

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-1627

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-263
G. Thomas Cooper, Circuit Court Judge

RECEIVED
NOV 02 2017
SC Court of Appeals

Jamal Gittens.....Appellant

vs.

John R. RakowskyRespondent

RECORD ON APPEAL

A. Johnston Cox, Esquire
Jessica A. Waller, Esquire
Alonzo J. Holloway, Esquire
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
(803) 779-1833
Attorneys for Respondent John R. Rakowsky

Jamaal A. Gittens
1206 Marlene Street
Charlotte, North Carolina 28208
Pro Se Appellant

INDEX

Appellant’s Record on Appeal.....1

 Transcript of Record.....14

 Order Denying Plaintiff’s Motion for Summary Judgment and Granting
 Defendant’s Motion to Dismiss.....35

Complaint of Jamaal Gittens, filed January 25, 2016.....43

Affidavit of Service, filed March 31, 2016.....49

Answer of Judge John R. Rakowsky, filed May 2, 2016.....52

Gittens’ Motion for Summary Judgment, filed April 27, 2016.....56

Judge Rakowsky’s Notice of Motion and Motion to Dismiss.....59

Judge Rakowsky’s Memorandum in Support of Motion for Summary Judgment,
and attached exhibits, filed June 20, 2016.....64

Judge Rakowsky’s Affidavit, filed May 19, 2016.....93

Gittens’ Opposition to Rakowsky’s Motion to Dismiss, filed May 11, 2016.....95

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Thomas Cooper Circuit Court Judge

PROOF OF SERVICE

Case No. 2016-001627

Attn: Jenny Abbott Kitchen

I certify that I forwarded a copy of the record of appeal to, defendants counsel Attorney Cox
at Gallivan & White Boyd PA 1201 main street suite 1200 Columbia SC 29202

October 13.2017

Sincerely

Jamaal A Gittens



Jamaal A Gittens

Type or printed notary name

Seal

- Place Notary Signature Above -

My commission expires

Date

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

APPEAL FROM LEXINGTON COUNTY

Thomas Cooper, Circuit Court Judge

Case No. 2016-001627

Jamaal Gittens

v.

John Rakowsky

RECORD ON APPEAL
OF APPELLANT

Jamaal Gittens


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

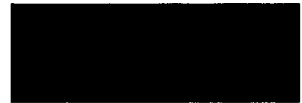
Jamaal Gittens, Appellant

v.

Alfred Johnson Cox, Respondent

RECORD ON APPEAL

Jamaal Gittens



Appellant

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

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 Ill App 3d 701,637 N.E.2d 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. Farnsworth
Type or printed notary name
Seal
Place Notary Signature Here
My Commission Expires
Date

Jamaal A Gittens



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 Ill. 445 (Ill 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)

Davis V Burris 51 Ariz 220 75 p2d 689(1938)

Scheuer V Rhodes, 416, US 232, 94 S Ct 1687 (1974)

16 C.JS constitutional law sec 202 pg287

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

Table of Authorities	11
Statement of Issues on Appeal	3
Statement of the Case.....	3
Conclusion	6

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 Calurus 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 north thirty-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.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

2016-CP-32-263

Jamaal Gittens,

Plaintiff,

v.

John Rakowsky,

Defendant.

Transcript of Record

RECEIVED

FEB 02 2017

SC Court of Appeals

June 20, 2016
Lexington, South Carolina

B E F O R E:

The Honorable Judge G. Thomas Cooper, Judge

A P P E A R A N C E S:

Jamaal A. Gittens, Pro Se
Attorneys for the Plaintiff

Michael J. Cox, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

THE COURT: Right.

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

THE COURT: How -- who --

MR. GITTENS: Attorney Clifford Koon.

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

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

THE COURT: Okay.

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

THE COURT: All right.

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

THE COURT: Okay. Did you appear in court for your 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 Jennings 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.)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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


Attn: Jamaal Gittens

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

Invoice #17-002
Transcript of record
June 20, 2016
ORIGINAL 20 PAGES @ \$ 3.25 \$ 65.00

State Employees Credit Union CK# 032464

PAID IN FULL \$ 65.00

hmj

ROA0034

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.



RECEIVED
COURT OF COMMON PLEAS
LEXINGTON, SC

2016 JUL 25 AM 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

GL 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 situated 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.

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

RECEIVED
JUL 21 2016
ELEVENTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA

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: Plaintiff Defendant
 Self-Represented Litigant

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

7/27/2016
 Date

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

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.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF Lexington)
)
Jamaal Gittens)
)
Plaintiff,)

IN THE COURT OF COMMON PLEAS

SUMMONS

vs.)

FILE NO. 2016-CP-32-00263

Judge John R. Rakowsky)
)
Defendant.)


TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Lexington, South Carolina

Jamaal Gittens
Plaintiff/Attorney for Plaintiff

Dated: 3/22/16

Address: 

SCCA 401 (5/02)

ROA0043

ORIGINAL

2016 CP3200263

STATE OF SOUTH CAROLINA

IN THE COUNTY OF LEXINGTON

JAMAAL GITTENS _____

PLAINTIFF,

Vs.

JUDGE JOHN R RAKOWSKY _____

DEFENDANT

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 JAN 25 AM 11:59

FILED

This claim is arising out of derivation of rights which is guaranteed pursuant to the United States Constitution. 42 USC 1983. Judge R Rakowsky made a ruling on a traffic matter when the court lacked subject matter Jurisdiction; his void judgment caused me the loss of professional career, and a great deal of financial difficulties

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)

A judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. [*Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958)]

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*, 101 S. CT. 2020(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 Ariz (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)

If the magistrate has not such jurisdiction, then and those advise and act with him, or execute his process, are trespassers Von Kettler et al. v Johnson 57 Ill. 109 (1870)

July 23, 2014 an officer had given me a ticket for speeding; his device needed to be calibrated. July 26, 2014 I had written Lexington municipal court a motion to challenge subject matter jurisdiction; being that I live in charlotte NC, and I'm constantly on the road .an Attorney name Clifford Koon JR responded and said that section 56-56150 code gives the court jurisdiction over traffic matters.. I responded to inform Clifford Koon that section only pertains to criminal matters, and that it doesn't contain an Enacting Clause. South Carolinas Supreme Court Held that in order for Bills/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 code doesn't contain that. State v Patterson, 4 SE, 350, 352, 98 660 NC (1887) Smith v Jennings 45 S.E. 821. 67 SC 324, (1903) Supreme Courts have further ruled that any law which lacks a required enacting clause is void on its face... See Joiner v State, 155 S.E.2d 8, 10 223Ga (1967)

Attorney Clifford Koon, Judge John Rakowsky should know that 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 Chatomon, 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 Honomichi 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 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 courts are bound by the Federal Constitution, "The supreme law of the land" The supreme court stated "When acting to enforce a statute/code, the judge of municipal court is acting as an administrative officer and not in a judicial capacity, courts in administrating or enforcing code/statues do not act judicially, but merely administratively" Thompson v Smith 155 VA 367. 154. SE. 583, 71 ALR 604.

It's been ruled that an "Appearance Ticket is not accusatory instrument and its filing does not confer jurisdiction over the defendant" "people V Gabby 670.N.Y. S.2d 421 (1997) "traffic infractions are not a crime or public offence" people V battle 202 CAL.App.2d 432 (1975);

"Subject matter jurisdiction is only determined from pleadings" Hall v State, 933 S.W.2d 363,326 AR 1996

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) The supreme Court constantly rules that standing is a necessary component of subject matter jurisdiction a "plaintiff must allege personal injury traceable to the defendant" See Allen v Wright 463 US 737, 751, (1984) 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.

"Without standing, there is no actual or justifiable controversy, and courts will not entertain such cases." Clifford S. v. Superior Court, 45 Cal.Rptr.2d 333,335.

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.

Only congress can make an act a crime affix punishment to it, and declare court shall have jurisdiction "US Hudson 11 US 32(1812) see US v Beckford (1997) 966F.Supp 1415(1997)

CONCLUSION

October, 2014 My Employer specialty logistic let me go because there insurance wouldn't cover because of this speeding violation, after I left specialty logistics, I applied for a company called Global express, they wouldn't hire me, in fact, they sent me my MVR, it shows a 47mph in a 30mph Zone., January 31 2015 my car was reposed because I no longer had a truck driver's income; I had to settle for a warehouse job making 8.hr, my CDL is currently suspended,

REMEDY SOUGHT

Judge John Rakowsky void judgment deprived me from pleasurable lifestyle; the salary I'm making now doesn't compare to what I was making as a professional truck driver. When my car was repossessed January 31 2015, it damaged my credit report as well; it shows repossession. 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

JUDICIAL NOTICE

A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law that supports his claim" Liebowitz v Amexco CO 1983 see western United Reality Inc v Isaacs 1984 "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can proof no set of facts in support of claim which would entitle him relief Conley V Gibson" 355 US 41, 45-46, 78 S CT (1957) Burden to show legal insufficiency of petition is on the party moving for dismissal, and motion to dismiss for failure to state a claim must separately state each omission or defect in petition. Indiana Nat. Bank V state Dept of Human services Okla. (1994)

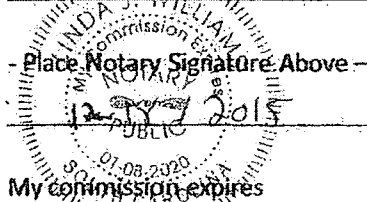
Respectfully submitted

Jamaal A Gittens

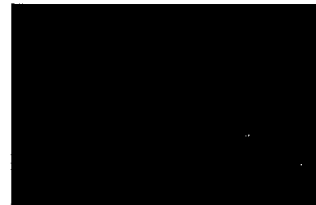
Linda Williams

Type or printed notary name

Linda Williams Seal



01-08-2020 Date



Jamaal A Gittens

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Jamaal Gitten S

Plaintiff

AFFIDAVIT OF SERVICE

BY MAILING

Vs.

(Answer)

Judge John R Rakowsky

Defendant

Docket No 2016 CP 3200 263

Personally Appeared the plaintiff who states that (s) he served the defendant with a copy of the Answer by first class mail by first class mail in the United States Mail, with proper postage attached on _____ addressed as follows

[REDACTED]

CLERK OF COURT
LEXINGTON, SC

2016 MAR 31 A 11:26

FILED

Sworn to before me this

29th day of March -20 16

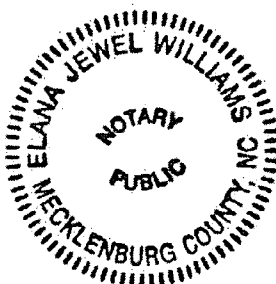
Jelana Jewel Willis

Notary Public of North Carolina


Jamaal Gitten S

Plaintiff

My Commission Expires: September 13, 2020



2016-CP-32-20263

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none">Complete items 1, 2, and 3.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery S. G. RAYMOND 3-25</p>																
<p>1. Article Addressed to:</p> <p>John R. Rakowsky 111 Maiden Lane Lexington SC 29072</p>  <p>9590 9403 0668 5183 5053 61</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table border="0"><tr><td><input type="checkbox"/> Adult Signature</td><td><input type="checkbox"/> Priority Mail Express®</td></tr><tr><td><input type="checkbox"/> Adult Signature Restricted Delivery</td><td><input type="checkbox"/> Registered Mail™</td></tr><tr><td><input type="checkbox"/> Certified Mail®</td><td><input type="checkbox"/> Registered Mail Restricted Delivery</td></tr><tr><td><input type="checkbox"/> Certified Mail Restricted Delivery</td><td><input type="checkbox"/> Return Receipt for Merchandise</td></tr><tr><td><input type="checkbox"/> Collect on Delivery</td><td><input type="checkbox"/> Signature Confirmation™</td></tr><tr><td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td><td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td></tr><tr><td><input type="checkbox"/> Insured Mail</td><td></td></tr><tr><td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td><td></td></tr></table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>2. Article Number (Transfer from service label)</p> <p>7015 0640 0004 8232 1436</p>																	

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

2016-CP-32-D-0263

Lexington Clerk of Court

205 E main streets

Lexington SC 29072

March 28, 2016

Attn:

FILED
MAR 31 11:26
DEBRA DARRIGG
CLERK OF COURT
LEXINGTON, SC

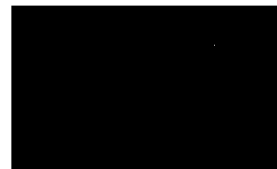
If anyone interferes with the docketing of the documents received by the clerk's office, I consider that they have committed the crime of obstruction of justice, and I will attempt to get criminal charges against them with the District Attorney, and the Grand Jury

Each Document not properly forward is in violation of 18 U.S.C 2076 which provides for a fine and up to one year in jail. Each document concealed destroyed is a violation of 18 U.S.C 2071 and provides for a fine and up to three years in prison. it is settled law that **delivery of a pleading to a proper official is sufficient to constitute filing thereof** Milton V United states 105 F. 2d 253,255 (5th Cir 1939) it was held that **pleading delivered to a deputy clerk at his home at night was thereby filed** Freeman v Giacomo Costa FU Adrea 282 F Supp 525 ED PA (1968) **"The duties of the clerk relating to the filing of complaints are ministerial in nature"** Orr v Culpeper 161 GA App. 801 804(288 S.E 2d 898) (1992)

December 18, 2015 I filed a motion to precede forma pauperis with your administration, the leave was granted, but the judge said that I had to pay the cost of service process. With this letter I'm sending you conformation that the defendant Judge John R Rakowsky has been served, Enclosed is the return receipt (Green Card) along with an affidavit of mailing.

Respectfully submitted

Jamaal A Gittens



Jamaal A Gittens

Elana Jewel Williams

Type or printed notary name

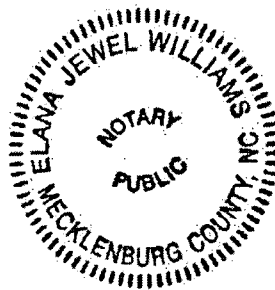
Elana Jewel Williams Seal

- Place Notary Signature Above -

September 13, 2020

My commission expires

March 29, 2016 Date



ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

ANSWER OF DEFENDANT
(Jury Trial Demand)

2016 MAY -2 P 2:00
THOMAS A. CARRIGS
CLERK OF COURT
LEXINGTON SC

JP

FILED

Defendant, by and through the undersigned counsel, hereby answers the Complaint of Plaintiff herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every paragraph of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. The allegations contained in the Plaintiff's Complaint are denied.
3. The REMEDY SOUGHT Paragraph (and any subparts) of Plaintiff's Complaint is denied, including but not limited to any allegations which state that Plaintiff is entitled to relief of any form from Defendant.

FOR A SECOND DEFENSE
(12(b)(6))

4. Defendant asserts that Plaintiff has failed to state facts sufficient to constitute a cause of action; therefore, Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(12(b)(2), 12(b)(4) and 12(b)(5))

5. The Complaint should be dismissed pursuant to Rules 12(b)(2), (4) and (5) of the South Carolina Rules of Civil Procedure because the Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant.

FOR A FOURTH DEFENSE
(Judicial Immunity)

6. The Complaint should be dismissed because the claims are barred by Judicial Immunity.

FOR A FIFTH DEFENSE
(*Res Judicata*)

7. The Plaintiff's claims are barred by *res judicata* as he failed to appear at his criminal trial to raise any of these issues in that forum.

FOR A FIFTH DEFENSE
(Qualified Immunity)

8. The Plaintiff's claims are barred by the Doctrine of Qualified Immunity.

FOR A SIXTH DEFENSE
(South Carolina Tort Claims Act)

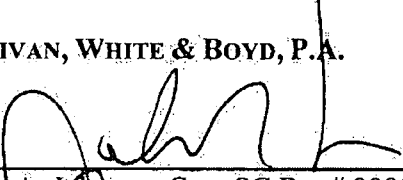
9. Defendant is immune from suit including, but not limited to, the statutory caps on damages pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 et. seq.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

[Signature Page to Follow]

GALLIVAN, WHITE & BOYD, P.A.

By:


A. Johnston Cox, SC Bar # 9081
A. J. Holloway, SC Bar #
PO Box 7368
Columbia, SC 29202
jcox@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

April 29, 2016

Attorneys for Defendant

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2016 MAY -2 P 2:00

FILED

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

CERTIFICATE OF SERVICE

BETHA CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 MAY -2 P 2:00

JP FILED


I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

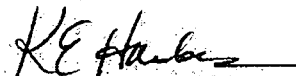
1. Motion to Dismiss; and
2. Answer of Defendant.

PARTIES SERVED:

Jamaal Gittens


Pro Se Plaintiff

Date: April 29, 2016


Legal Assistant

ORIGINAL

Lexington Clerk of Court

205 E main streets

Lexington SC 29072

April 25, 2016

Attn:

If anyone interferes with the docketing of the documents received by the clerk's office, I consider that they have committed the crime of obstruction of justice, and I will attempt to get criminal charges against them with the District Attorney, and the Grand Jury

Each Document not properly forward is in violation of 18 U.S.C 2076 which provides for a fine and up to one year in jail. Each document concealed destroyed is a violation of 18 U.S.C 2071 and provides for a fine and up to three years in prison. it is settled law that **delivery of a pleading to a proper official is sufficient to constitute filing thereof** Milton V United states 105 F. 2d 253,255 (5th Cir 1939) it was held that **pleading delivered to a deputy clerk at his home at night was thereby filed** Freeman v Giacomo Costa FU Adrea-282 F Supp 525 ED PA (1968) **"The duties of the clerk relating to the filing of complaints are ministerial in nature"** Orr v Culpeper 161 GA App. 801 804(288 S.E 2d 898) (1992)

March 24, 2016 defendant Judge John Rakowsky was served with the complaint pursuant to South Carolinas civil procedure Rule 5, 4, the defendant hasn't respond to the complaint within the time allowed pursuant to Rule 12, I Jamaal Gittens is moving for summary judgment, motion to vacate, based on material facts; attached is my motion for summary judgment .

Respectfully submitted

Jamaal A Gittens

Tenisha N. Bryant

Type or printed notary name

Tenisha N. Bryant Seal

- Place Notary Signature Above -

August 10, 2016

My commission expires

April 25, 2016 Date



Jamaal A Gittens

FILED
2016 APR 27 PM 1:00
BETH A. CARRICO
CLERK OF COURT
LEXINGTON S.C.

SP

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COUNTY OF LEXINGTON

JAMAAL GITTENS _____

PLAINTIFF,

Vs.

JUDGE JOHN R RAKOWSKY _____

DEFENDANT

2016CP3200263

2016 APR 27 PM 12:00
BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SD

FILED

JP

MOTION FOR SUMMARY JUDGMENT

PETITION TO VACATE VOID JUDGMENT

SOUTH CAROLINA CIVIL PROCEDURE RULE 60(b)(4)

Comes Now Jamaal Gittens moving for summary judgment, motion to vacate, Judge John Rakowsky hasn't responded within time allowed pursuant to Federal civil procedures rule 12(a). Judge John Rakowsky does not have constitutional grounds to suspend my driver's license for failure to appear, not paying traffic fines

Material Facts

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 courts are bound by the Federal Constitution, "The supreme law of the land" The supreme court stated "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)

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)" Attorney Clifford Koon's Bar membership card does not give him the legal status to file anything, the

certificate from the Supreme Court only authorizes him to represent wards of the state, through sufficient pleadings see Corpus Juris Secundum volume 7 section 4

The supreme Court constantly ruled that standing is a necessary component of subject matter jurisdiction a "plaintiff must allege personal injury traceable to the defendant" See Allen v Wright 463 US 737, 751, (1984) Subject matter jurisdiction requires a competent witness or notarized affidavit demonstrating injury, and a statutory or common law basis for remedy for the injury.

"Without standing, there is no actual or justifiable controversy, and courts will not entertain such cases." Clifford S. v. Superior Court, 45 Cal.Rptr.2d 333,335.

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.

Conclusion

I'm petitioning that this void judgment be vacated, and the sum of one hundred thousand dollars be rewarded for punitive damages. This void judgment has inconvenience me to the highest; my commercial driver's license is currently suspended, I was deprived from pleasurable lifestyle; I wasn't able to routinely provide for my family throughout the holiday's seasons the way I usually do. I had to leave my career field as a professional truck driver just to get this issue resolved; my vehicle was repossessed due to lack of income.

Tenisha N. Bryant

Jamaal A Gittens

Type or printed notary name

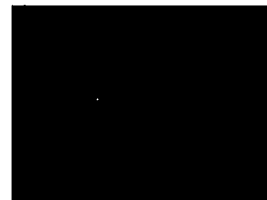
Tenisha N. Bryant Seal

- Place Notary Signature Above -

August 18, 2016

My commission expires

April 25, 2016 Date



Jamaal A Gittens

FILED
APR 20 12:00 PM
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, OH SC

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

NOTICE OF MOTION AND
MOTION TO DISMISS

2016 MAY -2 P 1:59
BETH A. CARRIGS
CLERK OF COURT
LEXINGTON, SC

SP
FILED

TO: *Pro Se* Plaintiff Jamaal Gittens


YOU WILL PLEASE TAKE NOTICE that Defendant, through his undersigned counsel, hereby gives notice of his intent to move, and does so move, for an Order of this Court dismissing Plaintiff's Complaint on the following grounds:

1. The Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant; therefore, the Complaint should be dismissed pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5) of the South Carolina Rules of Civil Procedure.
2. In addition, the Defendant is immune from suit under Judicial Immunity in that he had subject matter jurisdiction to hear the traffic citation issued against the Plaintiff pursuant to South Carolina Code Ann. § 56-5-6150.

Defendant's counsel certifies that consultation with *Pro Se* Plaintiff would serve no useful purpose.

[Signature Page to Follow]

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox, SC Bar # 9081

A. J. Holloway, SC Bar #

PO Box 7368

Columbia, SC 29202

jcox@gwblawfirm.com

(803) 779-1833 Ofc

(803) 779-1767 Fax

April 29, 2016

Attorneys for Defendant

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 MAY -2 P 1:59

FILED

ORIGINAL

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

CERTIFICATE OF SERVICE

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 MAY -2 P 1:59

FILED

SP

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

1. Motion to Dismiss; and
2. Answer of Defendant.

PARTIES SERVED:

Jamaal Gittens



Pro Se Plaintiff

Date: April 29, 2016

Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-32-263

ORIGINAL

Jamaal Gittens,

Plaintiff,

**MOTION AND ORDER INFORMATION
COVER SHEET**

vs.


John R. Rakowsky,

Defendant.

BETH A. CARRIGGS
CLERK OF COURT
LEXINGTON, SC

2016 MAY -2 P 1:59

SP FILED

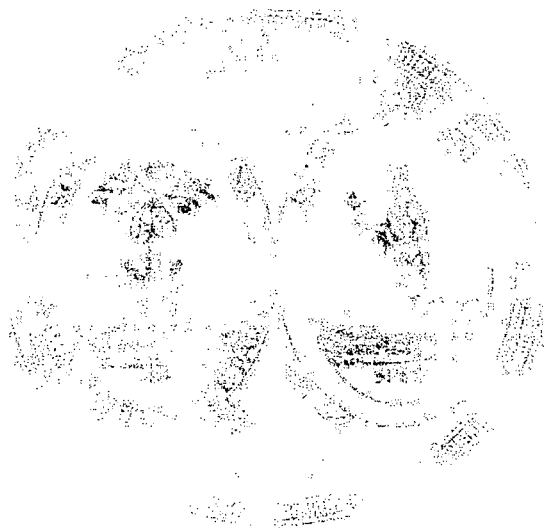
Defendant's Attorney: A. Johnston Cox, SC Bar No. 9081 Gallivan, White & Boyd, P.A. PO Box 7368 Columbia, SC 29202 jcox@gwblawfirm.com (803) 779-1833 Ofc; (803) 779-1767 Fax		Pro Se Plaintiff: Jamaal Gittens 	
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss Estimated Time Needed: 15 Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO			
SECTION II: Motion/Order Type			
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		04/29/2016 Date submitted	
SECTION III: Motion Fee			
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25 <input type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____		Date Filed: _____	

Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From:	Cox, Alfred Johnston PO Box 7368 Columbia, SC 29201	Date: 5/ 2/2016	
		Receipt #: 192813	
		Clerk: jparker	
Paying for:	Rakowsky, Judge John		
Transaction Type:	Payment	Reference #: 160472	
Payment Type:	Check	\$25.00	Comment: Non-Refundable
Total Paid:		\$25.00	

Total Received:	\$25.00
Change Due:	\$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP3200263	Jamaal Gittens VS Judge John Rakowsky	\$25.00	\$25.00	\$0.00



Total Cases:	1	\$25.00	\$25.00	\$0.00
--------------	---	---------	---------	--------

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

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

FILED
JUL 24 2014
CLERK OF COURT
TOWN OF LEXINGTON
SOUTH CAROLINA

Defendant Rakowsky submits this memorandum in support of his motion to dismiss the Complaint. The 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 judicial immunity.

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.

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. This action is frivolous and the Defendant requests that it be dismissed.¹

I. Lack of Service

As an initial matter, Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant. Plaintiff's "proof of service" shows only that he mailed a copy of the Summons and Complaint certified mail addressed to John Rakowsky at the Town of Lexington and that someone other than the defendant signed for receipt of the letter.

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). It was not sent restricted delivery to Rakowsky at his address and was not signed for by him. In addition, Rakowsky states in his affidavit that he never received service of the summons and complaint. Therefore, this action should be dismissed for failure to properly serve the summons and complaint.

II. Judicial Immunity

In addition, the Plaintiff's complaint fails to state a cause of action against the defendant 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).

¹ Plaintiff previously filed essentially the same action in federal court, but it was dismissed by the federal district court prior to service.

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 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 Plaintiff's position that subject matter jurisdiction did not exist is patently absurd.

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*, 1980 S.C. Acts No. 480; 1975 S.C. Acts No. (59) 692 and 2012 S.C. Acts No. 673; 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. § 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. § 5-7-10 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, "Trial of persons charged with violations of ordinances of municipality or laws of State," states,

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

(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 situated upon approval by the governing body of the county.

Furthermore, S.C. Code Ann. § 56-7-10 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.

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, the Plaintiff's basis for this lawsuit fails. The Acts under which code sections 5-7-10, 5-7-90 and 14-25-5 were promulgated 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.

Conclusion

Based upon the foregoing argument, the rules of court and the law of South Carolina, Defendant Rakowsky requests that the Complaint be dismissed for failure to effect proper service and pursuant to Rule 12(b)(6) S.C. R. C. P.

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox, SC Bar # 9081
Alonzo J. Holloway, SC Bar #101755
PO Box 7368
Columbia, SC 29202
jcox@gwblawfirm.com
aholloway@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

Attorneys for Defendant

June 17, 2016

FILED
JUN 20 11 51
CLERK OF COURT
COLUMBIA, SOUTH CAROLINA

2011 S.C. H.B. 4798

Enacted, June 18, 2012

Reporter

2012 S.C. Acts 263; 2011 S.C. H.B. 4798; 2011 S.C. R. 308

SOUTH CAROLINA ADVANCE LEGISLATIVE SERVICE > SOUTH CAROLINA 119TH SOUTH CAROLINA GENERAL ASSEMBLY - 2ND REGULAR SESSION > ACT NO. 263 > RATIFICATION NO. 308 > HOUSE BILL NO. 4798

Synopsis

AN ACT TO AMEND SECTION 5-7-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TRIAL OF A PERSON IN A MUNICIPAL COURT, SO AS TO NO LONGER PROVIDE THAT A MAYOR MAY CONDUCT A MUNICIPAL TRIAL, TO PROVIDE THAT A MUNICIPAL JUDGE MUST CONDUCT A SPEEDY TRIAL OF PERSONS ARRESTED AND INCARCERATED, AND TO REVISE THE PERIOD OF TIME THAT A PERSON MUST BE TRIED AFTER THE DATE OF HIS ARREST.

Text

Be it enacted by the General Assembly of the State of South Carolina:

Municipal court

SECTION 1. Section 5-7-90 of the 1976 Code is amended to read:

"Section 5-7-90.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."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

History

Approved by the Governor on June 18, 2012

Sponsor

McLeod

SOUTH CAROLINA ADVANCE LEGISLATIVE SERVICE
Copyright © 2016 LexisNexis. All rights reserved.

End of Document

ROA0069

[4772641] 1980 S.C. Acts 480 Uniform system of municipal courts
1979-1980 Bill 1004: Uniform system of municipal courts - South Carolina
Legislature Online

South Carolina General Assembly
103rd Session, 1979-1980

Bill 1004

Current Status

Bill Number:	1004
Ratification Number:	584
Act Number	480
Introducing Body:	Senate
Subject:	Uniform system of municipal courts

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A480, R584, S1004)

AN ACT TO AMEND CHAPTER 25 OF TITLE 14, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, RELATING TO MUNICIPAL COURTS, SO AS TO PROVIDE FOR A UNIFORM SYSTEM OF MUNICIPAL COURTS, TO PROVIDE FOR THEIR POWERS AND JURISDICTION, AND PROVIDE FOR THE SELECTION OF MUNICIPAL JUDGES, APPEALS FROM MUNICIPAL COURTS, SELECTION OF JURIES AND PENALTIES FOR FAILURE TO OBEY JURY SUMMONS IN MUNICIPAL COURTS, AND PRESCRIBE THAT THE CHAPTER SHALL APPLG TO CONSOLIDATED POLITICAL SUBDIVISIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Uniform system of municipal courts

Section 1. Chapter 25 of Title 14 of the 1976 Code is amended to read:

"Chapter 25

Municipal Courts

Section 14-25-5. (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.

Section 14-25-15. Each municipal judge shall be appointed by the council to serve for a term set by the council not to exceed four years and until his successor is appointed and qualified. His compensation shall be fixed by the council. Before entering upon the discharge of the duties of his office, each judge shall take and subscribe the oath of office prescribed by Article VI, Section 5, of the South Carolina Constitution. No municipal judge who is admitted to practice in the courts of this State shall practice law in the municipal court for which he is appointed.

Section 14-25-25. A municipal judge shall not be required to be a resident of the municipality by whom he is employed. A municipality may contract with any other municipality in the county or with the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court.

In case of a vacancy in the office of municipal judge, a successor shall be appointed in the manner of original appointment for the unexpired term. In case of the temporary absence, sickness, or disability of a municipal judge, the court shall be held by a judge of another municipality or by a practicing attorney or some other person who has received training or experience in municipal court procedure, who shall be designated by the mayor and take the prescribed oath of office before entering upon his duties.

Section 14-25-35. The municipal clerk or other municipal employee may be appointed to serve as clerk of the court. The clerk of the court shall keep such records and make such reports as may be determined by the State Court

[4772641] 1980 S.C. Acts 480 Uniform system of municipal court Administrator.

Section 14-25-45. Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

Section 14-25-55. The chief of police of the municipality for which a court is established, or someone designated by him, shall attend upon the sessions of the court. The chief of police and the police officers of such municipality shall be subject to the orders of the court and shall execute the orders, writs, and mandates thereof and perform such other duties in connection therewith as may be prescribed by the ordinances of the municipality. The chief of police and police officers shall also be invested with the same powers and duties as are provided for magistrates' constables.

Section 14-25-65. Whenever the municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of such court he may impose a fine or imprisonment, or both, not to exceed two hundred dollars or thirty days.

Section 14-25-75. Any municipal judge may suspend sentences imposed by him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment.

Section 14-25-85. All fines and penalties collected by the municipal court shall be forthwith turned over by the clerk to the treasurer of the municipality for which such court is held.

Section 14-25-95. Any party shall have the right to appeal from

the sentence or judgment of the municipal court to the Court of General Sessions of the county in which the trial is held. Notice of intention to appeal, setting forth the grounds for appeal, shall be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal shall be deemed waived. The party appealing shall enter into a bond, payable to the municipality, to appear and defend such appeal at the next term of the Court of General Sessions or shall pay the fine assessed.

Section 14-25-105. In the event of an appeal, the municipal judge shall make a return to the Court of General Sessions, and the appeal shall be heard by the presiding judge upon such return. The return of the municipal judge shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment. When the testimony has been taken

[4772641] 1980 S.C. Acts 480 Uniform system of municipal courts. By a reporter as provided herein, the return shall include the reporter's transcript of the testimony. The return shall be filed with the Clerk of the Court of General Sessions of the county in which the trial was held and the cause shall be docketed for trial in the same manner as is now provided for appeals from magistrate's courts. There shall be no trial de novo on any appeal from a municipal court.

Section 14-25-115. The council of any municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants. Ministerial recorders shall have the power to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates, but shall have no other judicial power.

Section 14-25-125. Any person to be tried in a municipal court may, prior to trial, demand a jury trial, and such jury when demanded, shall be composed of six persons drawn from the qualified electors of the municipality in the manner prescribed herein. The right to a jury trial shall be deemed to have been waived unless demand is made prior to trial.

Section 14-25-135. The council shall appoint not less than three nor more than five persons to serve as jury commissioners for the municipal court; provided, however, that the council may act as jury commissioners in lieu of appointing such commissioners.

Section 14-25-145. The jury commissioners shall, within the first thirty days of each year, prepare a box to be known as the jury box. Such box shall contain two compartments, designated as 'A' and 'B', respectively.

Section 14-25-155. The jury list of the municipality shall be composed of all names on the official list of qualified electors of the municipality furnished to the municipality by the State Election Commission each year, or copied from the official voter registration list of the municipality.

Compartment 'A' of the jury box shall contain a separate ballot or number for each name on the jury list.

Section 14-25-165. (a) The drawing and composing of juries for single trials or terms of court shall be conducted, mutatis mutandi, according to the statutes relating to the drawing and composing of juries in magistrates' courts, except as otherwise specifically provided by this chapter. A person appointed by the municipal judge who is not connected with the trial of the case for either party shall draw out of Compartment 'A' of the jury box thirty names and the list of names so drawn shall be delivered to each party or to the attorney for each

[4772641] 1980 S.C. Acts 480 Uniform system of municipal court party.

(b) In addition to the procedure for drawing a jury list as provided for in subsection (a) above, in those courts which schedule terms for jury trials, the judge may select a jury list in the manner provided by this subsection.

Not less than ten nor more than twenty days prior to a scheduled term of jury trials, a person selected by the presiding judge shall draw at least forty jurors to serve one week only. Immediately after such jurors are drawn the judge shall issue his writ of venire facias for such jurors requiring their attendance on the first day of the week for which they have been drawn and such writ shall be forthwith delivered to the chief of police, or may be served by regular mail by the clerk of court.

(c) The names drawn pursuant to either subsection (a) or (b) shall be placed in a box or hat and individual names randomly drawn out one at a time until six jurors and four alternates are selected. Each party shall have a maximum of six peremptory challenges as to primary jurors and four peremptory challenges as to alternate jurors and such other challenges for cause as the court may permit. If for any reason it is impossible to select sufficient jurors and alternates from the names drawn, names shall be randomly drawn from Compartment 'A' until sufficient jurors and alternates are selected.

(d) Where a jury is drawn and composed for a single trial, as provided in subsection (a) above, the parties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for the trial.

Section 14-25-175. Upon the adjournment of the court, the clerk having the custody of the names drawn under any method in this chapter shall take the names or numbers of the jurors who appeared and shall return these ballots or numbers to Compartment 'B' of the Jury box, and the ballots or numbers corresponding to the names of the jurors who were unable to appear or who were excused by the municipal judge shall be returned to Compartment 'A' of the jury box. When all names or numbers in Compartment 'A' have been exhausted, the names or numbers from Compartment 'B' shall be returned to Compartment 'A' and thereafter juries shall continue to be drawn therefrom in the manner provided herein.

Section 14-25-185. Any juror who, being duly summoned, shall neglect or refuse to appear in obedience to any summons issued by any municipal court, and shall not within forty-eight hours render to the municipal judge a sufficient reason for his delinquency, may be punished for contempt.

Section 14-25-195. Any party shall have the right to have the testimony given at a jury trial in any municipal court taken stenographically or mechanically by a reporter; provided, that nothing herein shall operate to prevent any such party from mechanically recording the proceedings himself. The requesting party shall

[4772641] 1980 S.C. Acts 480 Uniform system of municipal cou
pay the charges of such reporter for taking and transcribing if such testimony
is recorded by a municipal court reporter.

Section 14-25-205. In the event a consolidated political subdivision is created
under the Constitution and laws of this State the provisions of this chapter
shall apply to the creation and operation of courts for such consolidated
political subdivision mutatis mutandi."

Time effective

Section 2. This act shall take effect January 1, 1981.

2005 S.C. S.B. 596

Enacted, May 23, 2005

Reporter

2005 S.C. Acts 68; 2005 S.C. S.B. 596; 2005 S.C. R. 84

SOUTH CAROLINA ADVANCE LEGISLATIVE SERVICE > SOUTH CAROLINA 116TH SESSION OF THE SOUTH CAROLINA GENERAL ASSEMBLY > ACT NO. 68 > RATIFICATION NO. 84 > SENATE BILL NO. 596

Notice

[A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**

[D] Text within these symbols is deleted **<D]**

Synopsis

A BILL TO AMEND SECTION 56-7-10, AS AMENDED, RELATING TO THE USE OF THE UNIFORM TRAFFIC TICKET BY ALL LAW ENFORCEMENT OFFICERS, SO AS TO DELETE THE PROVISION THAT ALLOWS A LAW ENFORCEMENT AGENCY TO AUTOMATE THE ISSUANCE OF A UNIFORM TICKET IF APPROVED BY THE DEPARTMENT, AND PROVIDE THAT A LAW ENFORCEMENT AGENCY MAY UTILIZE COMPUTERS AND OTHER ELECTRONIC DEVICES TO ISSUE UNIFORM TRAFFIC CITATIONS AND STORE INFORMATION RESULTING FROM THE ISSUANCE OF A TRAFFIC CITATION IF THIS METHOD OF ISSUING A CITATION HAS BEEN APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY; AND TO AMEND SECTION 56-7-30, AS AMENDED, RELATING TO THE PRINTING, ORDERING, AND PURCHASING OF UNIFORM TRAFFIC TICKETS, AND THE FILING OF THE VARIOUS COPIES OF THE TICKET WITH THE APPROPRIATE AGENCIES, SO AS TO PROVIDE THE PROCEDURE THAT A LAW ENFORCEMENT AGENCY THAT ISSUES UNIFORM TRAFFIC TICKETS IN AN ELECTRONIC FORMAT MUST DISTRIBUTE COPIES OF THE TICKET TO VARIOUS ENTITIES.
Amend Title To Conform.

Text

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56-7-10 of the 1976 Code, as last amended by Act 54 of 2003, is further amended to read:

"Section 56-7-10. There will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses:

Offense Citation

Interfering with Police Officer Serving

Process Section 16-5-50.

Dumping Trash on Highway/Private Property Section 16-11-700

Indecent Exposure Section 16-15-130

Disorderly Conduct Section 16-17-530

Discharging Fireworks from Motor Vehicle Section 23-35-120

Damaging Highway Section 57-7-10

2005 S.C. S.B. 596

Place Glass, Nails, Etc. on Highway Section 57-7-20
Obstruction of Highway by Railroad Cars,
Etc., Section 57-7-240
Signs Permitted on Interstate Section 57-25-140
Brown Bagging Section 61-5-20
Drinking Liquors in Public Conveyance Section 61-13-360
Poles Dragging on Highway Section 57-7-80
Open Container Section 61-9-87
Purchase or Possession of Beer or Wine
by a Person Under Age Section 20-7-370
Purchase or Possession of Alcoholic Liquor
by A Person Under Age Twenty-One Section 20-7-380
Unlawful Possession and Consumption of
Alcoholic Liquors Section 61-5-30
Sale of Beer or Wine on Which Tax Has
Not Been Paid Section 61-9-20
Falsification of Age to Purchase Beer or
Wine Section 61-9-50
Unlawful Purchase of Beer or Wine for A
Person Who Cannot Legally Buy Section 61-9-60
Unlawful Sale or Purchase of Beer or Wine,
Giving False Information as to Age, Buying
Beer or Wine Unlawfully for Another Section 61-9-85
Employment of a Person Under the Age of
Twenty-One As An Employee in Retail or
Wholesale or Manufacturing Liquor
Business Section 61-13-340
Failure to Remove Doors from Abandoned
Refrigerators Section 16-3-1010
Malicious Injury to Animals or Personal

2005 S.C. S.B. 596

Property Section 16-11-510
Timber, Logs, or Lumber Cutting, Removing,
Transporting Without Permission, Valued
at Less Than Fifty Dollars Section 16-11-580
Littering Section 16-11-700
Larceny of a Bicycle Valued at Less Than
One Hundred Dollars Section 16-13-80
Cock Fighting Section 16-17-650
Ticket Scalping Section 16-17-710
Glue Sniffing Section 44-53-1110
Trespassing Section 16-11-755
Trespassing Section 16-11-600
Trespassing Section 16-11-610
Trespassing Section 16-11-620
Negligent Operation of Watercraft; Operation
of Watercraft While Under Influence of
Alcohol or Drugs Section 50-21-110
Negligence of Boat Livery to Provide Proper
Equipment and Registration Section 50-21-120
Interference with Aids to Navigation or
Regulatory Markers or Operation of
Watercraft in Prohibited Area Section 50-21-170
Operation of Watercraft Without a
Certificate of Title Section 50-23-190
Parking on private property without
permission Section 16-11-760
Certificate of Veterinary Inspection;
Requirement for Out-of-State Livestock
or Poultry Section 47-4-60
Inhibition of Livestock Inspection Section 47-4-120

ROA0078

2005 S.C. S.B. 596

Imported Swine Section 47-6-50

Operating Equine Sales Facility or Livestock

Market Without Permit Section 47-11-20

Liability of Person Removing Livestock for

Slaughter Section 47-11-120

Notice to Disinfect Section 47-13-310

Quarantine of Livestock or Poultry Section 47-4-70

Unlawful for Horse to Enter State Unless

Tested Section 47-13-1350

Quarantine of Exposed Horses Section 47-13-1360

Proof of Test Required for Public Assembly

of Horses Section 47-13-1370

False Certificates Section 47-13-1390

Unlawful to Feed Garbage to Swine Section 47-15-20

Notification Required from Certain Persons

Disposing of Garbage Section 47-15-40

Sale of Uninspected Meat and Meat Products Section 47-17-60

Sale of Uninspected Poultry and Poultry

Products Section 47-19-70

No other ticket may be used for these offenses. 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 within thirty days of submission by the department. A law enforcement agency may [D] automate the issuance of a uniform ticket if approved by the department <D> [A] UTILIZE COMPUTERS AND OTHER ELECTRONIC DEVICES TO ISSUE UNIFORM TRAFFIC CITATIONS AND STORE INFORMATION RESULTING FROM THE ISSUANCE OF A TRAFFIC CITATION IF THIS METHOD OF ISSUING A CITATION HAS BEEN APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY <A>."

SECTION 2. Section 56-7-20 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 56-7-20. [D] For purposes of this chapter, a <D> [A] EACH TICKET SHALL HAVE A UNIQUE IDENTIFYING NUMBER. EACH PRINTED COPY MUST BE LABELED AT THE BOTTOM WITH THE PURPOSE OF THE COPY. A HANDWRITTEN <A> traffic ticket [D] shall <D> [A] MUST <A> consist of [D] five <D> [A] FOUR <A> copies, one of which [D] shall <D> [A] MUST <A> be blue and [D] shall <D> [A] MUST <A> be given to the vehicle operator who is the alleged traffic violator; one of which [D] shall <D> [A] MUST <A> be yellow and [D] shall <D> [A] MUST <A> be dispatched to the [D] department <D> [A] DEPARTMENT OF MOTOR VEHICLES <A> for its records [A] AND FOR AUDIT PURPOSES <A> ; one of which [D] shall <D> [A] MUST <A> be white and [D] shall <D> [A] MUST <A> be dispatched to the police agency of which the arresting officer is a part; and one of which [D] shall <D> [A] MUST <A> be green and [D] shall <D> [A] MUST <A> be retained by the trial officer

2005 S.C. S.B. 596

for his records [D] ; <D> [A] . <A> [D] and one of which shall be pink and shall be dispatched by the police agency to the department for purposes of audit. Each ticket shall have a unique identifying number. <D> [A] AN ELECTRONIC TRAFFIC TICKET MUST CONSIST OF AT LEAST ONE, BLUE PRINTED COPY THAT MUST BE GIVEN TO THE VEHICLE OPERATOR WHO IS THE ALLEGED TRAFFIC VIOLATOR AND AS MANY AS THREE ADDITIONAL WHITE PRINTED COPIES IF NEEDED TO COMMUNICATE WITH THE DEPARTMENT OF MOTOR VEHICLES, THE POLICE AGENCY, AND THE TRIAL OFFICER. <A> "

SECTION 3. Section 56-7-30 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

"Section 56-7-30. [A] (A) <A> The [D] department <D> [A] DEPARTMENT OF PUBLIC SAFETY <A> shall have the traffic tickets printed. [D] Police <D> [A] LAW ENFORCEMENT <A> agencies shall order tickets from the [D] department <D> [A] DEPARTMENT OF PUBLIC SAFETY <A> and shall record the identifying numbers of the tickets received by them. The cost of the tickets [D] shall <D> [A] MUST <A> be paid by the [D] police <D> [A] LAW ENFORCEMENT <A> agency. The [D] audit copy and the department <D> [A] DEPARTMENT OF MOTOR VEHICLES <A> records [A] AND AUDIT <A> copy [D] shall <D> [A] MUST <A> be forwarded to the [A] DEPARTMENT OF MOTOR VEHICLES <A> within ten days of the disposition of the case by final trial court action or by nolle prosequi. The head of each [D] police <D> [A] LAW ENFORCEMENT <A> agency [D] shall be <D> [A] IS <A> responsible for the forwarding of the [A] DRIVER RECORDS AND <A> audit copies [A] TO THE DEPARTMENT OF MOTOR VEHICLES <A> and for conducting an annual inventory on December thirty-first of all tickets received but not [D] yet <D> disposed of by final trial court action or by nolle prosequi, and for forwarding the results of the inventory on a form prescribed by the [D] department <D> [A] DEPARTMENT OF MOTOR VEHICLES <A> to the [D] department <D> [A] DEPARTMENT OF MOTOR VEHICLES <A> within ten days of the completion of the inventory.

" [A] (B) A LAW ENFORCEMENT AGENCY THAT ISSUES UNIFORM TRAFFIC TICKETS IN AN ELECTRONIC FORMAT AS PROVIDED IN SECTION 56-7-10 MAY GENERATE A PRINTED COPY OF THIS TICKET BY USING AN IN-CAR DATA TERMINAL OR HAND HELD DEVICE. A COPY OF THE TICKET MUST BE GIVEN TO THE OFFENDER. THE AGENCY MAY THEN TRANSMIT THE TICKET DATA ELECTRONICALLY TO THE DEPARTMENT OF MOTOR VEHICLES FOR ITS RECORDS AND FOR AUDIT PURPOSES; THE LAW ENFORCEMENT AGENCY BY WHICH THE ARRESTING OFFICER IS EMPLOYED, AND THE TRIAL OFFICER FOR HIS RECORDS. IF ANY OF THESE ENTITIES DOES NOT HAVE THE CAPABILITY TO ACCEPT THE TICKET DATA SOLELY USING ELECTRONIC MEANS, THE ARRESTING AGENCY MUST PROVIDE THE ENTITY WITH A PRINTED COPY OF THE TICKET GENERATED BY THE IN-CAR DATA TERMINAL OR HAND HELD DEVICE. DATA TRANSMISSIONS TO THE DEPARTMENT OF MOTOR VEHICLES MUST BE MADE PURSUANT TO THAT AGENCY'S ELECTRONIC SYSTEM SPECIFICATIONS. PRINTED COPIES PROVIDED TO THE DEPARTMENT OF MOTOR VEHICLES MUST MEET THAT AGENCY'S DOCUMENT PROCESSING REQUIREMENTS. <A> "

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. Section 56-5-6310 of the 1976 Code is amended to read:

"Section 56-5-6310. The provisions of [D] this chapter, comprising the Uniform Act Regulating Traffic on the highways in this State, <D> [A] CHAPTERS 1, 3, 5, 7, 9, AND 10 OF TITLE 56 <A> shall be applicable to private roads if the owner, including any corporation or homeowners' association holding title to community roads and excluding those only holding easements over such roads, shall file a written consent stating that the undersigned is the owner of the private roads shown on an attached plat and consents to the application of the provisions of this chapter for purposes of highway safety on such private roads. When the road is owned by two abutting owners,

2005 S.C. S.B. 596

both shall consent to the application of this chapter. In the event there are more than two owners of the road, the provisions of this chapter shall apply when a majority of those owners of the total front footage abutting such road shall consent thereto. The consent shall be executed with the same formalities as a deed and with the plat shall be filed with the clerk of court or register of deeds for the county in which the private road is located and with the sheriff of such county. No derivation clause shall be required. Such filing shall not constitute a dedication to the public of such roads nor shall it constitute permission by the owner for the public to use such roads. The written consent shall become effective thirty days from the date it is filed with the clerk of court or register of deeds."

SECTION 6. This act takes effect upon approval by the Governor.

History

Approved by the Governor May 23, 2005

Sponsor

Sheheen

SOUTH CAROLINA ADVANCE LEGISLATIVE SERVICE
Copyright © 2016 LexisNexis. All rights reserved.

End of Document

South Carolina General Assembly
116th Session, 2005-2006

A77, R79, S318

STATUS INFORMATION

General Bill

Sponsors: Senators McConnell and Ford

Document Path: I:\council\bill\dk\3102dw05.doc

Companion/Similar bill(s): 3426

Introduced in the Senate on January 20, 2005

Introduced in the House on February 15, 2005

Last Amended on February 3, 2005

Passed by the General Assembly on May 17, 2005

Became law without Governor's signature, May 25, 2005

Summary: Municipal Incorporation Joint Legislative Committee established

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/20/2005	Senate	Introduced and read first time <u>SJ-8</u>
1/20/2005	Senate	Referred to Committee on Judiciary <u>SJ-8</u>
1/21/2005		Scrivener's error corrected
1/26/2005	Senate	Committee report: Favorable with amendment Judiciary <u>SJ-25</u>
1/27/2005		Scrivener's error corrected
2/3/2005	Senate	Amended <u>SJ-15</u>
2/4/2005		Scrivener's error corrected
2/8/2005	Senate	Read second time <u>SJ-25</u>
2/10/2005	Senate	Read third time and sent to House <u>SJ-20</u>
2/15/2005	House	Introduced and read first time <u>HJ-12</u>
2/15/2005	House	Referred to Committee on Judiciary <u>HJ-12</u>
5/4/2005	House	Committee report: Favorable with amendment Judiciary <u>HJ-45</u>
5/10/2005	House	Requests for debate-Rep(s). Loftis, Sandifer, Chellis, Umphlett, White, Whitmire, Davenport, Hamilton, Talley, Phillips, Skelton, Scarborough, Merrill, Toole, Clemmons, and Hosey <u>HJ-14</u>
5/12/2005	House	Read second time <u>HJ-65</u>
5/12/2005	House	Roll call Yeas-81 Nays-20 <u>HJ-69</u>
5/17/2005	House	Read third time and enrolled <u>HJ-44</u>
5/18/2005		Ratified R 79
5/25/2005		Became law without Governor's signature
6/1/2005		Copies available
6/1/2005		Effective date See Act for Effective Date
6/7/2005		Act No. 77

VERSIONS OF THIS BILL

1/20/2005

1/21/2005

1/26/2005

ROA0082

1/27/2005

2/3/2005

2/4/2005

2/7/2005

5/4/2005

(A77, R79, S318)

AN ACT TO AMEND CHAPTER 1, TITLE 5, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MUNICIPAL INCORPORATION, SO AS TO ESTABLISH A JOINT LEGISLATIVE COMMITTEE ON MUNICIPAL INCORPORATION TO REVIEW THE FILING OF AN AREA SEEKING INCORPORATION AND TO RECOMMEND TO THE SECRETARY OF STATE WHETHER THE MINIMUM SERVICE STANDARDS FOR MUNICIPAL INCORPORATION ARE MET, TO DEFINE "PUBLICLY-OWNED PROPERTY" "CONTIGUOUS" FOR PURPOSES OF MUNICIPAL INCORPORATION, TO PROVIDE FOR THE COMPOSITION OF THE COMMITTEE, AND TO PROVIDE ADDITIONAL REQUIREMENTS THAT A PROPOSED MUNICIPALITY SHALL MEET.

Whereas, municipal boundaries are limited only by the state's statutory law requirements; and

Whereas, some municipalities already extend across county lines; and

Whereas, if a publicly-owned property, such as a road or waterway, is within the exclusive territory of a single municipality, that municipality could extend its boundaries across the State, preventing areas that otherwise meet the statutory requirements for municipal incorporation from attaining local self-governance; and

Whereas, the General Assembly finds and declares that publicly-owned property is for the benefit of all the citizens of the State and not to be used as the exclusive territory of any one municipality. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Joint Legislative Committee on Municipal Incorporation established

SECTION 1. Chapter 1, Title 5 of the 1976 Code is amended to read:

“CHAPTER 1

Incorporation

Section 5-1-10. (A) A municipality having a certificate of incorporation issued by the Secretary of State and a township established by act of the General Assembly are declared to be perpetual bodies, politic and corporate, entitled to exercise all the powers and privileges provided for municipal corporations in this State, and subject to all the limitations and liabilities provided for municipal corporations in this State.

(B) The incorporation or corporate capacity of a municipality or township established by act of the General Assembly must not be attacked in any court in this State except as provided by statute.

Section 5-1-20. As used in Chapters 1 through 17 of this title, unless the context clearly indicates otherwise:

(1) ‘Municipality’ means a city or town issued a certificate of incorporation, or township created by act of the General Assembly.

(2) ‘Publicly-owned property’ means any federally-owned, state-owned, or county-owned land or water area.

Section 5-1-22. The General Assembly finds and declares the following to be the public policy of the State of South Carolina:

(1) publicly-owned property may be incorporated or annexed by a municipality as provided by the state’s statutory law; however, publicly-owned property is for the benefit of all citizens of the State and is not the exclusive territory of any one municipality; and

(2) incorporation or annexation of publicly-owned property does not confer or convey to a municipality control over the publicly-owned property that in any way:

(a) interferes with the superior authority of the federal, state, or county government; or

(b) prevents an area seeking to be incorporated from using the publicly-owned property to establish contiguity as provided in Section 5-1-30(A)(4).

Section 5-1-24. (A) After June 30, 2005, citizens of an area seeking municipal incorporation shall file an application for incorporation with the Secretary of State’s office containing:

(1) a petition setting out the corporate limits proposed for the municipality and the number of inhabitants residing within the

proposed corporate limits, and signed by fifteen percent of the qualified electors who reside within the proposed municipality; and

(2) documentation concerning the minimum service standard incorporation requirements as provided in Section 5-1-30.

(B) Upon receipt of a filing for a proposed municipal incorporation, the Secretary of State shall transfer a copy of the filing to the Joint Legislative Committee on Municipal Incorporation for review.

Section 5-1-26. (A) The Joint Legislative Committee on Municipal Incorporation is created to review the petition and documentation submitted by an area seeking municipal incorporation and to make a recommendation to the Secretary of State whether the area meets the minimum service standard incorporation requirements as provided in Section 5-1-30.

(B) The committee consists of seven members:

(1) two Senators appointed by the President Pro Tempore of the Senate;

(2) two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(3) one person appointed by the Governor;

(4) one city manager or elected city official appointed by the President Pro Tempore of the Senate from a list of three persons recommended by the Municipal Association of South Carolina; and

(5) one county council member or county manager or administrator appointed by the Speaker of the House of Representatives from a list of three persons recommended by the South Carolina Association of Counties.

(C) The members are appointed to serve terms of two years, initially beginning on July 1, 2005, and until their successors are appointed and qualify. A vacancy must be filled in the same manner as the original appointment for the unexpired term.

(D) The committee shall elect a chairman from its membership for a one-year term. The position of chairman rotates among the members.

(E) The committee meets at times and places as it may determine.

(F) Staff for the committee must be provided by the President Pro Tempore of the Senate and Speaker of the House of Representatives.

Section 5-1-30. (A) Before issuing a corporate certificate to a proposed municipality, the Secretary of State shall determine based on the filing submitted and the recommendation of the Joint Legislative Committee on Municipal Incorporation whether the proposed municipality meets the following requirements:

(1) the area seeking to be incorporated has a population density of at least three hundred persons a square mile according to the latest official United States Census, except as provided in subsections (B) through (E);

(2) no part of the area is within five miles of the boundary of an active incorporated municipality, except as provided in subsections (B) through (E);

(3) the area seeking to be incorporated has filed a service feasibility study that has been reviewed by the Joint Legislative Committee on Municipal Incorporation and approved by the Secretary of State;

(4) the area proposed to be incorporated is contiguous as defined and as described in this item. 'Contiguous' means adjacent properties that share a continuous border. If a publicly-owned property intervenes between two areas proposed to be incorporated together, which but for the intervening publicly-owned property would be adjacent and share a continuous border, the intervening publicly-owned property does not destroy contiguity;

(5) the area seeking to be incorporated has filed a proposal for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division. If law enforcement services are by contract, the proposal must indicate which governmental entity provides the service and the estimated compensation for the service; and

(6) the area seeking to be incorporated has filed a proposal demonstrating that at least three of the following services, either directly or by contract, will be provided to the incorporated area no later than the first day of the third fiscal year following the effective date of incorporation:

(a) fire protection at a minimum service level required in regulations promulgated by the South Carolina Fire Marshal;

(b) solid waste collection and disposal;

(c) water supply, water distribution, or both;

(d) wastewater collection and treatment;

(e) storm water collection and disposal;

(f) enforcement of building, housing, plumbing, and electrical codes;

(g) planning and zoning;

(h) recreational facilities and programs; or

(i) street lighting.

(B)(1) When an area seeking incorporation has petitioned pursuant to Chapter 17 the nearest incorporated municipality to be annexed to

the municipality, and has been refused annexation by the municipality for six months, or when the population of the area seeking incorporation exceeds seven thousand persons, then the provision of the five-mile limitation of this section does not apply to the area.

(2) For purposes of item (1) of this subsection, a refusal to annex the area by the municipality includes a statement from the municipality that the area does not meet the statutory requirements for annexation.

(C) The five-mile limit does not apply when the boundaries of the area seeking incorporation are within five miles of the boundaries of two different incorporated municipalities in two separate counties other than the county within which the area seeking incorporation lies, and when the boundaries of the proposed municipality are more than five miles from the boundaries of the nearest incorporated municipality that lies within the same county within which the proposed municipality lies, and when the land area of the territory seeking incorporation exceeds one-fourth of the land area of the nearest incorporated municipality.

(D) The population requirements do not apply to areas bordering on and being within two miles of the Atlantic Ocean and to all sea islands bounded on at least one side by the Atlantic Ocean, both of which have a minimum of one hundred fifty dwelling units and at least an average of one dwelling unit for each three acres of land within the area and for which petitions for incorporation contain the signatures of at least fifteen percent of the qualified electors of the respective areas seeking incorporation.

(E) The five-mile limit does not apply to counties with a population according to the latest official United States Census of less than fifty-one thousand.

Section 5-1-40. (A) The Joint Legislative Committee on Municipal Incorporation shall return the copy of filing to the Secretary of State with a written decision of its recommendation concerning the application for municipal incorporation.

(B) The Secretary of State shall provide the applicant with a copy of the committee's written decision.

(C) A recommendation by the committee or a determination by the Secretary of State that the requirements of Section 5-1-30 have not been met does not preclude the area seeking from submitting a subsequent application.

Section 5-1-50. (A)(1) After receipt of a recommendation from the Joint Legislative Committee on Municipal Incorporation, the Secretary of State shall determine whether the requirements of Section 5-1-30

have been met. If the Secretary of State determines that the requirements of Section 5-1-30 have been met, he shall issue to three or more persons residing in the area of the proposed municipality, a commission empowering them to:

(a) hold an election not less than twenty days nor more than ninety days after the issuance of the commission; and

(b) appoint three managers of election who shall conduct the election.

(2) Notice of the election must be published in a newspaper of general circulation in the community or by posting in three public places within the area sought to be incorporated which contains detailed information concerning the election. The notice must be published or posted not less than five nor more than fifteen days before the date of the election.

(B)(1) At such election, all registered electors living in the area sought to be incorporated must be allowed to vote on the following questions:

(a) incorporation;

(b) name of the municipality;

(c) the form of government;

(d) method of election as prescribed in Section 5-15-20;

(e) whether the election is partisan or nonpartisan; and

(f) the terms of the mayor and council members.

(2) When any of the above questions proposed in an election contain more than two options, the option receiving the highest number of votes will prevail.

(3) If a community votes in favor of incorporation pursuant to this section and selects a form of government in an election, notwithstanding the results of the selections made by the voters as to questions (d), (e), and (f) in item (1) of this subsection, the initial governing body of the incorporated municipality consists of four council members and a mayor, all elected at large in a nonpartisan election for terms of two years.

(C) The managers of election shall conduct the election, unless otherwise provided for in this chapter, according to the general law governing the conduct of special elections *mutatis mutandi*.

Section 5-1-60. The managers of the election shall make their sworn returns of the result of the election to the commissioners. The returns must show the total number of those voting in the election, together with the number of those voting on each question proposed.

Section 5-1-70. The commissioners shall certify the result of the election under oath to the Secretary of State, and if the result is in favor of incorporation, the Secretary of State shall issue a certificate of incorporation to the municipality and the municipality has all the privileges, powers, and immunities and are subject to the limitations provided by law.

Section 5-1-80. Before delivery of a certificate of incorporation, the Secretary of State shall require the production of a receipt from the State Treasurer for the payment of the following incorporation fees for municipalities with a population:

- (1) of one thousand or less, one hundred dollars;
- (2) between one thousand and five thousand, three hundred dollars;
- (3) over five thousand, six hundred dollars.

Section 5-1-90. The certificate of incorporation must be issued to the commissioners who immediately shall provide for the election of municipal officers pursuant to Chapter 15 and in accordance with the certificate as to form of government. Until the municipal officers are elected and qualify, the certificate of incorporation does not become effective and the powers of the municipality must be exercised only by the municipal council when the municipal council is created by election.

Section 5-1-100. (A) When following its incorporation a municipality's population has decreased to less than fifty inhabitants, the certificate of the municipality must be automatically forfeited and void. If a majority of the registered electors of a municipality files a petition requesting the municipal certificate be surrendered with the municipal council, the council shall order an election to determine the question, at which election all qualified electors of the municipality must be permitted to vote, and if two-thirds of those voting vote in favor of surrendering the certificate, the council shall certify the result to the Secretary of State, who shall cancel the certificate issued to the municipality.

(B) If the Secretary of State determines that any previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years, he shall cancel the certificate of the municipality.

Section 5-1-110. A suit to challenge the incorporation procedures of a municipal corporation pursuant to the provisions of Chapters 1

through 17 must be brought within sixty days after the issuance of the certificate of incorporation.”

Severability

SECTION 2. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of Chapter 1, Title 5 of the 1976 Code as amended by this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the chapter, the General Assembly hereby declaring that it would have passed each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective:

SECTION 3. The provisions of this act take effect July 1, 2005; however, the appointment of the members of the Joint Legislative Committee on Municipal Incorporation may be made upon signature by the Governor.

Ratified the 18th day of May, 2005.

Became law without the signature of the Governor-- 5/25/05.

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


CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

Defendant's Memorandum in Support of Motion to Dismiss

PARTIES SERVED:

Jamaal Gittens


Pro Se Plaintiff

Date: June 17, 2016 via U.S. mail
and June 20, 2016 via hand delivery



Legal Assistant

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

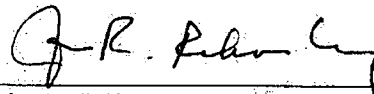
AFFIDAVIT OF JOHN R. RAKOWSKY

FILED
MAY 19 11:49
CLERK OF COURT
LEXINGTON, SC

PERSONALLY appeared before me Defendant John R. Rakowsky, the undersigned, who, being duly sworn, deposes and states as follows:

1. That he is the named Defendant in the above-referenced action.
2. That he has never been served with the Summons and Complaint in the action.

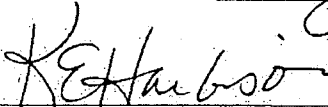
FURTHER AFFIANT SAYETH NOT.



John R. Rakowsky

SWORN TO AND SUBSCRIBED BEFORE ME

this 17th day of May, 2016



Notary Public for South Carolina

My Commission Expires: 7/16/2017

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Jamaal Gittens,

Plaintiff,

vs:

John R. Rakowsky,

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

Affidavit of John R. Rakowsky

PARTIES SERVED:

Jamaal Gittens



Pro Se Plaintiff

Date: May 18, 2016

KE Harrison

Legal Assistant

FILED
MAY 19 11:49
DEPT. OF COURT
LEXINGTON, SC

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COUNTY OF LEXINGTON

FILED

2016 MAY 11 P 1:09

JAMAAL GITTENS _____

PLAINTIFF,

Vs.

BETHA CARRIGG
CLERK OF COURT
LEXINGTON, SC
2016CP3200263

JUDGE JOHN R RAKOWSKY _____

DEFENDANT

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

To Attorney Johnson Cox

Defendants moving for motion to dismissal because he believes that he's immune from suit under judicial immunity, that Title 56 gives him subject matter over traffic affairs, and that he wasn't served pursuant to South Carolinas civil procedures Rule 12;

Reason for Denial of Motion to Dismiss

1 Defendant Judge Rakowsky is not entitled to immunity when he exceeded his jurisdiction" 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, 101 S.CT. 2020(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 Ariz 220, 75 P.2d 689(1938)

FILED
2016 MAY 11 P 1:09

2 John Rakowsky was served with the complaint on March 24, 2016; I have conformation that he was served at 111 maiden Ln, Lexington Sc 29072; his counsel has record of my complaint

DEBRA A. SMITH
CLERK OF COURT
LEXINGTON, SC

3 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... See. 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, 10 223Ga (1967)

Title 56 wasn’t enacted by the General Assembly; The General Assembly cannot create laws that are repugnant to the Federal Constitution, Supreme Court rulings. The Supremes court stated that “people are not subject to law, “which is called code” sovereignty itself is of course is not subject to law, for it’s the author and the source of law “Yick Wo v Hopkins 118 US 356(1886)

The Supreme Court stated that The Term “Persons” does not include the sovereign in common Usage, nor, ordinarily when employed in statues US v Cooper Corp 312 U.S 600(1941) see US V Fox 94 US 315

The Supreme Court stated “the judge of municipal court is acting as an administrative officer not in a judicial capacity when revocation driver’s license, courts in administrating does not act judicially, but merely administratively” Thompson v Smith 155 VA 367. 154. SE. 583, 71 ALR 604.

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) The supreme Court constantly rules that standing is a necessary component of subject matter jurisdiction a "plaintiff must allege personal injury traceable to the defendant" See Allen v Wright 463 US 737, 751 (1984) 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. See Beaufort Realty 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)

FILED
CLERK OF COURT
LEXINGTON, SC

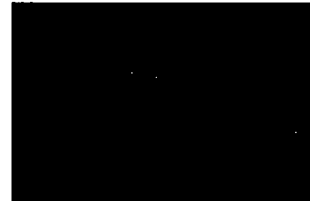
Attorney Johnson Cox stated that my complaint should be dismissed because plaintiff failed to appear at criminal trial to raise any of these issues. " A Party is not in default so long as he has a pleading on file which makes issues in that case that requires proof on the part of the opposite party in order to entitle him to recover Millikan v Booth Okla. 713,46 p 489 (1896)

Defendant Judge John Rakowsky acted under color law, contrary to the Federal Constitution and Supreme Court rulings, which entitles him to suit under 42 USC 1983; defendant Judge John Rakowsky should know the elements of cause of action in a complaint

Ronnie E. Farrow Jr

Jamaal A Gittens

Type or print name
Ronnie E. Farrow Jr Seal
- Place Notary Signature Above -
DUKEHAM COUNTY, SC
24
My commission expires



Jamaal Gittens

5/9/16 Date

STATE OF SOUTH CAROLINA
IN THE COUNTY OF LEXINGTON

FILED
2016 MAY 11 P 1:09

JAMAAL GITTENS _____

PLAINTIFF,

Vs.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC
2016CP3200263

JUDGE JOHN R RAKOWSKY _____

DEFENDANT

OBJECTION TO I FAILED TO STATE THE CLAIM

A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law that supports his claim" Liebowitz v Amexco CO 701 P.2d 140 (Colo. App. 03/28/1985) see western United Reality Inc v Isaacs 679 P.2d 1063 (Colo 1984) "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can proof no set of facts in support of claim which would entitle him relief Conley V Gibson" 355 US 41, 45-46, 78 S CT (1957) Burden to show legal insufficiency of petition is on the party moving for dismissal, and motion to dismiss for failure to state a claim must separately state each omission or defect in petition. Indiana Nat. Bank V state Dept of Human services Okla. (1994) see Haines v Kerner 404 U.S 519 (1972)

Material Facts

1 I had career as a professional truck driver ,when this speeding violation was placed on my MVR, my Employer Specialty logistics had to let me go because there insurance wouldn't cover me; my commercial drivers license is currently suspended

2 Judge Rakowsky acted under color of law, there's no judicial proceedings; cases referenced in law, that allows this type of judicial practice

3 It's been ruled that an "Appearance Ticket is not accusatory instrument and its filing does not confer jurisdiction over the defendant" "people V Gabby 670.N.Y. S.2d 421 (1997) "traffic infractions are not a crime or public offence" people V battle 202 CAL.App.2d 432 (1975)

Lexington Clerk of Court

205 E main streets

Lexington SC 29072

May 9, 2016

Attn:

ORIGINAL
FILED

2016 MAY 11 P 1:01

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

If anyone interferes with the docketing of the documents received by the clerk's office, I consider that they have committed the crime of obstruction of justice, and I will attempt to get criminal charges against them with the District Attorney, and the Grand Jury

Each Document not properly forward is in violation of 18 U.S.C 2076 which provides for a fine and up to one year in jail. Each document concealed destroyed is a violation of 18 U.S.C 2071 and provides for a fine and up to three years in prison. it is settled law that **delivery of a pleading to a proper official is sufficient to constitute filing thereof** Milton V United states 105 F. 2d 253,255 (5th Cir 1939) it was held that **pleading delivered to a deputy clerk at his home at night was thereby filed** Freeman v Giacomo Costa FU Adrea 282 F Supp 525 ED PA (1968) **"The duties of the clerk relating to the filing of complaints are ministerial in nature"** Orr v Culpeper 161 GA App. 801 804(288 S.E 2d 898) (1992)

I received confirmation that defendant John Rakowsky is moving for dismissal, I'm forwarding your administration my opposition on why this civil action shouldn't be dismissed; my opposition, rebuttal, has also been forwarded to defendants counsel Johnston Cox, Gallivan White & Boyd, PA

Respectfully submitted

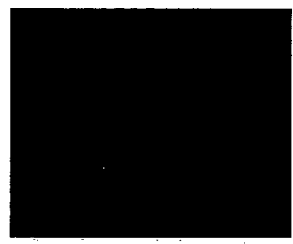
Ronnie E. Farrow Jr

Type or print name

NOTARY SEAL
RONNIE E. FARROW JR
NOTARY PUBLIC
SOUTH CAROLINA
Seal
- Place Notary Signature Above -

My commission expires

5/9/16 Date



Janet M

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-1627

RECEIVED

NOV 02 2017

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-263
G. Thomas Cooper, Circuit Court Judge

Jamal Gittens.....Appellant

vs.

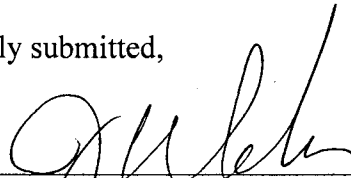
John R. RakowskyRespondent

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certified that the Record on Appeal complies with Rule 211(b), SCACR and the August 31, 2007 Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

Respectfully submitted,

By:



A. Johnston Cox, Esq. (SC Bar #9081)
Jessica A. Waller, Esq. (SC Bar #100256)
Alonzo J. Holloway, Esq. (SC Bar #101755)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

Attorneys for Respondent John R. Rakowsky

Columbia, South Carolina
November 2, 2017