

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

The Hon. Ernest F. Kinard, Jr., Circuit Court Judge
Trial Court Case No. 2008CP2101071

Opinion No. 4752
(S.C. Ct. App. Filed October 13, 2010)
Case No. 2008-CP-21-1071

James David Farmer

Respondent,

v.

Florence County Sheriff's Office

Petitioner.

RESPONDENT'S SUPPLEMENT TO THE APPENDIX

Patrick J. McLaughlin, Esquire
Wukela Law Firm
P.O. Box 13057
Florence, SC 29501
843-669-5634
Attorney for Respondent

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Columbia, SC 29211-1251

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S.C. Supreme Court

INDEX

Petition for Rule to Show Cause Hearing/Contempt of James David Farmer including Exhibits A and B1

Return to Petition for Rule to Show Cause Hearing/Contempt of Florence County Sheriff's Office and Certificate of Mailing10

Transcript of Court of Appeals April 13, 2010 hearing transcribed from audio tape #17408, Farmer v. Florence County obtained from the Court of Appeals.....13

Certificate of Counsel36

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

FILED

James David Farmer
 Plaintiff

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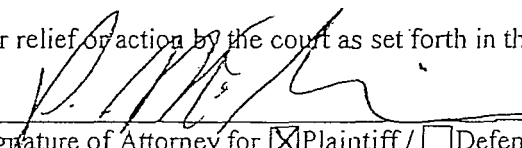

CASE NO.
2008-CP-21-1071

v.

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Florence County Sheriff's Office,
 Defendant.

Plaintiff's Attorney: Patrick J. McLaughlin, Bar No. 73675 Address: Wukela Law Firm, P.O. Box 13057, Florence, SC phone: 843-669-5634 fax: 843-669-5150 e-mail: patrick@wukelalaw.com other:		Defendant's Attorney: James C. Rushton, Bar No. Address: Hyman Law Firm, P.O. Box 1770, Florence, SC phone: 843-662-5000 fax: 843-678-9273 e-mail: jcrushton@hymanlawfirm.com other:	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO			
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant			October 13 2008 Date submitted
SECTION III: Motion Fee			
<input checked="" type="checkbox"/> PAID - AMOUNT: 25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input checked="" type="checkbox"/> Other: Petition and Order and Rule to Show Cause, and Verification			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>M. Barr</u>		Date Filed: _____	
<input checked="" type="checkbox"/> MOTION FEE COLLECTED: <u>25[#] 35386</u>		CERTIFIED: A TRUE COPY 	
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE CIRCUIT COURT FOR
THE TWELFTH JUDICIAL CIRCUIT
CIVIL ACTION: 2008-CP-21-1071

James David Farmer,)
)
Plaintiff,)
)
vs.)
)
Florence County Sheriff's Office,)
)
Defendant.)
_____)

**PETITION FOR RULE TO SHOW
CAUSE HEARING/CONTEMPT**

FILED
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CONNIE REEL-SHEARIN
CLERK C.C.C.P. & G.S.
FLORENCE COUNTY, SC

PLEASE TAKE NOTICE THAT the Plaintiff, by and through his undersigned counsel, respectfully moves, for a hearing in the above-captioned matter on the grounds that the Defendant has failed to comply with the Court's Order of September 26, 2008 and is currently in contempt of that court Order. The grounds therefore are as follows:

1. The Circuit Court of the Twelfth Judicial Circuit ordered the Defendant to return the plaintiff's property within ten (10) days of the Defendant's receipt of the Court's Order signed by the Honorable J. Ernest Kinard, Jr. on September 26, 2008.
2. That Written Notice of Entry of the Order described in Paragraph One (1) was received by the Defendant on September 29, 2008 (see *Exhibit A*).
3. That the Defendant has failed to deliver the personal property as required by the Court's order (*Exhibit B*).
4. That although the Defendant filed a Notice of Appeal in this matter on October 6, 2008, the Defendant has failed to comply with §18-9-150 S.C. Code Ann. (2007), which requires deposit or surety when a judgment calls for the delivery of personal property.

Failure to adhere to this statutory requirement means the Defendant's Notice of Appeal

Connie Reel-Shearin
CLERK OF COURT C.P & G.S

did not stay the provision of the Court's September 26, 2008 Order requiring delivery of the property to the Plaintiff within ten (10) days of the receipt of the Order.

5. That because of the grounds cited above, the Plaintiff is informed and believes the Defendant is in contempt of this Court's order and that the Defendant be brought before the Court to show cause why he should not be found in contempt of Court.

6. The Plaintiff is further informed and believes that he was forced to bring this Petition by the actions and/or inactions of the Defendant and that as such, the Plaintiff is entitled to attorney's fees and costs in bringing this Petition.

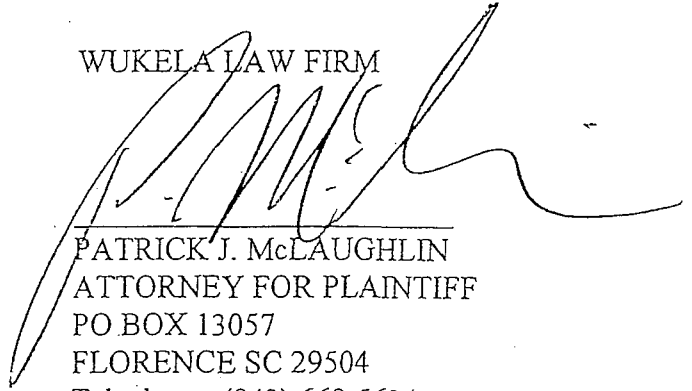
7. The Plaintiff is further informed and believes that he was forced to bring this Petition by the actions and/or inactions of the Defendant and that the Defendant is well aware, through previous correspondence and pleadings in this matter, that the continued course of depriving the Plaintiff of his inventory has and is causing the Plaintiff further damages in the form of lost profits. As such, the Plaintiff is informed and believes he is entitled to additional damages for lost profits resulting from the Defendant's refusal to obey the Court's order.

In support of this motion, the Plaintiff relies upon the pleadings filed in this action, the attached verification and such other affidavits and materials as may be timely submitted, and the applicable statutory and case law of South Carolina.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court grant this petition and set a date and time for a Rule to Show Cause hearing, where the Defendant be required to show cause why he should not be found in contempt for failing to follow the Order of

this Court and if finding the Defendant in contempt, award the Plaintiff damages incurred as a result of the Defendant's contempt of court.

WUKELA LAW FIRM



PATRICK J. McLAUGHLIN
ATTORNEY FOR PLAINTIFF
PO BOX 13057
FLORENCE SC 29504
Telephone: (843) 669-5634
Facsimile: (843) 669-5150

Florence, South Carolina

October 13, 2008

ATTACHMENT A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2008-CP-21-1071

James David Farmer Respondent,


v.

Florence County Sheriff's Office Appellant.

NOTICE OF APPEAL

Florence County Sheriff's Office appeals the Order for Summary Judgment of the Honorable J. Ernest Kinard, Jr. dated September 26, 2008. Appellant received written notice of entry of this order on September 29, 2008.

October 6, 2008



James C. Rushton, III
THE HYMAN LAW FIRM, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
Attorney for Appellant

Other Counsel of Record:

Patrick J. McLaughlin, Esquire
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057
Attorney for Respondent

ATTACHMENT B

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO: 2008-CP-21-1071
)

James David Farmer,
Plaintiff,

vs.

Florence County Sheriff's Office,
Defendant,

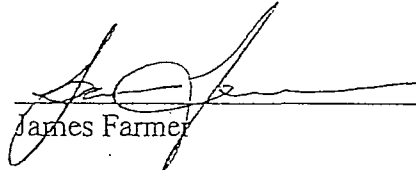
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

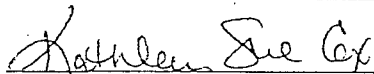
Personally appeared before me, the undersigned deponent, who being duly sworn states as follow:

1. I am thirty-seven years of age.
2. I am a citizen and residence of the City of Florence, State of South Carolina.
3. I have read the Petition for Rule to Show Cause that my attorney has prepared asking the Court to find the Defendant, Florence County Sheriff's Office, in Contempt of Court because they have refused to return my personal property as directed by Court Order. As of the date of this Verification, no one from the Florence County Sheriff's Office has made any attempt to return my inventory to me and I agree with the Petition my attorney has filed.

FURTHER AFFIANT SAITH NOT.


James Farmer

Sworn to before me this 13th day of October, 2008.


Notary Public for the State of South Carolina
My Commission Expires: 06-15-2009

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 James David Farmer,)
)
) PLAINTIFF,)
)
) vs.)
)
) Florence County Sheriff's Office,)
)
) DEFENDANT,)
)
 _____)

IN THE CIRCUIT COURT FOR
 THE TWELFTH JUDICIAL CIRCUIT
 CIVIL ACTION: 2008-CP-21-1071

ORDER AND RULE TO SHOW CAUSE

TO: THE DEFENDANT ABOVE-NAMED

Based upon the attached Petition and Verification, it appears that you have not obeyed the Order of September 26, 2008, as described in the Petition and Verification.

Therefore,

IT IS ORDERED that you appear before the Common Pleas Court for Florence County, South Carolina on the _____ day of _____, 2008 at _____ o'clock _____ M. before the Honorable _____ and then and there be prepared to show cause, if any, why the relief requested in the Petition and the attached Verification should not be granted and why you should not be held in contempt of court for such disobedience. This Order and Rule to Show Cause can be served on the above person by any means allowable under Rule 4(d) of the South Carolina Rules of Civil Procedure.

 PRESIDING CIRCUIT COURT JUDGE
 TWELFTH JUDICIAL CIRCUIT

At Chambers:

_____, 2008

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

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IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A # 2008-CP-21-1071

James David Farmer,

Plaintiff,

Vs.

Florence County Sheriff's Office,

Defendant.

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

RETURN TO PETITION FOR RULE TO
SHOW CAUSE HEARING/CONTEMPT

The Defendant, Florence County Sheriff's Office, by way of response to the Petition for Rule to Show Cause Hearing/Contempt, alleges as follows:

1. Paragraphs 1, 2, 3, and 4 of the Petition are admitted.
2. Paragraphs 5, 6, and 7 of the Petition are denied.
3. The Defendant alleges that the goods which were taken into its possession, and now requested by the Plaintiff, are counterfeit goods and illegal to be possessed under the laws of the State of South Carolina.
4. The Defendant would request the Court direct an amount to be posted as security by the Defendant, if any, pursuant to §18-9-190 of the South Carolina Code of Laws. In setting any amount to be secured, the Defendant would ask the Court to take into consideration the nature of the goods being requested as being goods that are illegal to be possessed by an individual in the State of South Carolina.


CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P. & G.S.

Florence, SC

October 15, 2008



JAMES C. RUSHTON, III,
Attorney for Defendant

THE HYMAN LAW FIRM, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James David Farmer,

Plaintiff,

Vs.

Florence County Sheriff's Office,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A # 2008-CP-21-1071

CERTIFICATE OF
MAILING

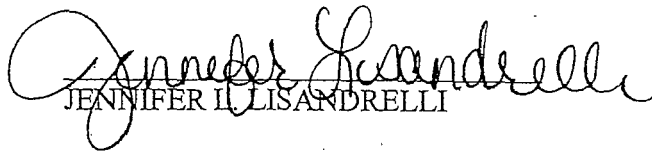
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FLORENCE COUNTY, SC

The undersigned, a Paralegal for The Hyman Law Firm, LLP, attorneys for the Defendant, does hereby certify that she deposited in the United States Mail a copy of the Return to Petition for Rule to Show Cause Hearing/Contempt dated October 15, 2008, the same being addressed to those persons whose names and addresses appear below, this being done on October 15, 2008, and that sufficient postage was affixed thereto:

Patrick J. McLaughlin
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057

Florence, SC

October 15, 2008


JENNIFER H. LISANDRELLI

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2008-CP-21-1071

Date of Appeal Hearing: April 13, 2010

James David FarmerRespondent/Appellant,

v.

Florence County Sheriff's Office.....Appellant/Respondent.

APPEARANCES OF COUNSEL:

Attorney for Respondent/Appellant:
Patrick J. McLaughlin, Esquire
Wukela Law Firm
Post Office Box 13057
Florence, South Carolina 29504

Attorneys for Appellant/Respondent:
Michael C. Abbott, Esquire
The Hyman Law Firm
Post Office Box 1770
Florence, South Carolina 29503

1 CHIEF JUSTICE FEW: Be seated, please. Madam Clerk,
2 call the case, please?

3 MADAM CLERK: Case No. 17408, Farmer vs. Florence
4 County.

5 CHIEF JUSTICE FEW: Mr. Abbott?

6 MR. ABBOTT: I'm Michael Abbott, and I'm appearing on
7 behalf of the Appellant/Respondent, Florence County
8 Sheriff's Office. Your schedule indicated that Jim
9 Rushton would be here. He's got health issues right now,
10 so he asked me to pinch hit for him. Your Honor, this
11 case arises out of a prior criminal action in which the
12 Respondent/Appellant was indicted for possessing with
13 intent to distribute and some other charges, counterfeit
14 goods: CDs, DVDs and soft goods. The Solicitor's Office
15 and the Respondent reached a plea agreement in which he
16 pled to less than the indicted amount of CDs and DVDs and
17 the charges with the soft goods, the T-shirts, tennis
18 shoes, that sort of thing were dropped.

19 JUSTICE THOMAS: Was that some sort of plea
20 negotiation?

21 MR. ABBOTT: Yes, ma'am.

22 JUSTICE THOMAS: All right. And then in the process,
23 the plea negotiation couldn't the Sheriff's Office have,
24 through the Solicitor, said part of the negotiations would
25 be your forfeit these other properties that we're not

1 pursuing?

2 MR. ABBOTT: Absolutely, Your Honor, if the
3 Solicitor's Office had worked with the Sheriff's
4 Department during the process of those negotiations.
5 Unfortunately, at least in this instance, they did not.
6 The Solicitor's Office did everything on their own without
7 the input of the Sheriff's Department, so they didn't have
8 any ability during the plea negotiations to work that
9 arrangement out.

10 CHIEF JUSTICE FEW: They didn't have the ability?
11 Doesn't the Solicitor's Office represent the State in
12 everything the State does in relation to a criminal
13 prosecution such as this.

14 MR. ABBOTT: Absolutely.

15 CHIEF JUSTICE FEW: So didn't the Solicitor's Office
16 represent the Sheriff when it decided not to raise the
17 idea of a forfeiture?

18 MR. ABBOTT: Well, they may have been acting -- they
19 were acting on behalf of the State. I believe the
20 question was, Your Honor, whether the Sheriff's Department
21 had input and could have had input. The answer is yes,
22 they could have, had they been given the opportunity. In
23 this instance, they were not given the opportunity by the
24 Solicitor's Office.

25 JUSTICE THOMAS: Isn't there, though, a requirement

1 also, I mean, under the statute that the Sheriff's Office
2 contact either the Solicitor or work with the Attorney
3 General for forfeiture?

4 MR. ABBOTT: Absolutely. The statute is clear. The
5 statute that we're dealing with diverts to the drug
6 forfeiture statute and the drug forfeiture statute
7 indicates that it's the responsibility of the Attorney
8 General's Office or the Solicitor's Office, the Circuit
9 Solicitor's Office to bring the forfeiture proceeding and
10 that didn't happen in this case. Now whether the, whether
11 the responsibility lies with the Sheriff's Department to
12 say hey, Solicitor, you need to have a forfeiture hearing
13 or once the case gets indicted and transferred to the
14 Solicitor's Office, it's their case and that's what
15 happened in this instance and for, for whatever reason,
16 and that's one of our arguments is that the Solicitor's
17 Office -- if there's a case to be made for failing to have
18 the hearing held, it's -- you're looking at the wrong guy.
19 It's by statute, it's the Solicitor's Office, and then
20 more particular in this case, it was the Solicitor's
21 Office who had control over the goods at that point once
22 the indictment was handed down and it's their
23 responsibility if, if a cause, a private cause of action
24 can be brought which, again, on behalf of the Appellant,
25 we don't think it can under state law but if one were to

1 be able to be brought, that's who it should have been
2 brought against because that's who by statute has the
3 burden to do it. The Sheriff's Department has no duty to
4 do it.

5 JUSTICE THOMAS: I don't think there's any question
6 about the confiscation, that, that the Sheriff's Office
7 had a right to confiscate. It's, it's a matter of once
8 those charges then were dismissed, dropped pursuant to any
9 negotiations, continuing to hold this property, and you've
10 indicated that, that in your primary appeal that law
11 enforcement agencies have the right to hold this allegedly
12 counterfeit goods even if the goods are not subject of a
13 criminal proceeding and that inquiry into the law
14 enforcement's motives is not proper in a hearing for the
15 return of confiscated items, is, is that your position?

16 MR. ABBOTT: Yes, Your Honor.

17 JUSTICE THOMAS: All right. Now, where, in Judge
18 Kinard's Order did he rule on this argument?

19 MR. ABBOTT: Well, Judge -- Judge Kinard's Order is
20 interesting in and of itself. There's a lot that he
21 didn't rule on in his Order. I'll, I'll put it that way.
22 His Order, basically, as he states, is a compromise. He---

23 JUSTICE THOMAS: But did you -- go right ahead.

24 CHIEF JUSTICE FEW: I was going to, I was going to
25 suggest that you answer the question directly and then

1 explain. If the answer is that he didn't, then he didn't.

2 MR. ABBOTT: The answer is that he didn't.

3 CHIEF JUSTICE FEW: Okay.

4 MR. ABBOTT: And, and coupled with that, Your Honor,
5 is that he didn't address many issues that were brought
6 before him and, in fact, I think that's what we're here
7 today is an appeal from a Summary Judgment Order which
8 didn't grant Summary Judgment. It didn't -- there is an
9 Order that requires the Sheriff's Department to return
10 goods. Number 1, that's not the, that's not the action
11 that was in the Complaint for which the Summary Judgment
12 Motion was filed. The Complaint sounded a negligence and,
13 frankly, Judge Kinard did that, which the statute at issue
14 didn't allow him to do. Section 39-15-1195(d) clearly
15 states that the owner of confiscated goods cannot bring a
16 Claim and Delivery action, cannot bring an action for
17 replevin. In the Complaint, the Respondent's Complaint
18 indicates that. They're, they're accurate. They cannot
19 bring an action for Claim and Delivery of these goods by
20 statute. What they can do by statute is apply to have the
21 goods returned to them, which they did not do. Instead,
22 they filed this negligence action and Judge Kinard's Order
23 doesn't address the Negligence action. It converts it
24 improperly to a claim and delivery action saying I'm not
25 going to give -- I'm not going to address your negligence,

1 I'm not going to give you damages, I'm not going to
2 address your defenses to the negligence action. I'm
3 telling you you need to give the goods back, which is a
4 claim and delivery remedy. Cannot do that.

5 JUSTICE THOMAS: Could that be based on the fact that
6 under the statute, there are requirements to institute the
7 forfeiture proceeding within a reasonable time?

8 MR. ABBOTT: Absolutely. And, hopefully, what may
9 come of this is ultimately there needs to be a forfeiture
10 proceeding. There needs to be a determination of whether
11 or not the goods are indeed counterfeit.

12 JUSTICE THOMAS: Are you asking this Court to remand
13 it for a forfeiture hearing?

14 MR. ABBOTT: Absolutely. I think that would be an
15 appropriate result to vacate the Order and remand it for
16 a forfeiture hearing. The statute clearly says that the
17 only way the Judge can order the return of confiscated
18 goods is in a forfeiture proceeding. Judge Kinard did not
19 have a forfeit -- he was not conducting a forfeiture
20 proceeding. He was conducting a Summary Judgment Motion
21 hearing on a negligence complaint. The relief he granted
22 didn't, didn't align with the Complaint.

23 JUSTICE THOMAS: Well, certainly you agree with some
24 of the relief he granted which was the dismissal of the
25 private causes of actions or those negligence causes of

1 action.

2 MR. ABBOTT: Absolutely.

3 JUSTICE THOMAS: Saying that those -- that Farmer
4 couldn't, couldn't pursue those.

5 MR. ABBOTT: And with that, I think the Complaint
6 fails in its entirety. With the, with the granting of the
7 Summary Judgment Motion as far as the Defendant and the
8 Appellant in this instance that, that there is no private
9 cause of action and/or the Tort Claims Act trumps it, it's
10 immune, then the Complaint should fail and Judge Kinard
11 should have granted the Summary -- the Cross-Summary
12 Judgment Motion of the Appellant.

13 JUSTICE THOMAS: Well, what about just for argument's
14 sake if there, if there is no private cause of action and
15 you return these goods, they're found -- maybe they're not
16 counterfeit, for whatever reason they, they are returned
17 and they are damaged, what happens then?

18 MR. ABBOTT: Well, thankfully I---

19 JUSTICE THOMAS: Are you saying that maybe later
20 there could be a cause of action?

21 MR. ABBOTT: If we, if we get to the point where the
22 forfeiture hearing takes place, which is -- which needs to
23 take place, that -- to me, that -- there are no factual
24 disputes leading up to the time of the Summary Judgment
25 Motion, other than whether or not the goods are

1 counterfeit. I think, hopefully, the Court will agree
2 that if the goods are counterfeit, the Sheriff's
3 Department is well within their rights to keep them,
4 regardless of whether he pled guilty or not to those
5 things.

6 JUSTICE HUFF: How soon should a forfeiture action
7 begin?

8 MR. ABBOTT: Well, by statute, within a reasonable
9 time.

10 JUSTICE HUFF: Are we going to be here again?

11 MR. ABBOTT: Hope -- well, again, one of -- I think
12 an appropriate remedy would be to vacate the Order and
13 remand it for a forfeiture hearing, which would take place
14 whenever the Court schedules it.

15 CHIEF JUSTICE FEW: Absent a forfeiture hearing on
16 remand, do you agree that the Sheriff's Office has no
17 right to hold the goods, absent a successful forfeiture
18 hearing?

19 MR. ABBOTT: I do not agree to that, Your Honor. I
20 think---

21 CHIEF JUSTICE FEW: What is, what is the legal right
22 at this moment that the Sheriff's Office has to hold these
23 goods that were seized from the other side, Mr. Farmer?

24 MR. ABBOTT: The legal right, Your Honor, is that
25 they -- they obtained a valid warrant which was signed by

1 the local Magistrate. They executed that warrant and
2 seized the goods in accordance with 39-15-1190 and until
3 such time as a Court tells them you've got to give the
4 goods back, they have every right to hold them.

5 CHIEF JUSTICE FEW: Well, hasn't that warrant been
6 dismissed?

7 MR. ABBOTT: The warrant -- the indict -- the
8 indictment that's followed from the warrant was, but the
9 warrant itself was not. I mean what -- so what -- the
10 diff--- the difficulty is and the Sheriff's Department is
11 convinced, and I know we'll have counter-arguments, but
12 the Sheriff's Department is obviously convinced that the
13 soft goods are counterfeit and they're being placed in a
14 position where they've got to facilitate -- I mean, it's
15 a, it's a crime not only to distribute but to possess
16 counterfeit goods, and they're being asked to facilitate
17 the return of these counterfeit goods and help commit
18 another crime and they've, obviously, got an objection to
19 doing that.

20 JUSTICE THOMAS: They have argued that they're not
21 counterfeit? Didn't they deny?

22 MR. ABBOTT: Which gets me back to the forfeiture
23 hearing and we need to have that.

24 JUSTICE HUFF: Thank you, Mr. Abbott. Mr.
25 McLaughlin?

1 MR. MCLAUGHLIN: Thank you, Your Honor. May it
2 please the Court? Mr. Abbott, I'm Patrick McLaughlin.
3 I'm here representing Mr. Farmer, and I think -- I'd like
4 to think I did a fairly good job briefing my issue, so I'd
5 like to direct my comments to some of the questions and,
6 I believe, Judge Thomas and Judge Huff, some of the
7 questions y'all asked are, are very important. No. 1,
8 whether or not we would be back here. I think it's
9 obvious -- well, it's obvious to Mr. Farmer in looking at
10 this that even though they're before this Court today
11 asking for a remand to go back and have a forfeiture
12 hearing on this material, that forfeiture hearing is
13 likely to be very interesting because we don't believe the
14 material is around anymore, and we think that's easiest
15 enough to understand based on the appeal. Judge Kinard
16 provided in the Order, he said, "Farmer, this stuff is
17 counterfeit."

18 JUSTICE THOMAS: Well, we're kind of going outside of
19 the record now, I'm just saying, and I know I, I asked a
20 question that might have been outside of the record
21 somewhat, too, but how are we supposed to know whether
22 they're---

23 MR. MCLAUGHLIN: Well, well---

24 JUSTICE THOMAS: ---it's, it's around or not. But
25 you say, though, that the forfeiture hearing, that is not

1 an effective remedy for you, because your client would
2 have to prove he didn't have knowledge of the use of the
3 property that made it subject to seizure and forfeiture.
4 But doesn't that paragraph go on to say that the Court --
5 if the Court denies that application, the hearing will
6 proceed on into a forfeiture hearing. It's not -- you,
7 you petitioned saying I want it back, but then it proceeds
8 into the forfeiture hearing and I don't see that as an
9 obligation.

10 MR. MCLAUGHLIN: Well, Your Honor, I think -- and I
11 searched for the term. I couldn't come up with the right
12 term while I was writing my brief and as soon as I
13 submitted it, it hit me. I believe that that subsection
14 H is an "innocent owners" kind of clause, and I think we
15 -- we know that if we look at the words that the General
16 Assembly used. They used the word "own" or they used the
17 word "use." Someone in Mr. Farmer's position could never
18 argue that they were not aware of what the use was and in
19 their own brief---

20 JUSTICE THOMAS: They still could argue, though, and
21 excuse me for interrupting.

22 MR. MCLAUGHLIN: Yes, ma'am.

23 JUSTICE THOMAS: It wouldn't preclude you. You might
24 not be able to say I'm the innocent owner, but it wouldn't
25 preclude you from arguing why forfeiture was

1 inappropriate.

2 MR. MCLAUGHLIN: Well, no, ma'am, it wouldn't. My
3 question then---

4 JUSTICE THOMAS: Like, for example, it's not
5 counterfeit.

6 MR. MCLAUGHLIN: That's exactly right. But my
7 question then is under what cause of action are we allowed
8 to bring it. I don't, I don't believe that people in Mr.
9 Farmer's position can bring a cause of action under H. I
10 don't believe they're allowed that and then it's---

11 JUSTICE THOMAS: It's not under Paragraph C of
12 Section 39-15-1195?

13 MR. MCLAUGHLIN: Well, that's what we brought our
14 cause of action on. We brought a cause of action of
15 negligence saying that the state was negligent in not
16 instituting those forfeiture proceedings. And, Your
17 Honor, a question you asked, you specifically asked the
18 Sheriff's Office about whether or not there were any
19 duties and the Sheriff -- and Mr. Abbott begin discussing,
20 well, this goes to the other statute that has to do with
21 drug forfeitures, but, but he -- they are ignoring the
22 very real duties that 39-15-1195 does place on them, and
23 those are duties -- and I believe this was what Your Honor
24 was asking about, duties to make these reports to the
25 proper prosecuting agencies, duties to have reports made

1 available for the public if they want to question this
2 inventory, also a duty not to -- basically, not to waste.
3 I believe those are under Subsections F and G of that, and
4 so I believe that's what -- that's the area Your Honor was
5 asking was aren't there some duties related to this and it
6 seems to me that the Sheriff's Office is completely
7 ignoring those duties here. Without a doubt, they believe
8 the stuff was contraband, but until it's been adjudicated
9 that, they don't have a right to hold it. I believe Judge
10 Kinard's Order that they grasp on that end question and
11 Judge Kinard, for those of us who have appeared before
12 him, sometimes he likes to split the baby, and I believe
13 that's what he did here. That's obvious by that sentence
14 that they grasp on which is this is obviously a reasonable
15 compromise. But it ignores the three very real findings
16 of fact that Judge Kinard made in that Order and Number 1
17 was that there were no pending criminal charges against
18 Mr. Farmer; Number 2, that he had never been convicted or
19 pled guilty to a violation of 1190 and Number 3, that the
20 -- excuse me, I forgot, that there was no hearing to
21 adjudicate the material. And so those are -- those were
22 the bases for his rulings, and I certainly believe that he
23 was proper in making those rulings in ordering them to
24 turn the property back over.

25 JUSTICE THOMAS: Did you ever ask for the property to

1 be turned back over?

2 MR. MCLAUGHLIN: Yes, ma'am, I did. There are two
3 letters, demand letters that---

4 JUSTICE THOMAS: I'm talking about in your Complaint?

5 MR. MCLAUGHLIN: In the Complaint, no, ma'am. No,
6 ma'am. There were two demand letters sent prior to the
7 Complaint being filed which I believe that---

8 CHIEF JUSTICE FEW: We understand that.

9 MR. MCLAUGHLIN: Yes, sir.

10 CHIEF JUSTICE FEW: The suggestion is made by the
11 Sheriff's Department that because you didn't ask for it in
12 your Complaint, you can't benefit from Judge Kinard having
13 ordered it. That relief can't occur. He can't order
14 something you didn't ask for. So explain to us how you
15 respond to that argument?

16 MR. MCLAUGHLIN: I, I would respond to that, Your
17 Honor, by saying A, it's certainly inherent that Judge
18 Kinard could have accepted our filing of, of the lawsuit
19 as a demand for the return of the property. I know in the
20 language of the Complaint, I, I did not specifically ask
21 for a prayer of relief demanding the return of the
22 property. Certainly, we did ask for damages, and I
23 believe when I asked for attorney's fees and damages, I
24 believe there's language that specifically references the
25 fact that Mr. Farmer had to secure an attorney to try to

1 get return of his property. So, so I believe it's
2 perfectly correct for Judge Kinard to treat the action if
3 he believed that we could file under H to treat it as a
4 filing under H.

5 CHIEF JUSTICE FEW: You -- on page 6 of the
6 transcript, which is page 97 of the record, you refer to
7 those two letters and ask that the property be returned to
8 you. Does that help you?

9 MR. MCLAUGHLIN: Yes, sir. Then at oral argument,
10 they were asked, Your Honor. And the other thing we deal
11 with here is whether or not we've got a private cause of
12 action, and the briefs go into quite detail about the
13 factors of the Summers case that I believe this Court
14 decided back in '89 about the special duty exception to
15 Tort Claims Act liability and goes through all six of the
16 factors and why we believe that we meet those factors.
17 This, this---

18 JUSTICE HUFF: You assert that they're not
19 counterfeit in your argument to the Court, because you say
20 that part of your damages is lost profits.

21 MR. MCLAUGHLIN: That's exactly right. Yes, sir.

22 JUSTICE HUFF: And I'm assuming that you don't sell
23 things that are counterfeit.

24 MR. MCLAUGHLIN: And, and that's a -- that brings up
25 a good point that I would like to bring up. There was a

1 question about whether or not this was a plea negotiation
2 and this, this is neither here nor there, but there's a
3 real question, I believe, in today's law about trademark
4 law and, and how it is valid. In their own brief, the
5 Sheriff's Department does admit that the central issue
6 behind trademark law is protecting the public from
7 inferior quality goods and that goes back to a very real
8 argument that was made to the Solicitor's Office which was
9 nobody makes anything anymore. Nike, Fubu, these, these
10 people, they're not making these goods. They're buying
11 them from other people. They're cutting out the tags.
12 They're sewing in their own tags and the question becomes
13 -- we've, we've kind of turned trademark law on its head
14 because there is -- there's not supposed to be any
15 inherent value in a trademark. The value is supposed to
16 be in the quality of the merchandise that we put the
17 trademark on, but, I mean, let's face it, we don't make
18 anything anymore. We buy it from other people and then we
19 slap our logos on it and then we want to---

20 JUSTICE THOMAS: Well, sir, it sounds like you are
21 making an argument saying that there's no reason that we
22 should have these trademark laws or the counterfeit law on
23 our books, and I don't believe that we are in a position
24 to do anything about that.

25 MR. MCLAUGHLIN: Yes, ma'am. No, it was more

1 argument about whether or not this was a real plea
2 negotiation. I handled Mr. Carmer's -- Mr. Farmer's
3 criminal defense and there were very real problems with
4 prosecuting him for the trademark issues.

5 JUSTICE HUFF: Address the comment that I think Judge
6 Few made, the indictment was, was dismissed?

7 MR. MCLAUGHLIN: That's correct.

8 JUSTICE HUFF: And under what basis do they retain
9 the property?

10 MR. MCLAUGHLIN: Well, under their -- I know what
11 their basis is. They say that they've got a right to
12 withhold it and not only that, they say you can't ask them
13 why they're holding it.

14 JUSTICE HUFF: Now, my next question is for how long?

15 MR. MCLAUGHLIN: Apparently, in perpetuity. And, and
16 that's, that's the other real issue here. We've got
17 property being taken and the Sheriff's Department seems to
18 be like, well, you can't call us into Court and ask us why
19 we took it. Yes, there is a duty on somebody and they
20 came up later on and tried to craft this identify argument
21 where you sued -- well, that's not us.

22 JUSTICE HUFF: That's my next question, but go ahead.

23 MR. MCLAUGHLIN: Yes, sir. They, they come up with
24 this next argument about, well, you sued the wrong person.

25 Well, I, I don't think that's proper to bring it up in the

1 response brief, when it hasn't been brought up. Although,
2 but even if it were, I don't think the, the relief there
3 is to dismiss this entire Complaint. I think Mr. Farmer
4 should be allowed to amend his Complaint if he needs to
5 and that identity argument, by the way, ignores the very
6 real duties that we talked about are in 1195, the duty
7 about the reporting, the duty about the waste, possible
8 waste to the clothing and these are issues that, that we
9 don't know about, because we had this, this Order issued
10 before we could ever get into discovery and start looking
11 into the actual case.

12 JUSTICE HUFF: How long had they held the property
13 before you made your demand for the return?

14 MR. MCLAUGHLIN: Your Honor, I, I am not sure. It was
15 from the date of the raid through. They have had this
16 property from the date they raided Mr. Farmer's store and,
17 and then, of course, in the record I believe are the two
18 letters where we made our first demand, which I think was,
19 was relatively quickly after the criminal charges were
20 dismissed.

21 CHIEF JUSTICE FEW: Thank you, Mr. McLaughlin.

22 MR. MCLAUGHLIN: Thank you, Your Honors.

23 CHIEF JUSTICE FEW: Mr. Abbott, we would like for you
24 to address the question that both of you have been asked
25 before which is what is the legal right of the Sheriff's

1 Department to hold these items in its custody after the
2 dismissal of the indictment and for the purpose of my
3 question, you can assume that when the indictment is
4 dismissed that the case management system would reflect
5 that the warrant has been dismissed.

6 MR. ABBOTT: Your Honor, if I may, again, I'll just
7 refer back to the seizure statute itself which allows the
8 Sheriff's Department to seize these goods pursuant to the
9 valid warrant, etc. There is a statutory mechanism to
10 give the goods back, which, again, is our argument that
11 the Respondent has not availed himself of that remedy.

12 JUSTICE THOMAS: But that's the same---

13 CHIEF JUSTICE FEW: Understood.

14 MR. ABBOTT: And I understand---

15 JUSTICE THOMAS: That same statute require, though,
16 that the Sheriff's Office do certain things and, frankly,
17 institute forfeiture proceedings within a reasonable time.

18 MR. ABBOTT: Correct. The Solicitor or the AG.

19 JUSTICE THOMAS: And why was that not done?

20 MR. ABBOTT: I can't answer for the Solicitor or AG's
21 office. I don't know. It should, should have been done.
22 Clearly, it should have been, but I -- but again, I can't
23 answer for them. I'm here on behalf of the Sheriff's
24 Department, and they have not gotten an order from a Court
25 telling them, other than the one that's before you today

1 that we're appealing that they need to return the goods.

2 CHIEF JUSTICE FEW: So you, you have said that the
3 Sheriff's Office has a right to hold these items when
4 there is a warrant that has alleged that they are
5 contraband and you have said that there is a forfeiture
6 procedure in the statute that you have not yet taken
7 advantage of. Is there any other legal mechanism that
8 might give the Sheriff's Department the legal right to
9 retain these pieces of property?

10 MR. ABBOTT: I don't know of one, Your Honor. If, if
11 I could, though, I'd like to analogize. If you carry, if
12 you carry Respondent's argument one step further and
13 remember that he was indicted for, I think, over a
14 thousand CDs and DVDs and over 65 -- over a thousand CDs
15 and over 65 DVDs and what he pled to was an amount
16 substantially less than that. If you carry that logic one
17 step further that, well, I haven't been indicted or pled
18 guilty to this offense, what's to stop him from getting,
19 clearly, the bootleg CDs and DVDs that are beyond what he
20 pled guilty to and that, and that would be an absurd
21 result.

22 CHIEF JUSTICE FEW: Fortunately, we don't have to
23 answer that question. He did, in fact, plead guilty to
24 counterfeit CDs, so we don't -- that's a totally different
25 situation from the, from the contraband---

1 MR. ABBOTT: Well---

2 CHIEF JUSTICE FEW: ---clothing items.

3 MR. ABBOTT: Respectfully, Your Honor, it's -- there
4 is no -- if the question is what legal right does the
5 Sheriff's Department have to hold the, to hold the goods
6 once the case is -- once the criminal action has been
7 dismissed, then there is on distinction between the CDs
8 and DVDs and the soft goods. He wasn't -- he didn't plead
9 guilty to having between 65 and a thousand CDs and DVDs,
10 so why shouldn't he get those back, too, and clearly, I
11 think, hopefully, you think that's an absurd result. It
12 gets back to we need to have a forfeiture hearing to
13 determine whether or not these things are counterfeit. If
14 they're not counterfeit, he's entitled to them back. If
15 they are, I don't think he is and there's no more
16 questions.

17 CHIEF JUSTICE FEW: Anything further?

18 MR. ABBOTT: No, sir, there's no more questions.

19 CHIEF JUSTICE FEW: All right. Thank you very much.

20 MR. ABBOTT: Yes, sir.

21 MADAM CLERK: Please stand for the Court.

STATE OF SOUTH CAROLINA)

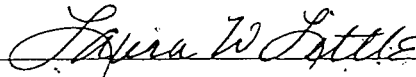
COUNTY OF DARLINGTON)

CERTIFICATE

I, Laura W. Little, Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that this is a true and correct Transcript of Record of the voice recording of the Appeal Hearing held on April 13, 2010; that I was not present for the hearing testimony; that the foregoing pages constitute a true and accurate transcript of testimony given at that time and place.

I certify that I am not of counsel or kin to any of the parties, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 30th day of July, 2012.



Laura W. Little, Verbatim Reporter

Notary Public, State of South Carolina

My Commission Expires September 21, 2015.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

The Hon. Ernest F. Kinard, Jr., Circuit Court Judge

Opinion No. 4752
(S.C. Ct. App. Filed October 13, 2010)
Case No. 2008-CP-21-1071

James David FarmerRespondent,

v.

Florence County Sheriff's Office..... Petitioner.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Respondent's Appendix to the Record on Appeal contains all additional material proposed to be included by the Respondent and not any other material.

Date: Aug. 6, 2012



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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

The Hon. Ernest F. Kinard, Jr., Circuit Court Judge

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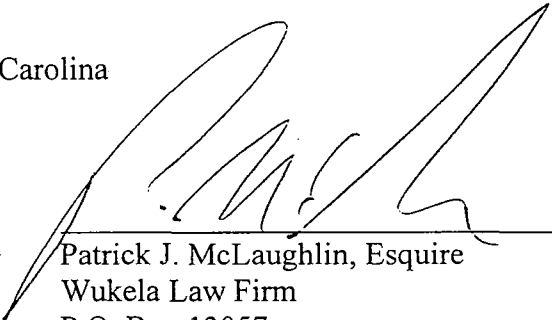
Petitioner.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the Respondent's Brief and Supplement to the Appendix was served on opposing counsel this 6th day of August, 2012 by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

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