STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Greenville County
Honorable Michael Nettles, Circuit Court Judge

Terry Edward McCall ..... Appellant

V.

Barnes Towing ..... Respondent

Appellate Case No: 2018-001020
FINAL Brief of Appellant

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Certificate of Pro Se Counsel, Appellant

The undersigned Pro Se Appellant counsel certifys that the Appellants Final Brief complies with Rule 211(b) SCACR Except for Copies of brief

Dated 10-2-18

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"Certificate of Service"

The undersigned certifys that a true copy of the Final Brief of Appellant and Record on Appeal has been served upon the parties listed below by placing same in the U.S. postal mail, postage prepaid, affixed forwarded to Addresses below:

Dated 10-2-18

s/ Terry McCall

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(1). The Trial Court Erred by allowing Respondent to Cross-examine Appellant with Pleadings he filed which alleged a different amount of damages After the Appellant withdrew those pleadings from being used IN his TRIAL at the beginning of the TRIAL. Requested to withdraw them and the Judge said OKAY Withdrawn;

(2). The Court Erred Allowing Respondent to Produce a new document never filed with the Previous case 2015-CV-23-10-8000 which was Introduced AS evidence IN this trial being this whole case hinged ON Appellants Vehicle AND Property being illegally deprived from him and sold without ever being notified of the intent to sale it, IN this TRIAL and the Previous matter, whereby respondent Attempted to have the Appellants vehicle title turned over to him for costs that Appellant accrued for Towing and storage, but the case was set aside AS to the Default Judgement due to the

Respondents failure to be truthful with the Court stating he had served Appellant and he recieved the Notice when in fact he never did, And Respondent was suppose to Advertise the Sale in the Newspaper which he refussed to do; Therefor the Court set aside the default; All Exhibits used were from the 2015 case This Counterclaim of Respondents is the same facts.

(3), The Court Erred denying Appellants, Motion To Dismiss Respondents Counterclaim. Appellant Claims that the Respondents Counterclaim is res judicata because it was the same claim for relief Respondents sought pursuant to a Complaint for Repairmens Lien filed in Civil Action No: 2015-CV-23-108000 "(the Prior case". The same allegations are that Respondent states in Counter Claim that they followed all Court procedures in obtaining the certificate of title And sale of the vehicle; which they did not follow All Court Procedures, was the reason the default judgement was set Aside. See: July 11, 2017 Order Judge Peden. And the Respondent never provided the Court with Any Proof that Appellant was given proper notices, because the truth was, Exhibit (2) of Plaintiffs) is proof the letter came back Unclaimed / Not delivered. These are the same procedures used in the Repairmens Lien, raised in the Counterclaim. And if the

Court has adjudicated decided, ruled upon that the Respondent failed to satisfy the service requirments set out in S.C. Rules of Civil Procedure Rule(4)d 8, and Magistrate Court Rules(6) and Provided false information in the Affidavit in Repairmens Lien and failed to Advertise the Sale in the local newspaper, and Set aside the default judgment initially granted because of these failures to satisfy statutory laws. There is Noway these same facts can be supported. There has been No evidence provided that service of the Notice mentioned in the "facts of the Counter Claim" were ever satisfied. Where the facts of Prior adjudication appear on face of Counter-Claim/Complaint. Defense can be raised by demmur. See: motion To Dismiss

Res Judicata defines: An issue that has been definitively settled by a Judicial Decision: Using the Repairmens Lien by Respondent was his one bite at obtaining any wages owed to him. Because S.C. Code 29-15-10 states this is the only way a Garagemen can collect storage fees, Towing fees, by using the Affidavit Repairmens Lien, not "Counter Claim" Even though Appellant sued for damages owed for his vehicle and property deprived from him unlawfully, The Respondent cannot seek to use the same facts, procedures, documents that earlier failed, to try and get a second Attempt at collecting fee's. Where the Court has decided in a Motion to Set Aside the Default Judgment on Motion for Reconsideration. And the

Court has ruled that Respondent failed to satisfy the neccessary statutory requirments. Appellant believes he was entitled to a hearing on "damages" owed to him, once the Court Ruled in the Motion for Reconsideration, to set aside the default Judgment granted to Respondent in the Repairmens Liem.

Because when Respondent recieved its Order granted initially in the Repairmens Liem, finding Appellant defaulted. A damages hearing was held for Respondent. Therefor the same due process should have been offorded to Appellant once the default Judgment was set aside. for damages, by destroying his vehicle and property, And Appellant should not have had to go thru a Jury Trial. These were issues raised before the trial. And the Judge stated "Im not quite sure" but, I believe we may need to have a full trial by Jury. Where does due Process come in to Play for damages to Appellant, thru default of Respondent, wrongfully obtained.

see: Res Judicata and Collateral Estoppell in South Carolina. 28 S.C.-L Rev 451, 452 (1977)

(4). The Court Erred when it denied Appellants Motion To Dismiss award of Storage fees, Towing fees to respondent, where Appellant showed the Court thru his testimony, respondents testimony and documented evidence "Barnes Towing Invoice Sheet" that Appellant Satisfied the requirments set out in S.C. Regulation 38-600-(14) see: Appellants/Plaintiff Exhibit (1)

S.C. Regulations 38-600 (14) in pertpart reads:
Wrecker services may charge a daily storage fee, commencing 12 hours after the vehicle is towed to the storage area and terminating when the vehicle owner or vehicle owner's designee offers or attempts to pick up the vehicle and offers to pay the wrecker services accrued charges.
The Respondent never objected that Appellant called on 3-13-12 requested to pick up his vehicle and offered to pay the accrued fees owed. Respondent even testified that Appellant came to pick up his medications out of the vehicle, at which time Appellant offered to pay the accrued fees and pick the vehicle up, but was informed the Highway Patrol had a hold on it.

(5). The Court Erred where it allowed into evidence Respondents / "Highway Patrolman David McAlhany" S.C. Dept of Public Safety "Towed" Vehicle Report. Where the Towed Vehicle Report was created, signed by the officer, David McAlhany, And Respondent could not Authenticate a report that he did not create and sign, Much less the Towed Vehicle Report had been "Scratched thru it", modified, altered, and Mike Barnes could not Authenticate this S.C. Dept of Public Safety Towed Vehicle Report, the officer David McAlhany was the Only person who could have Authenticated the Towed Vehicle Report to have be true And accurate, he was the Creator not Mike Barnes. Should have been suppressed not allowed in the trial.

(6). The Court Erred charging only Portions of the law, where the Complaint hinged on Notice, That it was never served on Appellant, that is the Notice of Sale for Repairmens Lien, not Notice for the Counter Claim; The Court should have read All relevant Portions of statutory law inclosed in the Repairmens Lien, S.C Code 29-15-10, 56-5-5630, 35, 40 Because the Complaint was, respondent failed to give the required notice(s) before selling the Appellants vehicle. And the Court failed to ensure that Respondent satisfied the required statutes. See: Complaint

(7). The Court Erred denying Appellant his due process right to enter into evidence, the Courts "Order" Setting Aside the default Judgment for the Repairmens Lien; Where the Court stated; It would allow him to talk about that Order at the Closing and didn't, This Order was germane to this Complaint because this Order from July 11, 2017 by Judge Peden whereby set aside the default judgment granted to respondent in his Repairmens Lien. Would have shown the Jurors that the Respondent Never complied to the statutory laws to had the vehicle title sold to him, nor the authorization by the Court to ever sell the vehicle, where he lied. the Court set that authorization aside, therefor its obvious Respondent failed, and the Jurors would have known

that Appellant was due damages for his property being fraudulently taken from him and destroyed, sold At scrap yard, "so Alleged," No proof it was sold these entered into evidence,

(8). The Court Erred limiting Appellants' Witnesses, where the Witness List revealed witnesses to be called, but was told by the Judge that he would get back with the Appellant as Witnesses he intended to call, but the Court never did, This denied Appellant his due process And prejudiced his trial.

(9) The Court Erred where it allowed Respondent to Cross Examine Appellant as to his felony D.U.I. And Damages to his Vehicle, Where Appellant objected to this type Examination about the amount of damages to his vehicle, Where Appellant argued, we have no adjuster here, you have not supported any material estimate of damages to Respondents testimony, No evidence was ever entered as evidence, therefor this type statement of amount of damages to Appellants Vehicle by Respondent was prejudical for the jury to hear, And was unsupported by any proof.

(10) The Court Erred denying Appellants Motion for a Directed Verdict, As Respondents Facts in the Counter claim are the same facts alleged in the Repairmens Lien which was set aside. Therefor if the evidence did not support the Relief for Repairmens Lien, How could the same evidence support a Counter Claim for relief. the lien was dissolved when the respondent failed to satisfy the requirments set out in 29-15-10 Repairmens Lien. Liens only exist on Repairmens Lien Not on Counter Claims See S.C. Code 29-15-10

(11). The Court Erred when it granted Respondents Counter Claim, where the same facts had already been ajudicated. And in the Counter Claim, the facts are talking about how they followed all Court Procedures in 2015-CA-23-108000 Repairmens Lien, by Mailing Notice letters, etc. which miss lead the jurors. Because the truth is, they didnt Properly follow all Court Procedures where they failed to satisfy the S.C Code 56-5-5635(B) And that case was set aside. And by alleging something Untruthful again in your Counter claim, which has been Proven to be False, is more than reasons why the Court Erred when it granted, Respondents Counter claim

(12). The Court did Err granting Respondents Counterclaim, Because the alleged facts that were stated in the Counter Claim, were what steps respondent took "when he failed in his Reparmens Lien "See: Judge Selden Peden's Order dated July 11, 2017. whereby Reparmens Lien default granted was set aside, for failing to follow All Court Procedures, statutory laws. But Yet the Respondent states in his Counterclaim that he followed all procedures using the Reparmens Lien, which was false, and the prior case was germane to this case, to prove that the Counter Claim facts were already proven to be false."

(13). The Court Erred Abused his discretion Violating Appellants Sixth Amendment Right to Counsel, when Circuit Court Judge Nettles Allowed Appellant to proceed Pro Se without conducting a proper hearing pursuant to Farretta V. California 422 U.S. 806 (1975) or advising Appellant of the dangers and disadvantages of self representation. See: State V. Barnes 407 S.C. 231, 753 SE2d 545, 548 (2014) None of these factors by Barnes which evidenced and intelligent waiver of the right to counsel and that the defendant was proceeding with full understanding of the dangers and disadvantages of Self representation Exist in this record.

Conclusion 1

TABLE OF AUTHORITES

Cases:

1. Harner V. Harner 116 W.Va, 530, 182 SE2d 291
2. Res Judicata and Collateral Estoppel in S.C. 28 S.C. L. Rev. 451, 452, (1977)
3. Faretta V. California 422 US, 806 (1975)
4. State V. Barnes 407 S.C. 27, 31, 753 SE2d 545, 548 (2014)
5. State V. Reed 332 S.C. 35, 503 SE2d 747 (1998

Constitutional Provisions,
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S.C. Code of Law 29-15-10
S.C. Code of Laws 565-5630, 35, 40

S.C. Regulations
S.C. Reg. 38-600 (14)

STATEMENT OF ISSUES ON APPEAL

(1). The TRIAL Court Erred by allowing Respondent to Cross-Examine Appellant with Pleadings he filed which alleged different amounts of damages, After the Court allowed Appellant to withdraw those Pleadings at the begining of the trial. The Court granted the request and stated WITHDRAWN. However once Respondent submitted them into evidence, the Appellant challenged the reliability of the evidene he was presenting but the Court made no ruling and failed to entertain the objection.

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Conclusion 1

STATEMENT OF THE CASE

On 3-4-2012 Barnes Towing towed Mr. McCalls SUV Ford Explorer 1994 after he was involved in a accident The Plaintiff called on 3-13-12 and offered to pay the accrued fees and pick up his vehicle, The defendants invoice sheet reflects this call was made, And Plaintiff went to the Towing Services Premises and offered to pick up his vehicle and pay the accrued fees. But was told S.C. Highway Patrol had a hold on it, and it was not being released. The Defendant informed Plaintiff he would contact him when he could release the vehicle. Three years past, the Defendant sent notice to Plaintiffs address. The Mail was returned Undelivered, Unclaimed from the U.S. Postal Service. The Defendant did not seek to perfect service by Publication as required by law. But Defendant stated in his Repairmens Lien Affidavit that the Notice Letters came back with proof letters were recieved by Plaintiff. which was false and lead the Court to believe nothing else was required. the Court then granted defendant certificate of title, authorization to sell the vehicle, and Placed default judgment against the Plaintiff.

On April 17, 2017 McCall was heard on a Motion for Relief from Judgment. The Court denied McCall

relief. McCall on April 27, 2017 filed a motion for Reconsideration was heard, and the Court granted him relief setting aside the previous Order the Court granted Mike Barnes (Barnes Towing) and set aside the authorization given to him to sell the vehicle. Where he had failed to satisfy the requirments set out in 56-5-5635(B) and he provided false information in his Affidavit, which led the Court to believe nothing else was required of him.

Prior to this McCall had already filed his Complaint suing Barnes Towing for his vehicle and property. McCall requested a hearing for damages where his vehicle and property had been wrongfully taken and destroyed prior to trial, and tried to introduce Judge Seldon Peden's Order dated July 11, 2017, And requested same treatment Due Process as Barnes Towing received once they established McCall did not respond to any notices sent to him. "Damages Hearing, but was informed he must proceed to a full Blown Jury Trial,"

The Trial Proceeded And heard the Complaint which hinged on McCall never being notified of the Notice to sell his vehicle by the Repairmens Lien.

The Barnes Towing submitted there Counter Claim which listed all the steps they took in serving Notices on McCall, and the Court Procedures they alleged were All followed, when using the Repairmens Lien.

The Jury didnt understand that the Only way a Garagemen could collect fees owed to him for storage was on Repairmen Lien - S.C. Code 29-15-10, and those steps were Proven to have failed, dissolving the lien, Therefor the Verdict was based on the same facts provided in the Counter claim, that was listed in the Repairmens Lien, Res Judicata.

On May 2, 16 Plaintiff filed Complaint. On June 8, 16 Defendant filed answer + Counter Claim, Plaintiff filed Amended Answer February 23, 2017, the matter was heard in Greer Summary Court on September 28, 2017, A jury verdict was issued in favor of defendant, the jury ruled for the defendant on his Counterclaim, awarding damages in the amount of 1,656.96. The proceedings were electronically recorded. The Notice of Civil Appeal was served February 21, 2018, by U.S. Postal mail services.

The Appellant Appealed to the Circuit Court of Common Pleas. Heard on April 12, 2018, the Court allowed Appellant to proceed "Pro Se" The Appellant's sixth Amendment Right to Counsel was violated when the trial Judge granted Appellants request "Motion to proceed Pro Se and failed to advise him of the dangers and disadvantages of self representation. The Court did not have Appellant to demonstrate that he had read relevant case law, and or understood Any of the Rules of Evidence or any understanding of his defense on Appeal, which evidenced an intelligent waiver of right to Counsel, or that he was proceeding with the full understanding of the dangers and disadvantages of self representation Accordingly the record fails to demonstrate Appellant made a knowingly intelligent waiver of right to Counsel, See: State V. Barnes 407 S.C. 27, 31, 753 S.E.2d 545, 548 (2014), Faretta V. California, 422 U.S. 806, 807 (1975)

STATEMENT OF THE FACTS

Facts Presented at trial

On 3-4-2012 Barne Towing, Respondent was called to a traffic collision on 291 near Worley Road in Greenville, S.C. to tow Plaintiff, Appellants vehicle a 1994 Ford Explorer. On 3-13-2012 the Appellant called Respondent and offered to pay the accrued fees, and offered to pickup his vehicle; See: Barnes Towing Invoice sheet. Appellants Exhibit (1). But was denied the right to pick it up or pay the accrued fees. See: S.C Regulation 38-600 (14) On 1-8-15 the Respondent filed a Repairmens Lien to seek charges alleged owed by Appellant, The Respondent alleged he served Appellant Notice of Sale of Vehicle. And the notice letters were never returned, unclaimed. The Court scheduled a hearing "date to sale vehicle on February 24, 2015. The vehicle was sold to Respondent for $ 1.00 dollar, a Bill of sale was issued March 2, 2015 to Respondent. While Appellant was incarcerated on 2015 he recieved notice from the Court that he owed $ 80.00 dollars Court Cost. Appellant filed a motion for relief from judgment on April 17, 2017. The Court denied the Motion. On April 27, 2017 Appellant filed a Motion for reconsideration. The Court issued its Ruling July 11, 2017 granting relief, stating Respondent violated S.C. Code 56-5-5635(B) in failing to

of Paye left hand side $690.00 dollars fees owed. This Price Written went With the Quote given to Appellant when he called offered to pay fees and pick vehicle up 3-13-12. Or the total amount would have been written in at the bottom of Page Under total which was left Blank ___ the week of September 28, 2017 the jury found for Respondent as to Appellants Claim for damages and rendered a verdict in favor of Respondent in the amount of $1,656.96. Appellant timely Appealed. On January 8, 2018 Appellant filed his brief listing 12 issues on Appeal. On April 5, 2018 the Magistrate filed his return of the Civil Appeal. The Appeal was heard and Order issued electronically May 16, 2018. The Appellant timely appealed to the Court of Appeals.

This Complaint filed June 8, 2016 hinged on Barnes Towing never gave McCall notice of the Sale of his vehicle, from the filing of his Repairmens Lien. therefor by "him" Respondent failing to Satisfy the required statutory laws to obtain certificate of Title & Authorization by the Court to sale McCalls vehicle from false information in his Affidavit. McCall believed that Barnes Towing owed him for the loss of his vehicle and Property.

And once McCall received a Ruling by the Court July 11, 2017 setting Aside the default judgment granted to Barnes Towing, and authorization to sell McCalls Vehicle. McCall believed this Order would strengthen his Complaint, where it hinged on, him never hearing Notice of the sale of the vehicle served on him. But, the Court didnt see it that way. McCall believes a hearing for damages should have been the appropriate remedy once the Court set aside its default judgment and authorization to sell his vehicle based on Barnes Towing failing to give required notice, & providing the Court with false information in his Affidavit sworn too.

See: S.C. Regulations 38-600 (14) once owner or designee offers to pay accrued fees and offers to pick up vehicle, storage fees stop mccall satisfied this requirment by calling 3-13-12 offering to pay fee's & Pick up vehicle, but was denied this right.

See: Barnes Towing Invoice - man called 3-13-12 (2:36) & Julie Martin his girlfriend.

See: Notice letter Envelope Exhibit, came back Unclaimed. Never delivered.

The Appellant Contends that the Court Erred, Violated Appellants right to counsel when the Appellate Judge Nettles, allowed Appellant to proceed Pro Se' without Conducting a Proper hearing Pursuant to Faretta V. California 422 US 806 (1975) or advising Appellant of the dangers and disadvantages of Self representation

See: Transcript Pg 4- line 6-9, You have an absolute right to represent yourself "Constitutional right to represent yourself, Do you want to hire a lawyer or do you want to represent yourself. I'll represent myself.
line 15 - Pg 4 How far did you go in school, I went thru High School two year college, Can you read & write I Can.

line 23-25 Pg. 4 All right, Do you Know that when youre appearing in Common Pleas Court, there are some risks. If you have not Attended Law school and if your proceeding Pro Se' your (Pg 5. line 1-4) going to be charged with the responsibility of Knowing the Procedural and the substantive Law just as if you were a lawyer You understand that, dont you. Yes Sir.

Transcript Pg 4 - line 23-25 All right
Do you know that when your appearing in Common Pleas Court, there are some risks. If you have not attended law school and if your proceeding Pro Se Your, See! Transcript Pg 5 - line 1-4 your going to be charged with the responsibility of knowing the Procedural and substantive Law just as if you were a lawyer, You understand that don't you? Yes Sir.

Transcript Pg 5 - line 1-10 and if you want to Proceed forward Pro Se your going be charged with the responsibility of knowing the procedural and substantive law just as if you were a lawyer, You understand that, Yes Sir, I'll allow you to do so And I'll be glad to hear from you.

The Appellate Circuit Court Judge has the responsibility of ensuring that the person Proceeding Pro Se' is informed of the dangers and disadvantages of self representation and makes a Knowing and intelligent waiver of right to counsel.

Barnes V. STATE 407 S.C. 27,31, 753 SE2d 545-548 (2014)

(Pg 5) Trans. Line 1-10 And if you want to Proceed forward Pro Se', your going to be Charged with the responsibility of Knowing the Procedural and the substantive law just as if you were a lawyer. You understand that. Yes Sir, Alright and you want to proceed forward Pro Se'. Yes Sir. I'll allow you to do so and I'll be glad to hear from you.

The trial Judge has the responsibility of ensuring that the person proceeding Pro Se' is informed of the dangers and disadvantages of self representation and makes a Knowingly and Intelligent waiver of right to counsel.

Barnes V. State. 407 S.C. 27, 31, 753 SE2d 545, 548, (2014) our Supreme Court held Barnes ~~A~~ should have been allowed to represent himself where he demonstrated and understanding of the process of Capital Voir dire, stated his intention to pursue a third party guilt defense at trial and discussed relevant case law, the burden of proof, and his right to ~~not~~ testify. Barnes also testified that he had read relevant case law and showed some understanding of the rules of evidence when Questioned by the trial judge. Id. At 33, 753 SE2d at 548

None of the factors in Barnes, which evidenced an intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self representation, exist in the record before this Court. Here the Judge failed to Advise Appellant of the dangers and disadvantages. the Judge informed Appellant that your going to be charged with Knowing procedural and substantive law just as a lawyer, you understand that.

This colloquy was insufficient to satisfy the requirements of Faretta. Moreover the Judge wholly failed to inquire into Appellants background experience with the civil system and knowledge of the rules of evidence and relevant case law. Accordingly the record fails to demonstrate Appellant made a Knowing and intelligent waiver of the right to counsel. See: Reed 332 S.C. at 41, 503 SE2d at 750.

This Court should hold the Appellate Circuit Court Judge Erred allowing Appellant to waive his right to counsel and proceed pro se. Reverse grant a new Hearing.

ARGUMENT

(1)

The trial Court Erred by allowing Respondent to Cross examine Appellant with Pleadings he filed, which alleged different amounts of damages. After Appellant withdrew those pleadings from being used in his trial At Pre-trial hearing and the Court agreed. The Court prejudiced the Appellants trial by allowing those Pleading in where they were prepared with supporting citations of Law, And by Appellant, but lead the jury to believe he was untruthful about the amounts of damages, when in fact the amounts of damages were re-sorted to different property items never was the total amounts changed, only shifted around-& See the C.D. Tape, it reflects the Amended Pleadings were withdrawn, therefore the Court did Err.

(2)

The Trial Court Erred Allowing Respondent to produce a new document never filed with the Court, with the previous case Repairmens Lien 2015-CV-23-10-8000 which introduced as evidence in this trial "having NO actual date" listed on the Respondents Exhibit(6) This Exhibit(6) has no date Nor No Name to whom it belonged to or to whom vehicle it was associated with. this Exhibit 6 from Respondent reflects different amounts than Appellants Exhibit(1) which reflects Amounts owed, and totals.

and has and actual date on it. when Appellant called requesting to pay the fees, but has no storage fee's listed nor storage dates. Therefor these two document are inconsistent and do not support the Respondents Counter claim. The Only support this Respondents Exhibit 6 has is, it support the Res Judicata Claim #3 where Respondent enters this evidence to try and support his claim that he followed All Court Procedures ~~"In his Counter Claim"~~ to get Relief in his Repairmens Lien, which he states in his Counter claim that they followed All Court Procedures, was Untrue, default set aside, Would be Material evidence showing the Court that there whole claim in these Counterclaim was, they did everything right by the laws to get the title of the vehicle and authorization to sell the vehicle, when in fact they didnt. So yes the Complaint was germane to the Repairmens Lien, because all the evidence Used to support Respondents Counterclaim was evidence used by the Repairmens Lien, which was dissolved set aside. Therefor these pieces of evidence were no good, fraudulent documents, with unsupporting testimony. If these same Exhibits failed during Process of the

Repairmens Lien, how could they support the Respondents Counter Claim with same facts alleged. See: Harner V. Harner 116 W.Va. 530, 182 SE2d 291

(3)

The Court Erred denying Appellants Motion To Dismiss Respondents Counter Claim: Because the same procedural steps alleged that were taken in the Counter Claim are the steps taken to get the default judgment that was set aside by the Repairmens Lien. And where the same facts of the prior adjudication appear on the face of a Complaint or "Counter Claim" the defense can be raised by demurrer "Motion To Dismiss. See: Harner V. Harner 116 W.Va 530, 182 SE2d 291 Res. Judicata and Collateral Estoppel IN. S.C. 28 S.C. L. Rev. 451, 452 (1977)
The Appellant raised this defense and the Motion To Dismiss was denied. The Appellant believes the Court Erred. S.C. Code 29-15-10, A Garagemen, Can Only collect storage fees on a Repairmens Lien. Respondent failed at that. Lien only exists on Repairmens (4). Lien S.C. Code 29-15-10

The Court Erred when it denied Appellants Motion To Dismiss Award of storage fees ~~+ Towing~~ to respondent. Appellant believes S.C Regulation supports us

argument & Motion; See: S.C. Regulation 38-600 (14) in pert part reads: Wrecker services may charge a daily storage fee, commencing 12 hours after the vehicle is towed to the storage area and terminating when the vehicle owner or vehicle owners designee offers or Attempts to pick up the vehicle and offers to pay the wrecker services accrued charges, During trial Respondent never objected that Appellant called 3-13-12 and requested to pay the fees owed, and pick up his vehicle, or that his designee Julse Martin also called and requested and offered the same, therefor Appellant contends he satisfied the requirments set out in S.C. Regulation. 38-600 (14) therefor his Motion should have been granted. And storage fees adjusted to Amount accordingly, But where the Court set aside any storage fees owed in its Previous Order, July 11, 2017, the Respondent has no evidence he complied with the laws to collect storage fees, And to be allowed a second Attempt After failing before with same facts & steps used would be Res Judicata claim. See Respondents Answer, Counterclaim

(5).

The Court Erred when it allowed Respondents "David McAlhany" Pubic Safety "Towed Vehicle Report" into evidence. Where the officer David McAlhany who

filled out the 'report' Towed Vehicle Report was Not present at trial to testify to the Authenticity of the document. Where Appellant challenged several places that were marked "scratched thru" to be hiding something, and Barnes Towing cannot Authenticate this Towed Vehicle Report. McCall moved to Suppress it

The Respondent has Misplaced and Confussed himself with the Respondents reciept reflecting costs: (Exhibit 6) of Respondent in place of Towed Vehicle Report where he claims the Towed Vehicle Report was properly Authenticated by Mike Barnes, because it lost the amount of Tow Bill; NO where on this Towed Vehicle Report is there Any Towing Costs listed. Only the Inventory of Appellants property in his vehicle done by the arresting officer David McAlhany, not Mike Barnes with Barnes Towing. Respondent. Therefor, Respondent could not Authenticate this document and the Court should have suppressed the evidence. Because it was in controversy with the Property items the Appellant alleged he had in the vehicle, now destroyed. And without the officer to testify to this documents Authenticity, its Questionable for

Respondent to say what was inventorred by Officer McAlhany, when he didnt do the inventory. Nor was Respondents signature on this Towed Vehicle Report; Therefor the Court Erred. See: Towed Vehicle Report

(6).

the Court Erred charging only Portions of the law. where the Compliant hinged on Notice of Sale Never Properly served on Appellant. Not the Notice for the Counter Claim, as the Circuit Court Judge was Not Fully understanding; the Court should have read All relevant Portions of the statutory law, where the Compliant talk about S.C Code 29-15-10, a Garage may must collect storage fees on Repairmens Lien, give required Notices 56-5-5630, 35, 40 Especially where Appellant proved the Notice letters were returned Unclaimed, he was never served, the Court should have charged all relevat portions, because this lead the jurors to believe the Respondent had complied by law, serving the Repairmens Lien and Notice of Sale of vehicle, when in fact he hadnt.

See: Transcript Pg 32, Line 10-12 As far as jury Instructions, the Repairmen Lien statute goes to the very heart of this case Controversy And would be appropriate jury charge The Court never gave that charge S.C Code 29-15-10

The Court Erred denying Appellant the right to argue and enter into evidence the Court decision in the prior germane case. The issues, facts in the Respondents Counter Claim were germane before the Court. Because the Counter Claim the same steps procedures the Respondent took in achieving his relief on the Repairmens Lien is stated and listed for his Counter claim. Because the dates of mailing, the prices paid for mailing certified return receipt letters, were for the repairmens lien, and not for the Counter Claim. And the Counter Claim stated they followed all Court Procedures, which they took with serving the repairmens Lien and notices, was a false statement made in their Counter Claim. And Judge Seldon Reders Ruling July 11, 2017 supported And was evidence that this statement on their Counter Claim was false and untrue. Such as the same statement they made in the Repairmens Lien. that the letters never came back Unclaimed. when in fact they did, And they Court ruled July 11, 2017 they did not follow Court procedures, and statutory law. And set aside the default Judgement. This Counter Claim was Res Judicata Compulsory claim.

(8)

The Court Erred in Limiting the Appellants Witnesses. There was a witness list presented at trial, several officers were called who testified; Other people, Witnesses were to testify such as the Clerk of Court, Judge Robert Simms whom was subpeaned, And when the Court ASK Appellant whom all he intended to call. The Court exclained we will call these officers first, and I'll get back with you or your other witnesses, But the Court never got back with Appellant, denying him his due process to call All his witnesses he intended to Call, Review the C. D. Recorded Disk, from the Court

(9)

The Court Erred in allowing Respondent to Cross-examine Appellant as to his Conviction for Felony D.U.I, Where it had nothing to do with Appellant not being properly served with the Reparmens Lien and notice of sale of the Vehicle.

(10)

The Court Erred abused his discretion by denying Appellants Motion for Directed Verdict, where the facts were not in controversy in Respondents Counter Claim, Because the material Evidence revealed Respondent never served Appellant with the Repairmens Lien or Notice of Sale of vehicle And the same steps taken in Serving the Repairmens Lien were repeated verbatim in the Respondents Counterclaim, same evidence, Postal Receipt revealed Notice letter came back Unclaimed by Appellant, therefor the Court should have granted a Directed Verdict.

(11).

The Court did Err and abuse its discretion granting Respondents Counter Claim. Where the same facts had been stated in the Repairmens Lien, same steps taken in Repairmens Lien were written in the Counter Claim, where these Facts & steps had already been adjudicated on, It was Res Judicata to allow them to come before the Court again and be decided on, a second bite at the Apple.

(12)

The Court Erred when it granted Respondents Counter claim, this is a reiteration of issue NO: 3,

(13)

The Court Erred abuse his discretion, Violated Appellants right to Counsel, when Circuit Court Judge Nettles Allowed Appellant to proceed Pro Se' without conducting a proper hearing pursuant to Faretta V. California 422 U.S. 806 (1975) or advising Appellant of the dangers and disadvantages of self representation.

See Transcipt. Pg 4 - line 6-9 You have an absolute constitutional right to represent yourself. Do you want to hire a lawyer or do you want to represent yourself.

See Transcript Pg 4. line 15 - How far did you go in school. I went thru High School, two years college. Can you read and write. I can.

Our Supreme Court held Barnes should have been allowed to represent himself where he demonstrated and understanding of the process of capital voir dire, stated his intention to a third party guilt defense At trial And discussed relevant case law and showed the Court the burden of proof And his right to testify. Barnes also testified that he had read relevant case law and showed some understanding of the rules of evidence when Questioned by the trial Judge
Id At 33, 753 SE2d at 548

None of these factors in Barnes which evidenced and intelligent waiver of the right to counsel and that the defendant was proceeding with the full understanding of the dangers and disadvantages of self representation, exist in this record, before this Court, See: State V Barnes 407 S.C. 21, 31, 753 SE2d 545, 548 (2014)

Here the Judge failed to advise Appellant of the dangers and disadvantages. the Judge informed Appellant that "your going to be charged with Knowing procedural and substantive law, just as a lawyer, you understand that.

this type colloquy was insufficient to satisfy the requirments of Farretta. Moreover the Judge wholly failed to inquire into Appellants background, experience with the civil court system and knowledge of the rules of evidence and relevant case law. Accordingly the record fails to demonstrate Appellant made a knowing and intelligent waiver of the right to counsel. See: Reed 332 S.C. at 41, 503 SE2d at 250

This Court should hold the Circuit Court Judge Erred allowing Appellant to waive his right to counsel and proceed pro se'.

Conclusions

Based on the foregoing Argument(s) Appellant respectfully requests this Court grant him a New Trial, Appeal, damages in amount of $7,500 dollars or the proper relief the Court deems just and proper

Respectfully Submitted,
S/ Terry McCall

This 2nd day of October, 2018

Terry McCall #233236
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