The South Carolina Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No. 2017-CP-10-3226

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SC Court of Appeals

Appellate Case No. 2017-002621

John G. Singletary Jr.,

Appellant,

v.

State of South Carolina
County of Charleston
North Charleston,

Respondent

REPLY BRIEF OF APPELLANT

Aaron C. Mayer, SC Bar # 81261
P.O. Box 21931
Charleston, SC 29413
T: (919) 699-6950
F: (888) 446-3963
aaron@mayerlawpractice.com

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

I. IT WAS REASONABLE FOR APPELLANT TO RELY ON HIS 2012 AND 2016 SLED REPORTS, WHICH SHOW NO CONVICTION OF THE CHARGE AT ISSUE HERE, UNTIL HE RECEIVED THE DISPOSITION SHEET ON MAY 26, 2017

The Appellant, through his undersigned counsel of record, asks this Court to appreciate the difference between a political adversary in a hotly contested election alleging something that seems outlandish versus a reliable government document demonstrating something – here that something being a conviction. The first is but a rumor, which may trigger a prudent person to investigate, but which constitutes no sort of notice: not actual, not personal, not constructive. Through Freedom of Information Act (FOIA) requests and other avenues, Appellant actively and aggressively sought additional information from Respondent to confirm or deny the mayoral-race contention that he had been convicted of solicitation. Respondent offered a mish-mash of non-determinative documents – the one on which Respondent relies most being the docketing sheet (referred to by Respondent as "Municipal Court Case History"), which Respondent admits in its own brief is incorrect and unreliable – but failed to provide anything resembling a disposition sheet until May 26, 2017, from which this appeal was taken.

Respondent's brief supports the need for a new trial by admitting that the Appellant never had a bond hearing below; by further confirming that not only has the disposition sheet been altered (Hrg. Tr. 13:25-14:3), but also by admitting that the docketing sheet has several errors and is therefore similarly unreliable (Br. of Respondent at 1); and by contending, erroneously, that a conviction for this showed up on the Appellant's SLED report (it did not, as evidenced by the SLED report submitted in federal court exhibits and to be offered as supplemental evidence here). First, the absence of a bond hearing: Respondent writes that Appellant "was booked...paid $470.00, the full

amount of the potential fine, and was released without the need to wait for a bond hearing." (Br. of Respondent at 1.) The way it is phrased, one would almost think Respondent did Appellant a favor by failing to explain nature of the charge against him, failing to explain the possible penalties, failing to tell him his Miranda rights, failing to tell him that he has a right to be present at his trial, failing to warn him that a trial would proceed in his absence if he fails to attend court, and by failing to obtain Appellant's acknowledgment in writing that he has received the foregoing notices – and by failing to have a judge file a statement, in writing, that the Appellant was provided the forgoing notices. But it was no favor to Appellant at all, as it violated South Carolina procedure (S.C. Summary Court Bench Book, § E 3, available at https://www.sccourts.org/summaryCourtBenchBook/display chapter.cfm?chapter=CriminalE) and deprived him of all that information.

With Respondent's concession that Appellant never had a bond hearing, additional inaccuracies in the docketing sheet (the Municipal Court's Case History) become apparent. In the initial brief, Appellant described some of the inadequacies of this two page case history document, now we must add to those the fact that all five entries on the second page of this document are wrong, unreliable and mysterious. Going from bottom to top, the earliest entry of 01/26/2010 says "Bond 96574 was set in the amount of $470.00 by...." That is wrong because Respondent admits that no bond was set. The next chronological entry of 01/27/2010 says "9:00 am Court event: Bond Hearing...." Here again, Respondent specifically disavows the accuracy of the written document Respondent contends that Appellant should have relied on to file court pleadings (i.e. appeal). The third chronological entry, 01/31/2010 says "9:00 am guthris recorded the following Case Action Note: BONDED OUT." But if Respondent never provided Appellant with a bond hearing, then by law he could not have been detained more than twenty-four hours. Appellant was in fact released on

January 26, 2010 at 6:58 p.m. according to Charleston County Detention Center records, which are consistent with Appellant's recollection, and which prove this third entry on Respondent's Case History is just plain wrong. The next two entries, both of 02/03/2010, indicate that a payment was made or received in the amount of $470.00 on February 3, 2010 – a full week wrong from the actual payment date and release date of January 26, 2010. Appellant insists that other portions of this Case History are wrong or inaccurate, carrying over to the error under entry 02/23/2010 saying Appellant "req. a cont. on 2-23-10...fwd Linda/Def notified by phone of new court date and time. LB 02/25/2010." Appellant did not request a continuance, Respondent did. And as discussed in the initial brief, how could Respondent have effectively notified Appellant by phone of an upcoming court date when all Respondent had was an outdated phone number? Appellant was never asked for a phone number by Respondent, and had no idea that notice of court could possible be done by phone. Respondent's statements in the case history / docket sheet related to providing Appellant telephone notice are similarly wrong, inaccurate and false.

Rather than an actual case history, Respondent's "Case History" document is so rife with wrong statements, inaccuracies and falsehoods that one wonders when it was created. It would be exceedingly rare and unusual for such inconsistencies to occur contemporaneously with the events they were supposedly recording. Yet this is the document, debunked by Respondent itself, that Respondent would have this Court rely on, would have this Court tell a mayoral candidate that he should have relied on prior to May 26, 2017 to file an appeal of this "conviction."

South Carolina Law Enforcement Division (SLED) maintains databases of criminal convictions, which all South Carolina courts must help maintain by reporting criminal convictions. "Each municipal judge shall report the disposition of each criminal case to the State Law

Enforcement Division within five days, weekends and holidays excluded." S.C. Code § 14-25-250 (A). As with other back-end portions of the conviction that Respondent did not report to central authorities, neither did Respondent report this "conviction" to SLED within the five days required from the date of the alleged conviction, May 6, 2010. **This is evident from a SLED report run nearly two years later, on March 14, 2012, which shows the 2010 arrest for solicitation, and shows no disposition, i.e. no conviction**. It is enough that this report shows no conviction: enough to support a ruling from this Court for Appellant to have a new trial or void the entire process of the municipal court (as no trial was ever conducted). **A SLED report run on Appellant in 2016 which shows the same thing: the 2010 arrest for solicitation, but no conviction or other disposition.** The SLED reports also directly exposes Respondent's misinformation at the top of page 3 of its brief that in 2015 "A member of the press searched Singletary online and requested a South Carolina Law Enforcement Division (SLED) criminal background check and located the Solicitation conviction" (Br. of Respondent at 3) because unless the conviction was added more than two years after it allegedly occurred, then that assertion cannot be true. Appellant disputes all other aspects of Respondent's brief which conflict with facts set forth in Appellant's initial brief, or with other demonstrable facts.

Respondent's above SLED reports claim and the other conspicuous and inexplicable inconsistencies present in Respondent's presentation to this Court – the disposition sheet's nine whited-out fields re-written over, the case summary sheet's / docketing sheet's many errors, the incident report's irreconcilable contradiction that the alleged victim was variously a "minor" but was also an "undercover officer," Respondent's incredible contention that a clerk recalled purely from memory seven years later sending written notice for the one court hearing that matters to Respondent

(at which the case was allegedly disposed of) but that was not even noted on the case summary / docketing sheet – make one worry that if a black person cannot obtain justice in South Carolina in 2018 under these dubious circumstances, then such justice will likely forever remain out of reach.

One final correction: Respondent's brief contains an assertion that could mislead this Court without further clarification: that sometime between October of 2015 and May of 2017, Respondent provided Appellant with FOIA responses "several of which included a copy of the Solicitation ticket he attached to his Motion for New Trial." (Br. of Respondent at 5.) It is dispositive for this Court to know that any copies of the solicitation ticket provided prior to May 26, 2017, were merely copies of the original ticket without the additional markings, signatures, etc. that would be added along the way to a different copy (which would later become the disposition sheet) as it made its way across the municipal judges' courtroom desks. So while Appellant had a copy of the ticket prior to May 26, 2017, he did not have a copy of the disposition sheet until May 26, 2017.

Improbably, Respondent suggests that Appellant somehow appealed the wrong aspect of the issues arising in the North Charleston Municipal Court and argues that Judge Nicholson was incorrect to consider the request for a new trial and other relief sought in the Circuit Court by Appellant. But from Judge Nicholson's thorough analysis during the hearing of the notice questions and Rule 5 questions, it is clear that he was aware of the full extent of the relief requested. Where Judge Nicholson erred was in ruling that a criminal defendant has some affirmative duty to check in with the court about his case if he has not heard in a while, and also in overlooking the absence of notice to Appellant of the May 2010 Municipal court date. Judge Nicholson's form order offers insufficient support for the decision to deny the appeal.

Glaringly, in its brief Respondent failed to respond to the absence of notice of the May 2010

trial date (Br. of Respondent at 2) despite Appellant in the initial brief reiterating the unlikelihood of a Rain Man clerk. Respondent also failed to respond to the problem of having a wrong address for the Appellant on its shoddy docketing sheet despite this being a potentially dispositive issue. Respondent additionally failed to respond to the question of what phone number was dialed for the "phone" notice it alleges. And of course, Respondent failed to cite any authority for its premise that telephone notice of municipal court dates is lawful.

All the above informs a question at the heart of this matter: Was the docketing sheet / Case History sheet – given its many weaknesses of which Appellate was aware immediately upon receipt thereof – sufficient notice of an alleged conviction to Appellant, who had in his possession his 2012 SLED report – a bona fide, reliable South Carolina State government document – which showed no conviction, was it sufficient to require Appellant to file an appeal within ten days of receiving it?

Appellant did not sit idly by when the mud was slung at him, he filed multiple FOIA requests with Respondent, he talked to the Respondent's clerks, he consulted his own records. And he determined that there was no disposition sheet and no reliable document that showed a conviction. So of course he should not have appealed when his adversary slung the mud of alleging a conviction in 2015. Respondent does not indicate when it provided Appellant with the docketing / Case History sheet, but it was sometime after 2015. And even when provided, that document was so patently inaccurate to Appellant that it would have been laughable if it were not so sad.

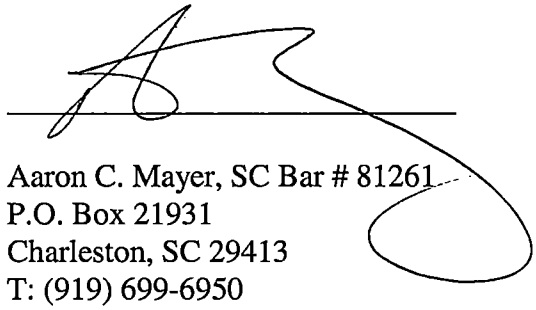
The time to appeal in this matter began running upon Appellant's receipt of the disposition sheet, in all its whited-out glory, on May 26, 2017.

In the alternative, this is a case in which this Court may grant substantial justice through *mandamus*, which was requested by Appellant when the Municipal Judge's made his incomplete

return, or may also use *coram nobis* relief. *See State v. Liles*, 246 S.C. 59, 73-74, 142 S.E.2d 433, 440 (1965); *see also Mendoza v. United States*, 690 F.3d 157 (3d Cir. 2012). These forms of relief are appropriate, in part, because of the admissions made by the Respondent since the Circuit Court hearing: namely that the Case History document that Respondent relied on almost exclusively in Circuit Court cannot be accurate. Additionally, Appellant renews the request for *mandamus* with regard to the Municipal Judge's return, which should include the entire case file. This *mandamus* request is intended to enforce Appellant's existing right to a complete return from the trial court, in the interest of justice.

PRAYER

For the above-state reasons, Appellant asks this Court to protect Appellant's Constitutional rights, to hold that the original notice of court provided by the municipal court was unconstitutionally lacking, that no trial could have been held without provision of Appellant's Rule 5 discovery, to vacate the conviction (or bond forfeiture), if any, and to remand this case back to the lower court for discovery and a new trial.



Aaron C. Mayer, SC Bar # 81261
P.O. Box 21931
Charleston, SC 29413
T: (919) 699-6950
F: (888) 446-3963
aaron@mayerlawpractice.com

Attorney for Appellant

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Charleston, SC