THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Michael Nettles, Circuit Court Judge
Trial Court Case No.: 2017CP2307401

Appellate Case No.: 2018-001020

Terry Edward McCall,

Appellant,

vs.

Barnes Towing,

Respondent.

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SC Court of Appeals

INITIAL BRIEF OF RESPONDENT

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Terry Edward McCall,

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Respondent.

INITIAL BRIEF OF RESPONDENT

STATEMENT OF THE CASE

On January 8, 2015, Mike Barnes d/b/a Barnes Towing filed a Repairman's Lien Affidavit with the Magistrate's Court. The Affidavit stated that a 1994 Ford Explorer, VIN: IFMDU34XORUC16348, owned by Mr. McCall, was towed by Barnes Towing at request of the South Carolina Highway Patrol on March 4, 2012, because it was severely damaged in an accident which was under criminal investigation. Plaintiff was instructed by the Highway Patrol

to hold the vehicle as evidence until the investigation was completed. The vehicle remained in storage for three years and accrued storage and towing fees of $2,090.00.

The vehicle was sold at auction on March 2, 2015, to Barnes Towing for $1.00. Barnes Towing sold the vehicle for Five Hundred ($500.00) Dollars to a scrap metal company. On March 8, 2017, the Defendant filed a Motion for Relief from Judgment upon the basis that the Repairman's Lien Affidavit was defective because he was not served with the pleadings. Therefore, he was denied procedural due process.

The Magistrate set aside its previous Order upon the basis that Mr. McCall had not been given adequate notice required by statute and granted a new trial.

Mr. McCall commenced this claim in Magistrate Court on May 2, 2016 seeking damages for his vehicle and items of personal property he alleged were in the vehicle. On June 8, 2016, Barnes Towing filed its Answer and Counterclaim denying the relief sought by Mr. McCall. Barnes Towing counterclaimed for $1,656.95 which was the balance of its outstanding damages after deducting Five Hundred ($500.00) Dollars for the proceeds it previously received from the sale of the vehicle.

The case was tried by jury during September, 2017. The jury denied the claim of Mr. McCall and awarded Barnes Towing $1,656.96. Mr. McCall appealed to the Circuit Court. By Order dated May 16, 2018, the Circuit Court affirmed the award to Barnes Towing and found no reversible errors by the presiding Magistrate.

STATEMENT OF FACTS

On March 4, 2012, Appellant, Terry McCall, was involved in a severe automobile accident while driving his 1994 Ford Explorer on North Pleasantburg Drive in Greenville, South Carolina. The driver of the other vehicle was severely injured in the accident. The investigating

South Carolina Highway Patrolman, D, E, McAlhany, found open beer cans in the Appellant's vehicle during an inventory of the contents at the accident scene (T. ___). Trooper McAlhany contacted Mike Barnes, owner of Barnes Towing, to tow Appellant's car to his business and hold the vehicle because a criminal investigation of the accident was taking place. Subsequently, Appellant was convicted of Felony DUI arising out of the accident.

Barnes Towing stored Appellant's vehicle for three (3) years. In 2015, Barnes Towing filed a vehicle forfeiture action in Magistrate Court. The Magistrate granted the forfeiture and ordered the vehicle sold. Because the vehicle sustained severe damage in the accident, Barnes Towing sold it to a scrap metal company for Five Hundred Dollars ($500) and applied the proceeds to the bill owed to Barnes Towing by the Appellant. Subsequently, Appellant filed a motion to set aside the forfeiture Order issued by the Magistrate. Following a hearing, the Magistrate set aside its trial Order because Appellant had not been properly served with the forfeiture pleading and also granted Appellant a new trial.

Appellant then commenced suit against Respondent for damages which included his wrecked car and items of personal property he claimed were in the car. While the case was pending for trial, the Appellant filed three different list's of property he claimed which included his car and personal property within the car. All three lists were different from one another with respect to the items claimed or the values of the items. Significantly, the Towed Vehicle Report prepared at the accident scene by Trooper McAlhany included an inventory of the contents of the car which listed only mulch and miscellaneous clothing (T. ___).

Respondent counterclaimed for the balance of $1,596.95 owed to him after giving credit of Five Hundred Dollars ($500) to the Appellant for the proceeds from the previous sale from the vehicle. The trial by jury in Magistrate's Court took place during the week of September 25, 2017. The jury denied the Appellant's claim and awarded Barnes Towing $1,656.96.

Just before the jury trial began, Appellant made no pretrial motions. Further, during the trial Appellant made no motions for relief. And, after the jury rendered its verdict, Appellant made no post trial motions such as for a new trial or for remitturr.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. *Townes Assoc., Ltd. v. City of Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENT

FIRST ISSUE

I. THE CIRCUIT COURT ACTED PROPERLY BY HOLDING THAT THE MAGISTRATE DID NOT ABUSE HIS DISCRETION WHEN HE ALLOWED COUNSEL FOR THE RESPONDENT TO CROSS EXAMINE APPELLANT CONCERNING THE MULTIPLE INCONSISTENT DAMAGE CLAIMS HE ASSERTED BEFORE AND DURING THE TRIAL.

The Appellant has fails to state a proper and comprehensible issue. Therefore, this issue should be summarily dismissed for failure to comply with the appellate rules.

Assuming Appellant is claiming that the Magistrate committed reversible error by allowing counsel for Barnes Towing to cross-examine Appellant concerning the multiple damage

claims he filed concerning his 1994 Ford Explorer and the articles of personalty he claimed were in the vehicle, this issue lacks merit.

Appellant filed an attachment with his Complaint itemizing the damages he claimed Respondent owed him (T. ____). Subsequently, Appellant filed an "Affidavit and Itemization of Accounts" dated June 23, 2016, which included a list of property with values for each which he claimed were his damages (T. ____). This document was inconsistent with the damages he claimed in the attachment to his Complaint. Thereafter, on July 21, 2017, Appellant filed an "Amendment to Complaint" listing the items he was seeking and the value of each (T. ____). This list was inconsistent in several particulars from the previous two lists with respect to the items claimed and the value thereof.

The Magistrate allowed counsel to cross-examine Appellant concerning the discrepancies included in the three lists described above. The Magistrate based his ruling upon the fact that these inconsistencies raised a credibility question concerning Appellant's damage claim. The Circuit Court acted properly by holding that the Magistrate did not abuse his discretion by permitting Respondent's counsel to cross-examine Mr. McCall concerning the different damage claims he asserted.

ISSUE TWO

II. THE CIRCUIT COURT PROPERLY HELD THAT THE MAGISTRATE DID NOT COMMIT REVERSIBLE ERROR BY ALLOWING INTO EVIDENCE DOCUMENTS WHICH RESPONDENT HAD NOT PRE-FILED BEFORE THE TRIAL TOOK PLACE.

The Magistrate Court rules do not provide for pre-trial discovery. Respondent was not obligated to provide a copy or list of the documents it intended to proffer at trial prior to the trial.

The Circuit Court correctly ruled that the Magistrate acted properly by allowing Respondent's documents into evidence.

ISSUE THREE

III. THE CIRCUIT COURT ACTED PROPERLY WHEN IT FOUND THAT THE MAGISTRATE DID NOT COMMIT REVERSIBLE ERROR BY DENYING APPELLANT'S MOTION TO DISMISS RESPONDENT'S COUNTERCLAIM.

The Appellant fails to comply with the Appellate Rules because he fails to articulate an error made by the Magistrate or the Circuit Court, and also included matters unrelated to the matter raised. Therefore, this Court should not consider this issue.

In 2015, the Respondent, after storing the Appellant's vehicle for several years, brought an action for forfeiture and sale of the Appellant's 1994 Ford Explorer. The Magistrate's Court initially granted the relief sought by Respondent. Later, Appellant moved to set aside the Order granting forfeiture because Appellant was not properly served with the action and did not have notice of the proceedings which led to the forfeiture and sale of the vehicle. The Magistrate reversed the prior Order and granted Appellant a new trial. The Appellant then filed the instant lawsuit against Respondent seeking damages, including the value of his vehicle and items of personalty he alleged were in the vehicle (T.____). Respondent counterclaimed for his damages which included the cost for towing and storing Appellant's vehicle and other case related costs (T.____). The Magistrate Judge denied Appellant's Motion to Dismiss upon the basis that the Appellant had been granted a new trial so all of the claims of both parties were now before the Court for a *trial de novo*. The Appellant incorrectly asserts that the Doctrine of *Res Judicata* bars the Respondent from asserting his counterclaim. Because Appellant was granted a new trial

in the vehicle forfeiture action, the Doctrine of *Res Judicata* does not apply. Therefore, the Circuit Court acted properly by affirming the ruling of the Magistrate.

ISSUE FOUR

IV. THE CIRCUIT COURT ACTED PROPERLY BY AFFIRMING THE RULING OF THE MAGISTRATE THAT THE ISSUE OF WHETHER OR NOT APPEALLANT COMPLIED WITH THE REQUIREMENTS OF SOUTH CAROLINA REGULATION 38-600(14) WAS A DISPUTED FACT TO BE RESOLVED BY THE JURY.

Appellant fails to articulate the issue he is attempting to raise. This Court should not consider this issue because it does not comply with the Appellate Rules.

The vehicular accident which gave rise to this action was under criminal investigation. The South Carolina Highway Patrol ordered Barnes Towing to tow and hold the vehicle until the investigation was completed. Ultimately, the investigation led to the indictment and conviction of Appellant for Felony DUI. While the investigation was underway, Appellant contacted Barnes Towing concerning the status of his vehicle. Mr. Barnes testified that Appellant did not offer to pay the towing and storage fee. Furthermore, he testified that he informed Appellant that the vehicle could not be released because it was being held pursuant to order of the South Carolina Highway Patrol to hold the vehicle due to a pending criminal investigation. The Appellant testified to the contrary. This created a factual dispute.

The jury awarded Barnes Towing the full sixty (60) day towing bill, less a Five Hundred and 00/100 dollar ($500.00) credit for the previous sale of the vehicle for scrap metal. The jury concluded that Mr. McCall's assertion that he was due a credit for a portion of the towing charges pursuant to Regulation 38-600(14) lacked merit and awarded Mr. Barnes the full sixty (60) day storage charge.

For these reasons, the ruling by the Circuit Court that the Magistrate did not abuse his discretion by submitting this issue to the jury should be affirmed.

ISSUE FIVE

V. THE CIRCUIT COURT ACTED CORRECTLY WHEN IT FOUND THAT THE MAGISTRATE DID NOT ABUSE HIS DESCRETION WHEN HE ALLOWED INTO EVIDENCE THE TOWED VEHICLE REPORT PREPARED BY THE INVESTIGATING SOUTH CAROLINA HIGHWAY PATROLMAN.

At trial, Mr. Barnes testified that South Carolina Highway Patrol Trooper David McAlhany prepared a Towed Vehicle Report including an inventory of the vehicle's contents in Mr. Barnes' presence (T. ___). According to Mr. Barnes, Trooper McAlhany signed the report in his presence and handed him a copy.

The Magistrate held that this was adequate to authenticate the document and allowed it into evidence.

Appellant fails to show an abuse of discretion by the Magistrate or any prejudice by the admission of the Report. The Circuit Court acted properly when it found that the Magistrate did not abuse his discretion by admitting the Report. It is well established that a trial judge has wide latitude concerning the admissibility of evidence and the Appellate Courts give great deference to the trial judge. Therefore, the holding of the Circuit Court should be affirmed.

ISSUE SIX

VI. THE CIRCUIT COURT ACTED PROPERLY WHEN IT FOUND THAT THE MAGISTRATE'S JURY INSTRUCTION WAS PROPER.

The Magistrate charged portions of several statutes applicable to the issues at trial and the facts in dispute but excluded other provisions of the statutes which were not germane to the issues before the court.

Appellant claims that the Magistrate committed error because he did not charge the jury that the "Respondent failed to give the required notice(s)" before selling the Appellant's vehicle (Appellant's Brief, P. ____) and also erred because he did not charge the entire statutes.

Appellant fails to comprehend that the Order in the previous claim granting him a new trial resulted in the instant case in which he was allowed to seek all of his damages against the Respondent. In addition, the jury charge he claims the Magistrate should have given is improper because it is a charge relating to the facts rather than the applicable law.

The charge by the Magistrate included all of the relevant portions of the statutes but excluded those portions which were not relevant to the issues in controversy.

During trial, Appellant repeatedly stated during his opening and closing statements, and testified at trial, that he had not been given proper notice in the prior forfeiture action. By doing so, he made it clear that the Order granting a new trial existed and was the result of a finding by the Magistrate that Appellant was not properly served with the forfeiture action initiated by Respondent.

Furthermore, the Appellant has not shown that he was prejudiced by the ruling of the Magistrate because he was allowed to go forward with his claim for all of his alleged damages against Respondent.

The Circuit Court held that the Magistrate properly charged the relevant portions of the applicable statutes. The Circuit Court also pointed out that the Return of the Magistrate did not mention that Appellant objected to the jury instruction and Appellant did not make a post trial

motion for a new trial. For all of the foregoing reasons, the holding by the Circuit Court should be affirmed.

Finally, Appellant failed to include a transcript recording of the jury charge in the Record on Appeal. Pursuant to Rule 210, SCACR, the Appellate Court will not consider any fact which does not appear in the Record on Appeal.

ISSUE SEVEN

VII. THE CIRCUIT COURT CORRECTLY RULED THAT THE MAGISTRATE DID NOT ABUSE HIS DESCRETION BY EXCLUDING FROM EVIDENCE THE ORDER FROM THE PRIOR FORFEITURE ACTION BROUGHT BY BARNES TOWING AND BY LIMITING THE TESTIMONY TO THE ALLEGATIONS OF APPELLANT THAT RESPONDENT FAILED TO GIVE ADEQUATE NOTICE IN THE FORFEITURE ACTION.

Barnes Towing brought an action for Forfeiture and Sale of Appellant's vehicle. The Magistrate issued an Order granting Forfeiture and Sale. Because of the severe damage to the Appellant's vehicle, Barnes Towing sold it to a scrap metal yard for Five Hundred and 00/100 Dollars ($500.00) and applied the proceeds to the bill owed by Appellant for towing and for sixty (60) days of storage of the vehicle. The Appellant moved to set aside the Order of Sale in the prior forfeiture action upon the basis he was not properly served in accordance with statutory requirements. The Magistrate set aside the Order of Forfeiture and granted Appellant a new trial. Appellant then commenced the instant action seeking damages including the value of his vehicle

and the alleged contents inside the vehicle.[1] At the trial, the magistrate excluded from evidence the Order in the previous forfeiture action setting aside the sale and granting a new trial.

The Magistrate concluded that Plaintiff could seek his claimed damages in this action and testify regarding the error in service of process made by the Respondent, but that the prior Order of the Court granting a new trial should not be admitted into evidence. The Magistrate concluded that there was no prejudice to the Appellant by excluding the Order because he was allowed to pursue his claim and describe the failure of Respondent to properly serve him.

The Circuit Court found that the Magistrate did not abuse his discretion. Furthermore, Appellant has shown no prejudice by the exclusion of the Order from the prior action. Therefore, the holding of the Circuit Court should be affirmed.

ISSUE EIGHT

VIII. THE CIRCUIT COURT RULED CORRECTLY THAT THE RECORD DOES NOT SUPPORT APPELLANT'S CLAIM THAT THE MAGISTRATE COMMITTED ERROR BY PRECLUDING HIM FROM CALLING WITNESSES.

This issue does not comply with the Appellate Rules because it fails to clearly state the issue, includes multiple issues, and contains extraneous matters not germane to the issue Appellant attempts to raise.

Appellant appears to be contending that the Magistrate committed error by precluding him from calling certain witnesses.

Appellant's argument fails for several reasons: First, the Return filed by the Magistrate does not mention that Appellant requested that the trial court subpoena certain witnesses nor

[1] Significantly, the Towed Vehicle Report by Trooper McAlhany did not list the items of personalty Mr. McCall claimed were in his vehicle (T. ___). And, Mr. Barnes also testified that the contents of the vehicle claimed by Appellant at trial were not in the vehicle.

does the Return indicate that the Magistrate denied such a request. Second, Appellant did not proffer a list of requested witnesses into the record during the trial. Third, the Appellant did not proffer the testimony of these alleged witnesses at trial or demonstrating why their testimony was important. Fourth, the record is devoid of any indication that Appellant requested a continuance in order to secure the testimony of these witnesses. Fifth, Appellant failed to make a Motion for a New Trial in order to preserve this issue for appeal before the Circuit Court and this Court. Sixth, the record from the Magistrate and the record in the Circuit Court contains nothing to substantiate that Appellant raised this issue during the trial.

Finally, Appellant failed to show what these witnesses testimony would be or to show any prejudice due to the absence of the testimony of these witnesses. Having utterly failed to preserve this issue for appeal or to adequately develop the record for appellate review, the holding of the Circuit Court should be affirmed and this issue summarily dismissed.

Appellant claims that the Magistrate told him he "would get back with Appellant" concerning the witnesses Appellant wished to call. The Return of the Magistrate contains no mention of this assertion by Appellant. And, the record submitted to the Circuit Court is devoid of any other evidence supporting the Appellant's contention.

The holding of the Circuit Court denying Appellant relief with respect to this issue should be affirmed.

ISSUE NINE

IX. THE CIRCUIT COURT ACTED PROPERLY WHEN IT HELD THAT THE MAGISTRATE DID NOT ABUSE HIS DISCRETION BY ALLOWING COUNSEL FOR RESPONDENT TO CROSS EXAMINE APPELLANT ABOUT HIS CONVICTION FOR FELONY DUI ARISING OUT OF THE ACCIDENT.

In his opening argument to the jury, the Appellant informed the jury he had made a terrible mistake for which he was paying a price. He was wearing his prison uniform. Later, during cross examination, Counsel for the Respondent asked him about his admission and he admitted he was convicted of Felony DUI as a result of the accident.

The Appellant opened the door to Counsel's cross examination by his comments in his opening statement. Appellant admitted during the hearing before the Circuit Court that he had opened the door (T._____).

There is a second reason why the Magistrate did not abuse this discretion by allowing Respondent's Counsel to cross examine Appellant concerning his conviction for Felony DUI arising out of the accident. That is, Felony DUI is a crime of moral turpitude.

In a well reasoned opinion the South Carolina Attorney General explained what constitutes a crime of moral turpitude (*See* Op. S.C. Atty. Gen. 2014 WL2538230) In this opinion the author stated the following:

> A crime of moral turpitude is defined by the Supreme Court of South Carolina as:
>
> "...an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Citing* State v. Smith, 194 S.C. 247, 259, 9 S.E.2d 584 (1940); State v. Horton, 271 S.C. 413, 238 S.E 2d 263 (1978); State v Lilly, Supreme Court of South Carolina , Op. No. 21840 (January 4, 1983). Usually, a crime of moral turpitude is an offense *mala in se*, i.e, "immoral in itself", as opposed to one which is *mala prohibitum*, prohibited by law. State v. Horton, supra. It is well established that not every crime is one involving moral turpitude. State v. LaBare, 275 S.C 168, 268 S.E. 2d 278 (1980) The decision does not rest simply upon whether the offense is a felony or misdemeanor. State v. Horton, supra. While some crimes involve moral turpitude as a matter of law, there are many other offenses, such as assault and battery of a high and aggravated nature, in the which the factual situation must be examined on a case by case basis. State v. Bailey 275. S.C 444, 272 S.E.2d 439 (1980) With respect to these offenses, all of the surrounding circumstances must be carefully scrutinized. In determining a crime of moral turpitude, this Office has previously stated: In determining whether a crime involves moral turpitude, one looks, not to instances involving self-destructive behavior but, rather, instances where the duty to society and fellow man ... is breached by the commission of the

crime ... State v. Ball. 292 S.C. 71, 73, 354 S.E.2d 908 (1987). Op. S.C. Attv. Gen.. 1991 WL 474741 (February 12, 1991). In State v. Bailey, 275 S.C. 444, 272 S.E. 2d 439 (1980), the South Carolina Supreme Court addressed the question of whether assault and battery of a high and aggravated nature is a crime of moral turpitude. There, the Court noted that this crime "...does not...invariably constitute a crime of moral turpitude, since that determination depends on the facts of each particular case." 275 S.C. at 446. This is consistent with the general law which is that: ....the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change. 21 Am. Jur. 2d, Criminal Law §23 p. 138. "In determining whether a crime involves moral turpitude, one looks, not to instances involving self-destructive behavior but, rather, instances where the duty to society and fellow man...is breached by the commission of the crime..." State v. Ball, 292 S.C 71, 73 354 S.E. 2d 908 (1987).

In *21 Am. Jur. 2d, Criminal Law §23 p. 138*, the writer opined that: ....the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change. 21 Am. Jur. 2d, Criminal Law §23 p. 138. In *State v. Lilly, 278 S.C. 499, 299 S.E.2d 329 (1983),* the Defendant was convicted of possession of marijuana with intent to distribute. The Supreme Court held that possession of marijuana with intent to distribute is a crime of moral turpitude for impeachment purposes. The Court concluded that: "Moral turpitude involves an act of baseness, vileness, or depravity in the social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Citing State v. Harvey, 275 S.C. 225, 227, 268 S.E.2d 587, 588 at fn. 1 (1981) Simple possession of marijuana is not a crime of moral turpitude. Unlike simple possession, however, possession with the intent to distribute involves the duty which a person owes to other people and to society in general. State v. Lilly, 278 S.C. 499, 500 299 S.E.2d 329 (1983).

In *State v. Horton, 271 S.C. 413, 248 S.E. 2d 263 (1978),* the Defendant was convicted of murder. The Supreme Court held that the offense of "hit and run" is contrary to justice, honesty, and good morals and involves "moral turpitude" and thus defendant's past conviction for "hit and run" was properly admitted into evidence as bearing on his credibility. "Moral turpitude" has been defined as: '...an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man...'" State v. Horton, 271 S.C. 413, 414, 248 S.E. 2d 263, 263 (1978), *citing* 58 C.J.S. Moral p. 1201.

In *Merritt v. Grant, 285 S.C. 150, 328 S.E.2d 346 (1985),* the Passenger in a car collision brought suit against the driver. He appealed to the Court of Appeals who ruled the trial court did not abuse its discretion in refusing to permit driver to introduce evidence of passenger's conviction for selling illegal drugs in 1974. The

Supreme Court affirmed. In reaching its decision regarding the definition of a crime of moral turpitude the Court used the following logic: "Although evidence of a prior conviction of a crime involving moral turpitude may be used to impeach the credibility of a witness [*State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980)], its admission in evidence is addressed to the sound discretion of the trial judge. *See Spears v. Collins,* 253 S.C. 510, 171 S.E.2d 606 (1970). It is within the discretion of the trial judge to determine whether the prejudicial effect of admitting proof of a party's prior conviction 'outweighs the probative worth of such evidence on the issue of credibility so as to warrant its exclusion.' *Citing* 81 Am. Jur. 2d *Witnesses* Section 569at 575 (1976). Merritt v. Grant, 285 S.C. 150, 156-157, 328 S.E.2d 346, 350 (1985).

Under the facts of the instant case, Felony DUI constituted a crime of moral turpitude. The Circuit Court acted properly when it concluded that the Magistrate did not abuse his discretion by allowing the conviction into evidence during Cross Examination.

ISSUE TEN

X. THE CIRCUIT COURT ACTED PROPERLY WHEN IT HELD THAT THE MAGISTRATE DID NOT ABUSE HIS DISCRETION BY ALLOWING COUNSEL FOR RESPONDENT TO CROSS-EXAMINE APPELLANT CONCERNING THE SEVERAL DAMAGE CLAIMS HE SUBMITTED TO THE MAGISTRATE COURT.

This is a reiteration of Appellant's First Issue. In response, Respondent relies upon the arguments asserted in response to the first issue.

ISSUE ELEVEN

XI. THE CIRCUIT COURT CORRECTLY HELD THAT THE MAGISTRATE ACTED PROPERLY BY DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WITH RESPECT TO THE RESPONDENT'S COUNTERCLAIM.

The claims of Appellant and Respondent involved factual disputes that were for the jury to decide. The factual disputes included, among others, the claims of Appellant that: (1) Respondent was liable to him; (2) Respondent owed Appellant damages; and, (3) the amount of the damages. It also involved factual disputes concerning the damages sought by Respondent.

The Magistrate acted properly by denying Appellant's Motion for a Directed Verdict with respect to Respondent's Counterclaim. The Circuit Court acted correctly by affirming the action of the Magistrate. Therefore, this Court should affirm the holding of the Circuit Court.

ISSUE TWELVE

XII. THE CIRCUIT COURT'S RULING UPHOLDING THE JURY'S AWARD OF RESPONDENT'S COUNTERCLAIM SHOULD BE AFFIRMED.

The jury awarded the Respondent's Counterclaim, which included the cost for towing and storing Appellant's vehicle for sixty (60) days, less Five Hundred Dollars ($500.00) the Respondent received when he sold the vehicle for scrap metal (T. ___). The Circuit Court affirmed the jury's award upon the basis that the damages awarded were consistent with those allowed by Law.

Appellant has shown no error by the Magistrate as a basis to overturn the jury's verdict. And, Appellant failed to preserve this issue for appeal by making a motion for a new trial. Therefore, this Court should affirm the holding of the Circuit Court upholding the verdict of the jury.

ISSUE THIRTEEN

XIII. THE CIRCUIT COURT ACTED PROPERLY BY AFFIRMING THE JURY'S AWARD OF DAMAGES TO RESPONDENT.

This issue fails to comply with the Appellate Rules because: (A) it fails to articulate a comprehensible issue; (B) it is a reiteration of issues 3 and 11; and, (C) it fails to set out a specific, cogent error made by the Magistrate Court or the Circuit Court.

The Respondent relies upon its responses to Issues 3 and 11 set forth hereinabove in this Brief in response to this issue.

The Circuit Court concluded that: (A) this is a reiteration of an earlier issue (T. ____); (B) it is an attempt to raise an issue previously resolved in the Appellant's favor in prior litigation; and, (C) Appellant had a full opportunity to litigate all issues and all damage claims during the trial in the instant case and therefore was not denied due process. As a result, the Circuit Court affirmed the verdict in Magistrate's Court and found no error made by the Magistrate.

In summary, this Court should affirm the holding of the Circuit Court finding no error by the trial Magistrate.

ISSUE FOURTEEN

XIV. THE MAGISTRATE DID NOT VIOLATE APPELLANT'S SIXTH AMENDMENT RIGHT TO COUNSEL.

This issue is not before this Court for review because Appellant failed to preserve this issue for appeal. Specifically, the Appellant did not request that the Magistrate appoint counsel and also failed to raise this issue before the Circuit Court. Having failed to submit this issue to the Magistrate or the Circuit Court, it is not subject to review on appeal.

The Return of the Magistrate does not include any indication that Appellant requested the appointment of counsel or that he moved the trial court for a new trial because of the failure of the Magistrate to appoint counsel. Furthermore, Appellant has failed to show that he has a

constitutional right to counsel in a civil claim for damages. Finally, the Appellant freely chose to represent himself at trial thereby waiving any claim of harm. For the reasons stated hereinabove, this Court should deny Appellant consideration of this issue and deny Appellant's request for a new trial.

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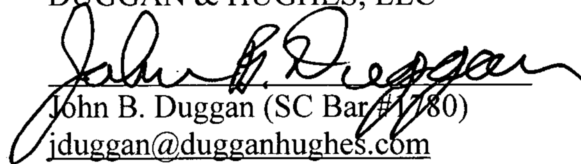
CONCLUSION

Respondent respectfully requests that the Court affirm the Order of the Circuit Court.

Respectfully submitted,

DUGGAN & HUGHES, LLC



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South Carolina Court of Appeals
Attn: Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

Re: Terry Edward McCall v. Barnes Towing
Appellate Case No.: 2018-001020

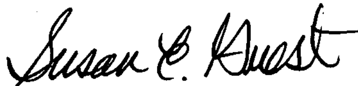
Dear Clerk of Court:

Please find enclosed the original and one copy of Initial Brief of Respondent, Designation of Matters to be Included in the Record on Appeal, Motion to Exclude Matters from the Record on Appeal, and Proof of Service for same in regard to the above referenced Appeal.

Furthermore, please find enclosed this firm's check made payable to you in the amount of $25 for your motion fee, along with a self-addressed stamped envelope for your convenience in returning a clocked copy of these documents to me.

Sincerely,

DUGGAN & HUGHES, LLC



Susan E. Guest
Paralegal

Enclosures

Cc : Terry McCall
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Una, SC 29378

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Michael Nettles, Circuit Court Judge
Trial Court Case No.: 2017CP2307401

Appellate Case No.: 2018-001020

Terry Edward McCall,

Appellant,

vs.

Barnes Towing,

Respondent.

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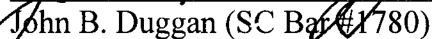
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent, Designation of Matters to be Included in the Record on Appeal, Motion to Exclude Matters from the Record on Appeal, and Proof of Service by way of the Office of General Counsel at the South Carolina Department of Corrections upon Terry Edward McCall by depositing a copy of same in the United States Mail, Via Certified Mail Article No.: 7015 1520 0002 5152 3751, postage prepaid, addressed to:

Certified Mail Article No.: 7015 1520 0002 5152 3751
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

DUGGAN & HUGHES, LLC



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