III. THE LOWER COURT ERR BY FAILING TO DISMISS THE APPEAL OF THE MAGISTRATE COURT DECISION DUE TO FAILURE OF THE APPELLANT TO SERVE NOTICE ON THE RESPONDENT OR HER COUNCIL OF RECORD AS PROVIDED BY RULE 18 (a).

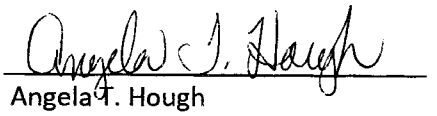
According to the South Carolina Civil Rules of Procedure, appeals made concerning the Magistrate's Court are to follow Rule 18. Rule 18 (a) deals with serving parties involved with written notice. Rule 18 (a) states, "All appeals of judgments rendered by the magistrate's court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered. If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced. At the time of the filing of the notice of appeal, the appropriate filing fee shall be paid by the appellant to the clerk of the circuit court to which the appeal is taken, unless a motion for leave to proceed in forma pauperis and an affidavit showing the appellant's inability to pay the fee required to appeal the action accompanies the filing of the notice of appeal. The right of appeal from a judgment exists for thirty (30) days after the denial of a motion for a new trial." In *Whetstone v. Livingston*, 54 S.C. 539 Supreme Court of S. C. (1899), states, "expressly requires that the notice of appeal must be served not only upon the magistrate, but also upon the respondent, or his attorney." Following that the court states, "this Court has repeatedly held that facts appearing only in the argument of counsel cannot be considered by this Court, we cannot take notice of any fact unless it appears in the 'Case,'

and must confine our attention to the facts there stated." As stated in court, so is in the transcript, the file for this case lacks Affidavit of Service of any means on the Respondent or the Respondent's attorney of record. The Respondent learned of the appeal on September 27, 2013 by notice of the appeal hearing sent by the Kershaw County Clerk of Court. To see the file it was taken from the outgoing pile for the Respondent to view since it was in process of being sent to the presiding judge to review. Again in court, the attorney for the Appellant did not deny this fact. Failure to serve timely notice by the Appellant should be grounds to dismiss this case.

CONCLUSION

For the foregoing reasons including the mitigating circumstances created by the Appellant in his criminal extortion acts against the Respondent Angela Hough and her husband, Albert Hough, Respondent Angela Hough respectfully request that this Court affirm the Order of Dismissal.

Respectfully submitted,



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Respondent Pro Se

Columbia, South Carolina
June 23, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

2013-Cp-28-358

Case No. 2014-000084

Richard Hough, Appellant,

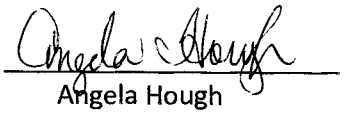
vs.

Angela Hough, Respondent,

PROOF OF SERVICE

I, Angela Hough, Pro Se Respondent, do hereby certify that I have served a copy of Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on June 23, 2014 by causing a copy of the same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

William A. Hodge
P.O. Box 8753
Columbia, SC 29202



Angela Hough

Lugoff, South Carolina
June 23, 2014