The South Carolina Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2017-CP-10-3226

State of South Carolina
County of Charleston
North Charleston, Respondent,

v.

John G. Singletary Jr., Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On January 26, 2010, Appellant was accused by North Charleston police of solicitation of prostitution. The arresting police officer issued Uniform Traffic Ticket Number 70055FB and set a bond amount on the ticket of $470.00. Appellant was then transported to the Charleston County Jail, where the $470.00 bond was paid and the Appellant was released that same day, January 26, 2010. At no time was the accused ever told he had the right to counsel, and no warning was ever given for trial in absentia. Bond hearings in South Carolina require the accused to sign in writing their acknowledgement of notice and warning of absentia requirements, or the bond judge to sign a written statement they did in fact notice the accused if he fails to sign the statement in writing. Neither was done in this matter. Violations of these precepts contravene rights protected under the 5TH, 6th, and 14th Amendments in the United States Constitution and the South Carolina Constitution.

Appellant timely submitted a Rule 5 / Brady motion with the Respondent on January 28, 2010, two days after being charged. Appellant received no documentation responsive to his motion and attended his trial date of February 23, 2010. At that court date, the prosecution requested a continuance, which was granted, and the Appellant was told he would be notified of a new court date. A check for a bond refund in the amount of $470 was the only communication Appellant ever received from Respondent in the following months. At that time Appellant considered the matter closed, resolved in his favor.

In 2015, Appellant learned that North Charleston was claiming it convicted him of the solicitation of prostitution charge. Appellant immediately filed – beginning in 2015 – multiple requests with Respondent (North Charleston and the magistrate's office) for case-related documents, including through South Carolina's Freedom of Information Act (FOIA). In March of 2016, a case

history was printed by North Charleston and sometime thereafter was provided to Appellant. It was obvious to Appellant that the history was inaccurate in several ways (set forth *infra*). Into 2017, Appellant continued requesting documents, including the "disposition sheet," which he had been requesting by name since 2015.

On May 26, 2017, North Charleston provided Appellant with what purported to be a disposition sheet, albeit with several tape-whited-out areas modifying the original. (See Appeal to Circuit Court, Disposition Sheet / Ticket.) Notably, Respondent admits the ticket was altered (Nov. 13, 2017, Hr'ng. Tr. 13:25-14:6). Nevertheless, finally having the closest thing Appellant figured Respondent was going to provide to a what should have been a reliable disposition sheet, Appellant requested a new trial on May 31, 2017. Municipal Judge Samuel M. Coleman denied the request on June 15, 2017, and Appellant filed the notice of appeal with the Ninth Circuit on June 23, 2017.[1]

Appellant moved for subpoena or discovery power and sought *mandamus* for Municipal Judge Coleman to cure the deficiency in the municipal return to Circuit Court, as the return was a one-page note with the same doctored disposition sheet Appellant had submitted as an exhibit to the new trial request. The municipal return was only those two pages; it did not include even a copy of any other portion of the file in the case. South Carolina statutes mandate a Summary Court Retention Schedule for municipal court documents, which, if followed, would have allowed Municipal Judge Coleman to access all the case documents anytime before the year 2025, which should all have been included in the return.

The Circuit Court held a hearing November 13, 2017, and having multiple questions that called for speculation as a result of not having a complete record from the municipal court, denied

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1 COUNSEL FOR APPELLANT STATED THIS INCORRECTLY IN CIRCUIT COURT, FORGETTING THE MOTION FOR NEW TRIAL FILED IN MUNICIPAL COURT.

Appellant's requested relief, which was for the municipal judge to cure the return, for discovery and to remand the case to municipal court for a new trial. This appeal timely followed.

STATEMENT OF THE FACTS

Appellant resides in North Charleston, where his next-door neighbor is Patrick Percy, a personal friend of long-time North Charleston Mayor, R. Keith Summey. In 2009, Mr. Percy and the Appellant suffered a real property boundary line dispute. This arrest occurred a month or two thereafter. On the day after the arrest at issue in this appeal, on January 27, 2010, the Appellant was checked in at 2:10 PM by the U.S. DOJ employee to a federal office in Columbia S.C, for an unrelated matter. This conflicts with the purported North Charleston Case History, which indicates that Appellant was still in custody through January 31, 2010 – one of several ways the North Charleston records verifiably differ from reality. Charleston County Detention Center records also verify that Appellant made bail and was released the same day he was charged, January 26, 2010.

Appellant appeared at the court date noticed on the ticket: February 23, 2010, and did not request any continuance; the City of North Charleston requested a continuance due to their failure to comply with the Appellant's written request for Rule 5 – a proper return from the municipal judge might well have shown this, but the municipal return was limited to a single-page note focusing on the number of days between May 4, 2010, and May 31, 2017, even though the permanent retention schedule required of municipal court documents might have yielded much more information.

Other purported municipal court records presented to the Circuit Court and relied on by the Circuit Court, seem to indicate additional court dates. Those documents suggest Appellant was notified by phone by a "Linda" one time and a "Burgess" another time, although there are three subsequent court dates, not two. However, these two supposed phone notifications never happened: no "Linda" or "Burgess" or anyone else called and notified Appellant of a North Charleston court date on this charge at any time.

Some months later, the Respondent returned to Appellant a $470.00 bond refund for ticket number 70055FB. Bond returns equate to exoneration of all charges. In addition, no record of any conviction was ever given to SLED as required by law in all conviction regarding the crime in question, and further, the South Carolina Budge Finance Dept. states they have no conviction fee ever surrendered to them in association with ticket 70055FB. In Circuit Court, what Respondent handed to the judge was a prospective allocation of the ticket fees, not an actual record of what was paid out by Respondent (Nov. 13, 2017, Hr'ng. Tr. 10:5-9).

In or around October of 2015, Appellant learned from a private third-party – significantly, not North Charleston – that North Charleston was alleging that it convicted Appellant of the 2010 charge in question. Appellant quickly took action, repeatedly requesting a disposition sheet, beginning in 2015. At some point Appellant received North Charleston's purported Case History, which was obviously wrong and inaccurate to Appellant in other verifiable ways as mentioned above – and again Appellant requested the disposition sheet, which he believed would finally tell the story of what had happened. In mid-2017, during yet another in-person request to the North Charleston Clerk of Court, after a twenty-five minutes wait, a clerk emerged with a copy of a disposition sheet that on its face showed whiteout of at least nine sections. This was a copy of the ticket, not the original, which original would be susceptible to inspection beneath the whited-out areas. That was on May 26, 2017, when the Appellant's efforts after years yielded a disposition sheet that on its face was grossly altered and the information on the document changed to have the reader believe something other than the original information. The document – which Respondent would later admit in Circuit Court was in fact altered – was new and was never presented previously to Appellant at any time prior to May 26, 2017. Nevertheless, it purported to be a disposition sheet, so the Appellant moved

for a new trial and when that was denied he filed this appeal to Circuit Court.

ARGUMENT

By refusing to provide anything resembling the full municipal record, the municipal return undercuts Appellant's access to documents necessary and essential to this instant appeal. Appellant is appealing not only the municipal return claiming lack of jurisdiction, ***Appellant is primarily appealing the original purported conviction that Respondent claims occurred in 2010.***

The Municipal Court's Failure to Notify Appellant of Trial Date Violated Procedural Due Process

Appellant did not receive notice of any court date other than the February 23, 2010, date, at which he appeared. At that hearing, Respondent told Appellant that the case was continued but did not inform Appellant of the new court date at that time; instead Respondent told Appellant it would notify him later of the new court date – even the Case History (Circuit Court Hr'ng, Court's Exhibit 2), which is inaccurate in several other ways, supports this fact at the entries dated February 23, 2010, and February 26, 2010. It must be noted that the inaccuracies in the Case History include material information such as Appellant's address (noted in the Case History incorrectly at 2937 Alabama Drive, a years' prior address, compared to the correct address listed on the ticket / disposition sheet of 4321 Waterview Circle); and also the date Appellant bonded out of custody (noted in Case History as January 31, 2010, but records from the jail show Appellant bonded out on January 26, 2010 and federal records corroborate Appellant being in a federal office on January 27, 2010). Entries from this unreliable and inaccurate Case History document indicate that someone named "Linda," a.k.a. "LB," phoned Appellant to notify him of the new court date on February 25, 2010, two days after the initial court date. Respondent's counsel claimed in Circuit Court that if a municipal court appearance is continued, then Appellant would have received notice "either by

telephone or in writing." (Nov. 13, 2017, Hr'g. Tr. 14:16-17.) Appellant asserts that telephone notice alone would be unconstitutional.

Respondent likely agrees, because when the Circuit Court asked about notice to Appellant of the May 4, 2010 date, the ultimate court date at which the Respondent claims the case was disposed, Respondent's counsel stated: "Clerk's office says that they sent a written notification of the new trial date, that they no longer have a copy of it because it's not something we were required to -" (Nov. 13, 2017, Hr'ng. Tr. 12:13-17). It is revealing that even before being asked for a copy of it, Respondent's counsel was making an excuse for why Respondent did not have the written notice, seeming about to say it was not something they were required to keep, but that would be completely inaccurate according to the retention requirements which would have required all documents to be kept until at least 2025 (Summary Court Retention Schedule). That some unnamed person at the North Charleston Clerk of Court's office said they wrote to Appellant more than seven years prior to notify him of the May 4, 2010, court date at which his case was purportedly disposed (Nov. 13, 2017, Hr'ng. Tr. 12:13-17) – an alleged letter that is not even noted on Respondent's own self-serving Case History document, that a clerk would remember, without documentation, such a routine letter sent seven years earlier, just when Respondent needs such a claim, is beyond reasonable belief. The sheer number of criminal defendants to whom such a clerk must send letters on a regular basis – or calls, if that is indeed the municipal court's procedure – is staggering, and to think that without noting it or documenting it to protect the defendant's Constitutional rights, to think the clerk would remember one particular letter among so many letters sent before and since, then the clerk would be Rain Man and should have provided an affidavit that included the address to which the purported letter was sent, because the address on the case history was wrong, outdated before 2010, and differed from the

correct address, which was listed on the ticket.

Interestingly, ***just as the municipal court had Appellant's mailing address wrong, the only phone number it had for Appellant – still listed incorrectly – was for the house phone at Appellant's years' prior address, no longer a working number to reach Appellant in 2010***. There was no phone number – and no field for a phone number – on the 2010 ticket, which makes one wonder how the municipal court telephones its criminal defendants. Apparently failing to realize Respondent had no valid number for Appellant in 2010, Counsel for Respondent stated in Circuit Court that Appellant was notified of court dates multiple times by phone.

The Case History document fails to indicate whether Appellant attended the March 9, 2010, municipal court hearing (Appellant did not know about it and so did not attend), but two days before the next hearing, which occurred on April 14, 2010, the Case History notes on April 12, 2010, "NOTIFIED BY BURGESS." It is silent as to the method of the April 12, 2010, notice, and consistent with the balance of this intriguing document no actor of Respondent is identified sufficiently to be questioned about what happened – tellingly, not even the pre-set field for a judge's name is completed anywhere on the document (also relevant below for the whited-out judge's signature on the disposition sheet). Even if Respondent had tried to notify Appellant on April 12, 2010 (which is disputed), and had accomplished personal notice that same day, ten days is the minimum Constitutional notice required for criminal court dates. That leaves Respondent eight days short. The truth is that Appellant was never informed of the April 14, 2010, court date and so he did not go to court that day. The Case History corroborates Appellant's absence, "NO SHOW FOR PRIOR COURT." Nor was notice of any kind – written, verbal or digital – provide to Appellant of the ultimate court date, May 4, 2010, the day Respondent claims to have found him guilty in absentia

or forfeited Appellant's bond.

Telephone notice, even if it had been provided (which of course would require Respondent to have had Appellant's phone number) – and even if allowed by the municipal rules, as the Respondent claimed in Circuit Court (but which rule the Appellant was unable to find) – does not satisfy Constitutional notice requirements generally and fails in this case specifically. For non-felony charges, the Fifth Amendment's provision of due process is satisfied by written notice being sent to an accused's address of record or attorney. Here, Respondent does not even claim to have done that, and the Appellant was unrepresented in the municipal court in 2010. Instead, Respondent claims in the Case History one phone call by an employee – inadequately named to actually identify "Linda" – for a March 9, 2010, court appearance. That was two court dates, and two months, prior to the ultimate May 4, 2010, disposition date, and does not indicate who was reached by phone – whether it was supposedly the actual Appellant or his wife or child, or a voicemail, or some completely unknown party because perhaps Respondent used the wrong phone number, like Respondent's mailing address error.

And of course, there is also Respondent's verbal claim in Circuit Court that a clerk employee of Respondent remembered seven years later specifically mailing notice to Appellant ahead of the penultimate court date to notify him thereof. All with no documentation or notes to support the unbelievable assertion, and with no specificity as to when this supposed letter was sent, be it two weeks, two days or two hours before the trial in absentia. This assertion by Respondent, not made in the brief to the Circuit Court or elsewhere, is unmeritorious, at best.

Also unmeritorious is Respondent's verbal assertion that Appellant had a "duty to maintain a contact with the [municipal court] and information on his criminal charges." (Nov. 13, 2017, Hr'ng.

Tr. 22:2-3.) A criminal defendant's duty to contact a court where charges are pending against him is limited to keeping the court up-to-date with his current mailing address. Here, the municipal court already had Appellant's correct address on the ticket, which was his correct address at all relevant times. Further, the municipal court informed Appellant at the one hearing of which he was ever aware, and which he attended, on February 23, 2010, that Respondent would notify Appellant of the next court date. ***Appellant was not informed of the next court date while in court on February 23, 2010.*** Appellant was never asked to contact the Respondent to check and see if a court date had been set. Quite the contrary, the Respondent gave Appellant particular reason to rely on the Respondent to provide notice of the next court date. *Pro se* criminal defendants cannot and should not be imputed a knowledge of the workings of a particular clerk or court's offices, regardless of whether a judge supposes they are familiar to some degree with court proceedings. Here, Appellant had no duty to contact the municipal court and ask when his next court date would be, and given the circumstances, a reasonable person would likely not have made inquiry either, and instead would have relied on the court to provide notice as Respondent said it would.

Further, Appellant recalls receiving a bond refund check in the amount of $470 and believed then and still believes to this day that the refund was the end of the prosecution against him in this matter. Therefore, even if a criminal defendant does have some duty to periodically check-in with the court where a prosecution is occurring, here, either the Respondent's promise to notify Appellant of his next court date or/and the Respondent's reasonable belief that his bond money was refunded make it understandable that Appellant would not follow-up to inquire in 2010 about a new court date.

In conclusion, a municipal rule that would allow for phone notice of a court date to a

criminally accused would fail Constitutional scrutiny as violative of the Fifth Amendment's provision of procedural due process. No notice, phone or otherwise, was provided to Appellant of any court date except the February 23, 2010, date, at which he was specifically told by Respondent that he would be notified of the next court date. Significantly, at no time did Respondent tell Appellant that a trial would go forward in Appellant's absence if he failed to be present in court. *See* S.C.R.C.P. 16; *see also State v. Castineira*, 341 S.C 619, 535 S.E.2nd 449 (Ct. App. 2000), *State v. Jackson*, 288 S.C. 94, 341 S.E.2d 375 (1986). Less than three months later, Appellant was purportedly convicted in his absence, without ever having received the promised notice – the Constitutional notice – or the Rule 5 materials he requested from Respondent. As adequate notice was not provided, no trial should have gone forward, and the purported conviction must be overturned and a new trial granted; in short, the case should be sent back to the municipal court.

Proceeding With Trial In Absentia While Rule 5 Remained Unanswered Violated Substantive Due Process

Two days after the charge, on January 28, 2010, Appellant submitted a request under Rule 5 of the S.C.R.C.P. for documents, photos, videos or statements that were either material to the preparation of his defense or intended for use by the prosecution as evidence in trial (Circuit Court Hr'ng. Exhibit 3). Although Respondent admits it has a video showing the alleged interaction that formed the basis of the municipal charge (Nov. 13, 2017, Hr'ng. Tr. 20:14), that nor any other Rule 5 production was ever provided to Appellant – not within thirty days of the request as Rule 5 requires, and at no time prior to the purported conviction in absentia (or bond forfeiture) on May 4, 2010. Respondent asked the Circuit Court to assume it complied with the Rule 5 request and assume that it produced the relevant documents to Appellant, because it lacks records. (Nov. 13, 2017, Hr'ng. Tr.

21:10-18.) That is asking too much when balanced against a criminal defendant's Constitutional rights to receive the evidence in their case, including exculpatory evidence, and to confront accusers. Additionally, the Summary Court Records Retention requirements would preserve until 2025 receipts indicating the provision of Rule 5 materials, of which there apparently are none in this matter.

Here, it is a near certainty that the video and other documents withheld by Respondent contain material information such as names of alleged witnesses, including those who made the video, and the name of the person allegedly solicited for sex – a person who the later-obtained incident report (See Exhibit of Appellant's Circuit Court Motion for Subpoena Power or Limited Discovery) identifies inconsistently as a "juvenile complainant" and an "undercover officer." Under the Constitution, the Appellant would be entitled to the name of this mysterious juvenile undercover officer, the video, and much other similar information, prior to any trial in the matter. (And if the alleged complainant was actually a juvenile, then soliciting a juvenile is a felony charge and the magistrate court never had jurisdiction.) Respondent's failure to provide this information prior to trial is the second reason this matter should be remanded for a new trial.

Appellant Had No Adequate Notice of Conviction Prior to May of 2017

In 2015, Appellant learned of the claimed conviction from a news outlet during a hotly contested mayoral race in which he was a leading contestant against the incumbent Mayor Summey. From the baseless, "alternative fact" politics common these days, Appellant reasonably believed that he should first verify the claim prior to filing motions or appeals. The question in Appellant's mind at the time: was this mudslinging or something more sinister?

South Carolina mandates that judicial orders are not in effect until they have been signed and

stamped by the clerk, i.e. entered into the record. The disposition for this case was not entered into any record as a final disposition any time prior to May 26, 2017. For nearly two years, from autumn of 2015 through May of 2017 – during which time Respondent insisted in open court (Federal Case No. 2:15-cv-04463) that they had previously produced all municipal documents – the Respondent stated it had no disposition sheet. Then, somehow, Respondent produced a copy of a disposition sheet on May 26, 2017, with the original signing judge's signature and date whited out, along with at least seven other fields also whited out. The S.C. Rules require judges to issue court dispositions promptly, but here it took seven years for a disposition sheet, and upon receipt Appellant immediately filed for new trial and then when that was denied, promptly appealed.

The triggering point for a post-trial appeal in accordance with Rule 29 is ten days after written notice. Even in the municipal procedure, S.C. Code §§ 22-3-1000 and 14-25-95, cited by the municipal judge, the time for an appeal begins only after the "rendering of the judgment." As with Circuit Court orders, a municipal court order pronounced outside a person's presence is not rendered effective until it is signed and filed with the clerk, at the very earliest, and most likely not before the absent person receives a copy of the filed order. Here, Appellant asked – in all the correct and proper ways – the Respondent for a disposition sheet immediately when he heard the third-party report of the conviction, but Respondent informed him there was no such document. Appellant asked again and asked in other ways, such as FOIA requests, over the next several months, but always got an equivalent answer from Respondent: "we don't have that; there is no such document in the file." Consequently, as no disposition sheet existed (evidenced by the absence of production upon many multiple requests) prior to May 26, 2017, there was no rendering of judgment prior to that date. Therefore, the earliest judgment could have been rendered was May 26, 2017, and Appellant's

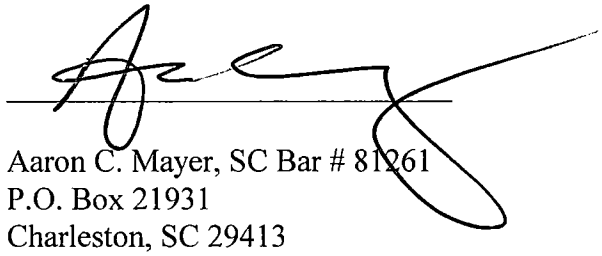
motion for new trial and appeal to Circuit Court was timely.

If this is a mere bond forfeiture and nothing more – and Appellant contends, in the alternative, that there was never a trial in absentia – a later trial demand by the defendant/Appellant may entitle him to a trial at a later date. (South Carolina Summary Judges Bench Book Trial Procedures.) The S.C. Bench Book procedure goes on to state that bond forfeitures are equivalent to convictions only when the legislature has specifically written such in the wording of the statue. The South Carolina statue for solicitation of prostitution is completely void of any such wording. Therefore, even if there was a bond forfeiture, which Appellant specifically disputes, that does not equate to a conviction in a solicitation of prostitution case, and the new trial Appellant is requesting here is the proper relief.

Because this is a serious matter of the Appellant's Constitutional rights being violated in the municipal court, *coram nobis*, *mandamus*, and a new trial are all appropriate avenues to remedy.

PRAYER

For the above-state reasons, Appellant asks this Court to protect Appellant's Constitutional rights, to hold that the original notice of municipal court was unconstitutionally lacking, and to remand this case back to the lower court for discovery and a new trial.



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June 27, 2018
Charleston, SC

THE STATE OF SOUTH CAROLINA
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John Gilbert Singletary, Appellant,

v.

The State, Respondent,

Appellate No. 2017-002621

PROOF OF SERVICE

I, Aaron Mayer, certify that on this the 27th day of June, 2018, I have served the within Initial Brief of Appellant and Designation of Matter – previously sent by email earlier in the month – by first-class mail, postage pre-paid, Robin Jackson, Esq., Senn Legal, LLC, P.O. Box 12279 Charleston, SC 29422.

June 27, 2018
Charleston, SC

Aaron Mayer, Attorney for Appellant