

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

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Appeal Case No. 2015-002345

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APR 20 2017

S.C. SUPREME COURT

Christopher A. Wellborn, ..... Petitioner,

v.

The City of Rock Hill, ..... Respondent.

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REPLY BRIEF OF PETITIONER

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**TABLE OF CONTENTS**

Table of Authorities .....ii

Argument ..... 1

    I.    THE RESPONDANT’S BRIEF ADDRESSES ALLEGATIONS THAT  
          ARE NOT THE SUBJECT OF THIS APPEAL OR MISTATES THE  
          RECORD. .... 1

    II.   THERE WAS NOT A SUFFICIENT RECORD OF THE  
          PROCEEDINGS ..... 1

    III.  THE TRIAL COURT JUDGE ERRED IN FAILING TO RECUSE  
          HIMSELF FROM HEARING THE CASE ..... 2

    IV.  TO CONSTITUTE CONTEMPT PETITIONER’S CONDUCT  
          WOULD HAVE TO VIOLATE SOUTH CAROLINA CODE  
          SECTION 22-3-950 AND SECTION 40-5-510 AND PETITIONER’S  
          ALLEDGED CONDUCT DOES NOT COME WITHIN THE  
          PURVIEW OF EITHER SECTION ..... 3

Conclusion ..... 4

**TABLE OF AUTHORITIES**

Cases

State v. King 306 SC 335, 412 S.E. 2d 375 (S.C. 1991) .....2

U.S. v. Peoples, 698 F.3d 185 (2012).....2

Statutes

South Carolina Code of Laws. §40-5-510 .....3

South Carolina Code of Laws. §22-3-950 .....3

Code of Judicial Conduct Rules

Canon 3.E(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR.....3

## ARGUMENTS

### **I. THE RESPONDANT'S BRIEF ADDRESSES ALLEGATIONS THAT ARE NOT THE SUBJECT OF THIS APPEAL OR MISTATES THE RECORD.**

On page five (5) of the Respondent's Brief, it is stated that a response as to Judge Lenzi's question as to why Mr. Wellborn was more than two (2) hours late for Municipal Court was found by Judge Lenzi's to be contemptuous. While Judge Lenzi did find the Petitioner in contempt of court for the alleged comment made in the hallway, his finding was reversed by Judge Hayes in an Order dated September 25, 2013.

On page four (4) of the Respondent's Brief, referring to the Petitioner's opening argument at trial, it is stated, "after a warning from the Court when he apologized to the jury for being late, Mr. Wellborn completed his opening". There was no allegation in the Verified Petition alleging contempt of court that the Petitioner made any comment in opening remarks that were improper. The only testimony concerning the opening statement was the testimony of the Petitioner, in which he stated that he apologized to the jury for being late without explanation as to why he was late. He stated that he did not remember if the issue was raised by objection by the City or not but the Court did address the issue and that the Petitioner respectfully explained that he had not violate the Court's order.<sup>1</sup> The Petitioner's testimony was not contradicted, nor was anything the Petitioner said in opening statements alleged to be contemptuous.

### **II. THERE WAS NOT A SUFFICIENT RECORD OF THE PROCEEDINGS.**

Respondent would have the Court find that a sufficient record was a Verified Petition and an Order from the lower Court. It is undisputed that there was no record of the proceedings in which the contempt was alleged to have occurred. The Respondent concedes in its brief that, "since summary courts are not courts of record in this the State of South Carolina and, as such,

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<sup>1</sup> App. p. 98

there will rarely be a transcript of the proceedings from which contempt allegation arises” (although it is a common practice in magistrates and other courts that are not courts of record to have a recording of the proceedings).

When the record in this case is reviewed there is no testimony during the contempt hearing that the Petitioner engaged in any contemptuous conduct. The only allegations alleging contempt were in the Verified Petition. The Petitioner testified and denied that he engaged in the conduct alleged in the Verified Petition. There was no testimony at the contempt hearing which contradicted the Petitioner’s testimony.

There was no record of the proceedings which clearly and specifically reflect the alleged contemptuous conduct. State v. King 306 SC 335, 412 S.E. 2d 375 (S.C. 1991)

### **III. THE TRIAL COURT JUDGE ERRED IN FAILING TO RECUSE HIMSELF FROM HEARING THE CASE.**

The Respondent cites U.S. v. Peoples, 698 F.3d 185 (2012) in support of its argument that Judge Lenzi was not required to recuse himself. It should be noted that in *Peoples*, Judge Currie did in fact recuse herself from hearing a contempt proceeding in which the Defendant had made comments toward her outside her presence. However, the essential distinction between the present case and the *Peoples* case is that there was a record of the contemptuous conduct in *Peoples*. The comments made by Peoples were heard by a clerk and recorded by a Court Reporter. There appears to be no factual dispute as to the behavior that occurred in the *Peoples* case. In the present case, there was no record of the contemptuous conduct and no witnesses testified at the contempt hearing as to the alleged contemptuous conduct. The only allegation of contempt was contained in the Verified Petition. Petitioner had no opportunity to confront or cross examine the author of the Verified Petition. The Respondent in its brief states, “judges are not called as witnesses in rule to show cause hearings”. If Judge Lenzi was not a witness as to

the alleged contemptuous behavior, then there were no witnesses and no evidence as to the alleged contempt.

The Respondent argues that Canon of Judicial Conduct, Canon 3E (1) (d) (iv) dictates that a trial judge can never preside over a contempt hearing that he or she initiates in his or her court when the trial judge witnesses the alleged contempt. It is the Petitioner's contention that should be the Rule. Only when there is no record of the proceeding and no other witnesses to the contemptuous conduct. Basic fairness dictates that one who alleges certain behavior cannot be the judge of whether or not that behavior occurred.

**IV. TO CONSTITUTE CONTEMPT PETITIONER'S CONDUCT WOULD HAVE TO VIOLATE SOUTH CAROLINA CODE SECTION 22-3-950 AND SECTION 40-5-510 AND PETITIONER'S ALLEDGED CONDUCT DOES NOT COME WITHIN THE PURVIEW OF EITHER SECTION.**

The Respondent argues that it is not necessary that Petitioner's alleged conduct come within the purview of Section 22-3-950 or Section 40-5-510 because the Courts in South Carolina have the inherent powers of contempt. Respondent is correct that South Carolina Courts have inherent powers of contempt. However, those powers are not without limitations. The legislature passed both Section 22-3-950 and Section 40-5-510 to apply specifically to magistrate's court. To rule contemptuous conduct in magistrate's court can extend beyond Section 22-3-950 and/or Section 40-5-510 would render the statutes meaningless. Both statutes are obviously a limitation imposed by the legislature on the contempt powers of magistrates. The Respondent would contend that Petitioner interpretation of Section 22-3-950 would require a fight inside the courtroom or a disturbance to the proceedings amounting to the equivalent of a fight in order to be contempt of court. Petitioner has not argued that interpretation. Section 22-3-950 does require an insult to the magistrate or juror or that one must be willfully guilty of an undue disturbance of the proceedings. There was no allegation that the Petitioner alleged

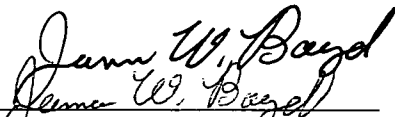
contemptuous conduct constituted any of the behavior forbidden by Section 22-3-950. The Petitioner's alleged contemptuous conduct, which he denied, was to ask the Court that he be allowed to tell the jury why he and his client were tardy. Such request was neither an insult to the Judge or an undue disturbance of the proceedings.

Section 40-5-510, which applies only to attorneys, requires an attorney to be guilty of disorderly conduct. There was no evidence that merely requesting to be allowed to address the jury on an issue is disorderly conduct.

### CONCLUSION

For all the foregoing reasons and the reasons stated in the Petitioner's original brief the Petitioner request that this case be reversed.

Respectfully Submitted,



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April 14, 2017

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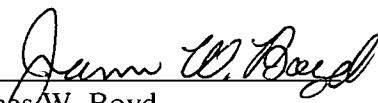
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PROOF OF SERVICE

I, James W. Boyd, certify that I served the within Reply Brief of Petitioner on Respondent by depositing a copies of the same in the United States mail, postage prepaid, addressed to its attorney of record, Christ Barton and Paula Knox Brown, Assistant Solicitor, 201 E. Main Street, 3<sup>rd</sup> Floor, Rock Hill, SC 29730, I further certify that all parties required by Rule 208 to be served have been served.

  
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April 17, 2017