

22429

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Alexander S. MacCaulay, Circuit Court Judge

RECEIVED

JAN 15 2016

STATE OF SOUTH CAROLINA,

SC Court of Appeals

Appellant,

vs.

KENNY RAY HARRIS,

Respondent.

Appellate Case No: 2015-001099

RECORD ON APPEAL

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

W. Walter Wilkins
Solicitor, Thirteenth Judicial Circuit

305 E. North St., Ste. 325
Greenville, SC 29601

ATTORNEYS FOR APPELLANT

STEVEN L. ALEXANDER, ESQ.
P.O. Box 618
Pickens, SC 29671
(864) 898-3208

Attorney for Respondent

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Alexander S. MacCaulay, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Appellant,

vs.

KENNY RAY HARRIS,

Respondent.

Appellate Case No: 2015-001099

RECORD ON APPEAL

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Appellant

STEVEN L. ALEXANDER, ESQ.
P.O. Box 618
Pickens, SC 29671
(864) 898-3208

Attorney for Respondent

INDEX

INDEX.....	i
CDV TICKET	1
INCIDENT REPORT	2-6
RETURN OF THE CRIMINAL APPEAL.....	7-9
MAGISTRATE’S RESPONSE.....	10-15
MOTION FOR RECONSIDERATION DATED AUGUST 4, 2014.	16
AFFIDAVIT OF DEPUTY ROPER.....	17
NOTICE OF APPEAL.....	18-20
ORDER OF J. MACAULAY, FILED MARCH 9, 2015	21-23
MOTION FOR RECONSIDERATION, DATED APRIL 2, 2015.....	24-27
ORDER OF J. MACAULAY DENYING THE MOTION FOR RECONSIDERATION:..	28-31
TRANSCRIPT OF MAGISTRATE’S COURT: AUGUST 18, 2014.....	32-44
TRANSCRIPT OF ORAL ARGUMENT: FEBRUARY 2, 2015.....	45-65
CERTIFICATE OF COUNSEL	66

Form S-438
Rev. 9/10

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

COUNTY OF DICKENS VERSUS
FIR KENNY MIDDLE NAME ROBERT JAME
STREET AND NO. [REDACTED] STATE SC ZIP CODE [REDACTED]

VEH. LIC. NO. [REDACTED] ☐ YES ☐ NO D
STATE [REDACTED] MAKE OF VEH. [REDACTED] YEAR [REDACTED] COMB. VEH. [REDACTED] AUTO [REDACTED] 16 PSGR. VEH. [REDACTED] COMB. [REDACTED]
HAZ. MT. [REDACTED] MOPED [REDACTED] MOTORCYCL. [REDACTED] OTHER [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT MAGISTRATE STREET AND NO. 211 C. DAVID STONE RD
DATE OF TRIAL 07-23-2014 TIME OF TRIAL 1000am CITY Pickens STATE SC ZIP CODE 29671

VIOLATION - COURT APPEARANCE REQUIRED YES ☐ NO ☐ VIOLATION SECTION NO. 11a-25-20

CRIMINAL DOMESTIC VIOLENCE
OWNER OF VEHICLE N/A DATE OF ARREST 07-11-2014

ADDRESS OF OWNER N/A DATE OF VIOLATION 07-11-2014

BAIL DEPOSITED N/A NAME OF ARRESTING OFFICER C. Roper RANK DET

JAIL DESCRIPTION OF ACCUSED [REDACTED] COUNTY DICKENS NUMBER 39

RACE NM SEX M BIRTH DATE 19 HT. 19 HAIR WT. EYES [REDACTED] BADGE A32 TROOP 03

DATE BAIL REC'D. BY 20 DATE OF VIOLATION 07-11-2014 WEATHER 1

CASE BEFORE MAGISTRATE ☒ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE. 0145 DISTANCE IN FEET FROM INTERSECTION 1.48

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

NOLLE PROSSED ☐ DISPOSITION GUilty FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

TRIAL BY: TRIAL JUDGE ☐ JURY ☐ HWY NO. 178 CITY Liberty

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20 Lat [REDACTED] Long [REDACTED]

JAIL SUSPENDED [REDACTED] FINE [REDACTED] AMT. COLLECTED [REDACTED] AMT. SUSPENDED [REDACTED]

COMMITTED TO: Vehicle Searched No Arrest as Result of Collision NO OFFENSE CODE 94 B.A. LEVEL [REDACTED]

CERTIFIED CORRECT [Signature] DATE 7-23-14 32468 FS

TRIAL COURT COPY

CASE # 2014-17622

AGENCY I.D.
SC0390000

INCIDENT REPORT
Pickens County Sheriff's Office

CASE NUMBER

2014-17622

NCIC

INQ. ENTD.

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Ins ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	1. 13A - CRIMINAL DOMESTIC VIOLENCE				☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		
	2.				☐ YES ☐ NO	☐ YES ☐ NO			
	3.				☐ YES ☐ NO	☐ YES ☐ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
	5648 MOOREFIELD MEMORIAL HWY, LIBERTY, SC						29657-	30-Blunt Object (Club, Hammer, etc.)	
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.	
	07/11/2014	1:30		07/11/2014	1:45	07/11/2014	1:45	1:55	3:30
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
					#1 #2 #3	☒ S ☐ O ☐ U	W	F	52
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
								ZONE 6	
	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
					#1 #2 #3	☒ S ☐ O ☐ U	W	F	52
SUBJECT NO. 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.				
	5'02"	176	BRO - Brown	GRN - Green					
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
								ZONE 6	
	VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN - M - Apparent Minor Injury								
	COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO								
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:								
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J - This Jurisdiction S - State O - Out of State U - Unknown								
	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH
	HARRIS, KENNY RAY				W	M	41	N	
NARRATIVE	ON THE ABOVE DATE AND TIME I RESPONDED TO THE ABOVE LOCATION IN REFERENCE TO A DISPATCHED COMPLAINT OF AN ASSAULT. R/O MET WITH THE VICTIM/ COMPLAINANT, WHO STATED THAT ON 07/11/14 AT APPROX. 0130AM HER BOYFRIEND WHOM SHE RESIDED WITH RETURNED HOME INTOXICATED AND PROCEEDED TO BEAT HER WITH A BAMBOO POLE IN ADDITION TO HIS HANDS AND FEET. VICTIM MORGAN STATED THAT SHE WAS BEATEN ABOUT HER FACE AND BODY WITH BOTH HIS PERSONAL WEAPONS AND THE BAMBOO POLE. R/O DID OBSERVE INJURIES ON VICTIM THAT APPEARED TO BE CONSISTENT WITH HER ACCOUNT OF THE ASSAULT. R/O LOCATED SUSPECT, KENNY RAY HARRIS, APPEARING TO BE INTOXICATED AND ASLEEP IN THE BEDROOM. R/O DID OBSERVE A STRONG ODOR CONSISTENT WITH THAT OF AN ALCOHOLIC BEVERAGE ASSOCIATED ABOUT HIS PERSON. R/O PLACED SUSPECT HARRIS UNDER ARREST FOR CRIMINAL DOMESTIC VIOLENCE AND HE WAS TRANSPORTED TO PICKENS COUNTY DETENTION CENTER. R/O OBTAINED A VOLUNTARY WRITTEN STATEMENT FROM THE VICTIM AND PROVIDED HER WITH VICTIMS PAPERWORK. R/O DID DOCUMENT/ PHOTOGRAPH THE SCENE AND VICTIMS INJURIES. NOTHING FURTHER AT THIS TIME.								
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
	TYPE (GROUP)								TOTAL VALUE
	STOLEN								
	DAMAGED								
	BURNED								
	RECOVERED								
	SEIZED								
	COUNTERFEIT								
	ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18	
☒ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
2335 - CHAD ROPER		07/11/2014	2335	768 - LT. ROBERT MCKINNEY		07/11/2014			
FOLLOW-UP INVESTIGATION OFFICER									
☐ YES ☒ NO									

AGENCY I.D.
SC0390000

SUPPLEMENTAL INCIDENT REPORT
Pickens County Sheriff's Office

CASE NUMBER

2014-17622

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 4 PAGES

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.						
VICT/SUBJ. I.D. OVERFLOW	☐ SUBJECT #	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
	☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED		
VICT/SUBJ. I.D. OVERFLOW	☐ WANTED	EXPLAIN		☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES		☐ USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK						
	☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
VICT/SUBJ. I.D. OVERFLOW	☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED		
	☐ JAIL	EXPLAIN		☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK						
VICT/SUBJ. I.D. OVERFLOW	☐ SUMMONS	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	HOME PHONE	EMPLOYER PHONE			
	☐	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED		
NARRATIVE	CITATION# 32468FS											
VEH/GUN/JECT	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN	☐ RECOVERED	☐ FOUND	☐ TOWED	☐ SUSPECT	☐ VICTIM	☐ VEHICLE	☐ GUN	☐ BOAT	☐ LICENSE PLATE	☐ SECURITIES/BONDS, STOCKS	☐ ARTICLE
PROPERTY EST.	SERIAL AND/OR OWNER APPLIED NO.		STATE		YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR		MAKE	
	MODEL		STYLE		COLOR		BRAND NAME		CALIBER			
ADMINISTRATIVE	NIC NO.		DENOMINATION		ISSUER		SECURITIES DATE		MISCELLANEOUS			
	TYPE (GROUP)		TOTAL VALUE		SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
STOLEN				☐ YES ☐ NO		☐ YES ☐ NO				☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER		
DAMAGED												
BURNED												
RECOVERED												
SEIZED												
COUNTERFEIT												
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		
2335 - CHAD ROPER		07/11/2014		2335		768 - LT. ROBERT MCKINNEY		07/11/2014				
FOLLOW-UP INVESTIGATION		OFFICER		☐ YES ☐ NO								

AGENCY I.D. SUPPLEMENTARY INCIDENT REPORT NARRATIVE
 SC0390000 Pickens County Sheriff's Office

CASE NUMBER

2014-17622

NCIC

INQ. ENTD.

SUPP # 4	INCIDENT DATE 07/11/2014	INCIDENT TIME 1:30	CASE STATUS CA - Closed by Arrest	PAGE 1 of 1 PAGES
SUPPLEMENT TYPE		SUPPLEMENT DATE 07/11/2014	SUPPLEMENT TIME 11:30	SUPPLEMENTING OFFICER 1000 - LEE GARDO

NARRATIVE

On 7-11-14 victim [REDACTED] came to LEC in reference to applying for an Order of Protection. It was determined at that time that suspect (Kenny Harris) was currently on probation. After speaking with Probation, Parole & Pardon, the address they had listed for Kenny was [REDACTED] however, victim stated that she and suspect had been residing at [REDACTED] for the past 3 months. When I contact Detention I was informed that suspect had already been released on a \$3000 PR bond and was to have no contact with victim. Suspect did not provide a location to Judge Dow on where he would be relocating. Victim was offered assistance to go to a shelter, but she decided to stay with her sister (Marcie [REDACTED] at [REDACTED] Hwy. which is adjacent to where this incident occurred. I scheduled for the victim to return on 7-14-14 to apply for the OOP in the event a valid address could be established for suspect.

AGENCY I.D. SUPPLEMENTARY INCIDENT REPORT NARRATIVE
SC0390000 Pickens County Sheriff's Office

CASE NUMBER

2014-17622

NCIC

INQ. ENTD.

SUPP # 5	INCIDENT DATE 07/11/2014	INCIDENT TIME 1:30	CASE STATUS CA - Closed by Arrest	PAGE 1 of 1 PAGES
-------------	-----------------------------	-----------------------	--------------------------------------	-------------------

SUPPLEMENT TYPE	SUPPLEMENT DATE 07/17/2014	SUPPLEMENT TIME 14:13	SUPPLEMENTING OFFICER 1000 - LEE GARDO
-----------------	-------------------------------	--------------------------	---

On 7-16-14 victim [REDACTED] came to LEC to file for an Order of Protection. Also while present I took additional photos of bruising on victim's right upper arm and chest.

NARRATIVE

VOLUNTARY STATEMENT

DATE 7-11-14 PLACE [REDACTED] TIME STARTED 1:47 P.M.
I, the undersigned, [REDACTED] am 52 years of age, my date and place of
birth being the [REDACTED] at Pickens
I now live at [REDACTED]
Before answering any questions or making any statements, C. Roper

a person who identified himself as a PCSO Deputy
duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

I came home about 1:35 Angrey cause I had to use my Brother-in-laws phone then started punching me in the head & face grab a stick to hit me with Kicked me & pulled my hair, cut my little left toe Hit in head with Bananabale. All this happen on July 11 2014 Kenny Ray Harris my boyfriend did this to me - END OF STATEMENT

[Signature]

[Signature]

[Signature]

[Signature]

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say this statement.

This statement was completed at 0155 A.M. on the 11th day of July, 2014

WITNESS: [Signature]

[Signature]

Signature of person giving voluntary statement

WITNESS: _____

2014 SEP 29 AM 11 31

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
SOUTH CAROLINA

IN THE CIRCUIT COURT

2014-CP-39- 1209

THE STATE,

VS

RETURN OF THE CRIMINAL APPEAL

Kenny Ray Harris,

Address [REDACTED]

DEFENDANT-Appellant

This matter is on appeal from the MAGISTRATE'S COURT of PICKENS COUNTY, South Carolina, the Honorable Benjamin A. Dow, Presiding Judge.

The Defendant, Kenny Ray Harris, was charged with violating S.C. Code Ann. Sec. 16-25-20, which is commonly referred to as Criminal Domestic Violence, on 7/11/2014.

This matter was heard in a First Appearance TRIAL on 7/23/2014, and the Notice of Appeal was filed by the victim on 7/24/2014. The court answered that appeal. The matter was heard again in a Motion to Reconsider Hearing on 8/18/2014. Notice of Appeal was filed on 8/28/2014. The proceedings were:

- ☒ recorded electronically.
- ☐ recorded by a court reporter.
- ☐ recorded in writing by the judge.
- ☐ not recorded.

The jury list was prepared pursuant to S.C. Code Ann.:

- ☐ 22-2-80. Selection of jury list for a single trial.
- ☐ 22-2-90. Selection of jury list for scheduled terms of jury trials.

The State called the following witnesses:

1. N/A See Narrative
2. _____
3. _____
4. _____

The Defendant called the following witnesses:

1. N/A See Narrative
2. _____
3. _____
4. _____

The State made the following Motions:

1. Reconsideration
2. _____

The State offered the following items into evidence:

1. Motion for Reconsideration
2. Photos

The Defendant raised the following objections to the items that the State sought to introduce into evidence:

1. State did not comply with Rule 4
2. State did not comply with Rule 29
3. Questions on who the prosecuting party should be

A summary of the Defendant's and State's position and the Court's ruling on the objection is attached.

The Defendant offered the following items into the record:

1. N/A See Narrative

2. _____

Attached are copies of the items which are checked:

- ☒] Uniform Traffic Ticket
- ☐] Warrant Number
- ☐] Jury List
- ☐] List of items offered into evidence, a summary of objections, and the Court's rulings
- ☐] Documents and exhibits put into the record
- ☐] Copy of Chaingang Commitment
- ☒] The Notice of Appeal
- ☒] Magistrate's Response to Appeal

RESPECTFULLY SUBMITTED,

Date: 9/26/2014

Benjamin A. Dow
Magistrate
216-A C. David Stone Rd.
Pickens, SC 29671
(864) 898-5376

2014 SEP 29 AM 11 31

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
THE STATE,

CLERK OF COURT IN THE CIRCUIT COURT
PICKENS COUNTY
SOUTH CAROLINA

2014-CP-39- 1209

VS

MAGISTRATE'S RESPONSE

Kenny Ray Harris,
Address: [REDACTED]

DEFENDANT)

.....)
Presiding Judge Benjamin A. Dow's response to Defendant's
Notice of Appeal:

On 7/11/2014 the defendant was arrested and charged with the criminal offense of Criminal Domestic Violence (CDV). Deputy Chad Roper of the Pickens County Sheriff's Office was the arresting officer. When Deputy Roper made the arrest he issued a uniform traffic ticket to the defendant advising him of the charge of CDV and his court date of 7/23/2014 at 10:00 am. This court placed the date for the First Appearance Hearing on the docket for the date and time the officer chose.

On 7/23/2014 at 10:00 am the defendant and victim were present and waiting for the hearing to begin, however Deputy Roper was not. The court proceeded to hear other cases that were set for the same date and time. Between cases the court checked to see if Deputy Roper was working and was detained on other matters pertinent to his duties. The court discovered the officer was not working that day and had not worked the previous

day or night. After completing hearings for other cases that were scheduled for the same date and time the court noticed Deputy Roper still was not present. At approximately 10:43 am the court had no other choice than to dismiss the case due to no prosecution. The defendant and his attorney, Steven Alexander, were made aware of the decision as was the victim.

On 7/24/2014 the victim in this matter was referred to the Clerk of Court's Office by the Pickens County Sheriff's Office Victim's Services (PCSOVS) to file an appeal. The victim filed the appeal with the Clerk of Court's Office and the appeal was served on my clerk on 7/25/2014.

On 8/4/2014 the Pickens County Sheriff's Office along with the aid of the Solicitor's Office filed with the Clerk of Court a Motion for Reconsideration in reference to this matter. Assistant Solicitor Sam Tooker then forwarded the Motion for Reconsideration to me at my office later the same day.

The court reviewed the Motion to Reconsider given in reference to this matter. The motion stated the victim and defendant were present for the First Appearance Hearing however the officer was not present. Along with the motion that was submitted to the court there were also pictures of the victim attached, that were said to have stemmed from the incident. The pictures showed various injuries to the victim.

On 8/18/2014 a hearing was held for the Motion for Reconsideration in this court at 10:00 am. Attending the hearing

for the State was as follows: Sam Tooker, Deputy Chad Roper (PCSO), Deputy Lee Gardo (PCSOVS), Sherry Holcombe (PCSOVS) and the victim. There for the defense were as follows: John DeJong (Defendant's Attorney) and Kenny Harris (Defendant). The court heard arguments from both parties.

The state acknowledged that the officer was at fault for not being present for the First Appearance Hearing. The state asked the court to reconsider reopening the case.

The defense argued that the Motion for Reconsideration was not served on Mr. Steven Alexander. The defense referred to Rule 4 and Rule 29 of Rules of Criminal Procedure stating that the defense was not served with the motion in writing. The defense stated to the court that since Mr. Alexander was not served in writing of the Motion for Reconsideration, the motion was not perfected. The defense also made the argument of questioning who the prosecuting agency was. The defense raised the issue that the deputy was the initial prosecuting agent. They questioned the fact that the solicitor's office was now involved as the prosecuting agent.

The stated then had the opportunity to respond to the arguments raised by the defense. The stated argued the fact that Rules 4 and 29 merely stated that a motion in writing be served to the court to preserve the ten day window. The State stated that by doing so they had preserved their rights to have the arguments heard in open court. The State also addressed the

issue of who the prosecuting agency was. The State advised that the Sheriff's Office, the prosecuting officer and Attorney General's Office are all representatives of the State. The State then asked the court to reconsider a prior ruling in reference to the case so the case could be decided on the merits of the case.

After the State had presented their case, the defense then addressed a statement by the State which referred to the court being able to rule on the merits of the case. The defense raised the issue of not knowing what the merits of the case were because they believed that Rule 4 and Rule 29 had not been met. They also earlier made reference to the only notice they received about the hearing was a summons from the summary court.

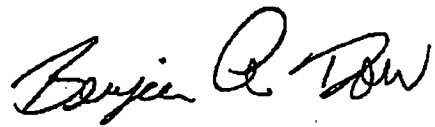
After hearing the arguments the court reviewed the wording of Rule 4 and Rule 29. The court agreed with the State's arguments in that Rule 4 does not state The Motion for Reconsideration must be served on the defense, since the motion was made in a hearing in open court. It is the court's view that on the Summary Court Summons, it stated the hearing was for a Motion for Reconsideration to reopen the case. It stated the date, time, location and reasoning for the hearing. The State, in open court, then made their reasons known why they were asking for the court to reopen the case. They advised the officer did not appear as the reason for asking for Reconsideration.

In reference to Rule 29, the tenth day of the preservation process fell on a Saturday. The State served the court with the Motion to Reconsider the following Monday keeping it within the ten day window.

The State asked for the case to be reopened so it could be judge on the merits of the case. The defense raised the issue that they did not know what the merits of the case were. The court felt that discussing the merits of the case in this hearing were outside the scope of the hearing. The State was asking for the case to be reopened because the officer was not present for the first appearance. The court decided the actual merits of the case should be decided in a first appearance hearing or trial setting.

After deciding on the arguments presented, the court also took into consideration the pictures that were attached to the Motion to Reconsider. As a culmination of the arguments and also the pictures the court ruled to reopen the case and the case to be placed back on the docket. I recused myself from any further hearings due to the fact I had heard information about the case and also photographs from the case were attached to the Motion for Reconsideration. Since the time this Appeal was filed, the defense has requested a jury trial for the defendant. The date and time for future hearings are yet to be determined.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Benjamin A. Dow". The signature is fluid and cursive, with the first name "Benjamin" and last name "Dow" clearly distinguishable.

Benjamin A. Dow
Magistrate
216-A C. David Stone Rd.
Pickens, SC 29671
(864) 898-5376

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

THE STATE

-VS-

KENNY RAY HARRIS,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

Ticket: 32468FS

PCSO Case: 2014-17622

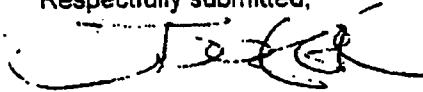
MOTION FOR RECONSIDERATION

NOW COMES THE STATE by and through its undersigned representative who would respectfully show unto this Honorable Court the following:

1. The Defendant was scheduled for trial to be held on July 23rd, 2014.
2. On July 23rd, the Defendant and the Victim were present in Court.
3. The arresting officer, Chad Roper, failed to show for court, and the Honorable Ben Dow, Pickens County Magistrate, dismissed the case.

WHEREFORE, THE STATE PRAYS that this Honorable Court issue its Order reinstating this case for prosecution in the Magistrate Court of Pickens County, SC.

Respectfully submitted,



Samuel Barton Tooker
Thirteenth Judicial Circuit-Pickens County
214 East Main Street, B-120
Pickens, SC 29671
(864) 898-5910 FAX (864) 898-5586
SC Bar # 78999

Dated: 07/23/14
Pickens, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

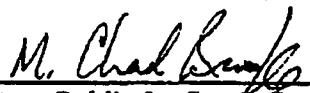
AFFIDAVIT

Personally appeared before me on this 30th day of July, 2014, Deputy Chad Roper, who on oath hereby deposes and states:

1. That the affiant is a Deputy Sheriff with the Pickens County Sheriff's Office.
2. That on July 23, 2014, the affiant was due in Magistrate's Court at 10:00 am, in reference to Pickens County Sheriff's Office case number 2014-17622. Both the victim, [REDACTED] and the defendant, Kenny Ray Harris, were present. Due to personal reasons, the affiant was late for this court appearance and Pickens County Magistrate Ben Dow dismissed the case solely because the affiant was not present.
3. The affiant now respectfully request that the Thirteenth Circuit Solicitor's Office file a Motion to Reconsider on behalf of the affiant and the victim.


Deputy Chad Roper, Affiant

SWORN to and subscribed before
me on the 30th of July, 2014.


Notary Public for South Carolina

My Commission expires: 05/02/2022

2014 SEP 29 AM 11 28

CLERK OF COURT

PICKENS COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

STATE OF SOUTH CAROLINA,

Respondent,

vs.

KENNY RAY HARRIS,

Petitioner.

IN THE MAGISTRATES COURT

Ticket # 32468FS

2014-CP-39-1205

NOTICE OF APPEAL

Kenny Ray Harris appeals to the Circuit Court, Court of General Sessions, the Honorable Benjamin Dow's order and ruling from the bench of 8/18/2014 granting the State's motion for reconsideration reinstating the charge of criminal domestic violence against the Petitioner.

The Court at the Motion for Reconsideration ordered and ruled that the charges against the Petitioner be reinstated and for a first appearance to be reset. This was a verbal order and ruling and no written order was issued.

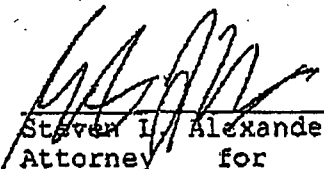
This appeal is based on the following:

The Respondent failed to comply with Rule 4(a) of the South Carolina Rules of Criminal Procedure. Petitioner was not served or provided with any written motion or affidavits from the state, he and his attorney only received a Summary Court Summons with a hearing date and time for a Motion for Reconsideration. This was received after the petitioners charge of criminal domestic violence 1st offense was dismissed at his first appearance in Magistrate Court by the Honorable Benjamin Dow when he appeared but the prosecuting officer

failed to appear. Petitioner had no written notice of what the State was requesting to be reconsidered and no written or actual notice of the basis for the motion for reconsideration. Therefore the state failed to comply with Rule 4(a) of the South Carolina Rules of Criminal Procedure by not making the motion in writing, failing to state with particularity the grounds therefor, and failing to set forth the relief or order sought.

There is further no legal basis for a "Motion for Reconsideration" under the South Carolina Rules of Criminal Procedure under which the State can make such a motion. Additionally there is no legal basis for which the Court to based its order and ruling on. The Court did not make any specific rulings and/or findings or state any legal basis that the order and ruling to reinstate the charges was made on.

Petitioner requests the order and ruling of the magistrate court be reversed and that the dismissal of the Defendant's charge of Criminal Domestic Violence be upheld.


Steven I. Alexander
Attorney for the Petitioner
PO Box 618
Pickens, SC 29671
864-899-3208

Date: 8/28/14

Other Counsel of record:

Mr. Samuel Tooker
Attorney for State of South Carolina

2014 SEP 29 AM 11:00
 STATE OF SOUTH CAROLINA THE MAGISTRATES COURT
 COUNTY OF PICKENS CLERK OF COURT Ticket # 32468FS
 PICKENS COUNTY
 STATE OF SOUTH CAROLINA

Respondent,) CERTIFICATE OF MAILING
 vs.)
 KENNY RAY HARRIS,)
 Petitioner.)
)

2014-CP-39- 1209

This is to certify that the undersigned did cause the NOTICE OF APPEAL to be served upon the attorney for the Respondent and the Presiding Judge for the Pickens County Magistrate Court by mailing a copy of the same in an envelope addressed as shown below and depositing same in the United States Post Office, with proper postage affixed thereto, on the 28th day of August, 2014

Mr. Samuel Tooker
 Pickens County Solicitors Office
 214 E. Main Street B-220
 Pickens, SC 29671

The Honorable Benjamin Dow
 Pickens County Magistrate Judge
 216 C. David Stone
 Pickens, SC 29671


 ALEXANDER LAW FIRM
 PO BOX 618
 PICKENS, SC 29671
 Telephone: (864) 898-3208
 Fax: (864) 898-3408

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

KENNY RAY HARRIS,

Defendant.

.....)

) IN THE COURT OF COMMON PLEAS

) 2014-CP-39-01209

) ORDER

TRIAL DATE:

TRIAL JUDGE:

PLAINTIFFS ATTORNEY:

DEFENDANTS ATTORNEY:

COURT REPORTER:

FEBRUARY 2, 2015

ALEXANDER MACAULAY

MITCHELL BYRD

STEVEN ALEXANDER

CHERYL SMITH

2015 MAR 19 PM 12 16
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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

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

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

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

1.63
Dr

County Sheriff's Office failed to appear.

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

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

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

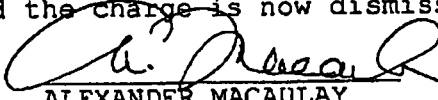
5) Therefore Rule 4(a) of the South Carolina Rules of Criminal Procedure was not complied with. I find there was

2.63
on

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

IT IS SO ORDERED, ADJUGED AND DECREED:

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

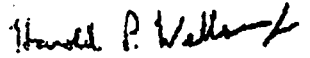

ALEXANDER MACAULAY
CIRCUIT COURT JUDGE

Date:

Jul 27, 2015

2015 MAR 5 PM 12 16
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Certified Copy


Clerk of Court
Pickens County, SC

Dated Mar 2015
mg

3.63

2015 APR 9 AM 11 02

STATE OF SOUTH CAROLINA

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

COUNTY OF PICKENS

THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

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

Respondent

vs

Kenny Ray Harris

MOTION FOR RECONSIDERATION
AND TO VACATE ORDER

Appellant

TO THE APPELLANT AND HIS ATTORNEY STEVEN ALEXANDER

PLEASE TAKE NOTICE that on the tenth day hereafter or as soon as counsel can be heard the undersigned on behalf of the Respondent will move and does hereby move the Court for an order amending and vacating its order dated February 27, 2015 and received April 1, 2015 upon the following grounds, to wit:

1. The Court did not have jurisdiction to grant the Respondent's appeal as the oral order of the Magistrate which is the subject of this appeal was interlocutory and not appealable. State v Miller 289 S.C. 426, 346 S.E. 2d 705 (1986) ("We adhere to our view that under § 14-3-330 (1976) a criminal defendant may not appeal until after sentence has been imposed.") Lack of jurisdiction may be raised at any time.
2. The Court did not have jurisdiction to grant the Appellant relief as Appellant was not aggrieved by the Magistrate's oral order reopening his case. State v

Looper S. C. Ct. App., Op. No. 5301 (filed March 4, 2015). Appellant has shown no prejudice by reopening his case and is in no different position than he was when the case was lodged against him.

3. The Court should reconsider its finding that the particular grounds for the motion were not set forth in the summons. The summons recited that the motion was for reconsideration of the trial court's dismissal of the case. Any defect in the particularity of the summons was cured by oral argument of the motion in open court before the Magistrate at the motion hearing.
4. The Court should reconsider its finding that the State's motion to reconsider was not in compliance with Rule 4 (a) as it does not state with particularity the grounds for the motion. The State's motion and accompanying affidavit by the arresting officer contained the requisite particularity and any defect was cured by the summons and oral argument of the motion before the Magistrate at the hearing on the motion which hearing was electronically recorded.
5. The Court should reconsider its finding that the grounds for the State's motion to reconsider were not sufficient to comply with Rule 4 (a) as there was no court reporter present as required. The Magistrate's Return in this case notes that the hearings in the trial court were electronically recorded.

Electronic recording is the equivalent of a court reporter in Magistrates' courts in South Carolina. See § 22-3-790. ("In any case before any magistrate in which a stenographer takes down the testimony or in which testimony is electronically recorded it need not be read over and signed by the witnesses.") State v Duncan 269 S.C. 510, 238 S.E. 2d 205 (1977) ("The magistrate's court is not a court of record....") Court Reporters are not supplied by the State for Magistrate Court proceedings.

6. The Court should reconsider and vacate its order reversing the Magistrate's oral order reopening this case thereby dismissing the charge of Criminal Domestic Violence against the Appellant as it was within the Magistrate's discretion to reopen the case and any defect in the State's motion to reconsider and reopen was cured by oral argument before the Magistrate in compliance with Rule 4.
7. Dismissal of the charge against Appellant was too harsh of a remedy for any technical defect in the State's motion to reconsider.

Date: April 2, 2015


Mitchell Byrd
Asst. Solicitor
Thirteenth Circuit

2015 APR 9 AM 11 02

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

Appellant

2014-CP-39-01209

vs.

CERTIFICATE OF SERVICE

Kenny Ray Harris

Respondent

The undersigned certifies that he has served upon opposing counsel for the Defendant the State's Motion to Reconsider and Vacate by depositing same in the United States Mail, to the address listed below with sufficient postage affixed thereto, this 2nd day of April, 2015:

StevenL. Alexander, Esq.
Box 618
Pickens SC 29671



Mitchell Byrd
Assistant Solicitor, 13th Judicial Circuit
305 E. North St., Suite 325
Greenville, SC 29601
864-467-8701
mbyrd@greenvillecounty.org

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

COUNTY OF PICKENS CLERK OF COURT THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY

STATE OF SOUTH CAROLINA, SOUTH CAROLINA

Respondent,

VS.

KENNY RAY HARRIS,

Appellant.

ORDER

DENYING MOTION FOR RECONSIDERATION
AND TO VACATE ORDER

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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

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

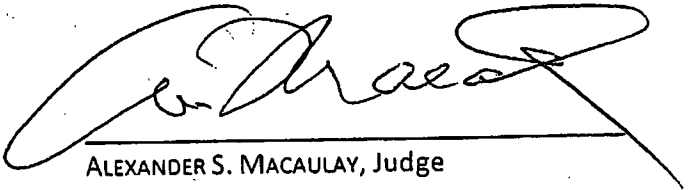
¹ The Supreme Court noted that: "FN2. However, we clarify that the statute at issue has been revised. As of June 13, 2013, section 56-7-15(A) provides: 'The uniform traffic ticket . . . may be used by law enforcement officers to arrest a person for an offense that has been freshly committed or is committed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

2015 APR 23 PM 1 19

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

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

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Pickens, South Carolina
April 23, 2015

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

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

STATE

VS.

KENNY RAY HARRIS

ORIGINAL

AUGUST 18, 2014

TICKET NO.: 32468FS

MOTION FOR RECONSIDERATION HEARING

CANNON COURT REPORTING
Certified Verbatim Reporters
Post Office Box 2727
Greenville, South Carolina 29602
864-298-0082 or 864-316-4918
cannonreporting@charter.net

State vs Kenny Ray Harris

1 JUDGE DOW:

2 Today is August the 18th, 2014. I'm Judge Dow.
3 This is in reference to a hearing that was requested
4 by the State in reference to the motion for a new
5 trial. Just a little background on this. This was
6 scheduled to be heard -- this was a case that was
7 scheduled to be heard on July 23, 2014 at 10:00 a.m.
8 The Court waited until approximately 10:43; due to
9 no prosecution being present the case was dismissed.
10 This is in reference to the State versus Kenny Ray
11 Harris. At that time Mr. Harris was charged with
12 criminal domestic violence on ticket number 32468FS.
13 Since the State had requested a motion for a new
14 trial this is in reference to that. Representing
15 the State is Mr. Sam Tooker. For the defense is Mr.
16 John DeJong. Mr. Tooker?

17 MR. TOOKER:

18 Yes, sir, may it please the Court. So it's the
19 State's understanding in this case that Officer Chad
20 Roper was to be the, I guess, prosecuting authority
21 in this case and there was an initial hearing
22 scheduled and Officer Roper was not present in Court
23 after notification, and so the Court dismissed the
24 charge. While the victim was present and prepared
25 to proceed without a prosecuting agent the case

1 could not go forward and that's certainly within
2 Your Honor's discretion. The State humbly just
3 comes before Your Honor and requests that the
4 charges be reinstated and that the case be permitted
5 to proceed to trial. We have provided Your Honor
6 with an affidavit from the officer explaining why he
7 could not be here. And it's the State's request
8 that based on his affidavit and acknowledgement in
9 his failure to fulfill his obligations that Your
10 Honor reinstate the charges and we be permitted to
11 proceed to trial on this case. That's the State's
12 request and we leave it in your hands, Sir.

13 JUDGE DOW:

14 Okay. Mr. DeJong?

15 MR. DEJONG:

16 Thank you, Your Honor, may it please the Court. I'm
17 at a total loss. The client receives a summons
18 stating that this is a motion for reconsideration
19 hearing. And I do not mean any disrespect to Your
20 Honor, but now Your Honor has filed it as a motion
21 for a new trial is how I understand it. The only
22 thing that I'm aware of -- alright, let me back up
23 just a little bit. On the July 25th date, if that
24 was the date, indeed I think Mr. Steven Alexander
25 actually made an appearance with the defendant. Mr.

1 Alexander had an emergency this morning; he could
2 not be here and asked me to cover this for him.
3 Nonetheless, Your Honor, be it a motion for a new
4 trial I think that is probably covered under Rule 29
5 subparagraph B. The motion for a new trial as I
6 understand it would have to be based on after-
7 discovered evidence. Now, after-discovered evidence
8 I would submit to the Court, if that's what I'm here
9 to argue, I don't know, because I've never seen a
10 copy of any motion or any affidavit -- which, let me
11 back up again. Not having seen a copy of the motion
12 or an affidavit or anything else that to my
13 knowledge was never served on Mr. Alexander, to my
14 knowledge it was never served on Mr. Harris, that
15 being said, Your Honor, if it was never served then
16 it was never perfected. Now to me that would be
17 like an appeal, the appeal would have to be served
18 on the defendant or the defendant's counsel to give
19 them notice. In this case all we got as far as I
20 know is a Summary Court summons. The question now
21 that we come from there, I don't know if I'm looking
22 at Rule 29, a motion for a new trial or a motion to
23 reconsider --

24 JUDGE DOW:

25 Alright, Mr. DeJong, let me stop you there.

State vs Kenny Ray Harris

1 MR. DEJONG:

2 Yeah.

3 JUDGE DOW:

4 That is entirely my fault. It is a motion for
5 reconsideration.

6 MR. DEJONG:

7 Alright.

8 JUDGE DOW:

9 That is what the document clearly states on it, it
10 is my fault in semantics and just --

11 MR. DEJONG:

12 That's fine.

13 JUDGE DOW:

14 -- put it out there I guess you'd say.

15 MR. DEJONG:

16 Because in my opinion there is a substantial --

17 JUDGE DOW:

18 Very clear difference, yes, sir.

19 MR. DEJONG:

20 -- difference (inaudible) whether we're ask --
21 whether the --

22 JUDGE DOW:

23 Yes, sir.

24 MR. DEJONG:

25 -- State is asking for a new trial or a motion to

1 reconsider. That having been said, since we are not
2 here now on a motion for a new trial and Your Honor
3 may be able to educate me this morning. I went to
4 the Summary Court Bench Book, I could not find
5 anything in specific in there with motions period
6 other than the segment I found in the magistrate --
7 the Summary Court Bench Book was they talk about
8 local rules, court rules and I think case law may
9 have been in there in precedence. And not having
10 found that I can only then revert back to the rules
11 what I would consider in this case the Rules of
12 Criminal Procedure, and that I think comes under
13 Rule 29 of the South Carolina Rules of Criminal
14 Procedure. Your Honor can read as well as I can,
15 but in large part that says that these motions --
16 well, let me back up again. Rule 4 is form of
17 motions, unless a motion is made during a hearing or
18 trial in open court with court reporter present, of
19 course we wouldn't have that here, shall be made in
20 writing, shall state with particularity the grounds
21 therefore, shall set forth a relief or order sought.
22 The requirement of writing is fulfilled if the
23 motion is stated on a written notice of the hearing.
24 Well, I would respectfully bring to the Court's
25 attention that on the Notice of Hearing, which is a

1 summons, there is no basis set forth in that at all.
2 And again, Your Honor, my position would be on a
3 motion itself as to Rule 4 and Rule 29, especially
4 Rule 4, that it would have to be in writing. And in
5 my opinion based upon the rule to be perfected would
6 have to be served on opposing counsel. The next
7 question that I would raise is, and this one becomes
8 even more fascinating, I know Mr. Tooker is here and
9 Mr. Tooker is with the Solicitor's Office. I can't
10 figure out in this case who the prosecuting
11 authority was or there seems to be some question as
12 to whether it was the officer or the Solicitor's
13 Office. If it was indeed the officer that was the
14 prosecuting authority then I think the officer would
15 have had to file the motion. I don't think at that
16 point in time if the officer was the prosecuting
17 authority the State was not the prosecuting
18 authority, I don't think the State can come in after
19 the fact now and say we are the prosecuting
20 authority, we are going to file this motion. If
21 they were not the prosecuting agency then they're
22 not even a party to this action and we're not a
23 party to this action if that were the case. Now
24 there seems to be, and I'll be the first to admit
25 it, there seems to be some question about whether or

1 not the Solicitor's Office is prosecuting or is not
2 prosecuting criminal domestic violence cases, I do
3 not know the answer to that question. I am sure we
4 can find out. My position is simply this, Your
5 Honor, that based on Rule 4 and in part Rule 29,
6 even if the notice to the Court shall we say for
7 purposes of argument was timely given, it was never
8 perfected as far as the defendant is concerned.

9 Therefore, it was never perfected and I would submit
10 it should be -- the motion should be dismissed on
11 that ground. Secondly, I get involved in the more
12 murky area and that is the prosecuting authority on
13 this case who then may bring or file this action and
14 if the State was not the prosecuting authority then
15 I don't think the State was a party to the action
16 and could not bring this particular motion and I
17 would also move that the motion be dismissed on that
18 grounds as well.

19 JUDGE DOW:

20 Alright. Mr. Tooker?

21 MR. TOOKER:

22 Well, I guess, we've got two arguments here and I'll
23 address each in turn. The first with regards to
24 Rule 4 and Rule 29, my understanding of those rules
25 is -- the idea is you want to ensure that the time

1 tolls within that 10 day period of when the ruling
2 is made until the motion can be heard. You ensure
3 the tolling by filing the written motion. Now the
4 defendant is then afforded an opportunity to come to
5 Court to present his case or to, you know, oppose
6 the motion as made by the State and that's what the
7 notice that the defendant did, is it afforded him
8 notice of his hearing where he could come, hear the
9 State's arguments and then respond. When Mr. DeJong
10 read Rule 4 I don't believe it said anything about
11 service of process. I mean Rule 4 just says that
12 you have to -- if it's not a hearing done in open
13 court, which is what we're doing right now, then to
14 perfect the record it has to be filed in writing to
15 the Court. In this case we filed in writing to the
16 Court to toll the 10 days until we could get in
17 front of Your Honor and have oral arguments. Now
18 the second issue is the one that I think is a little
19 more interesting inasmuch as the initial prosecuting
20 agent was the officer if the State is correct; is
21 that correct?

22 JUDGE DOW:

23 That's correct, yes.

24 MR. TOOKER:

25 So, our office, I myself, got involved in this case

1 after contacted -- being contacted by law
2 enforcement and requested to file a motion on behalf
3 of the State. Now, when Mr. DeJong says the State I
4 believe he refers to the prosecutor's office, I
5 mean, I think in reality the State is all
6 prosecution entities. I mean, you've got law
7 enforcement, you've got the Solicitor's office, you
8 have the Attorney General's office, they're all
9 representatives of the State but in different forms.
10 Whether or not Officer Roper would have had to file
11 the motion to perfect the motion for purposes of
12 this hearing, you know, that's a little more touchy
13 and I'm going to be candid inasmuch as I don't know
14 what the right answer is in that circumstance. I
15 think in the interest of fairness and justice, I
16 mean, what we're here to do today is to ask Your
17 Honor to reconsider a prior ruling and we're asking
18 you to reconsider that prior ruling based on the
19 affidavit provided by the investigating and
20 prosecuting officer. And so whether or not I myself
21 as a representative of the Solicitor's office or a
22 member of law enforcement needs to make the argument
23 I think no matter what as long as the argument is
24 presented to Your Honor, so Your Honor has the
25 ability to rule on the merits of the case that it's

1 within Your Honor's discretion as to whether or not
2 you want to grant the motion. So that's my peace.

3 MR. DEJONG:

4 If I may just respond briefly, not to the latter but
5 to the former one, Mr. Tooker says we are here to
6 argue the merits of the case. I don't know what
7 those merits are. I have no notice under Rule 4 or
8 Rule 29 of what the State is saying. At this point
9 in time to my knowledge we have never been furnished
10 a copy of the affidavit. So certainly I cannot
11 argue it. Now Mr. Tooker says Rule 4 doesn't say
12 anything about service and I'll be candid it
13 doesn't, but I think under the 14th Amendment of due
14 process certainly we would be entitled a notice and
15 that notice under Rule 4 that the motion be served
16 on the defendant stating with clarity or whatever
17 the exact terminology of that rule is what the
18 motion is. There's no way for me to come in and
19 we're going to talk about justice and fairness that
20 sort of cuts two ways for the defendant to have to
21 come in and argue a motion that he's not sure what
22 the grounds of the motion are for. That again, with
23 no disrespect to the Court, is certainly not
24 fairness and justice. We are entitled to that
25 notice. I submit we did not get the notice. I

State vs Kenny Ray Harris

1 submit as a result that the motion was not perfected
2 timely and therefore again should be dismissed.
3 Thank you, Your Honor.

4 JUDGE DOW:

5 Okay. If you'll just give me -- excuse me for one
6 second I'll be back with you.

7 (OFF RECORD)

8 JUDGE DOW:

9 After hearing both arguments today and also doing
10 some research back there, quick research, I am going
11 to open this back up and put it back on the docket
12 for starting over at square one. Because of, I
13 guess, to say my involvement in this case at this
14 hearing and also the other one I'm going to recuse
15 myself from any further hearings on this so that
16 there is not any appearance of partiality towards
17 one side or the other. And that will be the Order
18 of the Court.

19 MR. DEJONG:

20 Thank you, Your Honor.

21 MR. TOOKER:

22 Thank you, Sir.
23
24
25

State vs Kenny Ray Harris

CERTIFICATE

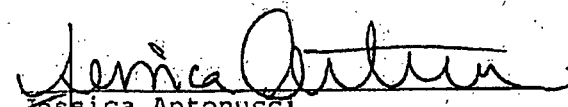
I, the undersigned, Jessica Antonucci, Notary Public
in and for the State of South Carolina do hereby certify
that:

That the foregoing tape was transcribed at the
request of Mitchell Byrd, Esquire;

A court reporter was not present at the proceedings
and therefore cannot guarantee that every word of
testimony could be heard or that the speaking parties are
properly identified;

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set my hand and
seal this 4th day of June, 2015.


Jessica Antonucci
Notary Public for South Carolina
My Commission expires 7/20/2015

) COURT OF COMMON PLEAS
) 2014-CP-39-01209

)

1) TRANSCRIPT OF RECORD

—

B E F O R E:

A P P E A R A N C E S:

STEVEN LUTHER ALEXANDER, ESQ.
Attorney for the Defendant

45

INDEX

(There were no witnesses called.)

EXHIBITS

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

(Defendant's Exhibits)

1	Summary Court Summons	3	
---	-----------------------	---	--

P R O C E E D I N G S

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification.)

THE COURT: The next action is 2014-CP-39-1209, State vs. Kenny Ray Harris. Mr. Byrd here on behalf of the State, Mr. Alexander on behalf of the appellant.

MR. ALEXANDER: That's correct, Your Honor.

THE COURT: Very good.

All right, Mr. Alexander.

MR. ALEXANDER: Thank you, Your Honor. If it pleases the Court, this is an appeal from a criminal domestic violence case against Mr. Harris. He was arrested, I believe, on or about July 11, 2014. His first appearance court date was scheduled per his bond documents. It may have been written on his ticket or warrant, but I don't have a copy of that with me. But it was definitely on his bond documents as July 23, 2014, at 10:00 a.m.

Mr. Harris appeared at this court appearance. The prosecuting officer, the arresting officer, did not appear. I believe the victim appeared -- alleged victim appeared. And Judge Benjamin Dow, the Pickens County magistrate, dismissed the case as a result against Mr. Harris.

Subsequent to that, I can't speak to what transpired behind the scenes, but we received a summary court summons, which I have, the original I've handed up and ask that it

1 be marked as, I guess, Defendant's Exhibit 1, which was
2 filed -- or signed, I should say, by Judge Dow on
3 August 7, 2014. And it just states -- and Your Honor can
4 see it -- that please be advised a motion for
5 reconsideration has been filed on the above case. Hearing
6 is scheduled on August 18, 2014, at 11 a.m. That's the
7 extent of written documentation that we received regarding
8 any motion, any basis of any motion, any notice of any
9 court date.

10 The hearing took place on August 18, 2014. I was --
11 backing up, I was appointed to represent Mr. Harris, got
12 the file right around the original court date. Mr. Harris
13 went to it by himself because I could not be there and
14 basically was going to ask for a jury trial, but nobody
15 showed up and the judge dismissed it. Mr. -- I could not
16 be at the August 18th hearing either, and John DeYoung, the
17 county public defender, appeared in my stead and
18 represented Mr. Harris at that hearing. So I still
19 represent Mr. Harris.

20 The result of the August 18th hearing, which was held
21 before Judge Dow and a member from the -- an assistant
22 solicitor appeared on behalf of the State at that hearing.
23 And still, there were no affidavits submitted, nothing in
24 writing. It was basically just attorney argument, and the
25 judge reinstated the charges against Mr. Harris for

1 criminal domestic violence first offense which are still
2 pending, and this appeal followed.

3 It's our contention that there were several things, I
4 guess, improper, for lack of a better word, that weren't
5 done properly in this case. And one being that pursuant to
6 Rule 4(a), as I've stated in my notice, as I'm sure Your
7 Honor read, South Carolina Rules of Criminal Procedure,
8 it's my submission that that was not complied with, which I
9 submit was required to be complied with.

10 THE COURT: In other words, this is the only notice
11 you have, the summary court summons?

12 MR. ALEXANDER: That's correct, Your Honor. We
13 received no written notice. To my knowledge, there was no
14 actual written motion filed with any clerk or magistrate's
15 office or anything by the State.

16 Just as way of discussion with the Court, not part of
17 the hearing, apparently it got dismissed. The officer
18 complained about it -- or somebody complained about it in
19 the sheriff's office, and the judge set -- scheduled this
20 hearing, is pretty much what happened, to my knowledge.
21 There was no written motion filed by anybody, which I
22 submit is required pursuant to Rule 4(a). And so we
23 received no written motion as to any basis stating with
24 particularity the grounds for the motion, stating the
25 relief or order sought, which is required pursuant to that

1 motion. We received nothing of that nature.

2 And beyond that, South Carolina Rule of Criminal
3 Procedure Rule 29 has a time-limit requirement. It's a
4 posttrial motion rule. Any posttrial motions have to be
5 filed within ten days. If the notice is the only filing
6 document, that's beyond ten days from the original court
7 date. I would submit that was not -- that -- the timeline
8 was not followed. If you apply the magistrate's court rule
9 of Rule 19, which is a new trial -- motion for a new trial
10 that can be granted, that has a five-day requirement, which
11 was also not met.

12 At hearing, there was no written order from the
13 hearing. Judge Dow gave no legal basis as to why he was
14 reinstating the charges, he quoted no statutes, no rules as
15 to anything that he was basing his reinstatement of these
16 charges on, did not make any specific rulings or findings
17 regarding that. So we believe the Court's ruling at the
18 August 18th motion for reconsideration hearing should be
19 set aside and the original dismissal from the
20 July 23, 2014, hearing date should be upheld and the case
21 should be dismissed, Your Honor.

22 THE COURT: All right. Mr. Byrd?

23 MR. BYRD: Thank you, Your Honor. Just a couple of
24 housekeeping items. The victim in this case, [REDACTED]
25 [phonetic] [REDACTED] did appear on July 23rd, the original

1 initial appearance date. The officer who issued the
2 ticket, however, did not appear. When the magistrate
3 dismissed the case, didn't take any testimony from anybody.
4 The victim, Ms. ██████, appealed. Her notice of appeal was
5 filed in 2014-CP-39-887. I point that out for the Court
6 because there may be something in that file that adds
7 factual matter to the Court's decision in this case.

8 THE COURT: Has that appeal been heard?

9 MR. BYRD: Judge Welmaker dismissed the appeal because
10 in the interim, the State filed a motion to reconsider.
11 His order is a short-form order that says, "Based upon the
12 State's motion to reconsider, I'm dismissing her appeal so
13 that the magistrate can hear the motion to reconsider."
14 His order is in her file. I'm not sure if it's in this
15 file.

16 THE COURT: No. It's not in this file.

17 MR. BYRD: Yes, sir. No. That's the reason I want to
18 point out that to connect all the dots here, you may need
19 to look at both files. But ---

20 THE COURT: Well, the other file was dismissed.

21 MR. BYRD: Yes. 887 was dismissed by Judge Welmaker
22 once the State filed a motion to reconsider. His order
23 says that, that based upon the motion to reconsider, I'm
24 dismissing the appeal so the magistrate can hear the
25 motion. And I think that's important because ---

1 THE COURT: Who appeared at that hearing before Judge
2 Welmaker on behalf of the defendant?

3 MR. ALEXANDER: Nobody, Your Honor.

4 MR. BYRD: I don't believe anybody did.

5 MR. ALEXANDER: We were never served, given any notice
6 of any appeal by the alleged victim for that. So that is
7 the first I've ever heard there was an appeal filed by the
8 alleged victim.

9 MR. BYRD: Right.

10 THE COURT: Well, of course, if the defendant wasn't
11 there, then whatever the Court ruled on, he had no notice
12 of.

13 MR. BYRD: Correct. Apparently, at the initial
14 hearing, Mr. Harris was present and the purported victim,
15 [REDACTED] was present. The judge, however, ruled,
16 apparently -- again, no written order was issued. He ruled
17 since the investigating officer was not present, the case
18 should be dismissed. Ms. [REDACTED] immediately, the following
19 day, the 24th, went to the clerk's office and filed a
20 notice of appeal in 887.

21 Now, on August the 4th, the State filed a motion to
22 reconsider. The Court's return states that the motion was
23 filed on the 4th, which is a Monday. The ten days ran on
24 Saturday. So the motion was filed within the ten-day
25 window.

1 Now, counsel has alluded to three things which I would
2 just briefly like to discuss. He has alluded to Rule 4(a).
3 Rule 4(a) also states that the requirement of writing is
4 fulfilled if the motion is stated in a written notice of
5 the hearing of the motion. That was done by Judge Dow on
6 August the 7th, the notice of the hearing.

7 THE COURT: Do you have the notice that sets forth the
8 grounds for the motion?

9 MR. BYRD: No, it does not.

10 THE COURT: Well, that's what that's referring to.

11 MR. BYRD: Agreed upon. But counsel omits a couple of
12 things that I think are important here.

13 THE COURT: Well, again, if you're relying on 4(a)
14 where it says that the motion is -- the requirement of
15 writing is fulfilled if the motion is stated in a written
16 notice of hearing, it's not just the time and place, but
17 what are the grounds.

18 MR. BYRD: Correct. Agreed.

19 THE COURT: And that's why you have notice, notice of
20 grounds.

21 MR. BYRD: I agree completely. But ---

22 THE COURT: His notice -- excuse me. I don't want to
23 interrupt. I do want us all to understand the rules that
24 we abide by, just as the notice of appeal by the defendant
25 sets forth the grounds, and I think that's what that notice

1 requires.

2 MR. BYRD: I agree with you.

3 THE COURT: In other words, you don't get around just
4 sending a notice ---

5 MR. BYRD: Correct.

6 THE COURT: --- a notice of time and place.

7 MR. BYRD: Agreed.

8 Rule 37 of the rules also provides that they shall
9 apply insofar as practicable in magistrates courts,
10 municipal courts and family courts to the extent they are
11 not inconsistent with the statutes and rules governing
12 those courts. So we have somewhat of a liberal system in
13 the magistrates court, not notice and rules don't apply.
14 But section ---

15 THE COURT: Except that this 4(a) is a written rule.

16 MR. BYRD: No question about it. It has a conflict,
17 however, with the statute, which I will note is 22-3-9- --
18 it's Section 22-3-1000, which states that except as
19 provided in Section B, a motion for a new trial may not be
20 heard unless made within ten days. So the statute says
21 you've got to make your notice within ten days.

22 Now, that occurred. The rule also says that -- back
23 to Rule 4(a), "An application to the Court for an order
24 shall be by motion which unless made during a hearing or
25 trial." The magistrate's return in this case clearly shows

1 that the State made its motion during the hearing on the
2 18th after notice -- written notice to the defendant. I
3 admit that the notice did not comply with Rule 4, but the
4 magistrate determined that the State had carried its burden
5 under Rule 4 at the hearing by oral motion. And the
6 magistrate does go on to give his reasoning. He clearly
7 says, "Here's why I'm doing this."

8 THE COURT: You left something out, I think, because
9 it's talking about made in open court.

10 MR. BYRD: Yes, sir.

11 THE COURT: What's the next line?

12 MR. BYRD: "Shall state with particularity." Is that
13 it?

14 THE COURT: No. I think I was looking "during a
15 hearing or trial in open court" ---

16 MR. BYRD: "With a court reporter present." Well, I
17 think ---

18 THE COURT: Was a court reporter present?

19 MR. BYRD: According to the magistrate, it was
20 electronically recorded. He says that in his return.

21 THE COURT: That's not a court reporter? That's not a
22 court reporter.

23 MR. BYRD: Correct. There's no question about that.
24 I don't think ---

25 THE COURT: So the motion was not made in accordance

1 with the rule.

2 MR. BYRD: Again, if you make the determination that
3 an electronic record is not equivalent, then you're right.

4 THE COURT: Well, I think our court reporter here
5 today would tell us that is something under consideration
6 in South Carolina, that we go through a new method, whether
7 we would do that. But it hadn't been adopted. The court
8 reporter is governed by the same rules that attorneys are
9 that binds that we have to abide by.

10 MR. BYRD: Agreed upon.

11 THE COURT: Again, I don't want to go too far because
12 I think this is sort of a technicality, but yet it seems
13 that I don't find that the exception for 4(a) where it
14 says, "Shall be made in writing, shall state with
15 particularity the grounds therefor, and shall set forth the
16 relief or order sought," is not within a motion "which,
17 unless made during a hearing or trial in open court with a
18 court reporter present." I don't find that you get an
19 exception to that. You fall within that.

20 MR. BYRD: Yes, sir. I'm following you completely.
21 Our point is is that even if you take the position that
22 because there was no court reporter present, it still ---

23 THE COURT: I'm not taking a position at all. I'm
24 just saying that's what the rule requires.

25 MR. BYRD: Yes, sir. Yes, sir. I just meant this is

1 the appellant's ---

2 THE COURT: That's Mr. Alexander's statement.

3 MR. BYRD: Yes, sir.

4 Rule 37 seems to contemplate that these rules apply
5 unless they are inconsistent with the statutes governing
6 the Court, and the statute doesn't make a requirement of
7 the court reporter.

8 THE COURT: But the rules do.

9 MR. BYRD: Yes, sir. But this statute was enacted ---

10 THE COURT: And so the Rule 4(a) and its exception
11 does not conflict with the statute that doesn't have one
12 when there is no statute.

13 MR. BYRD: Understand completely.

14 THE COURT: All right. So it does apply.

15 MR. BYRD: Well, again, this statute was enacted
16 June 6, 2014. And so it's our position that the
17 Legislature intended for this statute to be the one
18 governing the magistrates.

19 THE COURT: But, again, it does not address the
20 question of a court reporter.

21 MR. BYRD: Our position is is that it does.

22 THE COURT: Don't -- it's not your position as much as
23 I just asked you very simply, does the statute address the
24 requirement of a court reporter?

25 MR. BYRD: No, sir, it does not.

1 THE COURT: So it doesn't conflict with one that says
2 -- or with the rule that says it does require a court
3 reporter.

4 MR. BYRD: Again, I understand what you're saying. I
5 don't want to beat a dead horse.

6 The biggest issue in the case, aside from the
7 technicalities, though, is that we have a defendant who is
8 charged with a fairly serious crime, criminal domestic
9 violence. We have a victim who appeared for her hearing on
10 that case and was denied that opportunity to present her
11 testimony. She may have lost. The judge may have ruled
12 that she failed to carry the burden of proof, and
13 therefore, the case should be dismissed, the defendant
14 found not guilty.

15 But it's our position that she's at least entitled to
16 a day in court, and that's essentially what Judge Dow said.
17 I've heard all the arguments, Rule 4 and Rule 29 and the
18 technicalities. It's my belief that this case should be
19 heard. He even recused himself for fear that he might have
20 some knowledge of the facts of the case at that point in
21 time. So we're here today just simply to say on behalf of
22 the victim and the State, we need to have this case heard
23 on the merits so that it's resolved based on the truth and
24 justice of the matter.

25 THE COURT: Best evidence.

1 MR. BYRD: That's our ---

2 THE COURT: So ---

3 MR. ALEXANDER: I wasn't trying to interrupt.

4 THE COURT: No. That's just, again, the rules in
5 South Carolina are that only one speak at a time.

6 MR. ALEXANDER: Yeah. I was not going to speak to ---

7 THE COURT: I will recognize Mr. Alexander.

8 MR. ALEXANDER: Thank you, Your Honor. And I
9 apologize. I sensed maybe Mr. Byrd was wrapping up, so I
10 wasn't going to interrupt him.

11 Two things, Your Honor. Not to reiterate everything
12 already said, but I think Mr. Byrd said that the State
13 filed a motion on August 4, 2014. That may be. We've
14 never -- I would like to see what they filed. I have not
15 seen any written motion that was actually filed. They may
16 have, I don't know, sent a request down or something, but
17 I'm not seeing any written motion filed. The only thing I
18 received was what we presented as the exhibit, Your Honor,
19 the summons.

20 And then the only other thing, in the criminal system,
21 when there's a court date, the defendant doesn't show -- if
22 Mr. Harris had not shown up, he more than certainly would
23 have been tried in his absence and more than likely found
24 guilty if the victim -- alleged victim had showed up to
25 testify, which she was there. The same applies for the

1 State. The State is represented either by, as Your Honor
2 knows, an attorney or, in this case, a prosecuting officer
3 to present the State's case for them and call the
4 witnesses. That person knew about the court date and chose
5 not to show up. And they should be ---

6 THE COURT: When you say "chose," you don't know what
7 the reason for not appearing.

8 MR. ALEXANDER: Right. Nothing has been presented to
9 us that there was some type of medical emergency, and
10 nothing was presented during any of the hearings as to --
11 to my knowledge that the officer could not be there for
12 some reason that justified their absence.

13 But based on the evidence is that they knew about the
14 court date, and they were not there. And they should be
15 treated equally as the defendant should in that
16 circumstance, that they know if they don't show up, there
17 is a chance that the case could go forward in their
18 absence.

19 THE COURT: And the trial judge for whom the trial was
20 to be held did rule at the time with the victim there that
21 the summons would be dismissed.

22 MR. ALEXANDER: Yes, sir. He ruled that when there
23 was no representative for the State to present the case,
24 just in any court, call your case, there's nobody there to
25 call it.

1 THE COURT: Are you telling me that the State can't be
2 pro se? Well, they can, but through a prosecuting officer.
3 In other words, not a ---

4 MR. ALEXANDER: Not a lawyer, but the officer needs to
5 be there. And the officer was not there to represent the
6 State and call the witnesses, and therefore, there were no
7 -- nothing to go forward. The judge dismissed the case,
8 and it should stand, Your Honor. You know, the timing,
9 things of this, you know, I'm not going to argue too much
10 about. It's more -- other than we didn't receive any of
11 that. We certainly were not served with any motion that
12 was filed on August 4th, Your Honor.

13 THE COURT: All right. Mr. Byrd, anything else?

14 MR. BYRD: Just briefly. And, again, I don't want to
15 belabor the point, but the magistrate dismissed the case
16 before any testimony was offered. There's no requirement
17 that I am aware of that the State have a prosecuting agency
18 at a magistrates court hearing. The officer may or may not
19 have been a material witness in the case. No testimony was
20 taken.

21 The point being, however, that when the State filed
22 its motion to reconsider, which the magistrate's return
23 shows that it was filed and copies it to the return, the
24 magistrate considered that affidavit from the arresting
25 officer and considered the fact that he didn't come. And

1 his reasoning is in the return, that after hearing from the
2 State and hearing the officer's excuse, I'm reopening the
3 case. Mr. DeYoung was at that hearing. He clearly knew
4 what the motion to reconsider was. There's really no need
5 for the State to re-serve a motion after it's been heard.

6 So the defendant was aware, and he made one point that
7 I'll take issue with. Had the State gone forward at that
8 initial hearing, the defendant could not have been tried
9 because his attorney was not present. So it cuts both ways
10 in that sense. The judge couldn't go forward with the case
11 at the initial hearing because counsel for the defendant
12 was not present along with the arresting officer. This is
13 a case that just needs to be heard and resolved on its
14 merits.

15 MR. ALEXANDER: Your Honor, the only thing I would add
16 is to reiterate, you know, the -- I guess the grounds, you
17 know. Certainly the reason for the charges to be
18 reinstated were argued at the hearing on the 18th, but that
19 doesn't get around the rule that it has to be made in
20 writing. There was no court reporter present, it has to be
21 made in writing stating the grounds for it.

22 THE COURT: All right. Let's do this. I'm looking at
23 the return of the criminal appeal made by the magistrate.

24 MR. ALEXANDER: Your Honor, I don't mean to interrupt,
25 but I was never served with that.

1 THE COURT: Benjamin A. Dow on -- well, it's filed
2 September 29, 2014. The reason I refer to it is because
3 there's been some discussion of whether electronic recorded
4 statements or record is enough to satisfy the appeal
5 notice. And I don't know. Do you have a copy of the
6 return?

7 MR. BYRD: I do, Your Honor.

8 MR. ALEXANDER: I do not, Your Honor. I was never
9 served.

10 THE COURT: Looking down at the appeal, it was filed
11 on 8/28/2014. The proceedings were -- you see that on the
12 first page.

13 MR. BYRD: I have what is a return to criminal appeal
14 in 1209, and in the bottom of the first page, it has
15 "recorded electronically."

16 THE COURT: And what's underneath?

17 MR. BYRD: Check, recorded by a court reporter.

18 THE COURT: Apparently it was that they do know what a
19 court reporter is in magistrate court.

20 MR. BYRD: Oh, no question about that. Anybody can
21 bring ---

22 THE COURT: Again, sir, I know that. What I'm just
23 talking about is it conforms with the statute or the rule.

24 MR. BYRD: Yes, absolutely.

25 THE COURT: By the rules.

1 MR. BYRD: I understand.

2 THE COURT: All right. Inasmuch as the Rule 4(a) was
3 not complied with even in the notice here, I find, again,
4 is there's not sufficient grounds to -- or at least the
5 jurisdiction of it to be decided on reconsideration when
6 there's no notice, that -- no sufficient notice, that it
7 must be reversed. It would be put back to where the
8 original trial judge placed it.

9 MR. ALEXANDER: Thank you, Your Honor. Do I need to
10 draft an order, Your Honor?

11 THE COURT: Yes, sir. You will have to.

12 MR. ALEXANDER: Yes, sir.

13 THE COURT: Good luck with it, though, too.

14 MR. BYRD: Thank you, Your Honor.

15 MR. ALEXANDER: I will do that. I'll get it to Your
16 Honor.

17 *****END OF TRANSCRIPT OF RECORD*****
18
19
20
21
22
23
24
25

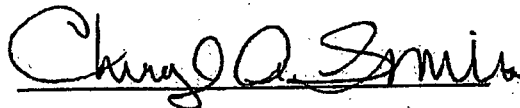
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Pickens County, South Carolina, on the 2nd day of February,
2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

May 27, 2015



Cheryl A. Smith, CVR-M

Court Reporter

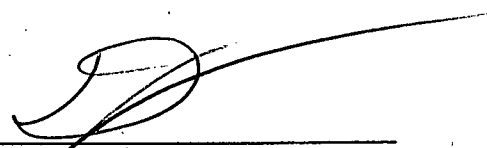
RECEIVED

JAN 15 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

DAVID SPENCER

Senior Assistant Attorney General

Office of Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3727

ATTORNEY FOR APPELLANT

January 15, 2016