

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3901209

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

South Carolina The State
of

Kenny Ray Harris

2015 FEB -4 P 5:00

RECEIVED

MAY 20 2015

SC Court of Appeals

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

This order ends does not end the case.

Additional Information for the Clerk: _____

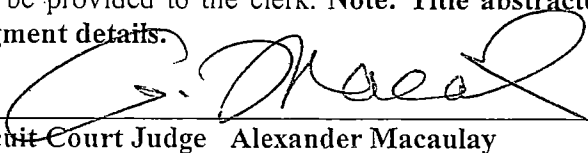
INFORMATION FOR THE JUDGMENT INDEX

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) |
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| | | |

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.


Circuit Court Judge Alexander Macaulay

2063

Judge Code

2/2/2015

Date

1-152

For Clerk of Court Office Use Only

2/4/15

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

South Carolina The State of

Mitchell Bryal

ATTORNEY(S) FOR THE PLAINTIFF(S)

Steven Luther Alexander PO Box 618 107 E Main Street
Pickens, SC 29671

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Yelton Deputy

Harold P Welborn, Jr. - Clerk of Court

Court Reporter Cheryl Smith

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.

Steven Alexander to prepare order

2-52

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
STATE OF SOUTH CAROLINA,)
Plaintiff,)
vs.)
KENNY RAY HARRIS,)
Defendant.)
.....)

IN THE COURT OF COMMON PLEAS
2014-CP-39-01209

RECEIVED

MAY 20 2015

ORDER

SC Court of Appeals

2015 MAR 19 PM 12 15
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA


TRIAL DATE: FEBRUARY 2, 2015
TRIAL JUDGE: ALEXANDER MACAULAY
PLAINTIFFS ATTORNEY: MITCHELL BYRD
DEFENDANTS ATTORNEY: STEVEN ALEXANDER
COURT REPORTER: CHERYL SMITH

This matter comes before the court by way of an appeal by the Defendant from an order from the Honorable Benjamin Dow in the Pickens County Magistrate Court reinstating the charge of Criminal Domestic Violence first against the Defendant. The Court has jurisdiction over the parties and subject matter.

At the call of the case the Plaintiff appeared represented by its attorney Mitchell Byrd and the Defendant appeared represented by his attorney Steven Alexander.

The Court makes the following findings of fact and conclusions of law in this matter:

- 1) The Defendant's charge of Criminal Domestic Violence first offense under ticket # 32468FS was dismissed by the Honorable Benjamin Dow at the first trial date on July 23, 2014 when the Defendant appeared, the alleged victim appeared but the arresting/investigating officer from the Pickens

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County Sheriff's Office failed to appear.

2) A motion for reconsideration was held on August 18, 2014 before Judge Dow following a motion filed by the Plaintiff on August 4, 2014. This motion was not served or provided to the Defendant, who only received a summons to appear for the motion from the magistrate court on August 18, 2014. The particular grounds for the motion was not set forth in the summons.

3) At the August 18, 2014 motion for reconsideration, which was held with no court reporter present only a tape recorder, Judge Dow granted the Plaintiff's motion to reconsider and reinstated the charge stated above against the Defendant. Defendant then filed this appeal requesting Judge Dow's order of reinstatement by reversed.

4) The Plaintiff failed to comply with Rule 4(a) of the South Carolina Rules of Criminal Procedure. The Defendant did not receive written notice of the Plaintiff's motion as he was not served with the motion filed on August 4, 2014, and even if he had been the motion filed is not in compliance as it does not state with particularity the grounds for the motion. Further, the grounds even if stated with particularity at the motion hearing on August 18, 2014 would not be sufficient to comply with Rule 4(a) as there was no court reporter present as required.

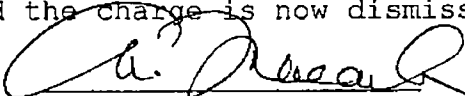
5) Therefore Rule 4(a) of the South Carolina Rules of Criminal Procedure was not complied with. I find there was

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not sufficient notice for the grounds of the motion, therefore the magistrate court's order reinstating the charge of criminal domestic violence first offense under ticket # 32468FS is reversed and the charge is now dismissed.

IT IS SO ORDERED, ADJUGED AND DECREED:

1) The magistrate court's order reinstating of criminal domestic violence first offense under ticket # 32468FS is reversed and the charge is now dismissed.



ALEXANDER MACAULAY
CIRCUIT COURT JUDGE

Date: Jul 27, 2015

2015 MAR 9 PM 12 16
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Certified Copy



Clerk of Court
Pickens County, SC

Dated Mar 2015

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STATE OF SOUTH CAROLINA 2015 APR 23 PM 1 19 IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS CLERK OF COURT THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA,
Respondent,

VS.

KENNY RAY HARRIS,
Appellant.

**ORDER
DENYING MOTION FOR RECONSIDERATION
AND TO VACATE ORDER**

C.A. # 2014-CP-39-01209

The Respondent, State of South Carolina ("State"), moved for an Order amending and vacating this Court's Order, dated February 27, 2015, reversing the Magistrate Court's oral order reinstating the charge against the Appellant ("Defendant") of Criminal Domestic Violence First Offense under Uniform Traffic Ticket # 32468FS, which the Trial Magistrate had previously dismissed at the first trial date, July, 23, 2014. These uncontroverted facts, to which no exception was taken by the State, are set forth in this Court's "findings of fact and conclusions of law" as follows:

"1) The Defendant's charge of Criminal Domestic Violence first offense under ticket # 32468FS was dismissed by the Honorable Benjamin Dow at the first trial date on July 23, 2014 when the Defendant appeared, the alleged victim appeared but the arresting/investigating officer from the Pickens County Sheriff's Office failed to appear." (Emphasis supplied).

2) A motion for reconsideration was held on August 18, 2014 before Judge Dow following a motion filed by the [State] on August 4, 2014. . . .

3) At the August 18, 2014 motion for reconsideration, . . . , Judge Dow granted the [State's] motion to reconsider and reinstated the charge stated above against the Defendant. The Defendant then filed this appeal requesting Judge Dow's order of reinstatement by (*sic*) reversed."

Although the State argues various grounds, it asserts, *inter alia*, in its Motion for Reconsideration and to Vacate Order, dated April 2, 2015, that:



"3. The Court should reconsider its finding that the particular grounds were not set forth in the summons. The summons recited that the motion was for reconsideration of the trial court's dismissal of the case. Any defect in the particularity of the summons was cured by oral argument of the motion in open court before the Magistrate at the motion hearing.

4. . . . The State's motion and accompanying affidavit by the arresting officer contained the requisite particularity and any defect was cured by the summons and oral argument of the motion before the magistrate at the hearing on the motion (Emphasis supplied).

These facts are uncontested, as reflected from a review of the entire record, and, therefore, "the law of the case." Cf. *State v. Branham*, 392 S.C. 225, 708 S.E.2d 806 (2011). Nevertheless, it is the crux of the State's argument that:

* * *

6. *The Court should reconsider and vacate its order reversing the Magistrate's oral order reopening this case thereby dismissing the charge of Criminal Domestic Violence against the Appellant (Defendant) as it was within the Magistrate's discretion to reopen the case and any defect in the State's motion to reconsider and reopen was cured by oral argument before the Magistrate* (Emphasis supplied).

The Supreme Court held, in its ultimate decision in *State v. Ramsay*, 409 S.C. 206, 762 S.E.2d 15 (2014), affirming the dismissal of the Defendant's conviction for criminal domestic violence for lack of jurisdiction by the Magistrate and Circuit Courts [the Supreme Court had reversed and remanded the first appeal, 381 S.C. 375, 673 S.E.2d 428 (2009)] that:

". . . we hold that at the time of the crime, *section 56-7-15* [of the South Carolina Code (2006)] required an officer to be present during the commission of a crime to validly issue a

uniform traffic ticket. Therefore, the magistrate properly dismissed the CDV charge." 409 S.C. at 213, 762 S.E. at 19.¹

In the instant case, the State moves the "Court [to] reconsider and vacate its order reversing the Magistrate's oral order reopening this case thereby dismissing the charge of **Criminal Domestic Violence against the [Defendant]** as it was within the Magistrate's discretion to reopen the case and any defect in the State's motion to reconsider was *cured by oral argument before the Magistrate*" *Supra* (emphasis supplied). Nevertheless, the uncontested "facts", as found by this Court in its Order, are that:

"1) The Defendant's charge of Criminal Domestic Violence first offense under [uniform traffic] ticket # 32468FS was dismissed by the Honorable Benjamin Dow at the first trial date on July 23, 2014 when the Defendant appeared, the alleged victim appeared but the arresting/investigating officer from the Pickens County Sherriff's Office failed to appear."

It appears long recognized that: "The warrant having been dismissed by order of the magistrate, there was no warrant in existence in that case to be amended, and the same could not be revived by writing into the supporting affidavit the words which the magistrate, on his own motion, inserted." *State v. Dendy*, 158 S.C. 15, 155 S.E. 150 (1930). Therefore, the hearing on the State's "motion for reconsideration . . . held on August 18, 2014 before Judge Dow following a motion filed by the [State] on August 4, 2014," came too late; the charge against the Defendant had been dismissed by order of the magistrate and there was no charge to be reconsidered and cured. *Ibid*. The prejudice to the defendant is axiomatic as to the protections provided under our Constitutions of the United States and South Carolina that no

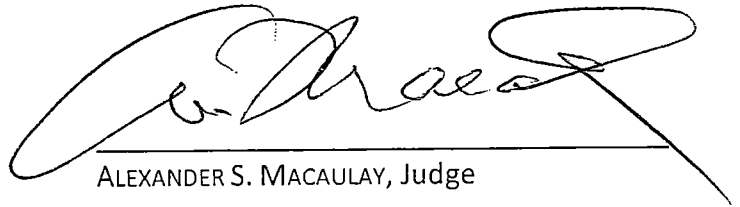
¹ The Supreme Court noted that: "FN2. However, we clarify that the statute at issue has been revised. As of June 13, 2013, section 56-7-15(A) provides: 'The uniform traffic ticket . . . may be used by law enforcement officers to arrest a person for *an offense that has been freshly committed or is committed in the presence of a law enforcement officer*'. . . ."

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person shall "be subject for the same offense to be twice put in jeopardy." U.S. Const. Amend V
and S.C. Const. Art. I, § 12. *Horry County v. Parabel*, 378 S.C. 253, 260, 662 S.E.2d 466, 470 (Ct.
App. 2008).²

Accordingly, the Defendant's Motion for Reconsideration and to Vacate Order, must be
DENIED, pursuant to Rule 59(e), SCRPC.³

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Pickens, South Carolina
April 23, 2015

² Overruled to the extent that Rule 74, SCRPC, has no application to criminal appeals to the circuit court. *State v. Oxner*, 391 S.C. 132, 133, 705 S. E.2d 51, 52 (2011).

³ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRPC.