

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

RECEIVED

NOV 17 2015

S.C. Supreme Court

Christopher A. Wellborn, ... Petitioner,

v.

The City of Rock Hill, ... Respondent.

APPENDIX

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Christopher Barton, Senior Solicitor
Paula Knox Brown, Assistant Solicitor
Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4601178

Rock Hill City Of

Chris Wellborn

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James Boyd

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. **ORDER**

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)
n/a	n/a	n/a

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.

s/ John C. Hayes 999

Circuit Court Judge

2049

Judge Code

11/13/2013

Date

For Clerk of Court Office Use Only

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:

Paula Knox Brown
201 E. Main Street Third Floor
Rock Hill, SC 29730

James W. Boyd
PO Box 36425
Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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.

STATE OF SOUTH CAROLINA FILED-RECEIVED THE COURT OF COMMON PLEAS
COUNTY OF YORK 2013 NOV 13 AM 8:16 SIXTEENTH JUDICIAL CIRCUIT

Christopher A. Wellborn,

Appellant,

vs.

City of Rock Hill,

Respondent.

DAVID H. LILSON
C.C.C.P. & G.S.
YORK COUNTY, SC

C.A. No.: 2013-CP-46-01178

ORDER

The Court issued an Order in this contempt appeal on September 25, 2013. Appellant timely filed a "Motion to Reconsider" said Order.

The motion alleges no error of law but asserts the trial judge's Order is not supported by sufficient evidence asserting that the comments the Court found in its Order of contempt are not supported by the record.

The body of Appellant's motion notes "... there is a conflict between the trial judge's version and the Appellant's version of what the ruling actually was." This argument ignores the fact that as the finder of fact the trial judge determines the facts from the record, which here includes Appellant's testimony, the Verified Petition of the trial judge, and the trial judge's knowledge of what he ordered in the subject incident and Appellant's conduct in the trial judge's presence. See TR 45, L7 through p. 46, L1. The Verified Petition of the trial judge establishes a factual basis for the finding of contempt. That appellant's recollection does not jibe with that of the judge who issued the order does not establish Appellant's version is correct. In fact, in his motion, Appellant notes "In this case there is a conflict between the trial judge's version and the Appellant's version of what the ruling actually was."

[Handwritten signature]

Appellant acknowledged that the trial judge ruled neither he nor the City Solicitor were to go into any detail or any explanation as to why he or his client was late or not present during the time of jury selection (TR, p. 29, LL 13-16). The trial judge, relying on his Verified Petition, found as fact that his instructions and his recollection of his order and Appellant's alleged contemptuous conduct, found as fact that his instructions to Appellant were that Appellant was to not make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence.

The record from the hearing on the contempt issue makes it clear that the trial judge found that he had told Appellant not to make any comment in the jury's presence about his or his client's tardiness. (TR, p. 45, LL 13-16 and p. 46, LL 4-6). The record of the hearing also reflects that the trial judge found that appellant had, in contravention of said order, in the jury's presence "...something like he wanted to explain to the jury why he and his client were late in arriving." (TR, p. 45, L 23 through p. 44, L 46).

In sum, on the record, the trial judge found and held that "Mr. Wellborn doesn't follow my very simple, direct order" (TR, p. 46, LL 11-13), and found Appellant's conduct contemptuous.

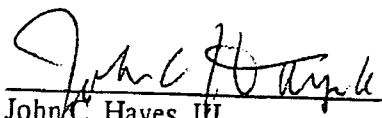
It must be noted by the undersigned that the imposition of a contempt finding on an attorney is not taken lightly and the undersigned has not in over twenty (20) years on the bench been compelled to hold an attorney in contempt. However, the undersigned must also note that the courts of this State, at any level, have the right, in fact the obligation, to demand and see that counsel, litigants, court personnel, jurors and spectators adhere to their direct orders.

Therefore, Appellant's Motion to Reconsider the Court's Order of September 25, 2013, is DENIED.

gch

IT IS SO ORDERED.

November 6, 2013
York, South Carolina



John C. Hayes, III
Presiding Judge

#3

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS
Rock Hill City Of

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4601178

Chris Wellborn

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

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 43(k), SCRPC (Settled); ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ 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:

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

ORDER INFORMATION

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)

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.

s/John C. Hayes, III

Circuit Court Judge

2049

Judge Code

9/25/2013

Date

For Clerk of Court Office Use Only

▪ This judgment was entered on October 2, 2013, and a copy mailed first class or placed in the appropriate attorney's box on October 3, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Paula Knox Brown 201 E. Main Street Third Floor Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Boyd 1544 Ebenezer Rd. PO Box 36425 Rock Hill, SC 29732

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton

David Hamilton - Clerk of Court

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.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Christopher A. Wellborn,

Appellant,

vs.

City of Rock Hill,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-01178

ORDER

FILED-RECEIVED
2013 OCT 2 PM 3:58
DAVID H. HARRISON
C.C.P. & GS
YORK COUNTY, SC

This matter is before the Court by way of an appeal from the Rock Hill Municipal Court.¹ Appellant, a licensed attorney, at a contempt hearing before Rock Hill Municipal Judge Peter J. Lenzi, was held in contempt on two of five allegations of contempt set forth in Judge Peter J. Lenzi's Verified Petition alleging Contempt of Court. Appellant alleges numerous grounds for reversal. This matter was heard August 27, 2013, and taken under advisement. James W. Boyd, Esq. appeared for Appellant; Paula Knox Brown, Esq. for Respondent.

Initially, appellant alleges on an appeal that the Trial Judge should have recused himself from the contempt proceeding. The Notice of Appeal sets forth nothing in support of this alleged error.

However, Appellant's motion for recusal is part of the record by way of the trial court's Return. Appellant's motion for recusal is based on Canon 3.E.(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR. The above referenced cannon provides that a judge shall disqualify themselves in a proceeding in which their impartiality might reasonably be questioned and that

¹ The original caption was "Rock Hill Municipal Court vs. Christopher A. Wellborn." Whether the captions affixed to this matter are correct is not before the Court. It seems the caption should actually be "In re: Christopher A. Wellborn." See Black's Law Dictionary, 7th Ed., p. 796.

the Trial Judge's impartiality may be questioned because "to the judge's knowledge he [or she] is likely to be a material witness in the proceeding."

The Trial Judge denied the Appellant's motion for recusal without elaboration. Implicit in his ruling is the judge's determination that he was not likely to be a material witness.

As set forth below, a Trial Judge has the inherent power to hold one in contempt. This power resides with the Trial Judge, that is, the judge in whose presence a contemptuous act occurred or whose direct order has been disobeyed. Here, the Trial Judge, Judge Lenzi, was not obliged to recuse himself. This inherent power has been to some degree codified as set forth below.

In Floyd v. Floyd, 365 S.C. 56, 615; S.E.2d 465 (Ct. App. 2005) the Court stated that a decision on contempt rests with the Trial Judge and is not subject to reversal unless the decision lacks evidentiary support or the Trial Judge abused his or her discretion.

The Trial Judge's order does not set forth the burden of proof he applied in his consideration of the evidence. Absent anything reflecting the contrary, this Court must consider that the Trial Judge applied the correct burden of proof. Appellant did not ask the Court to reconsider the subject order to reflect the burden the Court applied. Also on appeal the Appellant has not raised the issue.

The Court's analysis of this appeal starts with the Court of Appeals' compendium of the law on contempt found at Ex Parte Cannon 385 S.C. 643, 685 S.E.2d 814 (Ct.App. 2009).

Cannon, supra, states that all courts have the inherent power² to punish for contempt, which is essential for the preservation of order in judicial proceedings and to enforcement of the orders of the Court. As to disobedience to a court order, the record must clearly and specifically

² Inherent power; a power that necessarily derives from an office position or status. Black's Law Dictionary, 7th Ed., p. 1189.

galt

reflect the contemptuous conduct. Additionally, the courts have the inherent power to punish for offenses calculated to obstruct, degrade or undermine the administration of justice.

Cannon, supra, establishes that contemptuous conduct occurring in the presence of the Court is considered direct contempt. Civil contempt must be proven by clear and convincing evidence. Criminal contempt, which is the species here present, requires proof beyond a reasonable doubt.

In addition to the Court's inherent power to punish contemptuous conduct, our legislature has provided, by statute, two specific types of contemptuous conduct by Sections 22-3-950 and 40-5-510, South Carolina Code, 1976. The Court references these in its review of this appeal as they relate to the matter on appeal.

The two allegations upon which the Trial Judge found Appellant in contempt are:

3. Mr. Wellborn degraded the Court with his comment. There were several juries selected that morning including the Cullen jury. The Cullen jury was struck without Mr. Wellborn or his client in Attendance. Before the case got underway, Mr. Wellborn appeared. When the Court inquired of Mr. Wellborn as to why he was more than two hours late, Mr. Wellborn responded that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."
4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again, stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

As to Number 3 above, in his Order, the Trial Judge found that [Appellant's] remark to the Court when asked why he was more than two hours late, to wit: "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here" was, at best, impudent and, at worst, insolent and impertinent. The Trial Judge held that "such conduct has a chilling effect on the administration of justice and the judicial process. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00."

Based on this finding and the contempt charge from the verified petition, the trial court, by inference, appears to have found the referenced remark of Appellant degrading. The Trial Judge did not make a finding that Appellant's conduct constituted disorderly conduct which caused an interruption of the Court's business. (See § 40-5-510, South Carolina Code of Laws, 1976).

Since the Trial Judge, by proceeding through the vehicle of a verified petition, the power of contempt set forth in § 22-3-950, South Carolina Code of Laws, 1976, does not seem to apply. This Code Section reads to the undersigned as a ground of contempt power during the course of a proceeding in order that a judge is able to preserve the decorum in his or her court. Section 22-3-950, South Carolina Code of Laws, 1976, clothes a summary court judge with the "power to enforce observance of decorum in his court while holding the same." (emphasis added)

While the undersigned agrees that the comments could be rightfully construed by the Trial Judge to be "impudent", "insolent" and "impertinent," such conduct was not found to have disrupted court, but rather to have "a chilling effect on the administration of justice and the judicial process." This latter finding is not significantly different from The Supreme Court's observance in The Matter of Goude, 296 S.C. 510, 374 SE2d 496 (S. Ct. 1988), wherein the

gent # A

Court states "when a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system."

In Goude, the contemptuous conduct was committed in public. In the instant case it appears the comment was made to the Trial Judge "face to face." (See excerpt from contempt hearing set forth in Respondent's brief at page 6.)

The undersigned finds that the conduct of Appellant, while arguable a comment of disrespect for the operation of the City of Rock Hill's Municipal Court, does not constitute contemptuous conduct within the purview of § 22-3-950 or § 40-5-510, South Carolina Code of Laws. The comment does not, in context, rise to the level necessary for a contempt finding based on the Court's inherent power to punish contempt.

As to Number 4 above, the Trial Court found Appellant in contempt for violating the Court's order to Appellant "not to make any comment concerning his or his client's tardiness . . . in the presence of the jury." This finding is dramatically different from the comment at Number 3 above. Here, the Court has found that Appellant violated a direct order of the Court. This conduct clearly constitutes "an open and direct contempt to the court." (Section 40-5-510, South Carolina Code of Laws). As a direct violation of an order of the Court, it was within the Trial Court's inherent power to punish the comment as an act of contempt.

Neither a summary court judge nor any other members of the unified judicial system are to be prohibited from punishing conduct as contemptuous when it violates a direct order of the Court. A court without the authority to effectuate its orders by way of a finding of contempt is a neutered court. Requiring recusal in these instances would, as stated, neuter a court's ability to conduct the business of his/her courtroom.

JOHN #5

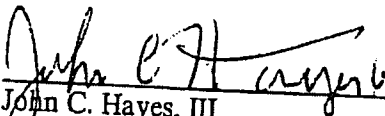
According to Judge Lenzi's Petition, Appellant was instructed (ordered) "not to make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence." In his Order, Judge Lenzi found that Appellant agreed with the allegation of the Petition and agreed that he was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence.

Appellant's second request for permission to inform the jury of the reason for his and his client's tardiness was in direct violation of the order of the Trial Judge, an order Appellant acknowledged. If Appellant was confused as to the judge's order a request to take up the matter outside the jury's presence would have been warranted. Instead of such request, Appellant chose to violate the Court's order and accomplish by doing so that which he had been ordered not to do.

Based on the above, I grant Appellant's appeal as to the finding of contempt for "degrading the Court with his comment" (Number 3 above) and set same aside.

Based on the above, I deny Appellant's appeal as to the finding of contempt for disobeying a court ruling and affirm the Trial Judge's finding of contempt and imposition of a fine for same. (Number 4 above)

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

September 15, 2013
York, South Carolina

#6

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ROCK HILL MUNICIPAL COURT,))
Petitioner)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

ORDER
CONTEMPT OF COURT

THIS MATTER was called for hearing on March 25, 2013 on the Verified Petition Alleging Contempt of Court filed by the undersigned on or about March 6, 2013. Present were the Respondent, Christopher A. Wellborn and his counsel, James W. Boyd. The Petition specified in five numbered paragraphs facts which the undersigned alleged constituted contemptuous conduct by the Respondent during his representation of David H. Cullen on a charge of Reckless Driving on January 16, 2013. A copy of the Verified Petition is attached hereto and made a part hereof by reference marked Exhibit 1.

Counsel for the Respondent filed a Motion for Recusal on or about March 20, 2013, mailed on March 21, 2013 and it was received by the Court on Friday, March 22, 2013. The Motion is attached hereto and made a part hereof by reference marked Exhibit 2. Mr. Boyd was allowed to argue his Motion and that Motion was denied.

Counsel for the Respondent called two witnesses; to-wit, the Respondent Christopher A. Wellborn, Esquire and James Morton, Esquire. Mr. Wellborn responded to each of the issues of alleged contemptuous conduct outlined in the Verified Petition, after introducing himself and reviewing both his experience as a criminal defense attorney and his membership in various legal organizations. Mr. Wellborn admitted that he had received notice that his case was set for trial on January 16, 2013 at 9:00 a.m. He testified concerning various conversations that he had with Anna Timothy Miller, the Rock Hill City Solicitor assigned to his case. Mr. Wellborn testified further that he did not get a call from Ms. Miller that the case would be called and as a result, he scheduled car repairs in Charlotte, North Carolina on the morning of January 16, 2013. There was no testimony offered from Mr. Wellborn that he, pursuant to numerous Orders of the Rock Hill Municipal Court (see composite Exhibit 3 attached hereto and made a part hereof by reference), sought or received protection for either he or his client on the date of his client's trial.

Mr. Wellborn testified that he, in fact, had a conversation with Anna T. Miller at approximately 10:00 a.m. on January 16, 2013. Mr. Wellborn confirmed that Ms. Miller advised him that she was calling at the behest of Judge Lenzi who requested that she contact Mr. Wellborn in order to determine where he was and why neither he nor his client were present to pick a jury. Mr. Wellborn took issue with Ms. Miller's recollections of that conversation which

were outlined in an Affidavit submitted by Ms. Miller with the Verified Petition. Although Mr. Wellborn acknowledged that the possibility of a "PCR" was raised in that conversation, Mr. Wellborn testified that the remark was not intended to be disrespectful or as a threat.

The Defendant admitted the Court inquired of him outside of the jury's presence as to why he was more than two hours late for his Jury Trial nor did he deny stating in response to that question "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here." Mr. Wellborn concluded that he meant no disrespect by his response, that since the question was posed by the Court, he was required to answer the question in an honest and forthright manner and that is all that he did.

Again, the Defendant admitted he requested permission from the Court to explain to the jury during his Opening Statement why neither he nor his client were present for jury selection. The Respondent and the Court agree that request was denied and Mr. Wellborn was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence. After Opening Statement it is agreed that Mr. Wellborn asked permission to go into the hallway so as to determine whether or not his client had arrived, and that request was granted. However, as he was leaving the courtroom and in the jury's presence, he once again requested permission to explain to the jury why he and his client were late for Court. Mr. Wellborn's explanation as reflected by his testimony was that he believed that the Court had limited his ability to make such comments in the jury's presence only during Opening Statement.

Finally, the Verified Petition accuses the Respondent of disobeying the Court's Order to cease making facial expressions and mutterings under his breath in response to adverse rulings regarding the introduction of evidence. Mr. Wellborn did not deny that he was admonished by the Court to stop making facial expressions and mutterings and had no recollections of making facial expressions or mutterings.

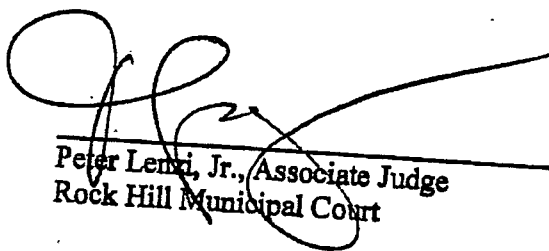
The Court finds the Respondent in contempt of Court concerning his conduct on two matters raised by the Verified Petition alleging Contempt of Court. The Court finds that his remark to the Court when asked why he was more than two hours late, to-wit: "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here" was, at best, impudent and, at worst, insolent and impertinent. Such conduct has a chilling effect on the administration of justice and the judicial process. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00.

The Court find the Respondent in contempt of Court concerning his violation of the Court's Order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury. The Court's admonition to counsel was clear, Mr. Wellborn nevertheless asked again to explain why he and his client were late for Court while exiting to see if his client had arrived and this request was made in the jury's presence, in clear violation of the Court's Order. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00.

EXHIBITS:

1. Verified Petition Alleging Contempt of Court
2. Motion for Recusal
3. Orders of The Rock Hill Municipal Court

DONE AND ORDERED this 28 day of March, 2013.


Peter Lenzi, Jr., Associate Judge
Rock Hill Municipal Court

CC: James W. Boyd, Jr., Attorney for Respondent

EXHIBIT 1

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

VERIFIED PETITION ALLEGING
CONTEMPT OF COURT

COMES NOW the undersigned, Peter J. Lenzi, Associate Judge, Rock Hill Municipal Court and under penalty of perjury avers and states as follows:

THE affiant is an Associate Municipal Court Judge for the City of Rock Hill who was presiding over the Jury Trial Docket for the City during the week of January 14, 2013. One of the cases scheduled for trial was the case of City of Rock Hill v. David H. Cullen, Case Number 20889FT. Christopher A. Wellborn had made an Appearance on behalf of the Defendant on September 24, 2012. The case was scheduled for Jury Trial on January 16, 2013 at 9:00 a.m. Notice had been sent by the Court by email on December 20, 2012.

The Court conducted a Docket Call on January 9, 2013 beginning at 10:00 a.m. by conference call. Mr. Wellborn spoke to the Judge, the Clerk, Solicitors Paula Brown, Anna Miller and Kindle Johnson and informed the Court that the Cullen case was a definite trial. The Solicitor, Anna Miller, concurred.

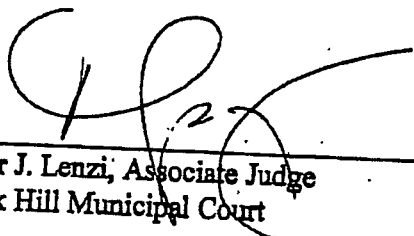
Five instances of contempt are as follows:

1. Mr. Wellborn and his client did not appear for Court. At approximately 10:00 a.m. on January 16, 2013 the Court noticed that neither Mr. Wellborn nor his client had made an appearance. The Court requested City Solicitor Anna T. Miller to attempt to contact Mr. Wellborn so as to inquire as to his whereabouts and if Mr. Wellborn could offer a legitimate reason for not appearing for his trial.
2. Mr. Wellborn threatened to undermine the Court with his comment. Ms. Miller reported back to the Court that she had made telephone contact with Mr. Wellborn who advised he was in Charlotte attending to some car repairs and that if the Court proceeded without him or his client being present, that Mr. Wellborn would "PCR" himself.
3. Mr. Wellborn degraded the Court with his comment. There were several juries selected that morning including the Cullen jury. The Cullen jury was struck without Mr. Wellborn or his client in attendance. Before the case got underway, Mr. Wellborn appeared. When the Court inquired of Mr. Wellborn as to why he was more than two hours late, Mr. Wellborn responded

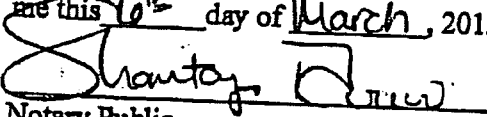
that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."

4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for Court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

5. Mr. Wellborn disobeyed a Court ruling with his behavior. During both Mr. Wellborn's cross examination of the City's chief witness and his direct examination of the Defendant, Mr. Wellborn was observed to be making facial expressions and mutterings under his breath in response to adverse rulings on objections raised by the Solicitor. The Court admonished Mr. Wellborn in front of the jury to refrain from the gestures and mutterings. Notwithstanding the Court's instructions, Mr. Wellborn continued to make facial gestures and continued to mutter under his breath in reaction to adverse evidentiary rulings on at least one other occasion.


Peter J. Lenzi, Associate Judge
Rock Hill Municipal Court

Sworn to and subscribed before
me this 16th day of March, 2013.


Notary Public

State of South Carolina

My commission expires: 9-1-2016

F.N.1 (For purposes of context, it must be noted that the undersigned in his capacity as Associate Rock Hill Municipal Court Judge conducts a Docket Call each month, usually on the Wednesday or Thursday before the beginning of the Jury Trial term on the following Monday. Counsel is routinely reminded that unless their attendance has been excused by either Judge Modla or Judge Lenzi that counsel is expected to be present with the Defendant on the assigned date and time that the matter is scheduled for Jury Trial. In addition to verbally reminding counsel of their

obligation to be present at the appointed time, memos have been sent out over the past several years. Attached hereto and made a part hereof by reference are memos dated September 3, 2008 and January 23, 2012 as well as notices originally setting the case for trial on December 7, 2012 and continuing the case to January 16, 2013 at 9:00 a.m. all of which address issues pertinent to these proceedings.)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

AFFIDAVIT

On January 16, 2013 at approximately 10:00 a.m. I contacted Mr. Wellborn in regard to a trial scheduled that day. Mr. Wellborn at that time was in North Carolina having his car serviced. The Court had instructed me to contact Mr. Wellborn regarding his absence. Pursuant to my conversation Mr. Wellborn indicated that if the case proceeded that it would be appealed or in the alternative grounds for a PCR. It is important that the defendant was also absent. The case proceeded to be called and a jury was struck.

Anna Timothy Miller
Anna Timothy Miller
Rock Hill City Solicitor

Sworn to and subscribed before
me this 6th day of March 2013.

Shantay Trew
Notary Public
State of South Carolina
My Commission Expires: 9-1-2016

EXHIBIT 2

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Rock Hill Municipal Court,)
Petitioner,)
v.)
Christopher A. Wellborn,)
Respondent.)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

MOTION FOR RECUSAL

The Respondent, Christopher A. Wellborn, through his undersigned attorney, James W. Boyd, moves the Court to grant the Respondent's Motion for Recusal on the ground that the Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR. Respondent would further move that Chief Judge Jane Modla be recused from hearing this matter. Respondent would move that one of the York County Magistrates be chosen to hold a hearing on this matter.

This matter comes before the Court pursuant to a petition signed by the Honorable Peter J. Lenzi, Associate Judge for the City of Rock Hill, alleging five grounds for contempt of court.

Canon 3.E.(1) states, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

[...](d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding, or an officer, director or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than a de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Rule 501 SCACR.

The Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) because he is likely to be a material witness in the proceeding. This is an action for criminal contempt. The respondent has the Sixth Amendment right to confront the witnesses against him. As a material witness, Judge Lenzi will be subject to cross examination. A judge cannot be a witness, be subject to cross examination and still act as an impartial judge in the same matter. The Honorable Jane Modla is disqualified under Canon 3.E.(1)(d)(i) because she is the Chief Judge of the Municipal Court and, in that capacity, is the supervisor of Judge Lenzi. An additional ground for the recusal of Judge Modla is that she may have knowledge of the facts of this case in her capacity as Chief Judge. Respondent would show that it is in the interest of justice that an impartial York County Magistrate be chosen to hear this matter.

Respectfully submitted,

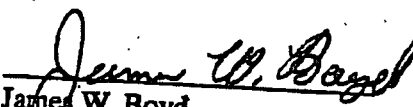

James W. Boyd
Attorney for Respondent
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
Phone (803) 328-2600
Fax (803) 328-5747

EXHIBIT 3

MEMORANDUM

TO: Defense Attorneys practicing in the Court
Chief John Gregory
Chief Frank Zebedis (Winthrop)
Captain Steve Parker
Captain Mark Bollinger
Captain Chris Watts
Lt. David Biggers
Sgt. Chris Hefner

CC: Diane Anderson, Clerk of Court
Chris Barton, Solicitor/Staff
Court Staff

FROM: Judge Jane Pittman Modla

DATE: January 23, 2012

RE: New Jury Trial Procedures

Please see the attached document in regards to the New Jury Trial Procedures that will be used in the Rock Hill Municipal Court.

If you have any questions, please call Shantay Greer at 803-329-8796.

In keeping with the Chief Justice's Order requiring the Summary Courts to dispose of all jury trials within 120 days of the filing of the charge, this Court must implement a new scheduling procedure. Henceforth, the Court will set the term of trial for every case, the Solicitor's Office will set the date certain during that particular term. The goal is to have all cases on a jury trial docket and none languishing in la-la land.

Therefore, effective immediately, jury trial requests will automatically be placed on the jury trial docket approximately TWO MONTHS out and the Court will send notice for the particular term immediately so that you can give your clients and witnesses plenty of notice. After the exchange of discovery and plea negotiations, the Solicitor will set a date certain for the trial during that term. That notice will go out approximately two weeks prior to trial. Any cases that cannot be heard during that term will automatically roll over to the next term - with the idea that no case will be continued more than two terms and will be disposed of in the required 120 days. The cases pending prior to January 2012 will be added slowly to each term, as well, until the running docket is current.

The Pre-Trial Telephone Conferences will continue to be held the Thursday prior to the jury trial term. You or someone in your office MUST participate in this conference and MUST inform the Court at that time :

- 1) IF you no longer need a jury because the disposition will be a guilty plea, PTI, a nolle prosequere, etc.
- 2) IF you need a continuance and why.
- 3) IF you have a lengthy pre-trial motion that can be heard prior to the jury strike.
- 4) IF you have discovery issues.
- 5) ANYTHING else that will help the Court judicially and economically dispose of the case.

The Court is trying to avoid requiring the mandatory appearance of the solicitors, attorneys, witnesses and defendants at pre-trial conferences. If both sides are prepared at the telephone conferences we should be able to avoid this.

Guilty plea affidavits and guilty plea appearances can be taken at any court session prior to the trial date (as opposed to the Friday before) as long as the Court knows ahead of time that you will not need a jury. The goal is to make sure the Court does not waste your tax dollars paying for a jury that you don't use. Also, if your client needs time to pay we must be advised it is a definite plea prior to the trial date. Furthermore, the cases can no longer be continued waiting for the guilty plea to occur. Attorneys, if your client is not in Court on the trial date and no plea has been entered and no affidavit is in the court file, then a BENCH WARRANT may be issued for failure to appear. Likewise, the diversion programs. If your client is going to participate, we need confirmation of the appointment date by the trial date. If we have no confirmation, and your client is not in Court, a BENCH WARRANT may be issued for failure to appear.

In order to help us all adjust to this new and fast-paced schedule, the Court will not schedule any attorney cases for the February, 2012 jury trial term. Hopefully this system will help us comply with the Chief Justice's Order without being too burdensome for all concerned.

MEMORANDUM

TO: Defense Attorneys
FROM: Judge Jane P. Modla
RE: Jury Trial Docket
DATE: September 3, 2008

Dear Defense Attorneys,

This is to inform you that I am making some changes in scheduling Jury Trials in the Rock Hill Municipal Court. I am reducing the number of cases on each days docket to less than 20. Theoretically, they will be divided up equally between the 3 Solicitors. I will no longer number the cases, but generally the older cases will be called first. You may participate in the ordering of each days cases during the telephone conference with Judge Lenzi and the Solicitors. This conference will take place the week before the term.

Any requests for a continuance must still be in writing and will be discussed during the conference. Unless you have written approval from Judge Lenzi or myself, your client must appear in Court on the given Court day and time. I will no longer accept guilty plea affidavits except in unusual circumstances.

As always, my goal is to move these cases using our time and tax dollars as efficiently as possible. If you have any questions, I can be reached at 329-5694.

Thank you for your cooperation.

cc: City Solicitors
Judge Lenzi

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: September 26, 2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL, SC 29730

REF:

Defendant: DAVID HAROLD CULLEN
Citation Number: 020889FT
Charge: RECKLESS DRIVING

Dear: CHRISTOPHER A. WELLBORN

We are in receipt of your request for a Jury Trial in the above-referenced case. This case will be called for Jury Trial during the DECEMBER 3 - DECEMBER 7, 2012 term of Court. You will receive a date certain for the Jury Trial once the Solicitor assigned to the case has provided the Court the date. Unless your appearance has been excused by either Judge Modia or Judge Lenzi, your client must appear.

If you will not need a jury on the trial date you need to let the Judge know at the Pre-Trial Conference.

Thank you for your attention to this matter.

Sincerely,


Shantay R. Greer
R.H. Municipal Court Assistant

cc: City Solicitor

For questions, please contact: Shantay at 329-8796

City of Rock Hill Municipal Court
120 E. Black Street
Rock Hill, SC 29730

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: 12/20/2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL, SC 29730

NOTICE OF CONTINUANCE

Defendant: DAVID HAROLD CULLEN

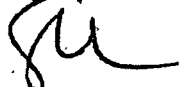
Citation Number: 020889FT

Charge: RECKLESS DRIVING

This letter has been sent to notify you that the court case referenced above has been continued until January 16, 2013 at 9:00 AM in the Rock Hill M Court House, 120 E. Black Street, Rock Hill, SC. for reason listed below:

JT

Thank you,



Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Rock Hill Municipal Court,)
Petitioner,)
v.)
Christopher A. Wellborn,)
Respondent.)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

MOTION FOR RECUSAL

The Respondent, Christopher A. Wellborn, through his undersigned attorney, James W. Boyd, moves the Court to grant the Respondent's Motion for Recusal on the ground that the Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR. Respondent would further move that Chief Judge Jane Modla be recused from hearing this matter. Respondent would move that one of the York County Magistrates be chosen to hold a hearing on this matter.

This matter comes before the Court pursuant to a petition signed by the Honorable Peter J. Lenzi, Associate Judge for the City of Rock Hill, alleging five grounds for contempt of court.

Canon 3.E.(1) states, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

[...](d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding, or an officer, director or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;

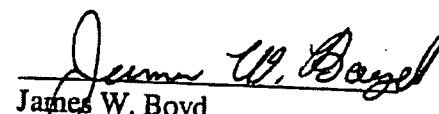
(iii) is known by the judge to have a more than a de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Rule 501 SCACR.

The Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) because he is likely to be a material witness in the proceeding. This is an action for criminal contempt. The respondent has the Sixth Amendment right to confront the witnesses against him. As a material witness, Judge Lenzi will be subject to cross examination. A judge cannot be a witness, be subject to cross examination and still act as an impartial judge in the same matter. The Honorable Jane Modla is disqualified under Canon 3.E.(1)(d)(i) because she is the Chief Judge of the Municipal Court and, in that capacity, is the supervisor of Judge Lenzi. An additional ground for the recusal of Judge Modla is that she may have knowledge of the facts of this case in her capacity as Chief Judge. Respondent would show that it is in the interest of justice that an impartial York County Magistrate be chosen to hear this matter.

Respectfully submitted,


James W. Boyd
Attorney for Respondent
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
Phone (803) 328-2600
Fax (803) 328-5747

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Christopher A. Wellborn

vs.

City of Rock Hill

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-46-01178

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-RECEIVED
2013 OCT 11 AM 10:56
DAVID H. MILLER
C.C.P. & GS
YORK COUNTY, SC

Plaintiff's Attorney:

JAMES W. BOYD, Bar No. 824

Address:

1544 EBENZER RD., ROCK HILL, SC 29732

Phone: 803-328-2600 Fax 803-328-5747

E-mail: jamesboyd@comprolum.net Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ 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 ☒ Plaintiff / ☐ Defendant

10/10/13

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ 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: _____

☒ Other: Appeal/Motion to Reconsider

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Christopher A. Wellborn,)
Appellant,)
v.)
City of Rock Hill,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. 2013-CP-46-01178

MOTION TO RECONSIDER

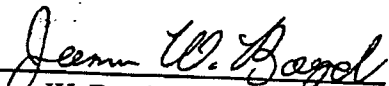
FILED-RECEIVED
2013 OCT 14 AM 10:56
DAVID H. MILLER
C.C.P. & C.S.
YORK COUNTY, SC

The Appellant, through his undersigned attorney, moves the Court to reconsider its Order of September 25, 2013, insofar as the Order denied the Appellant's appeal as to the finding of contempt for disobeying a court ruling. This is referred to as allegation number four (4) in the Order of September 25, 2013. The Order was received by the Appellant's attorney on October 4, 2013. The ground for this Motion is as follows:

1. The Court upheld the Appellant's citation for contempt as to Appellant's disobeying a court ruling not to make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence. This is referred to in the Order as allegation four (4). The Trial Court found Appellant in contempt for violating the Court's order to Appellant, "not to make any comment concerning his or his client's tardiness in the presence of the jury". The Appellant's testimony concerning the Trial Judge's order is as follows, "before opening statements, Ms. - - my recollection is that Ms. Miller actually addressed the Court and moved that neither party should be allowed to go into the details as to why either I or my client was late. Judge Lenzi ruled that we were not to go into any detail or any explanation as to why I or my client was late, or not present during the time of jury selection". (Transcript p. 29, lines 9-16) In allegation number four (4) the Trial Judge stated that, "After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again, stated that he wanted to explain to the jury why he and his client were late in arriving to Court". In his order, Judge Lenzi found that Appellant agreed with the allegation of the Petition and agreed that he was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence. In referring to his opening statement, Appellant testified at the contempt proceedings that, "I did stand up, in opening

statement, and say to the jury that I apologize for being late. And that was it. I did not make any other comment as to why I was not there, where I was, or anything else. But, I apologized for being late, which was not in contravention of the Judge's order. But, after opening statement, I made no further comment about why I was late or whether I was late or apologizing for being late, or anything else." (Transcript pg. 30, Line 3-11) Referring to his leaving the Courtroom to see if his client had arrived, Appellant testified as follows, "but, I made no further comment regarding my lateness to court or where I was, or anything else, during the entire course of the trial, either in the jury's presence or out of the jury's presence, in the Courtroom, in the hallway or anything else". (Transcript pg. 30, line 18-23) In the Order of September 25, 2013, page 2 the Court states as follows: "As to disobedience to a court order, the record must clearly and specifically reflect the contemptuous conduct". In this case there is a conflict between the Trial Judge's version and the Appellant's version of what the ruling actually was. According to the Trial Judge, the Appellant was ordered not to make any comment in front of the jury concerning his or his client's tardiness. According to the Appellant's testimony, he was ordered not to make any explanation to the jury as to his or his client's tardiness during opening statement. The record fails to reflect exactly what the Trial Judge ruled. The Trial Judge held that the Appellant made a comment concerning wishing to give an explanation concerning the tardiness after opening statements. Appellant testified that he never made a comment concerning his or his client's tardiness after opening statements. The Trial Court did not make a finding that the Appellant had disobeyed its ruling during opening statements but that Appellant had disobeyed its ruling by making a comment after opening statements. Exactly what was ordered and what Appellant said is undeterminable due to a lack of a record of the proceedings below.

FOR ALL THE ABOVE REASONS the Appellant requests that the Court reconsider its order and issue its order reversing the lower court's finding of contempt.


James W. Boyd #824
Post Office Box 36425
Rock Hill, SC 29732
(Ph.) 803-328-2600

ATTORNEY FOR APPELLANT

October 9, 2013

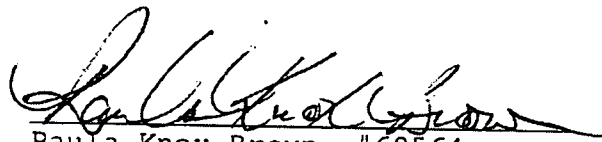
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Christopher Wellborn,	)	
Appellant.	)	
vs.	)	City's Response to
City of Rock Hill,	)	Motion to Reconsider
	)	C.A. No.2013-CP-46-1178
Respondent.	)	
	)	

Appellant filed a Motion to Reconsider, asking the Court to reconsider its Order filed on October 2, 2013, and to reverse Judge Lenzi's finding of contempt in the trial court. The Court found that Mr. Wellborn had been properly held in contempt by Judge Lenzi for disobeying the trial court's ruling. Judge Lenzi's order states that Mr. Wellborn acknowledged that ruling, despite Mr. Wellborn's differing testimony in the transcript. Judge Lenzi referenced that instruction in his findings at the hearing.

Now, I was there—And I'm not sure if Mr. Wellborn didn't understand your question. But so we're clear regarding number four, Mr. Wellborn requested permission to address the jury during closing -- during opening statement concerning why he or his client wasn't present. I said to Mr. Wellborn -- I denied that request and told him not to make any comment in the jury's presence about his or his client's tardiness; not to make any comment in the jury's presence about his tardiness. And I agreed with Mr. Wellborn, except for his comment, his apology, he didn't make a mention of it in his opening statement. But, when the opening statements were concluded, his client had not yet arrived. He asked the Court's permission to go out in the hallway and see whether he had arrived. I granted that permission. He headed for the door and before he exited, he said something like he wanted to explain to the jury why he and his client were late in arriving.... I have to think that there was at least a potential tactical advantage to asking for permission to explain that,... and the big, mean judge saying, ["no, you can't do that"]. Mr. Wellborn doesn't follow my very specific simple, direct order. And I'm going to find that conduct as contemptuous. (Transcript, 45-46)

This Court pointed out that, had Mr. Wellborn been confused regarding the Court's order, he could have asked to take the matter up outside the presence of the jury. That would have been appropriate. He did not do that. What he chose to do instead was to violate Judge Lenzi's order and "accomplish by doing so that which he had been ordered not to do," which is inappropriate. It is bringing the court's authority and the administration of the law into disrespect.

That is contempt. The Court properly affirmed the trial court's finding of contempt. The City asks the Court to deny the motion for reconsideration.



Paula Knox Brown, #69564
201 E. Main Street, Suite 300
Rock Hill, SC 29730
803-329-5641

ATTORNEY FOR RESPONDENT

October 23, 2013

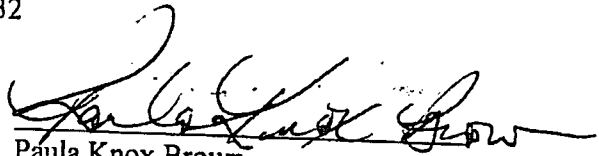
STATE OF SOUTH CAROLINA
COUNTY OF YORK
Christopher Wellborn,
vs. Appellant.
City of Rock Hill,
Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Certificate of Service of
City's Response to
Motion to Reconsider
C.A. No.2013-CP-46-1178

I, Paula Knox Brown, hereby certify that I served the City's Response to Motion to Reconsider on Appellant's attorney, James Boyd, by depositing a copy of the document in the United States mail, with sufficient postage affixed, on the 24th day of September, 2013. The envelope was addressed as follows:

James W. Boyd, Esquire
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732


Paula Knox Brown
City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
803-329-5641

September 24, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Christopher Wellborn,)
Appellant.)
vs.)
City of Rock Hill,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Respondent's Brief
C.A. No.2013-CP-46-1178

Christopher Wellborn was held in contempt in Rock Hill Municipal Court on January 16, 2013. He requested and was granted a continuance until March 25, 2013 to obtain counsel and to have the matter heard before final disposition. James Boyd appeared at the March 25th hearing on Mr. Wellborn's behalf. Additional witness was James Morton. Judge Lenzi, the trial judge, presided over the contempt hearing.

Mr. Wellborn seeks a reversal of his contempt adjudication on several grounds. First, The Honorable Peter Lenzi erred in failing to recuse himself. Second, the contemptuous conduct is not clearly and specifically reflected in the record. Third, the court erred in finding Mr. Wellborn in contempt of court "concerning his violation of the court's order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury. The alleged error is that the conduct neither assaults the magistrate nor constitutes undue disturbance to the proceedings under §22-3-950. Fourth, the court erred in finding that the statement allegedly made by the Mr. Wellborn was contemptuous. That statement was "[G]iven the way the Rock Hill Municipal Court is run, I am never quite sure when I am suppose[d] to be here." Mr. Wellborn denies making the statement as alleged. Mr. Wellborn additionally maintains that the statement he did make was uttered in a hallway and was not only made outside the presence of the court but also constituted no undue disturbance of the proceedings while the Judge was sitting officially. Contempt occurring in the presence of the court and/or causing an undue disturbance in the proceedings are requirements under §22-3-950. Additionally, the statement was not disorderly conduct causing an interruption of business or amounting to an open or direct contempt of the court, as required by South Carolina Code §40-5-510. Further, the defendant below and appellant in these proceedings, asserts that the "orders"

referenced in paragraph three of the Contempt Order are in fact not orders but letters and memos and that his interpretation and reaction to those letters and memos was reasonable for members of the York County Bar practicing in Rock Hill Municipal Court.

Mr. Wellborn seeks a reversal of his contempt order because Judge Lenzi erred in failing to recuse himself. A Motion for Recusal was filed with the Rock Hill Municipal Court prior to the March 25, 2013 hearing in the Christopher Wellborn matter. The ground for the motion was that Canon 3E(1)(d)(iv), Canons of Judicial Conduct, requires a Judge who is "likely to be a material witness in the proceeding" to recuse himself. Per the discussion on the record at the contempt hearing, Judge Lenzi considered this canon in light of *State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (S.C. 1999) and *US v. Peoples*, 698 F.3d 185. Judge Lenzi did not agree that his recusal was mandated by the canon any more than Judge Conrad in the *Peoples* case would have been required to do. In *Peoples* Judge Currie tried the defendant on several charges and warned him on several occasions about being late for her court. She eventually told *Peoples* that he would need to show cause why he should not be held in contempt. Mr. *Peoples*, outside Judge Currie's physical presence uttered some comments, which were heard by a clerk and recorded by a court reporter and which led to additional contempt charges. Judge Currie decided to recuse herself and a judge from another court, Judge Conrad, handle the Rule to Show Cause hearing. Mr. *Peoples* arrived late for Judge Conrad's court and found himself facing yet another contempt charge. Judge Conrad did not recuse himself from the proceedings. Although he was reversed on the contempt proceeding in the case that he initiated, it is critical to this analysis that the court's reasoning had nothing to do with failure to recuse himself from the proceedings, nor did the Court say that Judge Currie would have been remiss had she decided to preside over the hearing herself. Judicial Canons did not require that result in *Peoples*; and, they do not require that result here. The motion should be denied on this ground.

The appellant, Mr. Wellborn, seeks a reversal of his conviction because the contemptuous conduct is not clearly reflected in the record. Municipal Courts are not courts of record. The South Carolina Judicial Department hires no court reporters to sit regularly and record proceedings in Rock Hill Municipal Court. Although there is some reference to past ad hoc recordings in the transcript, it reflects past efforts to record the proceedings on a miniature tape recorder. That playback has typically been poor, at best, and is not the norm at present in the court. The "record" in Municipal Court

appeals, therefore, consists of the Return of the Municipal Court Judge. In this case the record consists of Judge Lenzi's Return, which includes a Verified Petition Alleging Contempt of Court with an affidavit from Anna Timothy Miller (now Thomas) attached; the Order-Contempt of Court; the Motion for Recusal; a 23 January 2012 Memorandum; and, a Notice of Continuance for January 16, 2013. This appeal benefits from the transcript of the March 25th proceedings, as Mr. Wellborn generally hires a court reporter to record his trials in Rock Hill Municipal Court. To say that no contempt can be prosecuted and upheld on appeal unless it is definitively captured on the record, either by court reporter or recording would limit the ambit and scope of the court's reach beyond anything contemplated in the law. The Judge's reach and "presence" go beyond the actual courtroom and potentially beyond anything that may be captured on the typical court reporter's set-up inside the courtroom walls, but that does not limit the reach of the court's contempt powers. *Kennerly* and *Peoples* prove helpful in defining the court's ambit for purposes of contempt.

Mr. Wellborn would have this court reverse his contempt finding because, when he addressed the issue of his and his client's tardiness in front of the jury, despite the court's admonition and warning to refrain from doing so, that address did not amount to an assault to the magistrate or constitute an undue disturbance to the proceedings under §22-3-950. That section states the following:

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in *Section 22-3-550*. §22-3-950, South Carolina Code of Laws, 1976, as amended.

However, for purposes of examining this behavior, not only is §22-3-550 relevant, but so is §40-5-510, which reads as follows:

Attorneys, solicitors and counselors may be removed or suspended and also, in aggravated cases, imprisoned, not exceeding twenty-four hours, by the several courts in which they have been admitted

to practice, if, in the presence of such court, they are guilty of any disorderly conduct causing an interruption of business or amounting to an open and direct contempt to the court, its authority or person.

This language is consistent with that in *Kennerly* and *Peoples*. Additionally, *State v. King*, 306 S.C. 335, 412 S.E.2d 375 (SC 1991) indicates that "[c]onduct which tends to bring authority and the administration of the law into disrespect constitutes contemptuous behavior." *Id.*, 338. Judge Lenzi expressed it on the record at the contempt hearing as follows:

You know, my experience is criminal defense lawyers are always playing it close to the edge. They're going to push the envelope every time. But what I told him was not to make any comment in the jury's presence concerning that issue. I have to think that there was at least a potential tactical advantage to asking for permission to explain that, with some jurors being perhaps interested in such an answer and the big, mean judge saying, no, you can't do that. Mr. Wellborn doesn't follow my very specific simple, direct order. And I'm going to find that conduct is contemptuous. (In re Wellborn; 46:2-13)

Without question, attorneys are to vigorously defend and advocate for their clients, as in *State v. Harper*, 297 S.C. 257, 376 S.E.2d 272 (SC 1989) where the attorney's contempt conviction was reversed by the South Carolina Supreme Court for standing to ask the court's permission to address the court as the court had ordered him to do before raising any objections or concerns to the seating of the jury. The behavior in this case, however, was in Judge Lenzi's observation totally different. Judge Lenzi specifically told Mr. Wellborn to make no comments about his and his client's tardiness to the jury. (In re Wellborn, 45:7-16) Mr. Wellborn completed his opening statement with only one additional warning from the court after he (Mr. Wellborn) apologized to the jury for being late. (In re Wellborn, 30: 24-25 and 31:1-15) He then requested and received permission from the court to go to the adjoining hallway to check for his client. On the way out of the room and while passing the jury on the way, Mr. Wellborn remarked that he wanted to explain to the jury why he and his client had been late in arriving. (In re Wellborn, 45:17-25 and 46:1; Order-

Contempt of Court, 2) "Courts repeatedly have found that offensive words directed at the court may form the basis for a contempt charge." US v. Peoples, 698 F.3d 185 (4th Circ, 2012) Although the contemptuous statements in Peoples were not directly heard by Judge Currie, being uttered while she was outside the courtroom, the Court found that "Peoples' outburst was both threatening and directed at the court, and thereby constituted misbehavior..." Peoples, pg 8. Because Peoples' outburst "caused Judge Currie and court personnel to spend time participating in the subsequent investigation of the outburst..." and "required court personnel to cease their regular duties and tend to the outburst," it was deemed to obstruct the administration of justice or to be disorderly. Peoples, . It was not great, but it need not be. Peoples, pg 9. Here, Court personnel, including Judge Lenzi have expended quite a bit of time and effort in addressing Mr. Wellborn's behavior, thereby obstructing the orderly administration of justice, as described in Peoples. Further, Judge Lenzi found Mr. Wellborn in contempt for "conduct which tends to bring authority and the administration of the law into disrespect", such conduct constituting contemptuous behavior. He did so because of Mr. Wellborn's decision to make comments that cast the court in a suspect light in front of the jury and, in doing so, failing to follow Judge Lenzi's "very specific simple, direct order." Mr. Wellborn's motion should be denied on this ground.

Mr. Wellborn is alleged to have said, "Given the way the Rock Hill Municipal Court is run, I am never quite sure when I am suppose[d] to be here." Mr. Wellborn denies making this statement. Mr. Wellborn says his actual comment was more like "because a case is docketed on a certain day, does not necessarily mean that it's actually going to be called on that day." (In re Wellborn; 26:19-25)

Mr. Wellborn agrees that a conversation took place between himself and Judge Lenzi but that it took place outside the courtroom, was, therefore, not "in the presence of the court", and did not cause a disturbance. He mentions a hallway. There are two hallways at Rock Hill Municipal Court one adjacent to the "courtroom" and one perpendicular to that hallway and separated by a locked door. One of those two hallways is used by lawyers and judges to hold sidebars outside the presence of the jury, which usually remains seated in the "courtroom" when the police department's training room must be used as a second

courtroom during jury trials. For practical reasons, the judge and the lawyers step outside and hold their discussions in one of these two hallways. The conversation occurred in this manner in one of the hallways. While a hallway is not a courtroom, court business is conducted in that hallway, which brings it within the purview of the "court" for purposes of discussing contempt of court. Judge Lenzi noted during the contempt hearing:

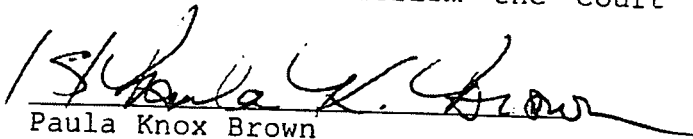
[T]his was an exchange between Mr. Wellborn and I, it was face to face at, I would guess, three feet. I don't think that it was inappropriate for me to inquire of Mr. Wellborn where he was, where he had been, given he was over two hours late. And his remark to me, his response to that question was, ["]well, the way you run this court around here, I'm never sure where I'm supposed to be.["]

I don't know how any judge can look into somebody's heart, but I can certainly appreciate his tone and the dismissive way in which he responded to that question.... [T]hat constitutes contemptuous conduct.

For those reasons, Mr. Wellborn's motion should be denied on this ground.

The last ground for Mr. Wellborn's appeal appears to be that Mr. Wellborn was not under and, therefore, could not have violated any order of the court by failing to appear for court on January 16th. Judge Lenzi's Return attaches a Memorandum and Letter from the court. Mr. Wellborn is correct. The letter and memorandum are not court orders; however, they are directives of the court, which are to be obeyed by the parties and attorneys appearing in the court. Mr. Wellborn's motion should be dismissed on this ground.

Since Mr. Wellborn's grounds for reversal in this matter are unsound, the City asks that this Court affirm the Court below.


Paula Knox Brown
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803-326-3865 (fax)
Paula.Brown@cityofrockhillsc.gov

STATE OF SOUTH CAROLINA
COUNTY OF YORK
Christopher Wellborn,
Appellant.
vs.
City of Rock Hill,
Respondent.

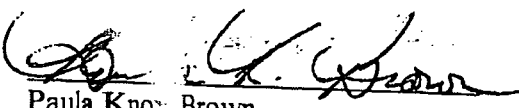
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Certificate of Service of
Respondent's Brief
C.A. No.2013-CP-46-1178

I, Paula Knox Brown, hereby certify that I served the
attorney, James Boyd, by depositing a copy of the doc-
sufficient postage affixed, on the 12th day of September,
follows:

Respondent's Brief on Appellant's
in the United States mail, with
The envelope was addressed as

James W. Boyd, Esquire
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732


Paula Knox Brown
City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
803-329-5641

September 12, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
CITY OF ROCK HILL)
Plaintiff,)
VS.)
CHRIS WELLBORN,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2013-CP-46-01178

RETURN TO APPEAL

APPEARANCES:

James W. Boyd, Attorney for Chris Wellborn

TRIAL ISSUES:

Attorney Wellborn represented David H. Cullen on a charge of Reckless Driving pending in the Rock Hill Municipal Court and the case was called to trial, as scheduled on January 16, 2013. As a result of Mr. Wellborn's conduct during the course of that trial, the undersigned filed a Verified Petition Alleging Contempt of Court and served a copy of that Petition to James W. Boyd, attorney for Mr. Wellborn on or about March 6, 2013. A copy of that Verified Petition including an Affidavit of Anna Timothy Miller is attached hereto and made a part hereof by reference and marked Exhibit 1.

CONTEMPT HEARING:

Upon proper notice and at a time and date mutually convenient to both the Court and to Mr. Wellborn and Mr. Boyd a hearing was conducted on the Court's Verified Petition Alleging Contempt. As a result of that hearing, the undersigned filed an Order of Contempt of Court in which the Court specified the instances of contemptuous conduct of which the Court determined Mr. Wellborn was guilty. A copy the Order of Contempt which includes three exhibits is attached hereto and made a part hereof by reference marked Exhibit 2.

The Order of Contempt outlines with specificity the issues addressed by the Court, as well as the substance of the evidence presented by the Defendant in response to the Verified Petition of Contempt filed by the Court.

Respectfully Submitted By:

A handwritten signature in black ink, appearing to be 'P. Lenzi', written over a horizontal line.

Peter J. Lenzi
Associate Judge, Rock Hill Municipal Court

Dated: 28th day of April, 2013

cc: James W. Boyd, Esquire

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE ROCK HILL
	)	MUNICIPAL COURT
COUNTY OF YORK	)	
	)	
ROCK HILL MUNICIPAL COURT,	)	
Petitioner	)	VERIFIED PETITION ALLEGING
	)	CONTEMPT OF COURT
VS.	)	
CHRISTOPHER A. WELLBORN,	)	
Respondent.	)	
	)	

COMES NOW the undersigned, Peter J. Lenzi, Associate Judge, Rock Hill Municipal Court and under penalty of perjury avers and states as follows:

THE affiant is an Associate Municipal Court Judge for the City of Rock Hill who was presiding over the Jury Trial Docket for the City during the week of January 14, 2013. One of the cases scheduled for trial was the case of City of Rock Hill v. David H. Cullen, Case Number 20889FT. Christopher A. Wellborn had made an Appearance on behalf of the Defendant on September 24, 2012. The case was scheduled for Jury Trial on January 16, 2013 at 9:00 a.m. Notice had been sent by the Court by email on December 20, 2012.

The Court conducted a Docket Call on January 9, 2013 beginning at 10:00 a.m. by conference call. Mr. Wellborn spoke to the Judge, the Clerk, Solicitors Paula Brown, Anna Miller and Kindie Johnson and informed the Court that the Cullen case was a definite trial. The Solicitor, Anna Miller, concurred.

Five instances of contempt are as follows:

1. Mr. Wellborn and his client did not appear for Court. At approximately 10:00 a.m. on January 16, 2013 the Court noticed that neither Mr. Wellborn nor his client had made an appearance. The Court requested City Solicitor Anna T. Miller to attempt to contact Mr. Wellborn so as to inquire as to his whereabouts and if Mr. Wellborn could offer a legitimate reason for not appearing for his trial.

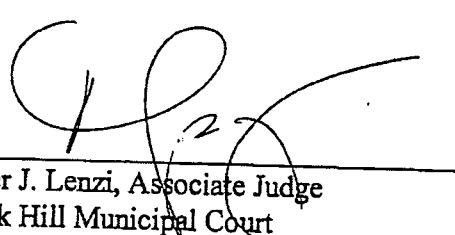
2. Mr. Wellborn threatened to undermine the Court with his comment. Ms. Miller reported back to the Court that she had made telephone contact with Mr. Wellborn who advised he was in Charlotte attending to some car repairs and that if the Court proceeded without him or his client being present, that Mr. Wellborn would "PCR" himself.

3. Mr. Wellborn degraded the Court with his comment. There were several juries selected that morning including the Cullen jury. The Cullen jury was struck without Mr. Wellborn or his client in attendance. Before the case got underway, Mr. Wellborn appeared. When the Court inquired of Mr. Wellborn as to why he was more than two hours late, Mr. Wellborn responded

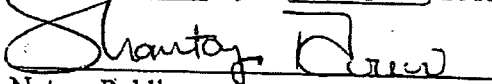
that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."

4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for Court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

5. Mr. Wellborn disobeyed a Court ruling with his behavior. During both Mr. Wellborn's cross examination of the City's chief witness and his direct examination of the Defendant, Mr. Wellborn was observed to be making facial expressions and mutterings under his breath in response to adverse rulings on objections raised by the Solicitor. The Court admonished Mr. Wellborn in front of the jury to refrain from the gestures and mutterings. Notwithstanding the Court's instructions, Mr. Wellborn continued to make facial gestures and continued to mutter under his breath in reaction to adverse evidentiary rulings on at least one other occasion.


Peter J. Lenzi, Associate Judge
Rock Hill Municipal Court

Sworn to and subscribed before
me this 16th day of March, 2013.



Notary Public

State of South Carolina

My commission expires: 9-1-2016

F.N.1 (For purposes of context, it must be noted that the undersigned in his capacity as Associate Rock Hill Municipal Court Judge conducts a Docket Call each month, usually on the Wednesday or Thursday before the beginning of the Jury Trial term on the following Monday. Counsel is routinely reminded that unless their attendance has been excused by either Judge Modla or Judge Lenzi that counsel is expected to be present with the Defendant on the assigned date and time that the matter is scheduled for Jury Trial. In addition to verbally reminding counsel of their

obligation to be present at the appointed time, memos have been sent out over the past several years. Attached hereto and made a part hereof by reference are memos dated September 3, 2008 and January 23, 2012 as well as notices originally setting the case for trial on December 7, 2012 and continuing the case to January 16, 2013 at 9:00 a.m. all of which address issues pertinent to these proceedings.)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

ROCK HILL MUNICIPAL COURT,))

Petitioner)

VS.)

CHRISTOPHER A. WELLBORN,)

Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

AFFIDAVIT

On January 16, 2013 at approximately 10:00 a.m. I contacted Mr. Wellborn in regard to a trial scheduled that day. Mr. Wellborn at that time was in North Carolina having his car serviced. The Court had instructed me to contact Mr. Wellborn regarding his absence. Pursuant to my conversation Mr. Wellborn indicated that if the case proceeded that it would be appealed or in the alternative grounds for a PCR. It is important that the defendant was also absent. The case proceeded to be called and a jury was struck.

Anna Timothy Miller
Anna Timothy Miller
Rock Hill City Solicitor

Sworn to and subscribed before
me this 6th day of March 2013.

Shantay T. Turo
Notary Public

State of South Carolina

My Commission Expires: 9-1-2016

EXHIBIT 2

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

ORDER CONTEMPT OF COURT

THIS MATTER was called for hearing on March 25, 2013 on the Verified Petition Alleging Contempt of Court filed by the undersigned on or about March 6, 2013. Present were the Respondent, Christopher A. Wellborn and his counsel, James W. Boyd. The Petition specified in five numbered paragraphs facts which the undersigned alleged constituted contemptuous conduct by the Respondent during his representation of David H. Cullen on a charge of Reckless Driving on January 16, 2013. A copy of the Verified Petition is attached hereto and made a part hereof by reference marked Exhibit 1.

Counsel for the Respondent filed a Motion for Recusal on or about March 20, 2013, mailed on March 21, 2013 and it was received by the Court on Friday, March 22, 2013. The Motion is attached hereto and made a part hereof by reference marked Exhibit 2. Mr. Boyd was allowed to argue his Motion and that Motion was denied.

Counsel for the Respondent called two witnesses; to-wit, the Respondent Christopher A. Wellborn, Esquire and James Morton, Esquire. Mr. Wellborn responded to each of the issues of alleged contemptuous conduct outlined in the Verified Petition, after introducing himself and reviewing both his experience as a criminal defense attorney and his membership in various legal organizations. Mr. Wellborn admitted that he had received notice that his case was set for trial on January 16, 2013 at 9:00 a.m. He testified concerning various conversations that he had with Anna Timothy Miller, the Rock Hill City Solicitor assigned to his case. Mr. Wellborn testified further that he did not get a call from Ms. Miller that the case would be called and as a result, he scheduled car repairs in Charlotte, North Carolina on the morning of January 16, 2013. There was no testimony offered from Mr. Wellborn that he, pursuant to numerous Orders of the Rock Hill Municipal Court (see composite Exhibit 3 attached hereto and made a part hereof by reference), sought or received protection for either he or his client on the date of his client's trial.

Mr. Wellborn testified that he, in fact, had a conversation with Anna T. Miller at approximately 10:00 a.m. on January 16, 2013. Mr. Wellborn confirmed that Ms. Miller advised him that she was calling at the behest of Judge Lenzi who requested that she contact Mr. Wellborn in order to determine where he was and why neither he nor his client were present to pick a jury. Mr. Wellborn took issue with Ms. Miller's recollections of that conversation which

were outlined in an Affidavit submitted by Ms. Miller with the Verified Petition. Although Mr. Wellborn acknowledged that the possibility of a "PCR" was raised in that conversation, Mr. Wellborn testified that the remark was not intended to be disrespectful or as a threat.

The Defendant admitted the Court inquired of him outside of the jury's presence as to why he was more than two hours late for his Jury Trial nor did he deny stating in response to that question "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here." Mr. Wellborn concluded that he meant no disrespect by his response, that since the question was posed by the Court, he was required to answer the question in an honest and forthright manner and that is all that he did.

Again, the Defendant admitted he requested permission from the Court to explain to the jury during his Opening Statement why neither he nor his client were present for jury selection. The Respondent and the Court agree that request was denied and Mr. Wellborn was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence. After Opening Statement it is agreed that Mr. Wellborn asked permission to go into the hallway so as to determine whether or not his client had arrived, and that request was granted. However, as he was leaving the courtroom and in the jury's presence, he once again requested permission to explain to the jury why he and his client were late for Court. Mr. Wellborn's explanation as reflected by his testimony was that he believed that the Court had limited his ability to make such comments in the jury's presence only during Opening Statement.

Finally, the Verified Petition accuses the Respondent of disobeying the Court's Order to cease making facial expressions and mutterings under his breath in response to adverse rulings regarding the introduction of evidence. Mr. Wellborn did not deny that he was admonished by the Court to stop making facial expressions and mutterings and had no recollections of making facial expressions or mutterings.

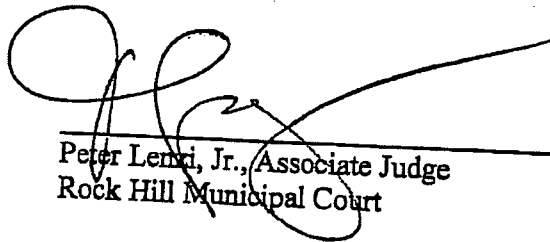
The Court finds the Respondent in contempt of Court concerning his conduct on two matters raised by the Verified Petition alleging Contempt of Court. The Court finds that his remark to the Court when asked why he was more than two hours late, to-wit: "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here" was, at best, impudent and, at worst, insolent and impertinent. Such conduct has a chilling effect on the administration of justice and the judicial process. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00.

The Court find the Respondent in contempt of Court concerning his violation of the Court's Order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury. The Court's admonition to counsel was clear, Mr. Wellborn nevertheless asked again to explain why he and his client were late for Court while exiting to see if his client had arrived and this request was made in the jury's presence, in clear violation of the Court's Order. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00.

EXHIBITS:

1. Verified Petition Alleging Contempt of Court
2. Motion for Recusal
3. Orders of The Rock Hill Municipal Court

DONE AND ORDERED this 28 day of March, 2013.



Peter Lenzi, Jr., Associate Judge
Rock Hill Municipal Court

CC: James W. Boyd, Jr., Attorney for Respondent

EXHIBIT 1

STATE OF SOUTH CAROLINA)	IN THE ROCK HILL
))	MUNICIPAL COURT
COUNTY OF YORK)	
))	
ROCK HILL MUNICIPAL COURT,))	
Petitioner)	VERIFIED PETITION ALLEGING
))	CONTEMPT OF COURT
VS.)	
CHRISTOPHER A. WELLBORN,)	
Respondent.)	
_____)	

COMES NOW the undersigned, Peter J. Lenzi, Associate Judge, Rock Hill Municipal Court and under penalty of perjury avers and states as follows:

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The Court conducted a Docket Call on January 9, 2013 beginning at 10:00 a.m. by conference call. Mr. Wellborn spoke to the Judge, the Clerk, Solicitors Paula Brown, Anna Miller and Kindle Johnson and informed the Court that the Cullen case was a definite trial. The Solicitor, Anna Miller, concurred.

Five instances of contempt are as follows:

1. Mr. Wellborn and his client did not appear for Court. At approximately 10:00 a.m. on January 16, 2013 the Court noticed that neither Mr. Wellborn nor his client had made an appearance. The Court requested City Solicitor Anna T. Miller to attempt to contact Mr. Wellborn so as to inquire as to his whereabouts and if Mr. Wellborn could offer a legitimate reason for not appearing for his trial.

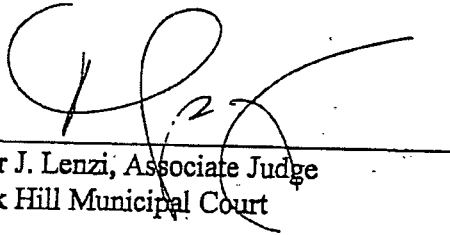
2. Mr. Wellborn threatened to undermine the Court with his comment. Ms. Miller reported back to the Court that she had made telephone contact with Mr. Wellborn who advised he was in Charlotte attending to some car repairs and that if the Court proceeded without him or his client being present, that Mr. Wellborn would "PCR" himself.

3. Mr. Wellborn degraded the Court with his comment. There were several juries selected that morning including the Cullen jury. The Cullen jury was struck without Mr. Wellborn or his client in attendance. Before the case got underway, Mr. Wellborn appeared. When the Court inquired of Mr. Wellborn as to why he was more than two hours late, Mr. Wellborn responded

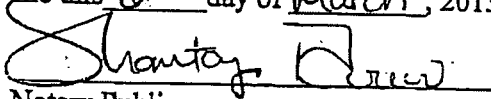
that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."

4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for Court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

5. Mr. Wellborn disobeyed a Court ruling with his behavior. During both Mr. Wellborn's cross examination of the City's chief witness and his direct examination of the Defendant, Mr. Wellborn was observed to be making facial expressions and mutterings under his breath in response to adverse rulings on objections raised by the Solicitor. The Court admonished Mr. Wellborn in front of the jury to refrain from the gestures and mutterings. Notwithstanding the Court's instructions, Mr. Wellborn continued to make facial gestures and continued to mutter under his breath in reaction to adverse evidentiary rulings on at least one other occasion.


Peter J. Lenzi, Associate Judge
Rock Hill Municipal Court

Sworn to and subscribed before
me this 16th day of March, 2013.



Notary Public

State of South Carolina

My commission expires: 9-1-2016

F.N.1 (For purposes of context, it must be noted that the undersigned in his capacity as Associate Rock Hill Municipal Court Judge conducts a Docket Call each month, usually on the Wednesday or Thursday before the beginning of the Jury Trial term on the following Monday. Counsel is routinely reminded that unless their attendance has been excused by either Judge Modla or Judge Lenzi that counsel is expected to be present with the Defendant on the assigned date and time that the matter is scheduled for Jury Trial. In addition to verbally reminding counsel of their

obligation to be present at the appointed time, memos have been sent out over the past several years. Attached hereto and made a part hereof by reference are memos dated September 3, 2008 and January 23, 2012 as well as notices originally setting the case for trial on December 7, 2012 and continuing the case to January 16, 2013 at 9:00 a.m. all of which address issues pertinent to these proceedings.)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
ROCK HILL MUNICIPAL COURT,)
Petitioner)
VS.)
CHRISTOPHER A. WELLBORN,)
Respondent.)

IN THE ROCK HILL
MUNICIPAL COURT

AFFIDAVIT

On January 16, 2013 at approximately 10:00 a.m. I contacted Mr. Wellborn in regard to a trial scheduled that day. Mr. Wellborn at that time was in North Carolina having his car serviced. The Court had instructed me to contact Mr. Wellborn regarding his absence. Pursuant to my conversation Mr. Wellborn indicated that if the case proceeded that it would be appealed or in the alternative grounds for a PCR. It is important that the defendant was also absent. The case proceeded to be called and a jury was struck.

Anna Timothy Miller
Anna Timothy Miller
Rock Hill City Solicitor

Sworn to and subscribed before
me this 6th day of March 2013.

Shantay Crew
Notary Public

State of South Carolina

My Commission Expires: 9-1-2016

EXHIBIT 2

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Rock Hill Municipal Court,)

Petitioner,)

v.)

Christopher A. Wellborn,)

Respondent.)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

MOTION FOR RECUSAL

The Respondent, Christopher A. Wellborn, through his undersigned attorney, James W. Boyd, moves the Court to grant the Respondent's Motion for Recusal on the ground that the Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR. Respondent would further move that Chief Judge Jane Modla be recused from hearing this matter. Respondent would move that one of the York County Magistrates be chosen to hold a hearing on this matter.

This matter comes before the Court pursuant to a petition signed by the Honorable Peter J. Lenzi, Associate Judge for the City of Rock Hill, alleging five grounds for contempt of court.

Canon 3.E.(1) states, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

[...](d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding, or an officer, director or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;

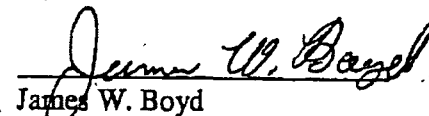
(iii) is known by the judge to have a more than a de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Rule 501 SCACR.

The Honorable Peter J. Lenzi is disqualified under Canon 3.E.(1)(d)(iv) because he is likely to be a material witness in the proceeding. This is an action for criminal contempt. The respondent has the Sixth Amendment right to confront the witnesses against him. As a material witness, Judge Lenzi will be subject to cross examination. A judge cannot be a witness, be subject to cross examination and still act as an impartial judge in the same matter. The Honorable Jane Modla is disqualified under Canon 3.E.(1)(d)(i) because she is the Chief Judge of the Municipal Court and, in that capacity, is the supervisor of Judge Lenzi. An additional ground for the recusal of Judge Modla is that she may have knowledge of the facts of this case in her capacity as Chief Judge. Respondent would show that it is in the interest of justice that an impartial York County Magistrate be chosen to hear this matter.

Respectfully submitted,



James W. Boyd
Attorney for Respondent
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
Phone (803) 328-2600
Fax (803) 328-5747

EXHIBIT 3

MEMORANDUM

TO: Defense Attorneys practicing in the Court
Chief John Gregory
Chief Frank Zebedis (Winthrop)
Captain Steve Parker
Captain Mark Bollinger
Captain Chris Watts
Lt. David Biggers
Sgt. Chris Hefner

CC: Diane Anderson, Clerk of Court
Chris Barton, Solicitor/Staff
Court Staff

FROM: Judge Jane Pittman Modla

DATE: January 23, 2012

RE: New Jury Trial Procedures

Please see the attached document in regards to the New Jury Trial Procedures that will be used in the Rock Hill Municipal Court.

If you have any questions, please call Shantay Greer at 803-329-8796.

In keeping with the Chief Justice's Order requiring the Summary Courts to dispose of all jury trials within 120 days of the filing of the charge, this Court must implement a **new scheduling procedure**. Henceforth, the Court will set the term of trial for every case, the Solicitor's Office will set the date certain during that particular term. The goal is to have all cases on a jury trial docket and none languishing in la-la land.

Therefore, effective immediately, jury trial requests will automatically be placed on the jury trial docket approximately TWO MONTHS out and the Court will send notice for the particular term immediately so that you can give your clients and witnesses plenty of notice. After the exchange of discovery and plea negotiations, the Solicitor will set a date certain for the trial during that term. That notice will go out approximately two weeks prior to trial. Any cases that cannot be heard during that term will automatically roll over to the next term - with the idea that no case will be continued more than two terms and will be disposed of in the required 120 days. The cases pending prior to January 2012 will be added slowly to each term, as well, until the running docket is current.

The Pre-Trial Telephone Conferences will continue to be held the Thursday prior to the jury trial term. You or someone in your office **MUST** participate in this conference and **MUST** inform the Court at that time :

- 1) IF you no longer need a jury because the disposition will be a guilty plea, PTL, a nolle prosequere, etc.
- 2) IF you need a continuance and why.
- 3) IF you have a lengthy pre-trial motion that can be heard prior to the jury strike.
- 4) IF you have discovery issues.
- 5) ANYTHING else that will help the Court judicially and economically dispose of the case.

The Court is trying to avoid requiring the mandatory appearance of the solicitors, attorneys, witnesses and defendants at pre-trial conferences. If both sides are prepared at the telephone conferences we should be able to avoid this.

Guilty plea affidavits and guilty plea appearances can be taken at any court session prior to the trial date (as opposed to the Friday before) as long as the Court knows ahead of time that you will not need a jury. The goal is to make sure the Court does not waste your tax dollars paying for a jury that you don't use. Also, if your client needs time to pay we must be advised it is a definite plea prior to the trial date. Furthermore, the cases can no longer be continued waiting for the guilty plea to occur. Attorneys, if your client is not in Court on the trial date and no plea has been entered and no affidavit is in the court file, then a BENCH WARRANT may be issued for failure to appear. Likewise, the diversion programs. If your client is going to participate, we need confirmation of the appointment date by the trial date. If we have no confirmation, and your client is not in Court, a BENCH WARRANT may be issued for failure to appear.

In order to help us all adjust to this new and fast-paced schedule, the Court will not schedule any attorney cases for the February, 2012 jury trial term. Hopefully this system will help us comply with the Chief Justice's Order without being too burdensome for all concerned.

MEMORANDUM

TO: Defense Attorneys
FROM: Judge Jane P. Modla
RE: Jury Trial Docket
DATE: September 3, 2008

Dear Defense Attorneys,

This is to inform you that I am making some changes in scheduling Jury Trials in the Rock Hill Municipal Court. I am reducing the number of cases on each days docket to less than 20. Theoretically, they will be divided up equally between the 3 Solicitors. I will no longer number the cases, but generally the older cases will be called first. You may participate in the ordering of each days cases during the telephone conference with Judge Lenzi and the Solicitors. This conference will take place the week before the term.

Any requests for a continuance must still be in writing and will be discussed during the conference. Unless you have written approval from Judge Lenzi or myself, your client must appear in Court on the given Court day and time. I will no longer accept guilty plea affidavits except in unusual circumstances.

As always, my goal is to move these cases using our time and tax dollars as efficiently as possible. If you have any questions, I can be reached at 329-5694.

Thank you for your cooperation.

cc: City Solicitors
Judge Lenzi

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: September 26, 2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL, SC 29730

REF:

Defendant: DAVID HAROLD CULLEN
Citation Number: 020889FT
Charge: RECKLESS DRIVING

Dear: CHRISTOPHER A. WELLBORN

We are in receipt of your request for a Jury Trial in the above-referenced case. This case will be called for Jury Trial during the DECEMBER 3 - DECEMBER 7, 2012 term of Court. You will receive a date certain for the Jury Trial once the Solicitor assigned to the case has provided the Court the date. Unless your appearance has been excused by either Judge Modla or Judge Lenzi, your client must appear.

If you will not need a jury on the trial date you need to let the Judge know at the Pre-Trial Conference.

Thank you for your attention to this matter.

Sincerely,


Shantay R. Greer
R.H. Municipal Court Assistant

cc: City Solicitor

For questions, please contact: Shantay at 329-8796

City of Rock Hill Municipal Court
120 E. Black Street
Rock Hill, SC 29730

STATE OF SOUTH CAROLINA
COUNTY OF YORK
CITY OF ROCK HILL MUNICIPAL COURT

Date: 12/20/2012

CHRISTOPHER A. WELLBORN
ATTORNEY AT LAW
PO BOX 10191
ROCK HILL, SC 29730

NOTICE OF CONTINUANCE

Defendant: DAVID HAROLD CULLEN

Citation Number: 020889FT

Charge: RECKLESS DRIVING

This letter has been sent to notify you that the court case referenced above has been continued until January 16, 2013 at 9:00 AM in the Rock Hill M Court House, 120 E. Black Street, Rock Hill, SC. for reason listed below:

JT

Thank you,



Clerk of Court

COUNTY OF YORK

CITY OF ROCK HILL

IN THE COURT OF COMMON PLEAS

vs.

CHRIS WELBORNE

56
FILED-RECEIVED
Plaintiff(s)
2013 APR 10 PM 3:37
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC
Defendant(s)

CIVIL ACTION COVERSHEET

2013-CP-46-01178

Submitted By: James W. Boyd

Address: PO Box 36425, Rock Hill, SC 29732

SC Bar #: 824
Telephone #: 803-328-2600
Fax #: 803-328-5747

Other:

E-mail: jamesboyd@compoum.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☒ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature: James W. Boyd

Date: April 10, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Rock Hill Municipal Court,)
Petitioner,)
v.)
Christopher A. Wellborn,)
Respondent.)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

2013CP4601178

NOTICE OF APPEAL

FILED-RECEIVED
2013 APR 10 PM 3:37
DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY, SC

The respondent, Christopher A. Wellborn hereby gives notice of appeal from the Order dated March 28, 2013 of the Honorable Peter Lenzi, Jr. of the Rock Hill Municipal Court in the above action, to the Circuit Court of Common Pleas, in the County of York. The Respondent received the Order on April 1, 2013.

The grounds for this appeal are as follows:

1. The Honorable Peter Lenzi, Jr. erred in failing to recuse himself.
2. The contemptuous conduct is not clearly and specifically reflected in the record. Recording of trials in the Rock Hill Municipal Court has been completed on an ad hoc basis (In re Wellborn; 35:9-13).

3. The court erred in finding that the alleged statement made by the Respondent that, "given the way the Rock Hill Municipal is run, I am never quite sure when I am suppose to be here" was contemptuous, the error being that such statement was made off the record in a hallway and was not made in the present of the court as required by S.C. Code Ann. §40-5-510. This finding is denied by the Respondent. This underscores the importance of having a record and the untenable position in which any reviewing court is placed when facts are alleged, disputed, and there is no possible way to verify the facts in dispute. The Respondent's actual statement was that, "because a case is docketed on a certain day, does not necessarily mean that it's actually going to be called on that day" (In re Wellborn; 26:19-25).

4. The court erred in finding that the alleged statement that Respondent stated, "given the way the Rock Hill Municipal is run, I am never quite sure when I am suppose to be

here" constituted contempt, the error being that such statement was not disorderly conduct causing an interruption of business or amounting to an open or direct contempt to the court, its authority or person as required by S.C. Code Ann. §40-5-510.

5. The court erred in finding that the alleged statement that the Respondent stated, "given the way the Rock Hill Municipal is run, I am never quite sure when I am suppose to be here" was contemptuous, the error being that the alleged statement was made off the record in a hallway and was not made in the presence of the court as required by S.C. Code Ann. §22-3-950.

6. The lower court erred in finding that the alleged statement of the Respondent that, "given the way the Rock Hill Municipal is run, I am never quite sure when I am suppose to be here" was contemptuous, the error being that such statement did not constitute an undue disturbance in the proceedings while the Judge was sitting officially as required be S.C. Code Ann. §22-3-950.

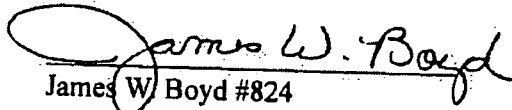
7. The court erred in finding the Respondent in contempt of court concerning his violation of the court order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury is that such disorderly conduct does not cause an interruption in business or amounting to an open or direct contempt to the court, its authority or person as required by S.C. Code Ann. §40-5-510. The Respondent denied making such comment and asserts that a request to the court cannot amount to disorderly conduct. There was no such record of this comment and, had there been one, that record would reflect that the comment was not made.

8. The court erred in finding the Respondent in contempt of court concerning his violation of the court order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury the error being that such conduct does not offer an assault to the magistrate or constitute undue disturbance to the proceedings as required by S.C. Code Ann. §22-3-950.

9. In paragraph three of the Contempt Order, Judge Lenzi referred to attached "Orders" of the Rock Hill Municipal Court. This claim is factually incorrect. These were not Orders of the Court, but memorandums, and not signed by a judge. On page thirty eight, line eighteen of the hearing transcript, Judge Lenzi referred to them as "letters" or "memos".

10. Attorney James Morton provided testimony that, as an attorney practicing in the Rock Hill Municipal Court, he makes it a practice to talk with the Solicitor about the case and whether it's going to be tried or not. Morton testified about the overbooking process of the court, having always considered the date noticed to be a contingency date. Morton testified that it would be reasonable for Mr. Wellborn, having discussed the case with the solicitor, to not think that the case was coming to trial on the date noticed. (In re Wellborn; 37:5-25, 38:2-8).

FOR ALL OF THE FORGOING REASONS the Respondent request that the court reverse the order of the lower court dated March 28, 2013.



James W. Boyd #824
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(Ph.) 803-328-2600
(Fax) 803-328-5747
jamesboys@comporium.net

ATTORNEY FOR RESPONDENT

April 10, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Rock Hill Municipal Court,)
Petitioner,)
v.)
Christopher A. Wellborn,)
Respondent.)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2013, I served, by personal delivery, upon the person named below, at the address below, the Notice of Appeal, pertaining to the above-referenced matter.

Honorable Peter Lenzi
Rock Hill Municipal
120 East Black Street
Rock Hill, SC 29730


Kathy L. Carpenter
Paralegal to James W. Boyd

Rock Hill, South Carolina
April 10, 2013

P R O C E E D I N G S

BEFORE: THE HONORABLE PETER LENZI

1:57 P.M.

THE COURT: This is the City of Rock Hill versus Christopher Wellborn. It's the 25th of March, about 1:50 in the afternoon.

Mr. Boyd, you have filed a Motion to Recuse, and --

MR. BOYD: That's correct.

THE COURT: -- I'll be happy to hear your argument on that.

MR. BOYD: Yes, sir, Your Honor. Your Honor, the grounds for the motion is set forth in the Petition -- I'm sorry, in the Motion itself.

Basically, Your Honor, the grounds for the Motion is, this matter comes before the Court pursuant to a Verified Petition alleging contempt of court. The Petition is signed by Your Honor, and it alleges five actions of contempt of court by Mr. Wellborn.

The grounds for the motion, Your Honor, is that pursuant -- the allegations for contempt are basically you are the witness to the allegations of contempt. This is a matter of criminal contempt. I

1 think the Canons of Judicial Conduct provide that, if
2 a judge is a witness, then they must recuse
3 themselves.

4 And, Your Honor, just to back up this motion,
5 the Court, in its petition, attached an opinion from
6 the United States Court of Appeals, United States
7 versus Robert Peeples, and in that particular case,
8 Judge Currie, who was the district court judge for
9 the District of South Carolina, was bringing contempt
10 charges against a defendant. In that particular case,
11 Judge Currie actually recused herself. And not only
12 did she recuse herself, but they got a judge from
13 another district --

14 THE COURT: North Carolina.

15 MR. BOYD: -- from North Carolina to hear it.
16 And, based on that, Your Honor, my motion is that
17 Your Honor would recuse yourself.

18 I think, under the circumstances of Rock Hill
19 City Court, even Judge Modla, as chief judge of this
20 court, would also -- since she has a supervisory
21 capacity over the court, would not be a proper judge
22 to hear this matter. And so, I am asking in the
23 Motion that one of the magistrates be appointed to
24 hear the case or maybe appointed is not a good word,
25 but be referred to one of the magistrates to hear this

1 matter, since Your Honor will be a witness to the
2 case. And, as a witness, of course, Your Honor would
3 be subject to cross-examination and be under oath, I
4 would assume.

5 So, for all those reasons, Your Honor, I would
6 ask that you recuse yourself.

7 THE COURT: A couple of matters on that Motion.
8 The Respondent, in this case, was aware, at least,
9 since January 16th - if my math is correct, that's
10 about seven weeks - that I intended to pursue a Rule
11 to Show Cause on this matter. I guess my question is
12 your letter was dated -- Your letter was dated the
13 20th. It was mailed the 21st out of Charlotte, and
14 we got it Friday. I guess my question is why did we
15 wait so long to raise this issue?

16 MR. BOYD: Your Honor, my understanding is
17 that there was going to be a Petition filed. I don't
18 think it was appropriate to file a Motion until the
19 actual Petition -- received the Petition alleging the
20 allegations. I think the actual -- I'm trying to find
21 the date I got the Petition. But the Motion, I
22 believe, was filed within days of actually receiving
23 the written Petition. And that is the reason.
24 Basically, it was a decision to wait until the Petition
25 was -- alleging contempt was filed. It did take

1 some time, after seeing the Petition and reviewing
2 it, to prepare the Motion. But, I believe it actually
3 was filed or sent within days of actually receiving
4 the Petition.

5 THE COURT: Now, let me ask this question.
6 When I advised Mr. Wellborn that I intended to
7 convene a hearing on a Rule to Show Cause on the
8 16th, he requested -- he said he wanted a hearing on
9 it and he wanted time to prepare.

10 MR. BOYD: Yes, sir.

11 THE COURT: Could I have proceeded? Did I
12 have to honor Mr. Wellborn's request for a
13 continuance to retain counsel first?

14 And secondly, if I had filed nothing by way of a
15 Verified Petition or a Petition, verified or unverified,
16 is it your position that I would have to recuse myself
17 because Mr. Wellborn might choose to call me as a
18 witness in the case. So, that a judge -- Let me
19 simplify it. If a judge believes that there's been
20 contemptuous conduct in his court, you're saying
21 that, unless the Respondent simply admits to it, but
22 if there's a hearing, that judge cannot conduct a
23 contempt hearing, if -- Because, all the Respondent
24 has to do is say, I'm going to call you as a witness in
25 the case or I may call you as a witness in this case.

1 MR. BOYD: I don't think -- Well, I don't think
2 it's whether you may be called as a witness, since --
3 If there's a petition filed that's verified, I think that,
4 In itself, makes one a witness, when one is alleging it.
5 But, to go back to the initial part of it, Your Honor,
6 the -- to the question of whether you were required to
7 grant a continuance, I think, alleging criminal
8 contempt, that anyone would be entitled to have an
9 attorney. So, I think the answer to that would be
10 yes, to the extent to allow someone to retain an
11 attorney, in those circumstances. I think that would
12 be a right someone would have, a constitutional right
13 for someone to have to an attorney, under those
14 circumstances.

15 THE COURT: So, if I gave him an hour, till after
16 lunch, to go get an attorney, reconvened the matter
17 that afternoon --

18 MR. BOYD: Yes, sir.

19 THE COURT: -- are you saying that because I
20 was the one that was going to have to -- I guess
21 I'm getting hung up on whether or not there's a
22 distinction between me having filed a petition,
23 verified or not, and me saying to an attorney, your
24 conduct was out of line. We're going to have a
25 contempt hearing, and me simply outlining to that

1 attorney what I believe to be the contemptuous
2 conduct and having that attorney reply, respond,
3 explain. Because, as I'm understanding, your
4 argument is Mr. Wellborn, because I was the one
5 who witnessed it and I have the authority -- or
6 allegedly witnessed it and I have the authority to
7 call him to task on his conduct, that the trial judge
8 could never conduct that hearing, whether he put it
9 down in writing or whether he should confront the
10 attorney an hour later and say, my notes indicate you
11 did this. What's your response?

12 MR. BOYD: Yes, sir, Your Honor, I understand
13 that. I think the answer to that question would be,
14 If the attorney, or anyone, for that matter,
15 potentially alleges -- or makes a request for recusal,
16 it would have to be determined at that time. In the
17 particulars of this case, the issue of recusal didn't
18 come up at that time, but -- And, frankly, there's
19 very little -- I don't know of any law on it, except
20 what is -- I know, in the federal case, the Peebles
21 Case, that was exactly what Judge Currie did. She
22 recused herself. Once a petition is filed and it's a
23 verified petition, there could be questions of the -- I
24 mean, it could be questions of credibility, for
25 instance. Unfortunately, in many cases -- Like, if it's

1 in circuit court, there's a court reporter right there,
2 it's no question about the conduct or what was done.

3 In the particular case of it not being a court of
4 record, there's no record of it. It's based on
5 people's memories of what happened. And that, I
6 think, makes a difference. Your Honor, I'm going,
7 also, on the canon of judicial ethics that I cited in my
8 motion. I mean, I think there's no way out that Your
9 Honor will be a witness to the contempt.

10 THE COURT: When you say a witness -- In your
11 motion, you said called as a witness, if I read it
12 correctly.

13 MR. BOYD: Well, Your Honor, I --

14 THE COURT: Why would there be a material
15 witness in the proceeding? I'm not sure -- I'm not
16 sure I understand what you mean by that.

17 MR. BOYD: Well, I don't know as I used the
18 word called. If I did say that, --

19 THE COURT: You did.

20 MR. BOYD: -- that would be an unfortunate
21 wording on my part. But there certainly would be a
22 material witness to the conduct.

23 THE COURT: Isn't a judge conducting a trial
24 always going to be a material witness to the conduct
25 that takes place in the courtroom.

1 MR. BOYD: That is correct. And that is why, if
2 there's a question, I think it's incumbent upon a
3 judge to recuse themselves.

4 For instance, Your Honor, by just example, if I
5 suddenly went berserk and stabbed Mr. Wellborn --
6 pulled out a knife and stabbed Mr. Wellborn,
7 obviously, I don't think you could hold a trial for me
8 for doing that because you were a witness to it. It's
9 the same -- I mean, if I was charged for assault, for
10 instance --

11 THE COURT: On the criminal --

12 MR. BOYD: Let's say --

13 THE COURT: On the criminal charge.

14 MR. BOYD: -- I just slapped Mr. Wellborn --

15 THE COURT: On the criminal charge.

16 MR. BOYD: -- I've committed an assault --

17 THE COURT: I understand your point exactly,
18 and I agree with you point -- In that circumstance,
19 under criminal charge, stemming out of some conduct.
20 But, in terms of if he did it in my courtroom, would I
21 be -- could I conduct a contempt hearing on your
22 conduct as being disruptive to the operations of the
23 court? And, if you say no, I can't find cases. And
24 I've been handicapped, because I didn't get your
25 notice -- your Motion until this morning; so, I've been

1 handicapped. But, I've spent a little bit of time on
2 the computer, Casemaker, and stuff. I can't find a
3 case. I agree with you that Judge Currie -- what
4 Judge Currie did. What I'm looking for is something
5 that says, given those circumstances, that I'm
6 required to recuse myself. I can't find it.

7 MR. BOYD: Yes, sir. And in those
8 circumstances, again, the question about if I
9 slapped Mr. Wellborn, of course, in a court that's
10 not recorded of what happened, can I suppose --
11 and suddenly I deny -- I mean, I say, no, I didn't slap
12 Mr. Wellborn, that it didn't happen. And then I don't
13 think you would be in a position to be the judge of
14 whether it happened or not. It would have to be
15 your word against mine, in those circumstances. So,
16 therefore, I think it would be incumbent upon
17 you to recuse yourself, under those circumstances.

18 THE COURT: Well, I haven't been able to find
19 any authority, so I'm going to deny your Motion.

20 Last time we were here, I think I recall that it
21 was suggested that -- and I think it was Mr. Morton
22 who is here, that he was going to be a witness in this
23 case.

24 I don't recall Mr. Morton being present in the
25 courtroom that day. So, before I rule in whether or

1 not --I'd like a proffer of what Mr. Morton or any
2 other witness would testify to concerning the issues
3 that are before the Court; that is, Mr. Wellborn's
4 conduct on that day.

5 MR. BOYD: But, Your Honor, what Mr. Morton is
6 here for is one of the allegations deals with him not
7 coming to court, and I think a comment concerning
8 why he didn't come here to court. And, basically, Mr.
9 Morton would testify concerning his understanding of
10 how cases are called and how he understands things
11 to be done and his dealings, and things of that
12 nature. And I can certainly call him and put
13 that on the record, if the Court has --

14 But, as far as proffering it, Your Honor, I mean,
15 that's part of our defense. I don't see really a point
16 in putting him up and then putting him up again in
17 the case in chief.

18 THE COURT: Well, I agree with you. I don't see
19 any reason to put him up twice. So, based upon the
20 Verified Petition that I filed and submitted, Mr. Boyd,
21 do you have any questions concerning the nature of
22 the allegations of contemptuous conduct that I am
23 alleging?

24 MR. BOYD: I guess I don't quite understand.
25 But, as far as --

1 THE COURT: Well, you understand what I -- The
2 conduct that I determined or that I allege was
3 contemptuous, do you have any questions concerning
4 what that conduct is, so that you can address it
5 appropriately?

6 MR. BOYD: I don't have any questions about
7 what the allegations are.

8 THE COURT: Okay. I wanted to make sure.

9 Okay. There are numbered paragraphs beginning
10 on page -- they aren't numbered -- but on the second
11 page of the Petition. Can I presume, from the fact
12 that you're here, Mr. Boyd, that Mr. Wellborn's
13 position is that he didn't do any of these things; and
14 that we'd have to take -- I'm going to have to
15 consider evidence?

16 MR. BOYD: Your Honor, I don't know it's his
17 position he didn't do any of those things. His position
18 is, on several matters, that he didn't willfully do a
19 number of those things. On some of the things, we
20 take the position that it wouldn't constitute contempt
21 of court, regardless.

22 THE COURT: Okay.

23 MR. BOYD: And some of them, his factual -- his
24 testimony concerning the facts would be somewhat
25 different than what's alleged in the petition. So,

1 there's a number of --

2 THE COURT: Okay.

3 MR. BOYD: -- factual and legal issues I think
4 we'd have to address, --

5 THE COURT: Okay.

6 MR. BOYD: -- bottom line.

7 THE COURT: So, if that's the case, I would be
8 happy to hear your first witness, Counsel.

9 MR. BOYD: Your Honor, just for the record, is
10 the Court taking the position that there doesn't
11 need to be any testimony concerning the factual
12 basis of the allegations against Mr. Wellborn?

13 THE COURT: Well, let me back up. I made a
14 note of this before. You have used the term, on
15 several occasions, criminal contempt.

16 MR. BOYD: Yes, sir.

17 THE COURT: What has been submitted that leads
18 you to believe that these are criminal contempt
19 matters?

20 MR. BOYD: Well, Your Honor, my understanding
21 of contempt is that any contempt or behavior in the
22 court, in the presence of the Court, would be
23 considered criminal contempt. That's my
24 understanding of criminal contempt. I could be wrong
25 on that, but that's my understanding; as opposed to a

1 civil contempt that may be obedience -- disobedience
2 for an order that's been issued by the Court that --
3 and later there's allegations that that order's been
4 violated.

5 THE COURT: Well, we have one of those, as
6 well, I think, at least as far as the allegations that
7 the Court has made.

8 MR. BOYD: And my understanding, an order --
9 If the court has issued an order and someone has
10 disobeyed it, then the person obeys the order, that's
11 being complied with, that's civil contempt. But then,
12 if it's not an order, but conduct in court, that is
13 actually criminal content. I may be repeating
14 myself.

15 THE COURT: Well, I wish you would've written
16 the Kennerly Opinion. You made it clearer in there
17 than, I think, you know, they made it. Because,
18 they don't talk in terms of criminal and civil,
19 although those phrases may appear, I know civil
20 does. But what they -- The distinctions they seem
21 to draw in the discussions they have, is direct
22 contempt, as opposed to constructive contempt.
23 Well, but you want -- Let me answer your question.
24 Yes, I believe we can go forward on my Verified
25 Petition, submitted under oath as the presiding judge.

1 And, if Mr. Wellborn has denied the allegations, then
2 we proceed to take testimony from him as to either
3 that he didn't do it, he didn't mean to do it, the litany
4 of things that you just discussed to the Court in
5 response to my question.

6 MR. BOYD: And just to clarify, Your Honor, my
7 understanding, then, we're going forward on the
8 Petition, that you are not actually going to be a
9 sworn witness in the case, as far as testifying, will
10 not being available for cross-examination --

11 THE COURT: That's correct. We are proceeding
12 on my Verified Petition for contempt.

13 MR. BOYD: Then do you wish me to go forward
14 with the --

15 THE COURT: Please.

16 THE COURT: I'd like to call Mr. Wellborn.

17 Whereupon -

18 CHRISTOPHER A. WELLBORN, having been first duly sworn,
19 was examined and testified as follows:

20 THE COURT: Please state your name for the
21 record.

22 THE WITNESS: Yes. My name is Christopher A.
23 Wellborn; last name, W-E-L-L-B-O-R-N.

24 THE COURT: Mr. Boyd, your first question.

25 EXAMINATION: (By Mr. Boyd)

1 available. I actually went over to the solicitor's
2 office, as I routinely do, looking for discovery, and
3 there was not any discovery, at that time.

4 Ultimately, the case was not tried that week.
5 We received a second notice, and this notice was
6 sent out on December 20th, 2012, notifying our office
7 that this case would be tried on January 16th, 2013 at
8 9:00 A.M.

9 Prior to that week of court -- Because, I had --
10 That particular day, we actually had four cases of
11 mine that were scheduled to go to trial on the same
12 day, which is not uncommon practice in the City of
13 Rock Hill Municipal Court.

14 So, I contacted the solicitor's office,
15 specifically, Anna Timothy, who was handling or Anna
16 Miller, I apologize, who was prosecuting this
17 particular case and asked her if this case was going to
18 trial that day. And Ms. Miller, of course, is always
19 extremely busy, has a lot going on, multiple cases,
20 and it's not unusual for her to have multiple attorneys
21 with multiple cases all going the same day; and so,
22 she said that she would let me know when this case --
23 If it was going to trial, she would let me know. Well,
24 I did not hear anything the rest of that week and
25 during the period of the docket call. I didn't hear

1 anything specific that the case was going.

2 The week before trial expired, and Monday
3 came; and, when Monday came, which was the day
4 before the trial date, I still had not heard anything
5 affirmatively that this case was going to trial. So, I
6 made an assumption -- perhaps foolish, but certainly
7 I did not make it out of any ill will or intent to in
8 any way flaunt any rules of court but, because Ms.
9 Miller had indicated to me she would let me know if
10 the case was going to trial, and I had not heard
11 anything throughout the week preceding and I had not
12 heard anything the Monday before, To be fair to Ms.
13 Miller, she's always been very good about letting me
14 know, you know, we're going to try this case, this
15 thing is definitely coming up, whatever. You know,
16 have your client ready. I just didn't get that in this
17 particular case. And I don't think it was any intent on
18 her part. I think it's just because she's just so darn
19 busy, and she has such a huge docket.

20 But, I made the assumption that she was not
21 calling this reckless driving case. Therefore, I took
22 my car up to Charlotte that morning at 7:00 A.M. to
23 have it worked on, because it was having some
24 problems. I was at the Subaru dealership in
25 Charlotte. Unfortunately, there are no Subaru

1 dealerships in Rock Hill, so I have to drive to
2 Charlotte to get my car repaired. And I was at the
3 dealership, and my car is being worked on. It was
4 still around 10:00 o'clock when I received a call
5 from Ms. Miller wondering where I was. I said, Well,
6 I'm at the Subaru dealership. And she indicated that
7 they were -- And I can't recall if she said, at that
8 time, that they were getting ready to or they had
9 already struck a jury in this particular case. I had not
10 notified my client, because I was still -- had been
11 awaiting the response from Ms. Miller about whether
12 this case was going to trial or not. But, I was now
13 stuck in Charlotte with no car, at 10:00 o'clock, being
14 told that the Court wanted to know where I was, and
15 that they were striking a jury in my case. And, of
16 course, as you can imagine, I was somewhat taken
17 aback. So, that was the background by which I came
18 into the case.

19 Now, at that time, parenthetically, I still had
20 received no discovery in this matter, which, as we
21 address the other issues in the petition, will become
22 somewhat important, because that kind of showed
23 up later.

24 But anyway, so I had this conversation with
25 Ms. Miller. I indicated to her that I was stuck there.

1 I would get back to court as quickly as I could and
2 suggested that perhaps it was not, from my
3 perspective, the proper thing to do to go ahead and
4 strike the jury in my client's absence and my absence,
5 given where I was; and the fact that I had not
6 received the notice that I understood I would receive
7 regarding this particular trial time. And I indicated
8 to Ms. Miller, in this phone call -- I was on my cell
9 phone, and I think she was on her cell phone, but I'm
10 not sure; but, I'm guessing she was. I indicated to
11 her that, under the circumstances, you know, I
12 thought my client might very well have a decent
13 grounds for appeal or, at the very least, perhaps even
14 post conviction relief possibilities against me for this
15 particular scenario; and thought that it might not --
16 you know, perhaps under the circumstances, this was
17 not the most economic use of the Court's time to
18 potentially have to revisit this particular case,
19 because of the circumstances preceding the drawing
20 of the jury.

21 We ended the telephone conversation. I got
22 my car back, ultimately. It was about half an hour
23 later. I rushed back to Rock Hill, proceeded to go
24 straight to my house, changed into a suit, came to
25 my office, grabbed the file and came straight over.

1 In the meantime, I contacted my assistant and
2 asked her to please try and get a hold of my client
3 as quickly as possible, let him know that we were
4 now up for trial and to meet me here at the
5 courthouse. I believe I was here at approximately
6 11:00 o'clock. I'd like to say it was 11:00 o'clock,
7 might've been a little bit later on. Honestly, I did
8 not make an exact note of the time. I did not
9 realize that, as I was coming into the courthouse,
10 that that would be necessary but here we are.

11 So, those were the circumstances of my late
12 delayed arrival to court.

13 Q All right. Let me ask you, back to the telephone
14 conversation with Ms. Miller. Paragraph 2 of the
15 Petition stated that you said that if the court proceed
16 without you or your client being present, that you
17 would PCR yourself, basically. Did you use those
18 words?

19 A No, I did not. And what I told Ms. Miller -- and I
20 think her affidavit actually is fairly close. What I said
21 was that if the case went to trial, I thought my client
22 would have good grounds for appeal or potentially a
23 PCR. That's exactly what I said. And I think that
24 had my client been found guilty instead of not guilty,
25 as he was at trial, he would've had good grounds

1 potentially for appeal and/or PCR. And that's what I
2 told her. I was expressing my position regarding my
3 client's -- what I thought were my client's possibilities
4 in terms of future litigation, should this matter
5 proceed to trial. Because, this is the first time I've
6 ever experienced the possibility of a client being
7 tried in my absence and their absence under the,
8 you know, conditions precedent, as they occurred on
9 January 16th. I was, you know, somewhat stunned,
10 I guess would be the best way to put it, but I
11 expressed my opinion to her regarding -- not
12 regarding the Court. I didn't say anything
13 derogatory about the Court. I simply said I thought
14 my client had good grounds potentially for appeal or
15 PCR, if things did not go well for him in the trial.

16 Q Now, let's discuss the third item, allegation of
17 contempt. It alleges, when the Court inquired of
18 you why you were more than two hours late, you
19 responded, and this is a quote in the petition, given
20 the way the Rock Hill Municipal Court is run, I am
21 never quite sure of when I'm supposed to be here.
22 And that's the end of quote.

23 If you'd discuss what happened in that
24 conversation.

25 A Yes. The conversation occurred in the back hallway

1 near the area in the back where there's a coffee
2 room, there's some bathrooms, there's a table, a
3 water cooler behind the judges' chambers. And I
4 had come in, Judge Lenzi asked why I was late. I
5 explained that I had been up in Charlotte, that I had
6 received this call at 10:00 o'clock; that up to that
7 moment, I had not known the case was being called
8 that morning and why, that, you know, I had been
9 expecting a call from Ms. Miller. There was a further
10 -- Well, I guess it was kind of a -- hard to say if it
11 was more of a comment or an inquiry from the Court,
12 something suggesting that, well, I should know that I
13 should be here, because the case was docketed for
14 that day. And the Court actually inquired, you know,
15 didn't I know I was supposed to be here, because the
16 case was docketed for that day. And so, the Court
17 asked me a question. I did not feel that it was
18 appropriate to not respond to the Court. I thought
19 that would be disrespectful. I assumed that what the
20 judge was looking for was an honest answer to a
21 heartfelt question and so I told him, I said that,
22 because a case is docketed on a certain day, does not
23 necessarily mean that it's actually going to be called
24 that day; that all of us who practice in the Municipal
25 Court, we -- you know, we know it.

1 Parenthetically, as addressed before, I had four
2 cases docketed that day. There are other attorneys
3 who, I'm sure, also had cases docketed that day
4 whose cases were not called. And what's interesting
5 to note is that -- So, that was my response. But
6 where that response comes from, I think, is
7 important to understand, too.

8 As of a week ago or week-and-a-half ago, there
9 was a docket meeting here -- or two weeks ago, in
10 this very courtroom where I attended. I think I was
11 the only defense lawyer who -- while I was present,
12 who actually came here physically with my clients.
13 And most of our cases were worked out. Most of my
14 cases were worked out by way of plea or however
15 they were worked out.

16 But, there were a couple that were still
17 potentially on the docket. And I had inquired of the
18 Court whether or not, you know, I could be given --
19 you know, if they were scheduled for a certain day,
20 you know, were they actually going to be tried that
21 day, because I wanted to make sure that my client
22 and I were here. In other words, I didn't want this
23 scenario that we're in court about today to be a
24 repetitive scenario. And the judge was kind enough
25 to let me know that, well, you know, that's up to the

1 Solicitor's Office, they'll let you know. So, once
2 again, I was -- which is fine, but it was -- kind of puts
3 me back into relying on the solicitor as to when the
4 case is actually going to be called.

5 And so, that was the kind of thing I was trying
6 to impart to the judge at the time he asked me that
7 question. It was not meant as a slur on the Court.
8 and certainly didn't -- in my mind, did not engender
9 any disrespect to the Judge or to the Court, in
10 general. I was simply stating fact, that because a
11 case was put on the docket for a particular day, as
12 a practical matter and a factual matter and a
13 historical matter, does not necessarily mean the
14 case will be called on that day.

15 Q And let me ask, this conversation didn't occur inside
16 the courtroom.

17 A No, this occurred in the hallway. There is a hallway
18 that runs the length, starting -- It's terminus is where
19 the break room is, where the water cooler is and the
20 sink and everything else. And it runs to the hallway
21 that is behind the courtroom that runs to the
22 secondary courtroom.

23 Q After you made that explanation or that comment,
24 did the judge admonish you in any way at that time
25 for that comment?

1 A No, he did not.

2 Q Let me ask you about the fourth allegation of
3 contempt that you disobeyed a court ruling by
4 making a comment and basically in it, it alleges that
5 you, after opening remarks, after being told not to,
6 stated that you wanted to explain to the jury why
7 you and your client were late in arriving to court.
8 Would you explain that, please?

9 A Absolutely. Before opening statements, Ms. -- My
10 recollection is that Ms. Miller actually addressed the
11 Court and moved that neither party should be
12 allowed to go into the details as to why either I or
13 my client was late. Judge Lenzi ruled that we were
14 not to go into any detail or any explanation as to
15 why I or my client was late, or not present during
16 the time of jury selection.

17 Now, what's interesting to note is that my
18 understanding is that -- and I may be wrong, but
19 that was my understanding at the time, based on
20 what had been conveyed to me both by Ms. Miller
21 and the judge -- that during the jury selection the
22 judge had told the jury that I had been -- I and my
23 client had been given proper notice to be here at
24 the time of jury selection.

25 So, the judge made his ruling and, during my

1 opening statement, I did not give any
2 explanation as to why I was late or why my client
3 was late. I did stand up, in opening statement, and
4 say to the jury that I apologized for being late. And
5 that was it. I didn't make any other comment as to
6 why I was not there, where I was, or anything else.
7 But, I apologized for being late, which was not in
8 contravention of the judge's order. But, after
9 opening statement, I made no further comment
10 about why I was late or whether I was late or
11 apologizing for being late, or anything else.

12 After opening statement, that issue was now
13 water under the bridge. I did ask, after both
14 opening statements were made, to be allowed to go
15 out in the hall to see if my client had yet arrived.
16 And I did go out in the hall, I found my client, and
17 he was able to come into the courtroom and
18 participate in the trial. But, I made no further
19 comment regarding my lateness to court or where I
20 was, or anything else, during the entire course of
21 the trial, either in the jury's presence or out of the
22 jury's presence, in the courtroom or in the hallway,
23 or anywhere else.

24 Q Now, at the time, were you admonished by the
25 Court, at any point, for making any comments to

1 the jury?

2 A During my opening statement, after I made -- I
3 simply said, Ladies and gentlemen, I'd like to
4 apologize for being late. And that's all I said. I
5 believe there was -- And I can't remember if it was
6 raised by way of objection from the City or not. But,
7 the Court did address that issue. And, as I explained
8 to the Court, and I explained it respectfully, that I
9 had not violated the Court's order. The Court's order
10 had been not to go into any details as to why I was
11 late or any explanation as to why I was late, or
12 anything else. All I said was -- I simply had
13 apologized to the jury for being late. And that's all
14 I'd done. And that was my understanding of the
15 Court's order. I certainly was not attempting, in my
16 opening statement, to violate the Court's order. I
17 mean, quite honestly, the case was hard enough, at
18 that point, to defend and, you know, as far as I could
19 tell, the jury already had a bad impression of my
20 client and perhaps myself, without inviting comment
21 from anybody as to doing anything untoward in the
22 courtroom.

23 Q And, as you were going out to see if your client was
24 present, was there any admonishment from the
25 Court as to any comment you made?

1 A Absolutely none.

2 Q And, concerning the fifth allegation that you
3 disobeyed a court ruling with behavior, the
4 allegation is basically that you made a facial gesture
5 and continued to mutter under your breath after
6 being admonished not to do so.

7 A I was never, to my recollection, admonished for any
8 muttering under my breath. I don't recall any
9 admonishment, at any time, for any facial
10 expressions. I think the only facial expression I
11 might've made was an expression of sort of profound
12 stupification, for lack of a better term, when the
13 issue of discovery came. And that was outside the
14 jury's presence.

15 But what happened is, as I was walking in the
16 courtroom, Ms. Miller was kind enough to hand me
17 eight pages of discovery, that I had never received
18 up to that point, and a videotape disk, which I had
19 no knowledge of up to that point. And that was one
20 of the pre-trial issues that was taken up. Because,
21 during pretrial, I pointed out to the court that we
22 had filed the proper discovery. I had actually made
23 an attempt to pick up discovery. There had, you
24 know, been none to pick up. And then here, at the
25 moment of trial, literally as we were walking into

1 the courtroom with a jury already drawn, I was
2 being handed eight pages of discovery and, more
3 troublesome, a videotape; and, whether the
4 videotape might very well have been exculpatory for
5 my client. But, I didn't get my own copy. I just
6 had -- She handed me her copy. There was only
7 one copy, evidently.

8 And I had asked the Court -- Initially, I asked
9 for a continuance. That was denied. I then asked
10 that the contents be excluded. That was denied. I
11 then asked for, at the very least, 10 minutes to
12 review the contents of the videotape, so I could at
13 least know what was there, and that was denied.
14 And I think I was so surprised at that, that I
15 probably did have a moment where I stood there
16 with my eyes open and my mouth open. But,
17 beyond that, I have no recollection whatsoever of
18 any facial expressions and certainly no mutterings.
19 To the extent that I may've had a facial expression at
20 some point during cross-examination or something
21 else, it was not meant, in any way, to be a comment
22 on the Court or a comment to the Court or
23 disrespectful. It would've been purely involuntary.

24 But honestly, at this point in the trial, where
25 we were -- the jury had already heard opening

1 statement and we were starting testimony, I was
2 taking the greatest pain possible to avoid conveying
3 any emotion, because the case was already in such a
4 posture that I just did not want the jury to, in any
5 way, garner a bad impression of my client or myself.
6 And we were already behind the eight ball in what I
7 would suggest was a rather significant way.

8 Q I believe we've covered the five allegations. Do you
9 believe there's anything else of importance you need
10 to convey at this time?

11 A Absolutely. Whatever happened on that day -- I
12 mean, I can certainly take responsibility for being
13 late to court, but I didn't do it on purpose. There
14 was nothing willful about it. There was nothing
15 intentional about it. Quite frankly, I can't think of
16 anything stupider that I could possibly do, as a
17 defense lawyer, than show up late to court with the
18 jury knowing that I was the reason they'd been
19 sitting there, not at their jobs, not at their homes,
20 not at their schools, not with their families, and
21 have that redound against my client. So, there was
22 nothing intentional. I certainly did not intend to
23 schedule an auto appointment with the sole purpose
24 of, you know, any way conveying disrespect to the
25 Court.

1 Everything else that happened that day I either
2 said as a response to the Court, trying to be as
3 respectful as possible; or, in some way, trying to
4 protect the record. And, of course, there was no
5 record. And I'm not sure when that finally dawned
6 on me that the proceedings weren't being recorded.
7 And I understand that the City has always sort of
8 designated itself -- or been designated as not being
9 a court of record. But, as a practical matter, again,
10 sometimes trials are recorded, sometimes they're
11 not. Sometimes pleas are recorded, sometimes
12 they're not. It sort of is done, in my experience, on
13 an ad hoc basis. And I had assumed that all these
14 matters were being recorded, and it was only later
15 that I found out that they weren't, which is
16 unfortunate, under the circumstances. But, there
17 we are.

18 But, again, I mean, there was nothing that I did
19 that I did willfully, disrespectfully in any way or with
20 any intent to convey any disdain or mark against the
21 Court. I take what I do very seriously. I take the
22 process very seriously. I take having a record and a
23 foundation for motions that I make very seriously.
24 And that's all I have to say.

25 MR. BOYD: Thank you. That's all the questions

1 I have.

2 THE COURT: You may step down, sir.

3 (WHEREUPON, the witness was excused.)

4 THE COURT: Mr. Boyd, your next witness,
5 please.

6 MR. BOYD: I call James Morton.

7 THE COURT: Mr. Morton, good afternoon.

8 THE WITNESS: Good afternoon.

9 Whereupon -

10 JAMES MORTON, being first duly sworn, was examined
11 and testified as follows:

12 THE COURT: Have a seat there. Adjust that
13 mic. And, once he's comfortable, Mr. Boyd, your first
14 question.

15 MR. BOYD: Okay.

16 EXAMINATION: (By Mr. Boyd)

17 Q State your name again, for the record.

18 A Jim Morton.

19 Q And are you a practicing lawyer in Rock Hill?

20 A I'm a practicing lawyer in Rock Hill, and I have been
21 practicing since 1985, almost exclusively criminal
22 practice.

23 Q And, as part of your criminal practice, do you
24 practice in the Rock Hill Municipal Court?

25 A Yes, I do.

1 Q And are you familiar with the process by which
2 cases are called in Municipal Court?

3 A Yes, I am.

4 Q How do you receive notice of cases?

5 A You receive notice by mail, usually at least a week,
6 usually more, in advance of what day your case will
7 be scheduled for.

8 Q And do you make it a practice to talk with the
9 Solicitor about the case and whether it's going to be
10 tried or not?

11 A Absolutely.

12 Q And, basically, what does your practice do on that?

13 A Well, my practice is, and having been a solicitor for
14 many years myself, that I've always considered that
15 court date sort of a contingency date, so to speak.
16 I've always tried, and hoped the solicitor would try,
17 to have some kind of confirmation, day your case is
18 actually going to trial on that date before that date,
19 knowing that in almost every court I've ever been
20 that's just the way it is; that they overbook, so to
21 speak, and they do that out of regard for jurors and
22 judges, in case cases fall through or resolve. They
23 don't want to just have one case scheduled for that
24 day. They want to have something going to court on
25 that day. So, it's sort of an overbooking process that

1 you confirm, as your court date gets closer.

2 Q You were here when Mr. Wellborn testified. Is that
3 correct?

4 A Yes, sir.

5 Q And, in your opinion, would it be reasonable for --
6 after discussing with the solicitor, for Mr. Wellborn
7 not to think the case was coming to trial that day?

8 A It would be reasonable.

9 MR. BOYD: Thank you. That's all I have.

10 THE COURT: I have a question for Mr. Morton.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Mr. Morton, I have a question.

13 THE WITNESS: Oh, you do. I'm sorry. I
14 couldn't understand you.

15 THE COURT: I'm sorry. I should speak up.
16 You've been practicing in this court for many years.

17 THE WITNESS: Yes, sir.

18 THE COURT: Have you ever received from this
19 court a letter or a memo from either me and/or
20 Judge Modla that said something like, unless your
21 appearance has been excused by either Judge
22 Mobleby or Judge Lenzi, you and your client must
23 appear. And that's the letter that assigns you your
24 date for trial.

25 THE WITNESS: I'm sure I have.

1 MR. BOYD: Thank you. That's all the questions.

2 THE COURT: Well, let me ask, then -- So, after
3 receiving this from the Court, you continue to rely
4 on discussions between you and the Solicitor.

5 THE WITNESS: Absolutely.

6 THE COURT: Thank you.

7 MR. BOYD: That's all the testimony I have.

8 THE COURT: Okay. Thank you.

9 (WHEREUPON, the witness was excused.)

10 THE COURT: I'm going to rule. I'm also going
11 to prepare a written order, as well, for purposes of
12 any appeals being filed.

13 Regarding the allegations, the numbers I'm
14 referring to are the numbers --

15 MR. BOYD: Your Honor, I'm -- I don't want to
16 interrupt the Court, but could I make a brief
17 argument?

18 THE COURT: Sure.

19 MR. BOYD: Your Honor, I just would -- If the
20 Court will indulge me, --

21 THE COURT: Sure. I'm sorry. Do you need a
22 moment? If you need a minute to organize, you just
23 take it, Mr. Boyd.

24 MR. BOYD: I don't -- That's fine. Your Honor, I
25 would just like to point out to the Court, I think, the

1 statutes that apply to this matter.

2 THE COURT: Okay.

3 MR. BOYD: 40-5-510 appears to be a statute
4 that deals exclusively with contempt by attorneys.
5 That statute states, attorneys, solicitors and
6 counsellors may be removed or suspended also, in
7 aggravated cases, Imprisoned, not exceeding 24
8 hours, by the several courts in which they admitted to
9 practice. And here's the important part. It says, if,
10 in the presence of such court, they are guilty of any
11 disorderly conduct causing an interruption of business
12 or amounting to an open and direct contempt of the
13 Court its authority or person.

14 I think, when you're dealing with a contempt by
15 an attorney as opposed to someone else, that
16 statute applies. And I've asked myself, well, why
17 would there be a separate statute for attorneys, as
18 opposed to litigants, witnesses, people who may be
19 in the courtroom. I think the reason for that --
20 Certainly, one reason for it may be that an attorney
21 is expected to -- as an officer of the Court, is
22 expected to act in a certain way; and also, expected
23 to aggressively represent -- and zealously represent
24 their client.

25 This statute sets out certain elements that must

1 be presented in order for an attorney to be found
2 in contempt of court, and it requires that the attorney
3 be guilty of disorderly conduct. And the disorderly
4 conduct either has to cause an interruption of the
5 business of the court, or it has to amount to an open
6 and direct contempt of the court, its authority or
7 person. So, I would submit that the elements that is
8 set forth in this statute have not been met in this
9 case. I think certainly, just going briefly through it,
10 Mr. Wellborn, not appearing to court which
11 admittedly may be a foolish thing on his part, may be
12 something that shouldn't have happened, was not
13 something that he did willfully; and also, it wasn't
14 something that comes under this statute.

15 Number two, that he said that he would -- talked
16 about appeal or PCR. Your Honor, I don't think that
17 can ever be a ground for contempt just to tell the
18 Court there's going to be an appeal or a PCR, because
19 that's the judicial process. And, frankly, that's
20 probably what would've -- exactly his client would've
21 done to him, had he not shown up and tried the case.

22 The other allegations concerning comments
23 certainly don't rise to the level of disorderly conduct.
24 So, I would submit to the Court that none of this
25 meets the elements of 40-5-510.

1 And, Your Honor, furthermore, there's no record
2 of the conduct, unfortunately. I know the Petition
3 has alleged certain conduct. Mr. Wellborn has
4 testified concerning -- and the facts are somewhat
5 different from his testimony than what is in the
6 Petition. I think that's why it's important, and I think
7 that's why the appellate decisions require a record of
8 the proceedings in order to be found in contempt.
9 And even if there's not a recording itself, I would
10 think, at the minimum, there would be required some
11 contemporaneous notation that a contempt has been
12 committed at the time.

13 And for all those reasons, Your Honor, I would
14 submit that this is not a case that Mr. Wellborn
15 should be found in contempt.

16 THE COURT: Thank you, Mr. Boyd.

17 My references, once again, are to the numbered
18 paragraphs in the Verified Petition, which I signed
19 earlier, back in January.

20 Regarding Paragraphs 1 and 2, this is what I
21 know. I know Mr. Wellborn had been ordered to be
22 in my court at 9:00 o'clock. What I don't know,
23 except through testimony that was offered today, and
24 Ms. Miller's comments to me, when she accommodated
25 me by trying to reach out to Mr. Wellborn to find out

1 where he was. But, in fairness to everybody
2 concerned, I think the close calls have to go Mr.
3 Wellborn's way. And I think Mr. Wellborn, in his
4 testimony, said that he didn't take real issue with
5 what Ms. Miller said in her affidavit, that certainly the
6 word -- I think everybody can agree that the term
7 PCR was brought up. I couldn't tell you about his
8 tone. I couldn't tell you about his demeanor, you
9 know, what he said to Ms. Miller. So, I think, in an
10 abundance of caution, I'm going to have to find that
11 there has been sufficient explanation of allegations
12 one and two that contempt -- that he's not to be
13 found in contempt of court, on those two paragraphs.

14 Number three is significantly different.
15 Whereas this was an exchange between Mr. Wellborn
16 and I, it was face to face at, I would guess, three
17 feet. I don't think that it was inappropriate for me to
18 inquire of Mr. Wellborn where he was, where he had
19 been, given he was over two hours late. And his
20 remark to me, his response to that question was, well,
21 the way you run this court around here, I'm never
22 sure where I'm supposed to be.

23 I don't know how any judge can look into
24 somebody's heart, but I can certainly appreciate his
25 tone and the dismissive way in which he responded

1 to that question. I didn't hear anything about
2 Ms. Miller, about not being told, about drawing
3 conclusions. I didn't hear about that until today.
4 What I got for that, what I thought was a legitimate
5 question was what I said, in that paragraph, that
6 constitutes contemptuous conduct.

7 Now, I was there -- And I'm not sure if
8 Mr. Wellborn didn't understand your question. But
9 so we're clear regarding number four, Mr. Wellborn
10 requested permission to address the jury during
11 closing -- during opening statement concerning
12 why he or his client wasn't present. I said to
13 Mr. Wellborn -- I denied that request and told him
14 not to make any comment in the jury's presence
15 about his or his client's tardiness; not to make any
16 comment in the jury's presence about his tardiness.
17 And I agreed with Mr. Wellborn, except for his
18 comment, his apology, he didn't make a mention of
19 it in his opening statement. But, when the opening
20 statements were concluded, his client had not yet
21 arrived. He asked the Court's permission to go out in
22 the hallway and see whether he had arrived. I
23 granted that permission. He headed toward the door
24 and before he exited, he said something like he
25 wanted to explain to the jury why he and his client

1 were late in arriving.

2 You know, my experience is criminal defense
3 lawyers are always playing it close to the edge.
4 They're going to push the envelope every time. But
5 what I told him was not to make any comment in
6 the jury's presence concerning that issue. I have to
7 think that there was at least a potential tactical
8 advantage to asking for permission to explain that,
9 with some jurors being perhaps interested in such an
10 answer and the big, mean judge saying, no, you can't
11 do that. Mr. Wellborn doesn't follow my very
12 specific simple, direct order. And I'm going to find
13 that conduct as contemptuous.

14 I'm going to be honest with everybody in the
15 room. The allegations I made against Mr. Wellborn
16 in Paragraph 5 is something probably, in my career
17 of trying cases, I'm just as guilty of as Mr. Wellborn.
18 I don't ever remember being called up on contempt
19 about it. Mr. Wellborn, from the Court's recollection,
20 we were doing some drawing on a blackboard, which
21 is directly opposite -- on the opposite wall from where
22 the jury sits. So, when Mr. Wellborn -- When an
23 objection was made that Mr. Wellborn didn't agree
24 with and he was walking back -- Gentlemen, I
25 appreciate -- I wish we didn't have to use that room,

1 but we do. That's the reason why we all have to be
2 on our best behavior over there. And he did it once,
3 and I told him to stop doing it; and it wasn't five
4 minutes later he did it again. But I've told you --
5 everybody in the room that I've probably been guilty
6 of that myself. And I would hope that, in the future,
7 that Mr. Wellborn will resist the temptation to do that.
8 So, I'm going to accept his explanation on that.

9 So, the Court's ruling is going to be that he is
10 guilty on Paragraphs 3 and 4. I'm going to impose a
11 monetary sanction. I will have this order ready as
12 soon as I can and the time for appeal will run from
13 the date it was provided to counsel.

14 Anything else?

15 MR. BOYD: No, sir, I think that's it. Thank you,
16 Your Honor.

17 THE COURT: Thank you.

18 Whereupon - The hearing was concluded at
19 3:08 P.M.

20
21 Shirley Dallas-Gerrald, CVR-CM
22 Court Reporter/Notary Public
23

1 MR. BOYD: I didn't say all day.

2 THE COURT: I figured you were a hundred percent.

3 MR. BOYD: Well I never know what to wear.

4 THE COURT: This is analogous to - I don't mean this
5 in disrespect because - but this is analogous to a battle
6 of wits, when one party is unarmed, not that she's unarmed
7 with wits, but she's unarmed with the research.

8 MR. BOYD: Your Honor, based on my experience, Ms.
9 Brown, she's never unarmed.

10 THE COURT: All right, let's go forward then. This is
11 a trial issue, a return to appeal from Judge Lindsay. Mr.
12 Wellborn represented Mr. Cullen on a reckless driving. I
13 haven't looked at the whole thing but apparently something
14 happened in the trial on January 16th, 2013, and Judge
15 Lindsay issued a petition alleging contempt of court. And
16 that was heard - doesn't say what date - said at the time
17 agreed upon but I'll let you go forward.

18 MR. BOYD: Yes, sir.

19 Your Honor, just a brief background of this case. The
20 facts are Mr. Wellborn did represent a client in Rock Hill
21 Municipal Court for a reckless driving charge. During the
22 - There was a - Mr. Wellborn unaware that the trial was to
23 take place had actually taken his car to Charlotte to have
24 it serviced, received a phone call from Assistant Solicitor
25 Anna Miller, and that he was up for trial. Mr. Wellborn

1 arrived at court late, I think approximately an hour, hour
2 and a half late, and as a result that and some things that
3 happened in the trial a petition rule was issued by Judge
4 Lindsay as to why Mr. Wellborn shouldn't be held in
5 contempt of court.

6 There were actually five allegations of contempt in
7 the petition. After the hearing Judge Lindsay found Mr.
8 Wellborn in contempt on two of the five allegations. The
9 two that - The factual basis of the two are allegations of
10 contempt that Mr. Wellborn was found in contempt on was -
11 one was a comment that Mr. Wellborn made in the hallway,
12 not in court. I think it's undisputed it was in a hallway,
13 not in open court, that Judge Lindsay ask - inquired of Mr.
14 Wellborn why he was late. According to the petition filed
15 by Judge Lindsay Mr. Wellborn responded given the way the
16 Rock Hill Municipal Court is run I'm never quite sure of
17 when I'm supposed to be here.

18 Mr. Wellborn testified in the court that he stated
19 that his answer to the question because the case is
20 docketed on a certain date does not necessarily mean it's
21 actually gonna be called that day. As you can see by the
22 order Judge Lindsay found that Mr. Wellborn's comment was
23 contemptuous and cited him for contempt on that basis.
24 However he did not find contempt for Mr. Wellborn on being
25 late for court.

1 THE COURT: Let me stop you right there. Where
2 does this - It's in quotation in his order, who testified
3 that the - that this statement was made or did the court
4 make it - was it remarks supposedly said that Mr. Wellborn
5 - was remarks to the court when asked why he was two hours
6 late and it's got in quotes.

7 MR. BOYD: Yes. The quote is actually from the
8 petition that was filed by Judge Lindsay.

9 THE COURT: So Judge Lindsay is the one who, he says
10 he heard that remark?

11 MR. BOYD: That's correct. Yes, sir.

12 THE COURT: Okay. Gotcha.

13 MR. BOYD: And the quotation from Mr. Wellborn is a
14 quote that is from the transcript itself ---

15 THE COURT: Right.

16 MR. BOYD: --- that is submitted. The other
17 allegation of contempt in which Mr. Wellborn was found in
18 contempt on was that he - there was an order - there was
19 some argument outside the presence of the jury. Mr.
20 Wellborn wanted to state to the jury and explain to the
21 jury in his opening statement why he and his client were
22 late. Judge Lindsay ordered that he could not make a
23 comment concerning that. The exact nature of the order is
24 unclear because of a lack of record that I'll get into in a
25 minute. But the - Judge Lindsay stated that he - that Mr.

1 Wellborn or in his allegation in his findings that Mr.
2 Wellborn after argument to the jury made another request in
3 the presence of the jury that he be allowed to comment, or
4 tell the jury, or explain to the jury why he and his client
5 was late.

6 Mr. Wellborn testified and Mr. Wellborn denied making
7 that comment and Mr. Wellborn's testimony that you see by
8 the transcript was that he had requested - did state in
9 opening argument that he apologized to the jury for his
10 client being late but offered no explanation as to why he
11 was late per Judge Lindsay's instructions. He'd made on
12 other comment at that time. Judge Lindsay found Mr.
13 Wellborn in contempt of court on that statement.

14 Your Honor, one of the - And I'll cite some authority
15 on this. It's clear that contemptuous conduct must be
16 clearly and specifically reflected in the record. And I'd
17 like to just pass up two cases that state that proposition.

18 I'll hand one over to Ms. Brown.

19 MS. BROWN: Thank you.

20 MR. BOYD: I'll pass up two to the court.

21 THE COURT: Okay.

22 MR. BOYD: And, Your Honor, I believe both of these
23 cases, one of them is *State versus King*, that was the case
24 concerning attorney contempt. The court there states that
25 such contemptuous conduct must be clearly and specifically

1 reflected in the record. The other *State versus Harper* is
2 actually an appeal from a magistrate's court and the - they
3 state, or the court states, in that decision the contempt
4 is an extreme measure and the power to a judge in contempt
5 is not to be lightly asserted. They said - They talked
6 about seeing no evidence in the record that the appellate's
7 actions amounted to disregard for the court's decorum,
8 insult to the magistrate or undue disturbance of the
9 proceedings.

10 The point I think I want to make is that basically
11 although Rock Hill City court is not a court of record. As
12 Mr. Wellborn testified it's in the record sometimes there
13 is a recording made of the proceedings, sometimes they're
14 not. In this particular case the trial itself in the
15 proceedings below there was no record made. So basically
16 there cannot be a - There is nothing appearing in the
17 record concerning Mr. Wellborn's contempt. There is
18 basically a lack of record of it. And the case law says
19 the contemptuous conduct must be on the record and in this
20 case it's clearly the alleged contempt is not on the
21 record.

22 And, Your Honor, going further with that and why this
23 is prejudicial to Mr. Wellborn in this particular case is
24 that there was some factual dispute concerning the
25 allegations of contempt of actually what was said and there

1 is no record in the court below. For instance in the Court
2 of Common Pleas, the Court of General Sessions, there is a
3 court reporter there, if an attorney says something the
4 record can be read back immediately and it can be
5 determined what was said.

6 In this case it was based on Judge Lindsay's basically
7 his memory, his allegations of what was said. And the - So
8 there is a factual issue here and there is no record to
9 substantiate the factual allegations. It becomes even more
10 important because Judge Lindsay issued a rule making
11 certain allegations against Mr. Wellborn. The allegations
12 - There were no other witnesses. This was a two witness
13 case. Mr. Wellborn testified, and Mr. Jim Morton testified
14 concerning some other matters, but as far as the conduct
15 itself there was no testimony except Mr. Wellborn.

16 We had made a motion, or I had made a motion to have
17 Judge Lindsay recused because he was making the allegations
18 and he was also being the finder of fact of the case so he
19 was by necessity a witness in the alleged contempt action.
20 And as a witness he would be - I don't think he could
21 fairly be a witness to the proceeding, the person making
22 the allegations. And also the judge making a factual
23 determination as to whether or not the contempt occurred.
24 So it's by nature a conflict for him to have been hearing
25 that case. And it goes back to the lack of record. There

1 is no record of it so what we have is Judge Lindsay hearing
2 the case, hearing Mr. Wellborn's testimony, judging the
3 credibility of Mr. Wellborn's testimony and when Judge
4 Lindsay was the person making the allegations against him.

5 And the standard for a finding of contempt on the
6 factual issues is beyond a reasonable doubt and I have a
7 case to that effect if the court wants to see it.

8 THE COURT: If you've got it go ahead and hand it up.

9 MR. BOYD: I do. I don't have a copy for -

10 THE COURT: That's all right, we'll give them the
11 cite.

12 It's *Polston versus Polston*, it looks like 502 S.E.2nd
13 86.

14 SOLICITOR BROWN: Thank you, Your Honor.

15 MR. BOYD: So we have - It's almost as if we've got a
16 situation that the judge is saying because I'm the judge
17 the factual issues are gonna be resolved in my favor. And
18 Mr. Wellborn no matter what he testifies to, I mean its
19 really no way he can have a fair hearing.

20 THE COURT: Does not the fact that the judge made five
21 of his own allegations and found that three of them weren't
22 supported, does that not indicate some fairness? I mean if
23 he was after Mr. Wellborn with any kind of a bias I'd think
24 he'd unloaded all five.

25 MR. BOYD: Yes, sir. Well, Your Honor, that could be

1 argued, however, the two we're concerned with is the two
2 that he was found in contempt.

3 THE COURT: I understand. But you're saying he should
4 have. He couldn't be fair but yet he alleged five and he
5 only found him in contempt on two.

6 MR. BOYD: That's correct.

7 THE COURT: Wouldn't somebody who was imminently
8 unfair a gun loaded to only five?

9 MR. BOYD: One of the allegations was his being late.
10 I don't think there was a factual dispute about anything
11 that was said in court on that and he did not find him on
12 that.

13 The other was a - There was one that was a factual
14 dispute about Mr. Wellborn making a gesture in court.
15 Judge Lindsay basically stated on that, he didn't make a
16 finding that Mr. Wellborn didn't do it. He made a finding
17 that he's done it himself when he was an attorney so he
18 wasn't gonna find him in contempt on that basis. And the
19 other there was concerning a conversation made, I think
20 with Ms. Miller, Assistant Solicitor Miller, while she was
21 in Charlotte - I mean he was in Charlotte and he wasn't
22 actually a witness to that himself. But the two he found
23 contempt on was interactions that he had directly with Mr.
24 Wellborn. And I think that may be the differences. This
25 is a direct - And these two it was a direct conflict in

1 testimony between what Mr. Wellborn testified to and the
2 allegation in the complaint.

3 Of course another thing, if he's a witness against Mr.
4 Wellborn, we contend he should have been subject to being
5 able to be cross examined - examined in front of a neutral
6 judge.

7 Your Honor, going further, I would submit that even if
8 you take the facts as found by Judge Lindsay, going through
9 the two findings of contempt, if Mr. Wellborn did say given
10 the way the Rock Hill Municipal Court is run I'm never
11 quite sure when I'm supposed to be here, this was a
12 statement that was allegedly made in a hall way. Not in
13 open court but in a hall way during a break from court, and
14 I submit as a matter of law that's just not contemptuous.

15 If you look at the statute in which the magistrates
16 are given power to deal with contempt, and I think that
17 applies to the municipal court also, the person has to be
18 in the presence of the court, offer an insult to the
19 magistrate or a jurat who is willfully, or who is willfully
20 guilty of undue disturbance of the proceedings before the
21 magistrate while sitting officially. Mr. Wellborn didn't
22 do any of that.

23 He wasn't in the presence of the court at that time
24 and it was a response to a question that the judge ask.
25 Now the judge may have not liked the response, it may have

1 not been a response that was very diplomatic that he made
2 but it certainly doesn't rise to the level of contempt.
3 It's not an insult and it's not in the presence of the
4 court while the court proceedings are going on, so I submit
5 that couldn't be a basis for a contempt.

6 The second statement in which Mr. Wellborn allegedly
7 made a request of the court in the presence of the jury
8 that he be allowed to explain his client's absence and his
9 tardiness is I submit doesn't rise anywhere near the level
10 of - and I'm quoting 22-3-950 - which requires the person
11 be guilty of an undue disturbance of the proceedings before
12 the magistrate while sitting officially. There is no
13 evidence presented or no finding that it caused an undue
14 disturbance in the proceedings. If you go to the *Harpers*
15 case, and I'll just make some quotations. It says some
16 arguments of a lawyer presenting his client's case
17 strenuously and persistently cannot amount to a contempt of
18 court so long as the lawyer does not in some way create an
19 obstruction which blocks the judge in the performance of
20 his judicial duty.

21 And it goes forward to saying an obstruction in the
22 performance of judicial duty resulting from an act done in
23 the presence of the court is then the characteristic upon
24 which the power to punish for contempt must rest.

25 There is no evidence that it caused any problems or

1 caused any disturbance in the proceedings. Even if Mr.
2 Wellborn made this comment as Judge Lindsay alleged, there
3 is - and it certainly did not cause any blocking the judge
4 in the performance of his judicial duty. So I would
5 submit, Your Honor, that even if you take the factual
6 findings as made by Judge Lindsay, it still as a matter of
7 law doesn't come to a contempt of court. That's, I
8 believe, my grounds.

9 THE COURT: All right. Do you want to respond now or
10 do your brief?

11 SOLICITOR BROWN: I'll respond to it in my brief.

12 THE COURT: Okay. I'll give you until the 11th if you
13 want to follow up. Now I will make one observation. I
14 hadn't had a chance to read everything but in reading the -
15 I'm looking over the *Harper's* case is a class mate of mine.
16 A funny story in a way when we both got sworn into the
17 Federal District Court. They sent my certificate to him
18 and his to me. We got it straight.

19 Anyway, in that case, you might look at it, it said
20 the magistrate's return did not allege a clear and specific
21 violation of the elements within the statute. So
22 apparently this was a direct appeal from the trial itself
23 and it had a return and the court relied on the fact that
24 the return did not reflect anything about contemptuous
25 conduct. When you're working on your brief take a look at

1 this record and see if you can find anything outside the
2 order that supports what Judge Lindsay says in the order
3 about what happened, because it has to be supported by the
4 record. And that is one of the problems with the judge
5 being whether he's got a conflict, whether it's a technical
6 conflict or not, the judge is gonna rely on the matters
7 that are not reflected in a record or the minimal return
8 there is some question to - not some question, but it's
9 hard for this court to determine whether or not there is
10 any factual basis to support the ruling below.

11 With that said, I'll give you the time I've indicated
12 and Mr. Boyd also.

13 MR. BOYD: Thank you, Your Honor.

14 SOLICITOR BROWN: Thank you, Your Honor.

15 THE COURT: All right, let's take a real short break
16 and then is it Lawson? Lowe.

17 (END OF TRANSCRIPT OF RECORD.)

18 (COURT IN RECESS AT 10:28 A.M..)
19
20
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

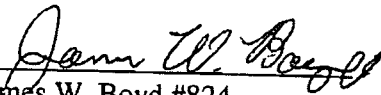
Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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July 15, 2014

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE COURT ERR IN FINDING THE APPELLANT IN CONTEMPT WHEN THERE WAS NO RECORD OF THE PROCEEDINGS?
- II. THE TRIAL COURT JUDGE ERRED IN FAILING TO RECUSE HIMSELF FROM HEARING THIS CASE.
- III. THE ALLEGED CONDUCT OF THE APPELLANT DID NOT COME WITHIN THE PREVIEW OF THE SOUTH CAROLINA CODE SECTIONS 22-3-950 OR 40-5-510.

STATEMENT OF THE CASE

On March 6, 2013, Peter J. Lenzi, Associate Judge for the Rock Hill Municipal Court filed a Verified Petition alleging five counts of contempt of Court against the Appellant. Appellant filed a Motion for Recusal on March 20, 2013. The matter was heard on March 25, 2013. Judge Lenzi issued a written Order on March 28, 2013 in which the Appellant was held in Contempt of Court on two of the five allegations alleged in the Petition. The Appellant timely filed a Notice of Appeal to the Court of Common Pleas of York County, South Carolina. The appeal was heard on August 3, 2013 by the Honorable John C. Hayes, III. Judge Hayes issued a written Order dated September 25, 2013, and filed October 2, 2013. In Judge Hayes' Order the Court reversed one of the findings of contempt against Appellant and upheld the other findings of contempt. The Appellant timely filed a Motion to Reconsider, the Court issued an Order dated November 6, 2013, and filed on November 13, 2013, denying the Motion to Reconsider. On November 29, 2013, the Appellant filed a Notice of Appeal to the South Carolina Appeals Court.

FACTS

The Appellant is an attorney licensed in the State of South Carolina. On January 16, 2013, the Appellant represented David H. Cullen on a charge of reckless driving in a jury trial in the Rock Hill Municipal Court. Prior to the Court date, the Appellant had contacted the Solicitor who was handling the case and asked if there would be a trial that day. The Appellant was informed that if there was going to be a trial the Solicitor would let him know. The Appellant heard nothing else about the case being tried and on the trial date took his car to have repairs done. While the Appellant was having his car repaired he received a call from the Solicitor stating they were striking a jury.¹ The Appellant contacted his client and arrived at Court later that morning.² At the beginning of the trial the Appellant and his client were not in Court. According to the Petition filed by Judge Lenzi, the Appellant asked for permission to advise the jury during his opening statement as to why neither he nor his client was present for jury selection. According to the Petition, the Court denied that request and instructed the Appellant not to make any comment concerning him or his client's tardiness in appearing for Court in any manner in the jury's presence.³ The Appellant testified that Judge Lenzi ruled that neither party were to go into any detail or explanation as to why the Appellant or his client were late or not present during the time of jury selection.⁴ The Petition alleges that, "as he was leaving the Courtroom, Mr. Wellborn in the jury's presence, once again stated he wanted

¹ R. p. 86, line 14 – p. 88, line 18.

² R. p. 89, line 21 – p. 98, line 7.

³ R. p. 18.

⁴ R. p. 95, line 9-16.

to explain to the jury why he and his client were late in arriving to Court".⁵ Appellant testified that he asked that after opening statements if he would be allowed to go out into the hall to see if his client had arrived. The Appellant testified as follows, "I made no further comment regarding my lateness to Court or where I was, or anything else, during the entire course of the trial, either in the jury's presence or out of the jury's presence, in the Courtroom or in the hallway, or anywhere else".⁶ Judge Lenzi found the Appellant in contempt of Court for making a comment for requesting in the presence of the jury permission to explain to the jury why he and his client was late for Court and fined the Appellant \$500.00.⁷

ARGUMENT

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

Before a person may be held in contempt the record must be clear and specific as to the acts or conduct upon which such finding is based. State v. Harper 297 S.C. 257, 376 S.E. 2d 272 (1989). Contemptuous conduct must be clearing and specifically reflected in the record. State v. King 306 SC 335, 412 S.E. 2d 375 (S.C. 1991); Brasington v. Shannon 288 S.C. 183, 341 S.E. 2d 130 (S.C. 1986). There was no record made of the proceedings in which the Appellant was representing his client therefore no records of those proceedings exist.⁸ The lack of record was prejudicial to the Appellant in this case. There was a factual dispute between the trial judge and Appellant as to what actually occurred. According to the Petition filed by Judge Lenzi, he instructed the Appellant not to make any comment about he or his client's tardiness in appearing for

⁵ R. p. 19.

⁶ R. p. 96, line 12-23.

⁷ R. p. 4.

⁸ R. p. 117, line 10-17.

Court in any manner in the jury's presences. Judge Lenzi alleged in his Petition that the Appellant made a request in the jury's presences to explain to the jury why he and his client were late in arriving to Court. The Appellant denied the allegation of the Petition.⁹ In the present case the judge holding the contempt hearing and making a factual finding was the same judge who was making the allegation. There is no record from the trial to substantiate the factual allegations made by Judge Lenzi. In the present case we have a situation in which Judge Lenzi is hearing the contempt proceeding, hearing the Appellant's testimony and judging the creditability of the Appellant's testimony and at the same time making the allegations against the Appellant. A record of the trial proceedings is critical in this situation.

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

Cannon 3.E(1)(d)(IV) of the Code of Judicial Conduct, Rule 501 SCACR provides that a judge shall disqualify himself in a proceeding in which his impartiality might reasonably be questioned and that the trial judge impartiality may be questioned because; (2) "to the judge's knowledge that he or she is likely to be a material witness in the proceedings."

At the beginning of the contempt proceeding the Appellant's counsel moved that the judge recuse himself.¹⁰ The motion for recusal was denied.

In the present case the factual allegations which allegedly constituted the contempt were made by Judge Lenzi by way of a Verified Petition. The Appellant denied the factual allegations of the Petition. It is obviously impossible for the trial judge to be

⁹ R. p. 96, line 12-23.

¹⁰ R. p. 73, line 15 – page 74, line 6.

impartial in making a determination of the actual allegations in ruling between his version of what occurred and the Appellant's version of what occurred. While the Court has inherit power to punish for contempt committed in the Court's presence, in most cases there is a record of the proceeding. Since there was no record of the proceedings there had to be a factual determination made as to what actually occurred. In the present case the actual determination was made by the person making the allegations.

The Judge did not testify but went forward with the case based on the Petition and did not testify or make himself available for cross-examination.¹¹ Judge Lenzie's failure to recuse himself and make himself available for cross-examination violated the Appellant's right of confrontation as guaranteed by the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Carolina Constitution. Judge Lenzie relied on allegations made in a Petition filed by himself. He did not make himself available for cross-examination as to the allegations he made. Appellant was denied the right to cross-examine the only witness to the alleged contemptuous conduct. The trial Judge should clearly have recused himself from judging the accuracy of a Petition filed in which he was making the allegations against Appellant.

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

There was not a finding in the Order of the Municipal Court that the Appellant violated §22-3-950 or §40-5-510. The Court of Common Pleas held that the Appellant's conduct constituted an open and direct contempt to the Court in violation of §40-5-510 South Carolina Code of Laws. The Court of Common Pleas did not address whether the Appellant's conduct violated §22-3-950 South Carolina Code of Laws.

¹¹ R. p. 85, line 6-12.

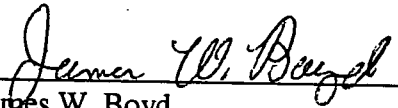
Section 22-3-950 provides that a magistrate may punish for contempt a person who, "shall offer an insult to the magistrate or a juror or is willfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially". There is no evidence of the proceedings that the Appellant by requesting permission to inform the jury why he and his client were late was offering an insult to the Judge or caused an undue disturbance in the proceedings. Therefore §22-3-950 does not apply to Appellant's alleged conduct.

Although the trial Court did not make a finding as to violation of §40-5-510 the Court of Common Pleas found that Appellant's alleged conduct constitutes, "an open and direct contempt of Court", in violation of §40-5-510 South Carolina Code of Laws. Section 40-5-510 provides for consequences for attorney's if, "in the presence of such Court, they are guilty of any disorderly conduct causing an interruption of business or amounting to an opening and direct contempt to the Court, its authority or person." This section requires two elements. The first is that there must be disorderly conduct on the part of the attorney. The second is that the disorderly conduct must cause a disruption of business or amount to an open or direct contempt of the Court its authority or person. While disobedience to a Court order may amount to an open and direct contempt to the Court it does not necessarily constitutes disorderly conduct. In this case there is no evidence that the Appellant engaged in disorderly conduct. The Appellant is to have alleged to have made a request to the Court in the presence of the jury in violation of a Court order. There was no evidence or testimony that the alleged request caused a disruption or that the Appellant acted in a disorderly manner in making the request. Therefore, §40-5-510 does not apply to this case.

CONCLUSION

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

Respectfully Submitted,



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August 19, 2014

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

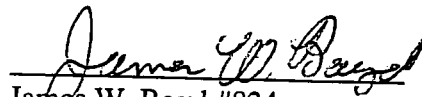
Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.



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August 19, 2014

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

- I. The Circuit Court did not err in affirming the lower court's finding of contempt.
- II. The Circuit Court did not err in affirming the lower court's discretionary decision to preside over the contempt matter occurring in his court, rather than recusing himself.
- III. The Circuit Court did not err in affirming the lower court's finding of contempt under Sections 22-3-950 and 40-5-510.

STATEMENT OF THE CASE

Appellant Christopher Wellborn represented David Cullen in Rock Hill Municipal Court. Anna Timothy-Miller represented the City of Rock Hill at trial. The Honorable Peter Lenzi presided over the trial on January 16, 2013. During the proceedings, Appellant was held in contempt on several grounds (to be discussed at "Statement of Facts"), which would later be reduced to writing by the trial judge and would form the basis of the contempt hearing requested by the Appellant. Mr. Wellborn requested and was granted a continuance until March 25, 2013 to obtain counsel to represent him at his hearing. James Boyd appeared on behalf of Appellant and filed a Motion for Recusal, which was received by the trial court on Friday, March 22, 2013. The motion was addressed by the court at the contempt hearing on Monday, March 25, 2013. That motion was denied. The hearing convened. Judge Lenzi considered and dismissed one allegation of contempt and found Appellant in contempt on the remaining two of three.

Judge Lenzi's Order of Contempt was issued on March 28, 2013. The Appellant's Notice of Appeal to the Circuit Court was mailed on April 10, 2013. The Return to Appeal was filed on May 1, 2013. The appeal was heard by Circuit Court Judge John C. Hayes, III, on August 27, 2013. James Boyd, Esquire, appeared for Appellant. Respondent was represented on appeal by City Solicitor Paula Knox Brown.

Judge Hayes's Order affirming the trial court was filed on October 2, 2013. Appellant's Motion to Reconsider was forwarded to the Court of Appeals on October 9, 2013. City's Response to Motion to Reconsider was filed in the Circuit Court on October 25, 2013. Judge Hayes's Order denying the Motion to Reconsider was filed on November 13, 2013. Notice of Appeal to the Court of Appeals was sent to Senior Solicitor Christopher Barton and City Solicitor Paula Knox Brown on November 20, 2013.

Appellant's Initial Brief was served on Respondent on January 27, 2014.

The standard of review is whether any evidence supports the court's decision or whether there is an abuse of discretion, amounting to an error of law. Floyd v. Floyd, 356 S.C. 56, 71-72, 615 S.E.2d 465 (S.C. App, 2005) The court, sitting in its appellate capacity, cannot make its decision de novo. Where the

law supports the court's decision and there has been no abuse of discretion, the decision will be upheld.

FACTS

Christopher Wellborn represented David Cullen in Rock Hill Municipal Court. Mr. Cullen's case was docketed for trial on January 16, 2013, at 9:00am and was called for trial on that day. (Verified Petition Alleging Contempt of Court, p.1, ¶2, L5, at Exhibit 1 to Return to Appeal; Return to Appeal, p.1, ¶1, L2). On the preceding Wednesday, January 9, 2013, Judge Lenzi conducted his docket call, which included a phone conference with Mr. Wellborn regarding the Cullen case. Over the phone's loudspeaker, "Mr. Wellborn spoke to the Judge, the Clerk, Solicitors Paula Brown, Anna Miller, and Kindle Johnson and informed the Court that the Cullen case was a definite trial. The Solicitor, Anna Miller, concurred." (Verified Petition Alleging Contempt of Court, p.1, ¶3, Ls 1-3, at Exhibit 1 to Return to Appeal].

On the morning of trial, neither Appellant nor his client were present for court. (Verified Petition Alleging Contempt of Court, p.1, ¶4 at #1.) The Court instructed Ms. Miller to contact Mr. Wellborn to find out why he was not in Court. (Id., p.1) Ms. Miller did as instructed. In the course of talking with Mr. Wellborn by phone, she learned that he was in Charlotte having his car serviced. Mr. Wellborn was advised that the court

intended to strike his jury and proceed with the trial.

(Affidavit of Anna Miller, p.1)

Once Appellant arrived and the trial began, Judge Lenzi addressed Mr. Wellborn's request to inform the jury why he and his client were late to court. Judge Lenzi specifically instructed Appellant not to address those matters in any way in the jury's presence. After a warning from the court when he apologized to the jury for being late, Mr. Wellborn completed his opening. He then asked permission to check in the hallway for his client, who had not yet arrived. On his way out of the courtroom and while passing the jury to exit the courtroom, Mr. Wellborn remarked that he wanted to explain to the jury why he and his client were late in arriving. Judge Lenzi saw the remark as direct disobedience to his oral order and found that and other behaviors and comments during the trial contemptuous.

The contempt hearing was continued to allow Mr. Wellborn time to engage counsel and for counsel to prepare. The hearing was held on March 25, 2013. Judge Lenzi held appellant in contempt on several, but not all, of the grounds for contempt in his bill of particulars. An appeal to the Circuit Court followed. Having the Court of Common Pleas grant one ground for appeal and affirm the trial court on the other, prompted this appeal to the Circuit Court.

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE LOWER COURT'S FINDING OF CONTEMPT

Mr. Wellborn sought a reversal of the trial court's findings on several grounds. First, The Honorable Peter Lenzi erred in failing to recuse himself. Second, the contemptuous conduct is not clearly and specifically reflected in the record. Third, the court erred in finding Mr. Wellborn in contempt of court "concerning his violation of the court's order not to make any comment concerning his or his client's tardiness in appearing for trial on January 16, 2013 in the presence of the jury. The alleged error being that the conduct neither assaulted the magistrate nor constituted undue disturbance to the proceedings under §22-3-950. Fourth, the court erred in finding that the statement allegedly made in the hallway by Mr. Wellborn was contemptuous.

That statement was "[G]iven the way the Rock Hill Municipal Court is run, I am never quite sure when I am suppose[d] to be here." Mr. Wellborn denied making the statement as alleged and maintained that the statement he did make was uttered in a hallway and was not only made outside the presence of the court but also constituted no undue disturbance of the proceedings

while the Judge was sitting officially. That the contempt occurs in the presence of the court and/or causes an undue disturbance in the proceedings are requirements under §22-3-950. Additionally, there was the question whether the statement was tantamount to disorderly conduct causing an interruption of business or amounting to an open or direct contempt of the court, as required by South Carolina Code §40-5-510.

(Respondent's Circuit Court Brief, p.)

The Circuit Court reversed the trial court as to the fourth ground. Judge Hayes found that the comment made in the hallway was not contemptuous, given the specific requirements of §40-5-510 and §22-3-950, it did not view the first three grounds in a similar light. (Circuit Court Order, p.4, L1 - p.5, L10). The Court of Common Pleas found Appellant's direct disobedience to the court's instruction not to say anything about his or his client's tardiness in front of the jury was "open and direct contempt to the court." (Circuit Court Order, p.5, L11 - p.6).

As to the remaining grounds for appeal, the Circuit Court reviewed the record regarding evidentiary support for the trial court's decision and/or abuse of the court's discretion. Finding both evidentiary support for the trial court's decision and no abuse of discretion, the Circuit Court affirmed the trial court. That decision was without legal error, was based on evidentiary

support, and was not an abuse of discretion. The Circuit Court's decision was proper and should be affirmed.

II. The Circuit Court did not err in affirming the trial court judge's discretionary decision to preside over the contempt matter occurring in his court, rather than recusing himself

In the Circuit Court, Appellant appealed his contempt order because the trial judge erred in failing to recuse himself. A Motion for Recusal was filed with the Rock Hill Municipal Court prior to the March 25, 2013 hearing in the Christopher Wellborn matter. The ground for the motion was that Canon 3E(1)(d)(iv), Canons of Judicial Conduct, requires a Judge who is "likely to be a material witness in the proceeding" to recuse himself. Per the discussion on the record at the contempt hearing, Judge Lenzi considered this canon in light of State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (S.C. 1999) and US v. Peoples, 698 F.3d 185. Judge Lenzi did not agree that his recusal was mandated by the canon any more than Judge Conrad in the Peoples case would have been required to do. In Peoples Judge Currie tried the defendant on several charges and warned him on several occasions about being late for her court. She eventually told Peoples that he would need to show cause why he should not be held in contempt. Mr. Peoples, outside Judge Currie's physical presence uttered some comments, which were heard by a clerk and recorded by a court reporter and which led to additional contempt

charges. Judge Currie decided to recuse herself and a judge from another court, Judge Conrad, handled the Rule to Show Cause hearing. Mr. Peoples arrived late for Judge Conrad's court and found himself facing yet another contempt charge. Unlike Judge Currie, Judge Conrad did not recuse himself from the proceedings. Although he was reversed on the contempt proceeding in the case that he initiated, it is critical to note for purposes of this analysis that the court's reasoning had nothing to do with Judge Conrad's failure to recuse himself from the proceedings, nor did the Court say that Judge Currie would have been remiss had she decided to preside over the hearing herself. Essentially, to say that Canon 3E(1) (d)(iv) dictates that a trial judge who finds a person in contempt in his court must recuse himself in that person's contempt hearing is tantamount to saying that a trial judge can never preside over a contempt hearing that he or she initiates in his or her court. The Judicial Canons did not require that result in Peoples; and, they do not require that result here. (Record, p. 39, L5-36).

Appellant's appeal was denied on this ground. In affirming the trial court's finding, Judge Hayes noted the following...

The Trial Judge denied the Appellant's motion for recusal without elaboration. Implicit in his ruling is the judge's determination that he was not likely to be a material witness.

As set forth below, a Trial Judge has the inherent power to hold one in contempt. This power resides with the Trial Judge, that is, the judge in whose presence a contemptuous act occurred or whose direct order has been disobeyed. Here, the Trial Judge, Judge Lenzi, was not obliged to recuse himself. (Record, p. 9, L3-8)

Additionally,

Neither a summary court judge nor any other members of the unified judicial system are to be prohibited from punishing conduct as contemptuous when it violates a direct order of the Court. A court without the authority to effectuate its orders by way of a finding of contempt is a neutered court. Requiring recusal in these instances would, as stated, neuter a court's ability to conduct the business of his/her courtroom. (Record, p.12, L18-L22)

In noting the standard of review, Judge Hayes quoted *Floyd v. Floyd*, 365 S.C. 56, 615 S.E. 2d 465 (Ct. App. 2005): "a decision on contempt rests with the Trial Judge and is not subject to reversal unless the decision lacks evidentiary support or the Trial Judge abused his or her discretion." (Record, p.9, L10-L12).

The Circuit Court did not err in affirming the trial court. There was neither an abuse of discretion nor an error of law. Based on that standard, this appeal of the Circuit Court's Order and Reconsideration Order should be denied on this ground.

III. The Circuit Court did not err in affirming the lower court's finding of contempt, despite Sections 22-3-950 and 40-5-510.

Mr. Wellborn appeals the Circuit Court's affirmation of the trial court under §§40-5-510 and 22-3-950. He reasons that, when he addressed the issue of his and his client's tardiness in

front of the jury, despite the court's admonition and warning to refrain from doing so, that address did not amount to an assault to the magistrate or constitute an undue disturbance to the proceedings under §22-3-950. That section states the following:

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in *Section 22-3-550*. §22-3-950, South Carolina Code of Laws, 1976, as amended.

However, for purposes of examining this behavior, not only is §22-3-550 relevant, but so is §40-5-510, which reads as follows:

Attorneys, solicitors and counselors may be removed or suspended and also, in aggravated cases, imprisoned, not exceeding twenty-four hours, by the several courts in which they have been admitted to practice, if, in the presence of such court, they are guilty of any disorderly conduct causing an interruption of business or amounting to an open and direct contempt to the court, its authority or person.

This language is consistent with that in Kennerly and Peoples. Additionally, State v. King, 306 S.C. 335, 412 S.E.2d 375 (SC 1991) indicates that "[c]onduct which tends to bring authority and the administration of the law into disrespect constitutes contemptuous behavior." *Id.*, 338. Judge Lenzi expressed it on the record at the contempt hearing as follows:

You know, my experience is criminal defense lawyers are always playing it close to the edge. They're going to push the envelope every time. But what I told him was not to make any comment in the jury's presence concerning that issue. I have to think that there was at least a potential tactical advantage to asking for permission

to explain that, with some jurors being perhaps interested in such an answer and the big, mean judge saying, no, you can't do that. Mr. Wellborn doesn't follow my very specific simple, direct order. And I'm going to find that conduct is contemptuous. (Record, p.111, L2-13)

Without question, attorneys are to vigorously defend and advocate for their clients, as in State v. Harper, 297 S.C. 257, 376 S.E.2d 272 (SC 1989) where the attorney's contempt conviction was reversed by the South Carolina Supreme Court for standing to ask the court's permission to address the court as the court had ordered him to do before raising any objections or concerns to the seating of the jury. However, the behavior in this case was, in Judge Lenzi's observation, totally different. Judge Lenzi specifically told Mr. Wellborn to make no comments about his and his client's tardiness to the jury. (Record, p.110, L7-16) Mr. Wellborn completed his opening statement with only one additional warning from the court after he (Mr. Wellborn) apologized to the jury for being late. (Record, p.96, L24-25; p. 97, L1-15) He then requested and received permission from the court to go to the adjoining hallway to check for his client. On the way out of the room and while passing the jury on the way, Mr. Wellborn remarked that he wanted to explain to the jury why he and his client had been late in arriving. (Record, p.110, L17-25; p.111, L1; p. 15, L10-19) "Courts repeatedly have found that offensive words directed at the court may form the basis for a contempt charge." US v. Peoples, 698

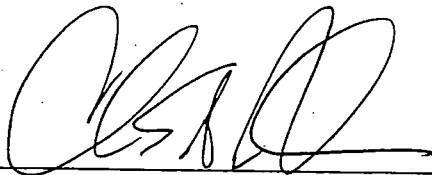
F.3d 185 (4th Circ, 2012) Although the contemptuous statements in *Peoples* were not directly heard by Judge Currie, being uttered while she was outside the courtroom, the Court found that "Peoples' outburst was both threatening and directed at the court, and thereby constituted misbehavior..." Peoples, pg 8. Because Peoples' outburst "caused Judge Currie and court personnel to spend time participating in the subsequent investigation of the outburst..." and "required court personnel to cease their regular duties and tend to the outburst," it was deemed to obstruct the administration of justice or to be disorderly. Peoples, . It was not great, but it need not be. Peoples, pg 9. Here, Court personnel, including Judge Lenzi have expended quite a bit of time and effort in addressing Mr. Wellborn's behavior, thereby obstructing the orderly administration of justice, as described in *Peoples*. Further, Judge Lenzi found Mr. Wellborn in contempt for "conduct which tends to bring authority and the administration of the law into disrespect", such conduct constituting contemptuous behavior. He did so because of Mr. Wellborn's decision to make comments that cast the court in a suspect light in front of the jury and, in doing so, failing to follow Judge Lenzi's "very specific simple, direct order." (Record, p.42, L1-25)

Mr. Wellborn's appeal was denied on this ground. In affirming the trial court, Judge Hayes did not abuse his

discretion; and, his decision was not without evidentiary support. The Circuit Court's Order should, therefore, be affirmed.

CONCLUSION

The Circuit Court did not err in affirming the lower court's finding of contempt. The Circuit Court did not err in affirming the trial court judge's discretionary decision to preside over the contempt matter occurring in his court, rather than recusing himself. The Circuit Court did not err in affirming the trial court judge's finding of contempt under Sections 22-3-950 and 40-5-510. The Circuit Court's decision was without legal error, was without abuse of discretion, and was supported by the evidence in the record. The Circuit Court's decision should, therefore, be affirmed.



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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

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

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

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

¹ Although not an issue in this appeal, it was disputed whether or not the Appellant was actually notified of the trial date. Although the Order of Contempt refers to numerous orders of the Rock Hill Municipal and refers to the composite exhibit 3, the exhibit 3 contains a memorandum. Exhibit 3 furthermore sets forth that the Solicitor's office will set the date certain for that particular term. Contempt of Court Order Exhibit 3. R. p. 24

² R. p. 20, line 14- P. 21, line 1.

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

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

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

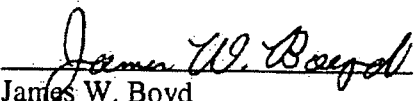
C. THE ALLEGED CONDUCT OF THE APPELLANT DID NOT COME WITHIN THE PREVIEW OF THE SOUTH CAROLINA CODE SECTIONS 22-3-950 OR 40-5-510.

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

CONCLUSION

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

Respectfully Submitted,


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October 3, 2014

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2013-002580

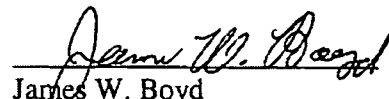
Christopher A. Wellborn, ... Appellant,

v.

The City of Rock Hill, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with
Rule 211(b), SCACR.


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October 3, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Christopher A. Wellborn, Appellant,

v.

City of Rock Hill, Respondent.

Appellate Case No. 2013-002580

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-414
Submitted May 1, 2015 – Filed August 12, 2015

AFFIRMED

James W. Boyd, of Rock Hill, for Appellant.

City Solicitor Paula Knox Brown and Senior City
Solicitor Christopher Edward Barton, both of Rock Hill,
for Respondent.

PER CURIAM: Christopher A. Wellborn appeals a circuit court order affirming the municipal court's ruling that held him in contempt of court. Wellborn argues (1) the municipal judge erred in finding him in contempt when there was no record of the trial; (2) the municipal judge erred in not recusing himself from the

contempt hearing; and (3) the alleged contemptuous conduct did not come within the purview of section 22-3-950 of the South Carolina Code (2007) or section 40-5-510 of the South Carolina Code (2011). We affirm pursuant to Rule 220(b), SCACR.

1. The circuit court properly found the municipal judge did not err in holding Wellborn in contempt for conduct not recorded in a trial transcript because the municipal judge's contempt order clearly and specifically stated how Wellborn's conduct violated a court order. *See Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982) ("Contempt results from the willful disobedience of an order of the court, and before a person may be held in contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based.").

2. Wellborn's arguments that the municipal judge was required to recuse himself under the Sixth Amendment to the United States Constitution and article I, section 14 of the South Carolina Constitution are unpreserved because the circuit court did not rule on these issues. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."); *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (finding an issue unpreserved for appellate review when the lower court did not rule on the issue and the party failed to make a Rule 59(e), SCRCPP, motion asking the lower court to rule on the issue).

As to the argument that the municipal judge erred in not recusing himself because the municipal judge was a material witness in the contempt hearing, the circuit court properly found there was no error. *See State v. Howard*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) ("Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." (internal quotation marks omitted)); *id.* (affirming the trial judge's decision not to recuse himself because "the trial judge had no proper basis to recuse himself and did not abuse his discretion in declining to recuse himself from the trial"); *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002) ("An abuse of discretion occurs when a trial [judge]'s decision is unsupported by the evidence or controlled by an error of law." (internal quotation marks omitted)); Rule 501, Canon 3(E)(1)(d)(iv), SCACR (requiring a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including instances when the judge is likely to be a material witness).

3. The circuit court properly found the municipal judge had the inherent authority to hold Wellborn in contempt because he violated a court order. *See State v. Passmore*, 363 S.C. 568, 571, 611 S.E.2d 273, 275 (Ct. App. 2005) ("The determination of contempt ordinarily resides in the sound discretion of the trial judge."); *Stone v. Reddix-Small*s, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988) ("On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion."); *Garrett*, 350 S.C. at 619, 567 S.E.2d at 526 ("An abuse of discretion occurs when a trial [judge]'s decision is unsupported by the evidence or controlled by an error of law." (internal quotation marks omitted)); *Curlee*, 277 S.C. at 382, 287 S.E.2d at 918 ("Contempt results from the willful disobedience of an order of the court . . ."); *id.* at 382, 287 S.E.2d at 917 ("The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice."); *State ex rel. McLeod v. Hite*, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979) ("The phrase 'inherent powers' is used to refer to powers included within the scope of a court's jurisdiction which a court possesses irrespective of specific grant by Constitution or legislation. Such powers can neither be taken away nor abridged by the legislature." (internal quotation marks omitted)).

Because the circuit court did not err in finding the municipal judge had the inherent authority to hold Wellborn in contempt, we decline to address whether Wellborn's conduct came within the purview of section 22-3-950 or section 40-5-510. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address a remaining issue when its determination of another issue is dispositive of the appeal).

AFFIRMED.¹

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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AUG 26 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2013-CP-46-01178

Christopher A. Wellborn, Appellant,

v.

The City of Rock Hill, ... Respondent

PETITION FOR REHEARING

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Attorney for Petitioner

The Petitioner petitions the Court for a rehearing in this case on the following grounds:

1. **THE MUNICIPAL COURT ERRED IN FINDING THE PETITIONER IN CONTEMPT WHEN THERE WAS NO RECORD OF THE PROCEEDING?**

The decision of the Court found that, "the Municipal Judge did not err in holding Wellborn in contempt for conduct not recorded in a trial transcript because the Municipal Judge's contempt order clearly and specifically stated how Wellborn's conduct violated the Court order". While the Municipal Judge's contempt order stated how the Petitioner's conduct allegedly violated a court order, there was no record of the trial in which the alleged contempt occurred. Since there was no record of the trial in which the contempt occurred there was no way a reviewing court can determine if in fact the Petitioner's conduct was contemptuous. It is important for the reviewing court to be able to review the record because there was a factual dispute as to the alleged contempt conduct committed by the Petitioner. Without a record there is no way that a reviewing court can determine if the trial judge abused his discretion in holding the Petitioner in contempt. The case of *Carly v. Hallie*, 277 SC 377, 382, 287 SE2d 915, 918, and (1982) cited in the decision involves a case in which the Appellate violated a family court custody order. In that case, the conduct did not occur in court but occurred outside the presence of the court. In that situation a hearing can be held to determine if contempt occurred. In the present case the alleged contempt occurred in the presence of the Court. No witnesses testified as to the contempt. Therefore it was incumbent upon the Court that the Court have a record of the proceedings.

2. THE MUNICIPAL JUDGE ERRED IN NOT RECUSING HIMSELF.

This Court cited Rule 501, Canon 3(E)(1)(d)(iv), SCARC which requires a Judge to disqualify himself or herself in a proceeding in which the Judge's impartiality might be reasonably in question, including instances when the Judge is likely to be a material witness. The Canon addresses exactly the situation in the present case. In this case the Municipal Judge brought the Rule to Show Cause against the Petitioner. No witnesses testified against the Petitioner in the contempt hearing. The Judge made a factual finding of the conduct allegedly committed by the Petitioner. The Petitioner under oath denied the conduct. In judging who was correct, it is obvious the Municipal Judge could not fairly and impartially make a ruling that the Petitioner's version of the events was correct. This Court is basically making a ruling that in a factual dispute between a Judge and an Attorney in a Municipal Court without a record the Judge is always correct. This was a factual dispute in which the Municipal Judge was alleging one set of facts and the Petitioner was alleging another set of facts. The Municipal Judge could obviously not be impartial and rule against himself. This was a clear instance in which the Judge was required to recuse himself.

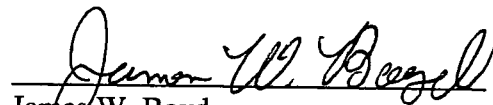
3. WAS THE PETITIONER'S CONDUCT REQUIRED TO VIOLATE SECTION 22-3-950 OR SECTION 40-5-510?

This Court found that it was not necessary to address whether the Petitioner's conduct came within the review of Section 22-3-950 or Section 40-5-510. While a Municipal Judge has the inherent authority to punish for contempt, what constitutes contempt is controlled by Section 22-3-950 and Section 40-5-510. The lower Court did not make a finding that Petitioner violated Section 22-3-950 but did make a finding that Petitioner violated Section 40-5-510. There was no finding by the lower Court that the

Petitioner's conduct constituted disorderly conduct. Since the statute controls what constitutes contemptuous conduct, the lower court erred in upholding Petitioner's citation for contempt.

Conclusion

All of the above reasons the Petitioner requests that the Court grant this Petition for rehearing.


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August 25, 2015

The South Carolina Court of Appeals

Christopher A. Wellborn, Appellant,

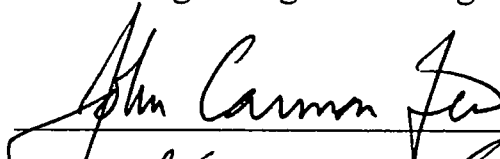
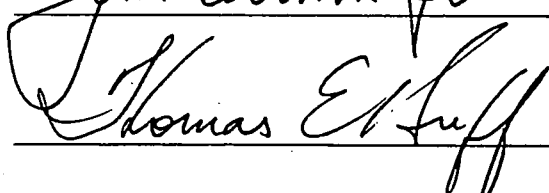
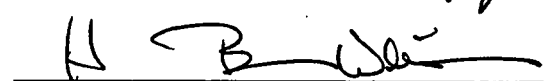
v.

City of Rock Hill, Respondent.

Appellate Case No. 2013-002580

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

James W. Boyd, Esquire

Christopher Edward Barton, Esquire

Paula Knox Brown, Esquire

FILED

October 23, 2015