

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

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APPEAL FROM LEXINGTON COUNTY

OCT 16 2017

Thomas Cooper, Circuit Court Judge

SC Court of Appeals

Case No. 2016-001627

Jamaal Gittens

v.

John Rakowsky

RECORD ON APPEAL

OF APPELLANT

Jamaal Gittens
1206 Marlene street
Charlotte NC 28208
(704) 975-8173
Appellant

Alfred Johnston Cox
P.O. Box 7368
Columbia, SC 29202
(803) 000-0000
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Thomas Cooper, Circuit Court Judge

Jamaal Gittens,Appellant

v.

Alfred Johnson Cox,Respondent .

RECORD ON APPEAL

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COMES NOW Jamaal Gittens petitioning this court this court to vacate void judgment pursuant to South Carolinas civil procedures Rule 60(b)(4) and provide punitive damages for deprivation of rights which guaranteed pursuant to the United States Constitution 42 USC 1983

Statements on issues on appeal

Judge John Rakowsky placed a speeding violation on my MVR, suspended my commercial driver's license for failure to pay fines, when there's no judicial precedents set forth him do so, this void judgment caused me to lose my job, placed me in a position where no trucking company would hire me. Judge Rakowsky argument is the legislative branch allows him to acting in this judicial capacity, totally ignoring Supreme Court rulings, the doctrine of precedent. It's been written, ruled that "The Use of Highways for purpose of travel and transportation is not a mere privilege but a common and fundamental right which a citizen can't be deprived 16 C.J.S constitutional law sec 202 pg287 see II Am Jur (1st) constitutional law sec 329 pg 1135

Statements of the case

7/23/2014 I received a ticket for allegedly speeding, I had written Lexington Municipal court a motion to dismiss due to lack of subject matter jurisdiction,, I was an over the road truck driver, plus I stayed 2hrs from Lexington SC. I'm aware that an officer cannot file his own service of summons, and that an appearance is not a accusatory instrument; I felt I could get this issue resolved by mail rather than coming to court, things didn't work out as planned

Argument

The United States Constitution established the judicial powers of the courts, Article III sections 2 clause 1 states the judicial Power shall extend to all Cases, in **Law and Equity**, arising under this Constitution, the Laws of the United States; courts are limited in jurisdiction. The federal constitution established a common law system, a system of law made not by legislators, but by courts and judges. The supremacy clause in the constitution provides that state judges are bound by the Federal Constitution, "The supreme law of the land"

The Supreme Court said the constitution must be interpreted in the light of common law, the principals and history of which were familiarly known to the framers of the constitution *South Carolina v United States* 199 U.S. 437 (1905) The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was adopted, it means now.

Precedent

Lower courts are bound to the Supreme courts proceedings” *Adam v Dept of Juvenile Justice of New York City*, 143 F.3d 61, 65 (2nd Cir. 1998) see *Norton v Shelby County* 118 U.S 425 (1886) The decisions of the United Sates Supreme Court whether right or wrong are the supreme ,they are binding in all courts of the land” *Hoover v Holston Valley Community Hospital* 545 F. Supp. 8, 13 (E.D. Tenn. 1981) see *Jordan v. Gilligan*, 500 F.2d 701, 707 (6th Cir. 1974)

The United States Supreme Court precedent is that standing is a necessary component of subject matter jurisdiction “plaintiff must allege personal injury traceable to the defendant” See *Allen v Wright* 463 US 737, 751, (1984)

Without standing, there is no actual or justifiable controversy, and courts will not entertain such cases.” *Clifford S. v. Superior Court*, 38 Cal App. 750 (1975)

“Standing is perhaps the most important of [the jurisdictional] doctrines, standing represents a jurisdictional requirement which remains open to review at all stages of the litigation...” *NOW, Inc. v. Scheidler*, 510 US 249

Subject matter jurisdiction requires a competent witness or notarized affidavit demonstrating injury, and a statutory or common law basis for a remedy for the injury. *Beaufort Reality Co v SC Coastal Conservation League* 346 S.C298 551 S.E 2d 588 (S.C Ct App 2001) also *Blandon v Coleman* 285 S.C 472,330 S.E2d 298 (1985)

Pleadings, indictment, information

Subject matter jurisdiction is only determined from pleadings” Hall v State, 933 S.W.2d 363,326 AR 1996 see Hague v Committee for industrial Organization 307 U.S. 496 (1939) without a petition on record, court has no jurisdiction Brown v VanKeuren, 340.118.122(1930) A complaint must state a cognizable cause of action against a party Charles V Gore, 248 Ill App 3d 441,618 NE.2d 633 (1st Dist. 1994) there must be a justifiable issues (cause of action) presented to the court through proper pleading Ligion v Williams 264 III App 3d 701,637 N.E2d 633(1st Dist.1994)

It’s been ruled that an “Appearance Ticket is not accusatory instrument and its filing does not confer jurisdiction over the defendant” People v Askinadze 636 N.Y.S 2d 554 (1995) see “people v Gabby 670.N.Y. S.2d 421 (1997) “traffic infractions are not a crime or public offence” people V battle 50 CAL.App.3d Supp (1975);

An indictment or complaint in a criminal case is the main means which a court obtains subject matter jurisdiction, and is” the jurisdictional instrument upon which an accused stands trial” State v Chatmon, 671 p2d 531 538 (Kan 1983) The complain is the foundation of the jurisdiction of the **magistrate** or court thus if these charging instruments are invalid, there is **lack of jurisdiction** Without a formal and sufficient indictment or information, court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime Honomichl v State 333 NW 2d 797,798 (SD 1983) Without a valid complain any judgment or sentence is rendered is “Void ab inito” Ralph v police court of El Cerrito 190 p.2d.632.634.84.Cal App 2d 257(1948)

The judge of municipal court is acting as an administrative officer and not in a judicial capacity when Revocation drivers license, courts in administrating, do not act judicially, but merely administratively Thompson v Smith 155 VA 367.154.SE.583 VA (1930) see Forrester v White, 484, U.S.,219 (1988)

Enacting Clause

South Carolinas Supreme Court Held that in order for codes /Statues to “**have a force of law**”, they must have an **enacting clause upon is face**, showing the authority by which they are **promulgated**, Title 56, the code I supposed to have violated doesn't contain that. Supreme Courts have further ruled, that any law which lacks a required enacting clause is void on its face.. **State v Patterson**, 4 SE.,350, 352, 98 660 NC (1887) **Smith v Jennings** 45 S.E. 821. 67 SC 324, (1903) See **Joiner v State**, 155 S.E.2d 8,

South Carolinas codes have been revised, published without the enacting clauses; a statute book published without the enacting clause is not a valid publication of laws, *State of Nevada v. Rogers*, 10 Nev. 120, 261 (1875) *People v. Dettenthaler*, 77 N.W. 450, 452, 118 Mich. 595 (1989) *Kefauver v. Spurling*, 290 S.W. 14, 15, 154 Tenn. 613 (1926);: *People v. Dettenthaler*, 77 N.W. 450, 452, 118 Mich. 595 (1989) *Vinsant, Adm'x v. Knox*, 27 Ark. 266, 284, 285 (1871) *Commonwealth v Illinois cent R. co* 170 S, W 171. 175, 160 Ky. 745 (1914) *stickler v Higgins* 106 S.W State of board of Equalization 96. P 2d 420,422 Mont (1939) *Preckel v. Byrne*, 243 N.W. 823, 826, 62 N.D. 356 (1932) see *Ruling Case Law*, vol. 25, “statues”.22, p 776 133, p. 884; citing L.R.A. 1915 B p 1065

Judicial immunity

It is clear that a judge who acts in the absence of subject matter jurisdiction may be held liable for judicial acts *stump v Sparkman* 435 U.S. 349, 98 S CT. 1099 (1978)

Where judge presumes to exercise jurisdiction beyond understood boundaries, judge is not entitled to immunity. *Dykes v Housemann*, 743 F.2d 1488 (11th Cir. 1980)

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. *Zeller v. Rankin*, 633 F2d 844 (9th Cir 1980)

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts s acts *Davis V Burris* 51 Ariz 220 75 p2d 689(1938)

When an officer acts under a state law in a manner contrary to the Federal Constitution, he “comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official or representative character and is subject in his person to the consequences of his individual conduct. The state has no power to impart him from immunity from responsibility to the Supreme authority of the United States.” By Law, a judge is an officer. The Judge then acts not as a judge, but a private individual(in his person) The U.S Supreme Court, in Scheuer V Rhodes, 416, US 232, 94 S Ct 1687 (1974)

Competent *fact* witness

Defendant Rakowsky made affidavit stating he never received the complaint, didn't show up for court. Had his attorney testify on his behalf, when he isn't a competed fact witness with firsthand knowledge; John Rakowsky couldn't be cross- examined, impeached; him not receiving service of summons is hearsay see SC civil procedures rule 801(c) “statements of counsel brief or in argument is not sufficient for a summary judgment” Trinsey V Pagliaro 229 F. Supp.647 (1964) see Gonzales v Buist 224 U.S 126, 56 L Ed 693, 32, S Ct 463 (04/01/12)) United States v Lovasco 431U.S 738 (1977) “no instructions was asked, but, we have said, the judge told the jury that they were to regard only the evidence admitted by him, **not statements of counsel**” Holt V United States 218 U.S. 245,54 L..Ed. 1021, 31 S. Ct 2 (1910)

Conclusion

Judge Rakowsky initiated a void judgment under a color of law, there no judicial proceedings that support his type of judicial practice; he should know the elements of cause of action in a complaint, defendant Rakowsky only obtains jurisdiction through sufficient pleadings, opposing parties with a controversy, one that has suffered injury, Dank v Benson, 2000 OK 40, 5 P, 3d 1088, 1091 The United States Supreme Court said “only individual complaints maybe maintained”, Hague V Committee for industrial Organization 307 U.S. 496 (1939)

I had a career as a Professional Truck driver, October, 2014 my employer special logistics let me go because their insurance company wouldn't cover me do to this speeding violation, after I left special logistics, I applied for a company called global express, they would hire me, in fact they sent me my MVR, it shows a 47 in a 30 miles zone. January 31 2015 my car was repossessed because I didn't have any income; it damaged my credit report as well; it shows repossession. Judge John Rakowsky void judgment deprived me from pleasurable lifestyle; This void judgment has caused me a great deal of stress; it affected my social life with friends and family; I wasn't able to routinely provide for my family throughout the holiday's seasons the way I usually do. For the great deal of unnecessary stress, I accumulated thought this whole ordeal. I'm seeking one hundred thousand dollars in damages

Ronnie E. Farrow Jr

Type or printed notary name

Ronnie E. Farrow Jr Seal

- Place Notary Signature Above -

12/24/2015

My Commission expires

10/2016 Date

Jamaal A Gittens

1206 Marlene Street

Charlotte NC 28208

(704) 975-8173

Jamaal A Gittens

CASES

Adam v Dept of Juvenile Justice of New York City, 143 F.3d 61, 65 (2nd Cir. 1998)

Norton v Shelby County 118 U.S 425 (1886)

Valley Community Hospital 545 F. Supp. 8, 13 (E.D. Tenn. 1981)

Jordan v. Gilligan, 500 F.2d 701, 707 (6th Cir. 1974)

Clifford S. v. Superior Court, 38 Cal. APP. 4th 750(1995)

Anastasoff v U.S. 223.F.3d 898 (8th cir 2000)

Brown v VanKeuren, 340.118.122(1930)

Charles V Gore, 248 Ill App 3d 441,618 NE.2d 633 (1st Dist. 1994)

Thompson v Smith 155 VA 367.154.SE.583, VA (1930)

Adams v City of Pocatello, 416 p.2d.46, 48; 91 Idaho 99 (1966)

Berberian v Lussier 139 A. 2d 869, 872 87 RI 226, (1958)

City of Chicago v Collins 175 III. 445 (III 1898)

Trinsey V Pagliaro 229 F. Supp.647 (1964)

Gonzales v Buist 224 U.S 126,56 L Ed 693,32,S Ct 463 (04/01/12)

Forrester v White, 484, U.S,219 (1988)

16 C.JS constitutional law sec 202 pg287

II Am Jur (1st) constitutional law sec 329 pg 1135

Smith v Jennings 45 S.E. 821. 67 SC 324, (1903)

Joiner v State, 155 S.E.2d 8,

State v Patterson, 4 SE, 350, 352, 98 660 NC (1887)

Stump v Sparkman 435 U.S. 349, 98 S CT. 1099.(1978)

Dykes v Housemann, 743 F.2d 1488 (11th Cir. 1980)

Zeller v. Rankin, 633 F2d 844 (9th Cir 1980)

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II Am Jur (1st) constitutional law sec 329 pg 1135

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CHAPTER 112.

An act supplemental to an act to incorporate the town of Charleston in Swain County.

The General Assembly of North Carolina do enact:

SECTION 1. That after the authorities of the town of Charleston shall have prepared suitable and convenient places for hitching horses, that hitching horses to gates and fences belonging to individuals in said town shall be construed a nuisance, and the authorities of said town are authorized to abate such nuisance, and are authorized to impose such fines and penalties as will abate them. Hogs running at large shall also be construed a nuisance.

SEC. 2. This act shall be in force from and after its ratification.

In the general assembly read three times, and ratified this the 7th day of March, A. D. 1887.

CHAPTER 113.

An act to incorporate the town of Forest Hill.

SECTION 1. That the town of Forest Hill, in Cabarrus county, be and the same is hereby incorporated, by the name and style of the town of Forest Hill, and it shall enjoy all the rights and privileges of incorporated towns and be subject to all the provisions of law now existing in reference to incorporated towns.

SEC. 2. That the corporate limits of said town shall be as follows: beginning opposite the old cotton mill on the line of Concord corporate line, and running north with said line fifty-three and one half degrees east one half mile to a stone, thence north forty-eight and one-half degrees west one half mile to a stake, thence south fifty-three and one-half degrees west one mile to a stone, thence south fifty-three and one half degrees east one half mile to a stone, thence north fifty-three and one-half degrees east to the beginning.

SEC. 3. That the officers of said town shall consist of a mayor, four commissioners and a constable, and the commissioners shall have power to elect a secretary and treasurer, and to elect the constable.

Fig. 6 — Excerpt from, *Laws and Resolutions of the State of North Carolina, 1887*. Chapter 113 (below) was published with no enacting clause, and thus was "void," *State v. Patterson*, 98 N.C. 660. The preceding law, Chapter 112, was published with an enacting clause.

ACT No. 303.

House Bill No. 872.

By Mr. Fernandez, Chairman of Committee on Public Health and Quarantine (Substitute for House Bill No. 405 by Messrs. Fernandez and Landry).

AN ACT

To provide for the discovery and treatment of mental disorders; to define and interpret certain terms used herein; to designate institutions and places for mental patients; to provide for the examination, admission, commitment and detention of mental patients and their transfer, discharge, leave of absence, boarding out, return of escaped patients and interstate rendition and deportation; to provide for the assessment, imposition and collection of costs, fees and expenses incidental to carrying out the provisions of this Act; to grant certain rights to patients committed under this Act.

ARTICLE I.

Short Title, Interpretations and Definitions.

Section 1. Short Title: This Act shall be known as the Mental Health Act of 1944.

ACT No. 284.

House Bill No. 670.

By Messrs. Martinez and Picciola.

AN ACT

To amend and re-enact the Title and Sections 1, 2 and 3 of Act 309 of 1938, entitled: "To create and establish a trades school for the education of white people of the State of Louisiana, in Thibodaux, Lafourche Parish, Louisiana, under the supervision of the State Board of Education, and to provide for the building, equipping and maintenance of said institution."

Section 1. Be it enacted by the Legislature of Louisiana, That the title of Act 309 of 1938 is hereby amended and re-enacted so as to read as follows:

Fig. 7 — Excerpt from, *Acts passed by the Legislature of the State of Louisiana, 1944*. Act 303 (above) was held "defective" as it had no enacting clause. *O'Rourke v. O'Rourke*, 69 So.2d 567. Act 284 (below) has an enacting clause in Section 1 where the body of the law starts.

AN ACT

To amend and reenact Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session, to provide with respect to teaching French and the culture of Louisiana in the public elementary and high schools in the state.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session is hereby amended and reenacted to read as follows:

§ 272. French language and culture; teaching in public schools

A. The French language and the culture and history of French populations in Louisiana and elsewhere in the Americas shall be taught for a sequence of years in the public elementary and high school systems of the state, in accordance with the following general provisions:

(1) As expeditiously as possible but not later than the beginning of the 1972-1973 school year, all public elementary schools shall offer at least five years of French instruction starting with oral French in the first grade; except that any parish or city school board, upon request to the State Board of Education, shall be excluded from this requirement, and such request shall not be denied. Requests already received from school boards for exclusion from the provisions of Act 408 of 1968 shall also be valid for exclusion from the provisions of this Act unless individual school boards deem otherwise. School boards which have not already requested exclusion may do so at any time between July 1, 1971, and the beginning of the 1972-1973 school year. The fact that any board is excluded, as here provided, from participation in the program established by this section shall in no case be construed to prohibit such school board from offering and conducting French courses in the curriculum of the schools it administers. In any school where the program provided for herein has been adopted the parent or other person legally

AN ACT

To regulate loans and advances of credit by banks under revolving loan plans and to provide for interest and other charges thereunder; to provide for penalties; and to repeal all conflicting laws.

TITLE I - REVOLVING LOAN PLANS

Section 1. Definitions:

(a) The term "revolving loan" means an arrangement, including by means of a credit card, between a lender and a debtor pursuant to which it is contemplated or provided that the lender may from time to time make loans or advances to or for the account of the debtor (1) through the means of checks, drafts, items, invoices for the purchase of goods, orders for the payment of money, evidence of debt or similar written instruments or requests whether or not negotiable, endorsed or signed by the debtor or by any person authorized or permitted to do so on behalf of the debtor or (2) through the means of any other direction to pay by the debtor for loans or advances or charges to an account in respect of which account the lender is to render bills or statements to the debtor at regular intervals (hereinafter sometimes referred to as the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or at the debtor's option may be payable by the debtor in installments.

(b) Credit cards - The term "credit card" as used herein means an identification card, credit number, credit device or other credit document issued to a person, firm or corporation by a lender which permits such persons, firm or corporation to purchase or obtain money, goods, property, or services on the credit of the issuer.

(c) "Lender" means a bank chartered or licensed by state or federal authorities and authorized to do business and doing business in this state.

Section 2. Revolving Loan Interest Charge, Separate Charge Statement

Fig. 8 — An excerpt from, *Louisiana Acts 1968*, Extra Session, 1968 (bound in "*Acts of the Legislature*" Regular Session, 1969). Act 24 (right) was declared to be "null" and without effect because of the manner in which it was printed or reported in the statute book without an enacting clause, *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741. A preceding law, Act 21 (left), shows proper use of the enacting clause on the face of the law.

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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 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 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 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

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

2 MR. GITTENS: Okay. Thank you.

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

5 THE COURT: Yeah.

6 MR. COX: -- Columbia? Okay.

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

9 MR. COX: Yes, sir.

10 THE COURT: Which ever you prefer.

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

12 THE COURT: Okay. Thank you very much.

13 MR. COX: Thank you, Judge.

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

15 (This proceeding was concluded.)

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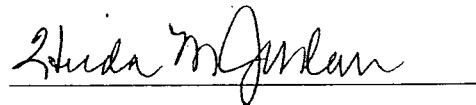
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C-E-R-T-I-F-I-C-A-T-E

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
Post Office Box 435
Lexington, South Carolina 29071
hjordan@sccourts.org

January 18, 2017

Jamaal Gittens
1206 Marlene Street
Charlotte, NC 28208

Attn: Jamaal Gittens

Re: Gittens v Rakowsky - Motion Hearing
2016-CP-32-263

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Transcript of record
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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

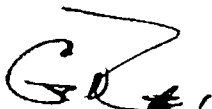
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 2016-CP-32-263

ORIGINAL

**ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter comes before me on Plaintiff's Motion for Summary Judgment and Defendant Rakowsky's Motion to Dismiss the Complaint. Plaintiff's Motion is based upon the argument that Rakowsky was served with the Summons and Complaint and he failed to answer the complaint within thirty days of service. Rakowsky's Motion to Dismiss was filed on two grounds, including lack of service of pleadings pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5) of the South Carolina Rules of Civil Procedure and the doctrine of judicial immunity. A hearing was held in this matter on June 20, 2016.

On July 24, 2014, Plaintiff Jamaal Gittens ("Gittens"), was issued a Uniform Traffic Ticket and given a summons to appear in the Town of Lexington Municipal Court for trial upon violation of S.C. Code Ann. § 56-5-1520(G)(3), Speeding in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit. He was inside the Town of Lexington city limits when he was cited. Despite receiving notice of the trial date, Gittens did not appear for the trial and was tried in his absence.



RETTA A. OVERTON
CLERK OF COURT
LEXINGTON, SC

2016 JUL 25 11:27

FILED

Gittens has now brought suit against John Rakowsky, who was acting as Presiding Judge of the Town of Lexington Municipal Court during the trial, claiming that the court did not have subject matter jurisdiction to hear the case.

I. Gittens' Motion for Summary Judgment

Gittens claims that he served Rakowsky with a copy of the Summons and Complaint. As proof of this, he provided the Court with a "proof of service" dated March 29, 2016 attaching a certified letter receipt addressed to John Rakowsky at the address for the Town of Lexington. The receipt shows that a person named Jay Graham signed for the letter. Rakowsky provided an affidavit to the Court stating that he has never been served with a copy of the Summons and Complaint.

Plaintiff's Motion for Summary Judgment is denied. Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant in compliance with South Carolina law. It appears that the certified letter was not sent return receipt requested, restricted delivery to Rakowsky at his address and was not signed for by him. This is not proper service upon an individual pursuant to Rule 4(d)(1) and it is not proper service by mail pursuant to Rule 4(d)(8). In addition, Rakowsky states in his affidavit that he never received service of the summons and complaint.

Furthermore, a review of the court file indicates that an Answer and Motion to Dismiss for failure to properly serve the Summons and Complaint were filed on behalf of the Defendant on April 29, 2016, within thirty days of the letter signed for by Jay Graham.



II. Rakowsky's Motion to Dismiss

For the same reasons addressed above, Rakowsky's Motion to Dismiss is granted for lack of proper service upon Defendant. Plaintiff failed to serve the Summons and Complaint upon Defendant as required by South Carolina law.

Even if the action had been served correctly, Rakowsky, as a municipal court judge, is entitled to judicial immunity from suit as a matter of law. "The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). "Judicial immunity affords absolute immunity from suit." *Stump v. Sparkman*, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). "In other words, judicial immunity, if applicable, acts as a bar to suit, not just as an ultimate bar to relief. Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *O'Laughlin v. Windham*, 498 S.E.2d 689 (Ct. App. 1998).

Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances. However, it is not without limitations. The United States Supreme Court has carved out three exceptions. The first exception (and the one cited by Plaintiff) is that no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978); *O'Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689, 1998 S.C. App. LEXIS 40 (S.C. Ct. App. 1998). No immunity is granted if "there is clearly no jurisdiction over the subject-matter . . . [and] the want of jurisdiction is known to the judge" *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). The question, then, is "whether at the time [the judge] took the challenged action he had jurisdiction over the subject matter before him," and, in

GR 3

answering that question, "the scope of the judge's jurisdiction must be construed broadly"
Id.

As a sitting judge, Judge Rakowsky is entitled to Judicial Immunity from suit and dismissal of this action. Judge Rakowsky clearly had subject matter jurisdiction to hear the case against Gittens.

The South Carolina General Assembly created the Municipal Court System and provided it with the subject matter jurisdiction to hear and decide traffic cases and certain other misdemeanors. *See*, 1949 S.C. Act (46) 466; 1980 S.C. Act No. 480; 1975 S.C. Act No. (59) 692 and 2012 S.C. Act No. 263; also *Pickens v. Schmitz*, 297 S.C. 253, 376 S.E.2d 271 (1989) (finding that municipal court had proper subject-matter jurisdiction to hear traffic violation case resulting in a DUI conviction). These Acts were then codified as S.C. Code Ann. § 56-5-6150, 5-7-10, S.C. Code Ann. § 5-7-90 and S.C. Code Ann. § 14-25-5 (see legislative history).

S.C. Code Ann. § 56-5-6150, enacted into law by the South Carolina General Assembly, at 1949 S.C. Act No. (46) 466 states,

Trial jurisdiction of municipal courts.

All municipal courts of the State may try and determine criminal cases involving violations of this chapter occurring within the respective limits of such municipalities when the penalty prescribed by this chapter for such violations does not exceed thirty days' imprisonment nor one hundred dollars' fine and may have trial jurisdiction over such criminal cases the same as magistrates.

S.C. Code Ann. § 5-7-10, enacted at 1975 S.C. Act No. (59) 692, states,

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

S.C. Code Ann. § 5-7-90, *see*, 1975 S.C. Act No. (59) 692; 2012 S.C. Act No. 263, § 1, states,

Trial of persons charged with violations of ordinances of municipality or laws of State

The municipal judge or judges of a municipality shall speedily try all persons arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial must be held within ten days after the arrest or at a time scheduled by the court, in which event the trial is deferred. The municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to Section 5-7-30.

S.C. Code Ann. § 14-25-5, enacted at 1980 S.C. Act No. 480, states,

Establishment of municipal courts by ordinance; facilities for courts; use of magistrate court by municipality

(a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

(b) Any municipality establishing a municipal court pursuant to the provisions of this chapter shall provide facilities for the use of judicial officers in conducting trials and hearings and shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge.

(c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate upon approval by the governing body of the county.

Furthermore, S.C. Code Ann. § 56-7-10, *see* 2005 S.C. Act No. 68, states,

The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General.


GRS

Despite these clearly crafted code sections vesting Judge Rakowsky with subject matter jurisdiction to dispose of the charge against him, Gittens claims that S.C Code Ann. §5-7-10, §5-7-90 and §14-25-5 56-7-10 have no force and effect because they contain no enacting clause as required by Art. III., sec. 16, of the South Carolina Constitution. Again, Plaintiff's basis for this lawsuit fails. Plaintiff has produced no evidence that the laws passed by the General Assembly creating the relevant code sections did not contain an enacting clause. In fact, the Court has reviewed some of the Acts under which these code sections promulgated and they do contain enacting clauses as required by the South Carolina Constitution. *See*, 1980 S.C. Acts No. 480; 1975 S.C. Acts No. (59) 692, 2012 S.C. Acts 263 and 2005 S.C. Acts 68. There is no requirement in our Constitution or otherwise requiring an enacting clause appear in the text of every code section.

THEREFORE, IT IS ORDERED THAT: Plaintiff's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED THAT: Defendant's Motion to Dismiss is granted and the case is dismissed with prejudice.

AND IT IS SO ORDERED.



Judge Thomas Cooper
Presiding Judge, Eleventh Judicial Circuit

July 21, 2016
Columbia, South Carolina

FILED
JUL 25 11:27
DEPUTY CLERK OF COURT
LEXINGTON, SC

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP3200263

Jamaal Gittens	Judge John Rakowsky
----------------	---------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date <u>7/27/2016</u>
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For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **July 27, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Jamaal Gittens 1206 Marlene Street Charlotte, NC 28208

Alfred Johnston Cox PO Box 7368 1201 Main Street, Suite
1200 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
