

NOTICE OF APPEAL FROM COMMON PLEAS
REGARDING A CONVICTION IN MAGISTRATE COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

CARMEN T. MULLEN, CIRCUIT COURT JUDGE

Case No. 2016-07-01856

Brian J. MacDermant,

Appellant (Pro se),

v.

The State,

Respondent

NOTICE OF APPEAL

2017 MAY 11 AM 10:37
JERRI ANN ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Brian J. MacDermant appeals the order of Honorable Carmen T. Mullen electronically dated April 17, 2017 which affirmed his conviction in magistrate court. Appellant received written notice of the order on April 20, 2017.

April 26, 2017

Other Counsel of Record:
Jean K. McCormick, Esq
P.O. Box 1880
Bluffton, SC 29910
Attorney for Respondent

Signed/_____
Brian J. MacDermant, Pro se
1007 11th Street
Port Royal, SC 29935
843-271-8838

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MAY 15 2017

SC Court of Appeals

Brian J. MacDermant,

Appellant (Pro se),

v.

The State,

Respondent

I, Brian J. MacDermant, was convicted in a magistrate court jury trial before Judge Brooks on Aug. 16, 2016 of Assault and Battery in the 3rd, a crime I DID NOT commit, having read the statute. The jury trial was immediately after jury selection. Just before jury selection started, I made a verbal motion for a continuance to hire an attorney. Judge Brooks denied my motion, so I said, "Don't let a room full of jurors sway your decision." He then said he remembered me and for me not to say he (Judge Brooks) doesn't have jurisdiction over the case. Judge Brooks may have even said I was one of those "sovereign" people or used that word. Judge Brooks was mistaken. I immediately said I never said any of it, it wasn't me, and that I would have remembered saying something like that. I had a previous unrelated jury trial before Judge Brooks on a traffic citation 'changing lanes unlawfully' and was acquitted of that charge by a jury. That was my only unrelated, prior interaction with Judge Brooks.

I was convicted of A&B in the 3rd by the alleged victim's perjury and exaggerations. I could prove the perjury in a strong, circumstantial verbal talk that would take considerable time before Judge Mullen, so I decided to bring forth an extremely quick, easily proven grounds for overturning a wrongful conviction: audience interjection and Judge Brooks not keeping order in the courtroom, when Judge Brooks had clear opportunity to warn the person who interrupted the jury trial. Judge Brooks never warned the person who interjected or told the person to stop from walking up to the witness on the witness stand. This is the utmost egregious lapse in judgment by Judge Brooks, who is to remain impartial throughout a jury trial.

I, Brian J. MacDermant, went before Judge Mullen (appeals hearing) on April 11, 2017 and said there was audience interference during the jury trial. The alleged victim was on the witness stand, and as I was cross-examining him, his wife interjected verbally from where she was sitting in the audience. The wife then immediately walked (she did not run) all the way up to the witness stand with a white piece of paper and showed the paper to her husband/alleged victim. The judge made no sound verbally or showed any physical expression. The white piece of paper was never introduced into evidence, nor did I get to see the paper, nor did I get to cross-examine the wife. There is recorded audio of the verbal interjection. There was no recorded video taken of the jury trial. When I filed my original appeal, I did not have the luxury of the audio tape; it takes more than 10 days to receive the audio tape.

There's never an excuse or justification for any member of the audience to make comments about a witness' testimony. I am entitled to a fair and impartial trial. Both instances: the wife's interjection and the judge not keeping order in the courtroom by warning the wife, are clear and blatant violations of the Due Process Clause which is included in the 5th & 14th Amendments to the U.S. Constitution ["deprived of life, liberty, or property, without due process of law"]. I paid a monetary fine of \$1087.50 (property) as punishment and was deprived without due process.

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I, Brian J. MacDermant, transcribed (verbatim) the audio recording of the jury trial. Here is the excerpt of audience interference as I am cross-examining the prosecution's witness:

Defendant (1:06:19): So, some people was anybody at this people that was verbally invited?

Alleged victim: Not that I'm aware of. Maybe last minute, maybe Mr. Ashmore. (1.06:38)

Alleged victim's wife from the audience: He's on the list.*

Alleged victim: He's on the list, ok. Again, I was not responsible for the list of attendees. My wife maintained that list based on my supporters during during the campaign. But since the 3 of us, Mr. Ashmore and Mr. Owens had campaigned together, we were you know we campaigned as a as a threesome, not so much as against each other but just we're the we're the 3 people that you have to choose from to elect the 2 seats for Council. May the best person win.

Def: Give me a minute your Honor, please. Um.

[* this was interference of the trial and testimony from the audience]

The egregious facts here are more than reasonable for overturning this conviction. Judge Brooks was no longer impartial when he did absolutely nothing in reaction to the testimony/interference from the audience. The state can always re-try me again. I deserve a fair and impartial trial, where people do not give testimony from the audience, and then proceed to the witness on the witness stand, show them a piece of paper, and have the judge do absolutely nothing during the interjection and Judge Brooks' response to it.

If you have doubts in my logic here, then you are saying it's ok for innocent people to fall through the cracks and be convicted. Everything (100%) in this appeal, I have given the truth, the whole truth, and nothing but the truth, to the best of my ability, so help me God.

April 26, 2017

Other Counsel of Record:
Jean K. McCormick, Esq
P.O. Box 1880
Bluffton, SC 29910
Attorney for Respondent

Signed/_____
Brian J. MacDermant, Pro se
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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 05, 2017

Brian J. MacDermant
1007 11th Street
Port Royal SC 29935

Re: Brian MacDermant v. State
Appellate Case No. 2017-001046

RECEIVED

MAY 15 2017

SC Court of Appeals

Dear Mr. MacDermant:

Please provide the Court with proof showing you filed the notice of appeal with the clerk of court of common pleas within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

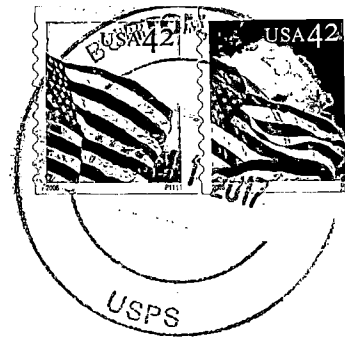
cc: Jean Kiser McCormick, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

Brian MacDermant
1007 11th Street
Port Royal, SC 29935

RECEIVED

MAY 15 2017

SC Court of Appeals



THE SOUTH CAROLINA COURT OF APPEALS
ATTN: V. Claire Allen, Deputy Clerk
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