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I N D E X

WITNESS/DESCRIPTION PAGE NO.

Motions Hearing

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 20

1 THE COURT: Jamaal Gittens.

2 MR. GITTENS: Yes. How are you doing, Judge, sir?
3 sir, Judge.

4 THE COURT: I'm fine. All right. Mr. Gittens, tell me
5 what is this about?

6 MR. GITTENS: Well, Judge Rakowsky --

7 THE COURT: Who is Judge Rakowsky?

8 MR. GITTENS: A magistrate judge.

9 THE COURT: In Lexington County?

10 MR. GITTENS: Yes.

11 THE COURT: Okay.

12 MR. GITTENS: He placed a speeding violations on my MVR
13 and suspended my commercial driver's license when he had no
14 constitutional grounds to do so. I had sent petitions to
15 the Court, you know, and nothing every followed it. So what
16 I did was in March I actually filed a petition to sue Judge
17 Rakowsky.

18 THE COURT: How -- back up a little bit. How did it
19 ever get in front of Judge Rakowsky; were you charged with
20 something?

21 MR. GITTENS: Well, speeding -- well, he placed a
22 speeding violation on my MVR.

23 THE COURT: How did that happen?

24 MR. GITTENS: Well, basically --

25 THE COURT: Did you get a speeding ticket?

1 MR. GITTENS: Yes, I got a speeding ticket. Yes.

2 THE COURT: All right. You went to court with him?

3 MR. GITTENS: No. I filed -- I filed, you know, a
4 letter stating I was challenging jurisdiction because I
5 don't live in South Carolina, and Attorney Clifford Koon
6 responded and said that Title 56 give the court's
7 jurisdiction over traffic matters.

8 THE COURT: Right.

9 MR. GITTENS: Then I responded back to Mr. Koon, okay --

10 THE COURT: How -- who --

11 MR. GITTENS: Attorney Clifford Koon.

12 THE COURT: I know, but what's he got to do with it, was
13 he representing you?

14 MR. GITTENS: Oh, no. At that time I had -- I was
15 challenging jurisdiction. He had responded to my motion on
16 jurisdiction.

17 THE COURT: Okay.

18 MR. GITTENS: Yeah. So that's how it got started.

19 THE COURT: All right.

20 MR. GITTENS: How the situation got started, and I had
21 sent several petitions to the clerk's office concerning this
22 matter to vacate void judgment and none of them never got
23 filed.

24 THE COURT: Okay. Did you appear in court for your
25 traffic violation?

1 MR. GITTENS: No, I didn't.

2 THE COURT: You did not appear?

3 MR. GITTENS: I did not appear.

4 THE COURT: So then he must have found you guilty, I
5 guess?

6 MR. GITTENS: Well, actually he sent something in the
7 mail, you know what I'm saying, basically saying that I
8 didn't appeal -- that I didn't appear. And I sent the
9 letter back to the attorney.

10 THE COURT: Where do you live?

11 MR. GITTENS: I live in Charlotte, North Carolina.

12 THE COURT: All right.

13 MR. GITTENS: So, you know, I'm like two hours away.

14 THE COURT: I understand. So then he found you, I guess
15 he found you guilty and then he sent that into the DMV?

16 MR. GITTENS: Exactly.

17 THE COURT: Okay.

18 MR. GITTENS: So at that time all I did was just sent
19 the motion to vacate to the court. The motion to vacate,
20 you know, based off, you know, constitutional right --

21 THE COURT: Okay.

22 MR. GITTENS: -- you know.

23 THE COURT: And then what happened to that motion?

24 MR. GITTENS: That wasn't filed. I'm saying they never
25 filed it, you know, every time I called the clerk's office,

1 you know, nobody never, you know, they hung up.

2 THE COURT: You sent something to the clerk's office?

3 MR. GITTENS: Yes, it was sent to the clerk's office and
4 every time I called they say they never received it or, you
5 know, they hang up the phone and stuff like that, so --

6 THE COURT: Did you serve that on Judge Rakowsky?

7 MR. GITTENS: Oh, no. This is just a motion to vacate
8 void judgment. I sent that then. This has been going back
9 to probably 2014. This is the early stage. I was just
10 basically petitioning to vacate the void judgement, that's
11 all, under federal, you know, Rule 60, at that time.

12 THE COURT: Okay.

13 MR. GITTENS: Before this. All I wanted to do was
14 vacate it, okay. A void judgment can be collaterally
15 attacked at any time.

16 THE COURT: I understand.

17 MR. GITTENS: Yeah. So that was just, you know, what I
18 asked for, okay. And that speeding ticket stopped me from
19 getting employed, you know. I had a lot of places, you
20 know, so my company had to let me go. So they're not
21 answering my motions to vacate and/or my other petitions I
22 came here to file a civil action towards Judge Rakowsky.

23 THE COURT: All right, and you did that?

24 MR. GITTENS: Yes, yes. That's why we're here now.

25 THE COURT: All right. Well, wait a minute. When did

1 you file that?

2 MR. GITTENS: Well, this was filed, this civil action
3 was filed on December 10.

4 THE COURT: All right.

5 MR. GITTENS: And then they grant me a motion to proceed
6 pauperis.

7 THE COURT: To do what?

8 MR. GITTENS: To -- to not pay for the civil action.

9 THE COURT: Okay. So allowed you to go forward pro se?

10 MR. GITTENS: Yes, exactly.

11 THE COURT: All right. And did you serve it on Judge
12 Rakowsky?

13 MR. GITTENS: Yes. When I spoke to the clerk she said
14 he was at 110 -- he was at 110 Maiden Lane. So I actually
15 sent it there because you can send certified mail, she said
16 you can send it certified mail. So I have -- and I called
17 the clerk's office. I called 110 Maiden Lane and asked was
18 he there and she was like yeah, he was there at that time.
19 So I had sent the, you know, the petition for the civil
20 action, certified mail and I got confirmation from J. Graham
21 that it was received. Nobody never sent nothing back to me
22 saying, you know, he's not here anymore. Let's just say I
23 doubt they would, you know, not give it to him, you know,
24 it's a document that's certified.

25 THE COURT: All right. What happened after that?

1 MR. GITTENS: So I just -- I'm saying when he hasn't
2 responded I filed a motion for summary judgment in the time
3 allowed, within the time allowed, you know, pursuant to
4 South Carolina Rules of Civil Procedures.

5 THE COURT: All right, and then the attorney -- I guess
6 he's representing Rakowsky?

7 MR. GITTENS: Yes.

8 THE COURT: Filed a motion to dismiss this case?

9 MR. GITTENS: Yes.

10 THE COURT: Because he says you did not serve the
11 summons and complaint on --

12 MR. GITTENS: Yes.

13 THE COURT: -- Judge Rakowsky.

14 MR. GITTENS: Yes.

15 THE COURT: And he also raises the issue of immunity.

16 MR. GITTENS: Yes, exactly.

17 THE COURT: Okay. And then you filed opposition --

18 MR. GITTENS: Exactly.

19 THE COURT: -- to the motion to dismiss?

20 MR. GITTENS: Yes.

21 THE COURT: Saying basically the same thing you've said

22 --

23 MR. GITTENS: Yes.

24 THE COURT: -- in the motion for summary judgment --

25 MR. GITTENS: Yeah.

1 competent fact witness. Allegedly was speeding.

2 THE COURT: All right. Allegedly.

3 MR. COX: Allegedly speeding, right, that he was
4 convicted for. July 24, 2014, was the date of that. He was
5 given notice of his trial. He did write in, I think,
6 objecting to subject matter jurisdiction, which was
7 considered by the judge at the trial that he did not attend,
8 and was denied, in which the judge found that he did have
9 subject matter jurisdiction. He --

10 THE COURT: Is there any transcript to that?

11 MR. COX: You know, Judge, I haven't looked. I hadn't
12 even looked to see if there is.

13 THE COURT: Okay.

14 MR. COX: But I can definitely do that if we need to.
15 Like I said, he was given notice. He didn't appear. He was
16 found -- he was tried in his absence and found that he
17 violated the speeding statute and Judge Rakowsky was the
18 municipal judge presiding at the time. He is no longer a
19 municipal in Lexington.

20 This is the second lawsuit that Mr. Gittens has
21 brought. He brought one in federal court first against
22 Judge Rakowsky which was dismissed by it was even filed,
23 before it was ever served for failure to state a claim. And
24 now he's brought this case in state court essentially
25 alleging the exact same things.

1 THE COURT: That he didn't have jurisdiction.

2 MR. GITTENS: Yeah, exactly, based off United States
3 Supreme Court proceedings and South Carolina's proceedings,
4 South Carolina Supreme Court proceedings.

5 THE COURT: You've done a lot of research on this?

6 MR. GITTENS: Oh, definitely.

7 THE COURT: And your -- when you say you served the
8 summons and complaint, I see -- well, I see a return
9 receipt, but I can't read it.

10 MR. GITTENS: Well, yeah. They -- the clerk of court
11 had the original, but J. Graham actually um --

12 THE COURT: I see J. Graham.

13 MR. GITTENS: Yes.

14 THE COURT: You know who that is?

15 MR. GITTENS: No, I don't. I don't even know who that
16 is, but he signed it at Maiden Lane where Judge Rakowsky is
17 -- employment office.

18 THE COURT: All right. All right. Thank you, sir. Mr.
19 Cox.

20 MR. COX: Thank you, Judge. Just a little more
21 background, Judge. Mr. Gittens was issued a Uniform Traffic
22 Ticket, traveling through the Town of Lexington for speeding
23 more than fifteen, less than twenty-five miles an hour. I
24 --

25 MR. GITTENS: Objection, Your Honor. He's not a

1 He really doesn't allege anything against Judge
2 Rakowsky other than he acted without jurisdiction, so
3 there's really no allegations of wrong-doing other than he
4 didn't have jurisdiction to hear the case, which is an
5 absurd argument.

6 First, as you noticed, Judge, we filed this Motion to
7 Dismiss for failure to properly serve Mr. Rakowsky. It does
8 not appear and he was served pursuant to statutory law and
9 that it was not a return receipt restricted delivery and it
10 not served upon Mr. Rakowsky. He filed an affidavit that he
11 never received it and was never served with it. So service
12 is not proper under South Carolina law and he has not been
13 served, but even -- you know, we answered the lawsuit, even
14 if it was served. We went by that date, the 29, and we got
15 our answer in and our Motion to Dismiss within 30 days of
16 that.

17 The second grounds for our dismissal, Judge, is this
18 argument that he didn't have subject matter jurisdiction.
19 It's just not true and there is no basis for that allegation
20 whatsoever. Municipal Court's in South Carolina are vested
21 with jurisdiction under a number of statutes that were
22 passed by South Carolina Legislature. There's 56-5-6150,
23 which gives Municipal Courts jurisdiction to hear all
24 traffic violations. 5-7-90, which gives Municipal Courts
25 jurisdiction to hear violations of local or state laws

1 occurring in their jurisdiction. 14-25-5 establishes the
2 Municipal Court system as part of the Unified Judicial
3 System to hear cases within those jurisdictions and 57-7-10
4 states that service of a Uniform Traffic Ticket, which, as
5 you know, Judge, that's been proclaimed the ticket you have
6 to use in order to give somebody a traffic violation,
7 invests municipal courts with jurisdiction to dispose of the
8 charges for which those tickets are issued. I have Pickens
9 verses Smith, 376 S.E.2nd 271 has found that Municipal
10 Courts do have subject matter jurisdiction to hear traffic
11 violations, and I have -- the basis of Mr. Gittens -- he
12 just says there's no enacting clauses. Obviously, that's
13 his burden of proof, but I've got -- I've gone and pulled
14 the acts that created these statutes, Judge, and they all
15 have enacting clauses, of course.

16 MR. GITTENS: An enacting clause, can the Judge see it?

17 MR. COX: Sure. You can too.

18 So, of course, Judge, all these laws were passed by the
19 legislature and in a manner prescribed by law with enacting
20 clauses in the jurisdiction --

21 MR. GITTENS: I don't see an enacting clause. Can you
22 show me where the enacting clause is?

23 THE COURT: Sir.

24 MR. GITTENS: Pardon me, sir.

25 THE COURT: I gave you -- I'm going to let you speak.

1 MR. GITTENS: I apologize, sir.

2 THE COURT: All right.

3 MR. COX: I think he's under the misconception is that
4 the enacting clause must appear in the code section. You
5 know, as you know, in the code section it's just put in
6 those sections so they're easier to find. I think he's
7 under the misconception that you have to have an enacting
8 clause in every code section, which you don't. But these
9 laws that were passed do have enacting clauses in them. As
10 does every law passed by the legislature in South Carolina.

11 For that reason, Judge, for those two reasons we asked
12 that this be dismissed.

13 THE COURT: All right.

14 MR. GITTENS: May I proceed, sir?

15 THE COURT: Yes, sir.

16 MR. GITTENS: Your Honor, the United States Constitution
17 established a system of law not made by legislators, but by
18 courts and judges. The Supremacy Clause of the Constitution
19 provides that state courts must be -- state courts are bound
20 by the federal constitutions. The United States Supreme
21 Court's proceeding is that standing is a necessary component
22 of subject matter jurisdiction.

23 THE COURT: That what is?

24 MR. GITTENS: Standing. Meaning a plaintiff must allege
25 injury traceable to the defendant. That's Allen verses

1 Wright (sp). South Carolina Supreme Court concluded that
2 standing is a requirement and lower courts must provide --
3 must abide by the Supreme Court rulings. And that's in
4 Beaufort Reality, South Carolina Coastal Conservative. You
5 can also see Blanding verse Coleman, okay. South Carolina
6 Supreme Court have ruled in Smith verse Jenning that a law,
7 that statutes and codes must have an enacting clause upon
8 its face showing authority by which they are cumulated. It
9 just can't have -- you know, it has to be upon that face.
10 The reason why it have to be upon that face to let you know
11 where the law came from, you know what I'm saying, for
12 possible fraud. You see what I'm saying? Several supreme
13 courts have ruled that every law enacted requires an
14 enacting clause upon its face or it's void. Okay. The
15 Supreme Court have -- in Smith verse Thompson, the municipal
16 judge is acting as an administrative officer, not in
17 judicial capacity in a revocation of a drivers' license.
18 Courts Administration does not act judicially but merely
19 administratively. The Supreme Court stated that only
20 Congress can make an act a crime or fix punishment to it.
21 Then the court shall have jurisdiction, US verse Hudson, US
22 verse Bedford. This is circuit court proceedings, okay.
23 It's been ruled that an appearance ticket is not an
24 accusatory instrument and its filing does not confer
25 jurisdiction over the defendant. An indictment and the

1 complaint is the main means a court obtains subject matter
2 jurisdiction so you can challenge that instrument as well.
3 Was there anything filed with associated cause pursuant to
4 federal rules of evidence? I'm saying was there affidavit
5 of the, you know what I'm saying, of the so-called competent
6 fact witness with first-hand knowledge? I'm saying did they
7 have an indictment? No, they didn't have an indictment.
8 The Supreme Court says to proceedings, you know what I'm
9 saying, where state courts have to follow and standing is a
10 necessary component to subject matter jurisdiction and it
11 doesn't contain an enacting clause upon its face. So you
12 don't know where the law came from.

13 THE COURT: All right.

14 MR. GITTENS: And, also, I'd like to say subject matter
15 jurisdiction only determine the pleadings. The court does
16 not have jurisdiction unless they have a petition on file.
17 I'm saying you can look at Hall verse State. Also in Haig
18 verse Committee For Industrial Organization the US Court
19 basically said only natural people can file a complaint. A
20 corporation doesn't -- only a natural people -- only persons
21 have rights under the Fourteenth Amendment. A corporation
22 cannot be a plaintiff, you see what I'm saying. I'm
23 assuming the state is a corporation in this matter. It has
24 to be a person where you can cross-examine under oath, which
25 is an injured party. So I'm saying you got to look into

1 that as well, you know. But the Supreme Court basically
2 sets the requirements, the United States Supreme Court, the
3 highest federal court states the requirements and the lower
4 courts have to abide by and the Supreme -- there's no
5 standing in here, there's no injured party that deprived the
6 court jurisdiction also there's no petition on record, you
7 know. I'm also saying we have to challenge the status, what
8 delegate authority gives anybody to file anything, you know
9 what I'm saying. Does Koon have a valid license to file
10 anything? What delegate authority gives him to file
11 anything? We have to check the status as well.

12 THE COURT: All right. Thank you very much. I'll take
13 a look at it, Mr. Gittens. I'm going to ask that you and
14 Mr. Cox give me a proposed order. You heard me say that in
15 the first case. You understand what I'm saying?

16 MR. GITTENS: No, I don't.

17 THE COURT: Well, I'm going to look at it and I'm going
18 to issue an order. But if you want to -- and I'm offering
19 the same thing to Mr. Cox. If you'd like to give me an
20 order that you think I should sign I'll take a look at it
21 and I'll consider it. If you don't care to do that, that's
22 fine, too.

23 MR. GITTENS: Okay. Now, what type of order, concerning
24 my case?

25 THE COURT: Yes.

1 MR. GITTENS: Yeah. Okay. And I --

2 THE COURT: Where do you want me to --

3 MR. GITTENS: -- and also this is a collateral attack on
4 a void judgment, too, is what I'm saying.

5 THE COURT: What do you want me to do?

6 MR. GITTENS: I want this dismissed.

7 THE COURT: Okay.

8 MR. GITTENS: Yeah.

9 THE COURT: Okay. Well, then tell me in an order why it
10 should be dismissed.

11 MR. GITTENS: Okay. That sounds good.

12 THE COURT: How much time do you need?

13 MR. GITTENS: You can give me -- I'm going to go start
14 on it today and just give me like fifteen days --

15 THE COURT: That's --

16 MR. GITTENS: -- fifteen to thirty days to get the
17 petition, yeah, but basically --

18 THE COURT: Fifteen or thirty?

19 MR. GITTENS: Thirty days. Give me thirty days.

20 THE COURT: You've got it.

21 MR. GITTENS: But I can issue it -- early within that,
22 but, again, all mines is based on Supreme Court ruling. If
23 you look at Smith verse Jennings, you know what I'm saying,
24 which is in South Carolina in 1903, you know, in other
25 words, basically, any statute has to be -- it has to say

1 it's enacted by the General Assembly.

2 THE COURT: Okay. I understand.

3 MR. GITTENS: Yeah.

4 THE COURT: You're going to mail me something within
5 thirty days?

6 MR. GITTENS: Yes.

7 THE COURT: All right, you do the same thing, Mr. Cox.

8 MR. COX: Yes, Your Honor.

9 THE COURT: All right. Good enough. I'm going to have
10 to give you an address. You live in Charlotte?

11 MR. GITTENS: Yes.

12 THE COURT: We're going to give you an address where I
13 want you to mail it, okay?

14 MR. GITTENS: Okay. So no -- so no judgment can be made
15 today on this ruling?

16 THE COURT: No, sir. I'm going to wait thirty days
17 until I understand what you -- you know, you just handed me
18 the file five minutes ago.

19 MR. GITTENS: Okay.

20 THE COURT: So I've got to go look at it. I've got to
21 study it.

22 MR. GITTENS: Okay. You've got to study it. That makes
23 sense.

24 I appreciate it, sir.

25 THE COURT: We're writing down the address. You don't

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have to file it. You just have to send it to me.

MR. GITTENS: Okay. Thank you.

MR. COX: And, Judge, just so I know where do you want me to send it to; is it your office in --

THE COURT: Yeah.

MR. COX: -- Columbia? Okay.

THE COURT: You can send it by email if you prefer to a hard copy.

MR. COX: Yes, sir.

THE COURT: Which ever you prefer.

(Address for Judge Cooper passed to Mr. Gittens.)

THE COURT: Okay. Thank you very much.

MR. COX: Thank you, Judge.

MR. GITTENS: Thank you, sir. You have a nice one.

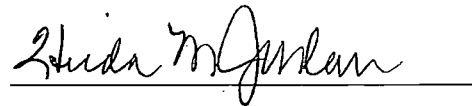
(This proceeding was concluded.)

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST 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 HEARING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 20 DAY OF JUNE, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

January 18, 2017

Hilda M. Jordan, CVR-M
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January 18, 2017

Jamaal Gittens
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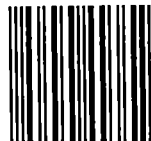
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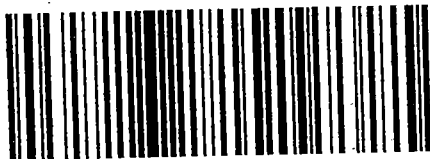
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