THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

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Case No.: 2015-CP-07-1343
APPELLATE CASE NO. 2016-000955

John Alden Bauer, III — Appellant

v

Beaufort County
School District — Respondent

RESPONSE, WITH PROLOGUE, TO RESPONDENT'S INITIAL BRIEF

PROLOGUE

This Prologue also addresses issues in RESPONSE.

Appellant has asked the Department of Education for a hearing on his Teacher Certification which normally would occur after all appeals are exhausted. This request is for many reasons. A few of the reasons are listed below:

1. This will allow evidence that has been blocked or withheld by the district to be presented, since Counsel for Respondent argues that relevant evidence withheld (Spoliation) by the district was not preserved for appeal. Appellant was surprised that the Honorable Marvin H. Dukes, III would err by allowing spoliation.
2. The unnecessary and illegally long delays imposed by the Beaufort County School District combined with appeals has caused Appellant's certificate to lapse.
3. Respondent's counsel also argued that knowingly false evidence (Spoliation) was not relevant to the case. Appellant was surprised that the Honorable Marvin H. Dukes, III erred by allowing such documents.
4. Respondent's counsel ignores that the district's violation of six (6) sections of Title 59 should have had a bearing on the outcome of the Beaufort County School Board's decision to terminate Appellant. Five (5) of the violations occurred before the hearing and one (1) violation occurred after the hearing.
5. Respondent's counsel who attended the deliberations of the jury, as Advice Counsel to the Board, apparently overruled Chairman Bill Evans on admission of Appellant's exhibits on the grounds that Appellant had not testified, although the sworn witnesses confirmed the exhibits. (Duff's attendance at jury deliberations is confirmed by the law firm of Childs and Halligan and David Duff in 2 separate affidavits, one signed by Dr. Shirley Fawley and Mr. Vernie L. Williams.)
6. Appellant Moved the disqualification of Respondent's counsel at the Court of Common Pleas on the following grounds. "*Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer*

participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing." Rule 1.12 South Carolina Rules of Professional Conduct. The Honorable Marvin H. Dukes, III erred by denying that counsel had participated substantially (counsel spoke 108 times and made rulings).

It is clear that if this court should happen to agree with Counsel for Respondent on the issue of *"Preserved for Appeal"* that Appellant will not be able to take advantage of the compelling evidence that was regrettably not allowed, and/or not allowed to be considered, during jury deliberations at his hearing.

Therefore, Appellant is asking for the hearing with the South Carolina Department of Education in order that the whole truth may finally be allowed and acted upon.

Below are relevant questions in this case, whose answers, have a common denominator:

1. How is it that a Board of Education can hear false testimony that all those involved, except the board, know to be false?
2. How is it that no written charges were ever issued in this case, a violation of the Teacher Employment and Dismissal Act? ("TEDA") 59-25-460 *"No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees and an opportunity for a hearing has been afforded the teacher.*

NOTE: Appellant was officially terminated, according to public district documents, without a hearing on June 5, 2014, finalized and effective July 1, 2014 (documentation withheld by the district) That was 10 months prior to a hearing that was required by law to be within 15 days. (TEDA 470)

3. How is it that an Advice Counsel who claimed to be unbiased can actually testify for the district at a board hearing? (Counsel stated that the district had not withheld emails-- Fact. 11,000 emails, (their numbers) containing exculpatory evidence, are still withheld)

4. How is it that an attorney hired by the district can attend the deliberations of the "*Jury*"? A violation of Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) U.S. District Court for the Central District of California - 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977.

5. How is it that the District Administration, and the Board can collaborate? (McKee v. Peoria Unified School District, Superior Court of Arizona, LC2011-000006-001 DT, September 6, 2013. *"1. The Board was not an impartial tribunal. (a)The Board and the District are the same entity.*

   Also as asserted by David Duff, below, now representing the district: "... *Board or the District which legally are one in the same."* Duff at times has represented both Board and District, plus the Superintendent. (Duff's assertion, above, was in a Hearing, 14th Judicial District, August 19, 2016, page 27 lines 6-7)

6. How can an Advice Counsel to the board knowingly allow false evidence to be presented? (Examples cited in filed documents)

7. How can Advice Counsel rule that relevant case law from other states are inadmissible in a board hearing?
8. How can an Advice Counsel to the board knowingly allow the superintendent to testify falsely during the board hearing? As cited in multiple documents the superintendent swore that he would produce certain emails that did not exist, then swore that he had produced them.
9. How can an Advice Counsel to the board allow true exculpatory evidence to be withheld (Spoliation) and then claim that the evidence was not preserved for appeal? Is that not a punishable offense? Examples are detailed in filed documents. See page 2, paragraph 2, line 1 of Respondent's Initial Brief
10. How can counsel unilaterally decide to change judges by only informing his chosen judge and ignoring the judge assigned to the case? (Judge shopping?)
11. How is it that false accusations, not asserted during discovery, can be presented at trial?
12. How is it that Advice Counsel to the Board can add fictitious "*facts*" to the Board Order that were not presented? Counsel even wrote that the exhibits in Appellant's notebooks were unnumbered, page 5 of Board Order. Not only were all 300 exhibits numbered, but there was an Alphabetical Cross-referenced Directory.
13. How is it that the Order of the Court of Common Pleas contain the same factual errors as in the Board Order?
14. How is it that Respondent's attorney was allowed to interpret the law for the Court of Common Pleas? Should the judge not consult as per Canon 3(7)(b)

15. How is it that the district could violate six (6) sections of the Teacher Employment and Dismissal Act, i.e., 59-25-430, 440, 450, 460, 470, and 480 and still prevail in court. All of these violations are detailed in filed documents. *"The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion."* Brown v. James, 697 S.E. 2d 604, 389 S.C. 41 (2010)

16. Why did the Advice Counsel to the Board insist that Appellant testify at the hearing but then made certain that Appellant could not do so?

NOTE: It was apparent that the hearing was a blatant "Kangaroo" and that the only opportunity for justice would be from an appeal.

All of the questions above have the common denominator of David Duff who was Advice Counsel to the Board, and who then replaced the terminated Childs and Halligan as attorneys of Record representing Superintendent Jeffrey C. Moss while Moss was still the Respondent, and then Duff represented the district after the district became Respondent. Duff was the apparent author of the Board Order as well as the author of the Orders from the Court of Common Pleas.

Although Duff's participation in the Court of Common Pleas appeared to violate Rule 1.12 of The Rules of professional Conduct, the Court of Common Pleas allowed him to proceed. Rule 1.12 "*Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally*

and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing."

In addition the General Counsel for the district, Drew Davis, participated substantially in this case for depositions and in advising the district. Davis was not licensed to practice law in South Carolina.

RESPONSE (in addition to Prologue responses)

As to Respondent's Statement of the Case:

What is the basis for Respondent's objections to Appellant's Statement of the Case? As mentioned, did Respondent believe that under Rule 208(b)(1)(C) only court procedures are to be included, and was he objecting on those grounds? But Respondent went far afield in his own statement including contested issues, surely not appropriate as to Rule 208.

It is odd that Respondent objects to including the official Termination Papers of July 1, 2014, citing Rule 210(c) *"...matter not presented to the tribunal below..."* Those documents are among the many documents illegally withheld (Spoliation) by the district until after the Board Hearing, ending May 2, 2015. It is clear, as stated many times in Appellant's filed documents, that the court has discretion (below) to consider relevant evidence that was illegally withheld by the district. In fact, willfully withholding relevant evidence is the crime of Spoliation and is enough to reverse this case.

"The matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases." Singleton v. Wulff, 428 U.S. 106 (1976) No. 74-1393

If the court accepts *Singleton,* Respondent's principal argument is negated.

Respondent objects to #2 in Appellant's Statement of the Case, that reads, *"February 5, 2014. Principal McAden was ordered to preserve evidence.."* The district's own witness testified to the fact, that she was required as to *"preserving anything electronic"* Board Hearing page 209 line 24, and when asked Ms. McAden answered, *"..everything was to be preserved.."* Board Hearing page 210 line 2.

Number 5 of Appellant's statement reads, *"May 21, 2014. George McMaster wrote Litigation Hold Letter to Preserve Evidence, as final act as pro bono consultant (McMaster was closing his law practice)"* This letter is District Exhibit 28. Again, Respondent objects to his own exhibit.

Even by a strict interpretation of Rule 208, certainly #26 is relevant. *"26. March 16, 2016. Proposed Order submitted by Counsel for Respondent."* Was this part of the procedure? Yes. Does Respondent contest the entry? No, he merely objects to it.

In the more than two dozen discursive pages by Respondent his point seems to be that Appellant may well be innocent of any wrong doing but Appellant refused to testify so he is stuck with a death penalty to his career. Never mind that the hearing was a Kangaroo

court and that Chairman Evans said that Appellant's exhibits would be considered, but Duff did not allow it. All exhibits were shredded including Appellant's only personal copy. Respondent's Counsel attended the Board's "jury" deliberations, and the Board and District, i. e. Jury and Prosecution were "*One in the same*" (quoting Duff).

Repeating the lie that "*Bauer negligently left a 'special needs' ('special needs'* changed from *'handicapped') student unattended off campus*", page 3, does not make it true. Yes, the Board believed that lie because their side said it was true, but without ANY evidence, and the exculpatory evidence that was available was not preserved. It does not take talent, only honesty, to know that the pool is on campus and that the child was attended by employees at the pool, and that Appellant returned to the school with the same class (23 students) that he left with. So where did the 24th child come from? There was no investigation and the child was not interviewed. No one knows how he got there or where he hid. But the lie continues.

The outrageous behavior of the Beaufort County School District is now famous in Beaufort County, and WSAV TV station reported that, "*The nepotism rule change is one of more than 60 rules Moss changed (in two years) without oversight from the 11 member school board. Board member Michael Rivers is concerned.*"

It was reported in August that the superintendent pleaded down to two ethics violations and paid a fine. The lack of a professional core in the district is that during this whole case the General Counsel for the district was not licensed to practice law in South Carolina.

In the early stages of Appellant's case, ***procedure*** is perceived not to matter. The District violated six (6) sections of the Teacher Employment and Dismissal Act and violated several archetypical examples of case law, all documented in Appellant's filings. But after the early stages it seems that now only ***procedure*** matters. In both cases the truth is a casualty.

It is outrageous that Respondent's Counsel, as Advice Counsel to the Board (Jury), allowed the District to withhold exculpatory evidence (spoliation), and then ask this court to consider the evidence not to be preserved *"...matter not presented to the tribunal below..."*. Should this court not make a referral for punishment?

There are times when principle and rectitude matter. Great good could come out of this if the court would decide that the South Carolina Constitution Section 22 actually matters and that prosecution and jury acting together to hide corruption cannot continue.

The fitting result of this appeal would be restoring, at least temporarily, Appellant to his position while an independent inquiry examines the School Board and the handling of this case.

Rule 502.1, Judges oath. *"I pledge to seek justice, and justice alone;"*

Respectfully Submitted,

John Alden Bauer III

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October 17, 2016

CERTIFICATE OF SERVICE VIA US MAIL
AND VERIFIED ELECTRONIC MAIL

The undersigned, John Alden Bauer, III, pro se, certifies that he has served the following Counsel of Record with the foregoing RESPONSE, WITH PROLOGUE, TO RESPONDENT'S INITIAL BRIEF by making a copy of same, via verified electronic mail, and via US Mail, postage prepaid, and return address clearly indicated to the following on the 17th day of October, 2016.

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