

**FINAL BRIEFS OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2012-212457

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OCT 30 2012

**SC Court of Appeals**

North Charleston City of,

Respondent,

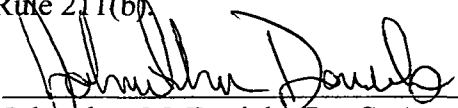
v.

Johnathan M. Daniels,

Appellant.

**FINAL BRIEFS OF APPELLANT**

This FINAL BRIEFS OF APPELLANT includes (1) Appellant's Initial Brief and (2) Appellant's Reply Brief, and complies with Rule 211(b).

  
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Appellant, *Pro Se*

\_\_\_\_\_  
*Attorney for Respondent*

**INITIAL BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

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Case No. 2012 - 212457

North Charleston City of,

Respondent,

v.

Johnathan M. Daniels,

Appellant.

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INITIAL BRIEF OF APPELLANT

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July 27<sup>th</sup>, 2012



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## **STATEMENT OF ISSUES ON APPEAL**

1. DID THE CIRCUIT COURT ERR IN FINDING THAT THE MUNICIPAL TRIAL, IN WHICH APPELLANT WAS FOUND GUILTY, WAS A FAIR AND IMPARTIAL TRIAL, MEETING THE REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW?
2. DID THE CIRCUIT COURT ERR BY FAILING TO REQUIRE THE MUNICIPAL JUDGE TO MAKE A PROPER RETURN, INCLUDING A COPY OF THE RECORD (i.e., TRANSCRIPT), BEFORE MAKING ITS RULING TO DENY APPELLANT'S APPEAL OF THE MUNICIPAL COURT'S FINDING?

## **STATEMENT OF THE CASE**

Appellant brought this case before the Circuit Court to appeal from the judgment of the City of North Charleston Municipal Court, hereinafter "municipal court." At the municipal court trial, Appellant was charged with a minor traffic violation (no bike light), found guilty, and fined.

During the municipal court trial, Appellant was segregated from the courtroom, threatened with jail, and harassed and demeaned by court officers. These actions were taken as a result of Appellant's religious practice of wearing a religious headdress, and adversely affected Appellant's defense. Appellant filed written briefs and entered evidence to the Circuit Court. The Circuit Court affirmed the municipal court's judgment. This appeal follows.

## **FACTS**

On October 18<sup>th</sup>, 2012, Appellant was summoned to the North Charleston Municipal Court to answer a traffic violation. Appellant arrived at the City of North Charleston City Hall to attend the 1:00 p.m. court session, and was promptly targeted for discrimination and segregation by the Constables attending upon the court.

Even though Appellant had already cleared the security checkpoint downstairs and given explicit verbal notice of his religious practice to the court Constables, Appellant was unlawfully ordered to remove my religious headdress or face the loss of his case and five days in jail for contempt of court. When Appellant asserted his right to practice his religion, Appellant was told, in open court, “Your [Appellant’s] religion don’t belong in this courtroom and you better take it off.”

At the hands of the attending court Constables, Appellant was verbally and profanely abused, seized and segregated from the courtroom, repeatedly threatened, generally made a spectacle of, and unlawfully threatened and coerced into removing his religious headdress. Appellant unwillingly appeared before the court without his headdress and with his hair exposed.

When called before the Judge, Appellant informed the Judge that he had been discriminated against and assaulted by the court’s Constables, the Judge did not acknowledge Appellant’s concerns at all; rather, he simply moved forward with the case. During Appellant’s oration with the Judge, Appellant was forced to endure even more verbal abuse, with court Constables and officers laughing and deriding Appellant openly, in plain view and earshot of the Judge and everyone else attending the court. Appellant openly objected to the way he was being mistreated and publicly declared the “trial” to be unfair and discriminatory.

Although Appellant was innocent of the charge and entered a Not Guilty Plea, he was found guilty. Appellant filed a timely appeal to the Court of Common Pleas to vindicate his rights in this matter.

## ARGUMENTS

1. THE CIRCUIT COURT ERRED IN FINDING THAT THE MUNICIPAL TRIAL WAS A FAIR AND IMPARTIAL TRIAL, WHICH MET THE REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW?

In the hearing to reach a verdict in the above referenced case, Appellant was religiously and racially discriminated against by the City of North Charleston's court Constables. This discrimination occurred, both, before and during the 1:00 p.m. court session. This discrimination was unlawfully carried out in violation of Article 1 § 3 of the South Carolina Constitution, the First, Fourth & Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1983, 42 USC § 21B and SC CODE Chapter 1 § 32.

Appellant was seized and segregated from the courtroom before the Judge entered chambers and before the Judge and/or Constables gave the notices, which are required by law, outlining rights of the accused at trial and details of the court's procedure. On October 18<sup>th</sup>, 2011, Appellant had no knowledge of his rights, knowledge that such notices were even given, or were required to be given, and only learned of them about two months after that date.

Appellant's being unlawfully segregated from the courtroom, and thus, not being present to be notified that he had a right to a jury trial in a criminal traffic case and that he had a right to have legal counsel appointed if he could not afford to do so, among other things, unfairly and negatively impacted his defense. Appellant's ignorance of these facts would have been remedied had he not been segregated from the courtroom for his religious practices.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." *Faretta v. California*, 422 U.S. 806, 807 (1975). "The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is *per se* reversible error." *State v. Thompson*, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003). "Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *McKnight v. State*, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995) (quoting *Strickland v. Washington*, 466 U.S. 668, 692, (1984)).

"A defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." *Thompson*, 355 S.C. at 262, 584 S.E.2d at 134. "The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights." *Id.*

A review of the record in this case shows that Appellant neither understood that the charge against him was a criminal charge, nor was he aware that he could have counsel appointed if he could not afford to hire his own. Appellant's being unlawfully segregated for his religious practice precipitated the misunderstandings and the Circuit Court could not reasonably conclude that Appellant knowingly or intentionally waived rights he was unaware of.

The intimidation to force Appellant to stop practicing his religion, threats of conviction and confinement, and general interference by the court's Constables distracted and prevented Appellant from mounting an effective defense to the charge. By the unlawful actions of the court's Constables, Appellant was unduly harassed, stressed, made upset and distracted from his defense; effectively not having a fair opportunity to present his case.

Briefs and evidentiary documents filed by Appellant to the Circuit Court presented clear proof of the claims made by Appellant, and cited reasons for his appeal to the Circuit Court. In addition, the municipal court was required to file a return, including transcript, which would have contradicted the claim made by the municipal court judge that he made Appellant aware of his rights. The Circuit Court erred by not fully developing and reviewing the record.

2. THE CIRCUIT COURT ERRED BY FAILING TO REQUIRE THE MUNICIPAL COURT TO MAKE A PROPER RETURN, INCLUDING A COPY OF THE RECORD (i.e., TRANSCRIPT), BEFORE MAKING ITS RULING TO DENY APPELLANT'S APPEAL OF THE MUNICIPAL COURT'S FINDING?

The municipal court whose judgment is appealed to the Circuit Court is required to make a Return to the Circuit Court as outlined at SC Code 14-25-105, which reads, "In the event of an appeal, the municipal judge shall make a return to the Court of Common Pleas, and the appeal must be heard by the presiding judge upon the return. The return of the municipal judge shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment. When the testimony has been taken by a reporter as provided herein, the return shall include the reporter's transcript of

the testimony. The ... There shall be no trial de novo on any appeal from a municipal court.”

In this case the municipal court’s Return was not made in accordance with the requirements of SC Code 14-25-105. The Circuit Court obviously erred in concluding that Appellant was made aware of his rights after being segregated from the municipal court. Appellant has reviewed the audio record of the municipal court trial, and found that the judge’s Return from the municipal is obviously false, as Appellant was never made aware of his rights. The Circuit Court either moved forward with the case despite the deficiency of the Return (no transcript or recording), or unreasonably concluded that no harmful prejudice or reversible error occurred at the municipal court’s trial of Appellant.

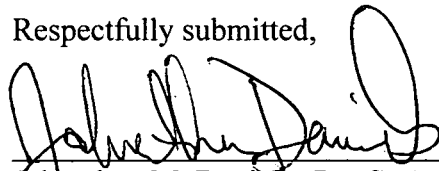
The Circuit Court’s reliance on the false and unsupported statements in the municipal court’s Return as inviolate evidence of the proper trial and conviction of Appellant is unreasonable and totally unsupported by the record.

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

July 27<sup>th</sup>, 2012

Respectfully submitted,



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**REPLY OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2012-212457

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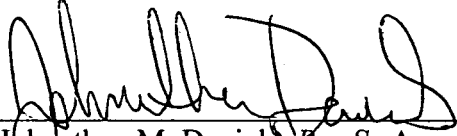
v.

Johnathan M. Daniels,

Appellant.

REPLY OF APPELLANT

September 7<sup>th</sup>, 2012

  
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## **STATEMENT OF THE CASE**

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## **FACTS**

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Even though Appellant had already cleared the security checkpoint downstairs and given explicit verbal notice of his religious practice to the court Constables, Appellant was unlawfully ordered to remove my religious headdress or face the loss of his case and five days in jail for contempt of court. When Appellant asserted his right to practice his religion, Appellant was told, in open court, “Your [Appellant’s] religion don’t belong in this courtroom and you better take it off.”

At the hands of the attending court Constables, Appellant was verbally and profanely abused, seized and segregated from the courtroom, repeatedly threatened, generally made a spectacle of, and unlawfully threatened and coerced into removing his religious headdress. Appellant unwillingly appeared before the court without his headdress and with his hair exposed.

When called before the Judge, Appellant informed the Judge that he had been discriminated against and assaulted by the court's Constables, the Judge did not acknowledge Appellant's concerns at all; rather, he simply moved forward with the case. During Appellant's oration with the Judge, Appellant was forced to endure even more verbal abuse, with court Constables and officers laughing and deriding Appellant openly, in plain view and earshot of the Judge and everyone else attending the court. Appellant openly objected to the way he was being mistreated and publicly declared the "trial" to be unfair and discriminatory.

Although Appellant was innocent of the charge and entered a Not Guilty Plea, he was found guilty. Appellant filed a timely appeal to the Court of Common Pleas to vindicate his rights in this matter.

**In response to Respondent's argument at (I)(A), Appellant makes this rebuttal:**

Regardless of Respondent's feeble arguments to the contrary, if Appellant had been in the courtroom when the notices of the right to counsel in a criminal trial were given, or informed of such a right by the Judge, as every other citizen attending court was allowed, Appellant could have attained counsel by right. The fact that the law demands a right to counsel in certain cases, does not prevent Appellant from taking equal advantage of the offer of counsel that was made to everyone else attending the municipal court.

More precisely, if other citizens were offered counsel in cases in which the law didn't require the offer to be made, then Appellant should be afforded the same offer as everyone else who was not removed from the courtroom because of his or her non-disruptive religious practice (R. p. 16).

Furthermore, Appellant did not knowingly and voluntarily waive his right to counsel. (R. pp. 13 & 14, at claims 26-35).

**In response to Respondent's argument at (I)(B), Appellant makes this rebuttal:**

Appellant did not knowingly and voluntarily waive his right to a jury trial. Even if Appellant refused Judge Jennings' insistence to have Appellant's case moved to the jury trial roster, Appellant's refusal was not undertaken "knowingly." In his Memorandum And Affidavit In Support Of Criminal Appeal, filed with the Circuit Court on May 9<sup>th</sup>, 2012, Appellant presented evidence to the Circuit Court that (1) he was not present when the Judge and Bailiffs gave any general order concerning rights of the accused, (2) he was not specifically made aware of his rights by the Judge, (3) he did not know that he had missed or been deprived of any notices, and (4) he did not know that having a jury trial was his "right" rather than an imposition by a hostile Judge. (R. pp. 13 & 14, at claims 26-34). Appellant could not "knowingly" waive a right that he did not know of, even if in his ignorance, he refused the Municipal Judge's ambiguous and imposing insistence on a jury trial.

Appellant's lack of notice and his lack of awareness of his rights at the Municipal trial was brought to the attention of the Circuit Court, on May 9<sup>th</sup>, 2012, through Appellant's Memorandum And Affidavit In Support Of Criminal Appeal, and was

properly put at issue before the Circuit Court hearing of Appellant's Appeal on May 17<sup>th</sup>, 2012. (R. pp. 13 & 14, at claims 26-34).

In addition, and importantly, Appellant was under a great deal of stress and confusion when he was brought before the Municipal Judge on October 18<sup>th</sup>, 2011. The record clearly evidences that Appellant was (1) segregated from the courtroom for his non-disruptive religious practice, (2) presently, arguing with the Municipal Court's Bailiff's about his being segregated, and (3) brought into the courtroom in a confused and emotional state. (R. p. 2; R. p. 4; R. p. 6, at claims 18 – 25; R. p. 12, at claims 18-19, 21, 24, 25).

The Circuit Court could not have properly assessed that Appellant was informed of his right to a jury trial, and "knowingly" waived it, as falsely claimed by the Municipal Court in its Return to the Circuit Court. (R. p. 16). Appellant raised the issues of a lack of notice being given and his unawareness of his rights at the Circuit Court, by memorandum, and it is proper for this Court to consider these issues in the present case. Respondent assessing a "knowing and voluntary" waiver of Appellant's right to a jury trial is smoke and mirrors, and does not meet the required standard.

**In response to Respondent's argument at (II)(A), Appellant makes this rebuttal:**

Appellant's objection to the sufficiency of the Municipal Court Return could not have been raised in Appellant's Notice of Criminal Appeal or any paper filed at that time, as it was an impossibility, because the Municipal Court's Return had not been made yet. Unless Respondent's counsel forgets, the Return is filed in response to the Notice of Criminal Appeal, and Appellant's objecting to a Return that has not been made yet is just an asinine notion.

Furthermore, Appellant had no way of knowing what the Circuit Court Judge was reading at the Circuit Court Appeal hearing, and still lacks precise knowledge of what exactly is, or is not, in the case record. If the Municipal Court had complied with the law requiring that the transcript be included in its Return, then Appellant would have been correct in assuming that the Circuit Court Judge was fully informed. However this does not appear to be the case, and is the very reason that Appellant has brought this case before the Appellate Court, so that this Court can determine if an error was made by the Circuit Court Judge or if the record was insufficient due to the Municipality's non-compliance with the law.

As Appellant is a reasonable person, it seemed to Appellant that either (1) the Circuit Court read the transcript of the Municipal Court trial and erroneously found that Appellant was informed of his rights, or (2) that the Municipal Court did not send a transcript as required by law.

The issue of whether or not the Return was lawful and sufficient must be preserved to be heard, here, as it could not have been brought forth at any earlier time.

**In response to Respondent's argument at (II)(B), Appellant makes this rebuttal:**

By presenting a purposely incomplete quotation of law and argument, Respondent's counsel is attempting to obfuscate the issue raised by Appellant and to deceive or confuse this Court. The entire applicable law reads as follows [underlining mine]:

**"SECTION 14-25-105.** Municipal Judge to make return to Court of Common Pleas in event of appeal; no appeal de novo.

In the event of an appeal, the Municipal Judge shall make a return to the Court of Common Pleas, and the appeal must be heard by the presiding Judge upon the return. The return of the Municipal Judge shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment. When the testimony has been taken by a reporter as provided herein, the return shall include the reporter's transcript of the testimony. The return must be filed with the Clerk of the Court of Common Pleas of the county in which the trial was held and the cause must be placed on the motion calendar for the Court of Common Pleas. There shall be no trial de novo on any appeal from a Municipal court.”

The “**shall**,” stated in the law above, does not mean, “*If the Municipal Court opts to provide a transcript.*” It creates a duty and obligation to do so. A MUST DO. It does not create any duty on Appellant to go and produce a transcript to give to the Circuit Court, nor does it require that Appellant take any action to produce any part of the required Return. This duty and obligation falls squarely on the Municipal Court to carry it out, and the Municipal Court in this case failed in its duty to do so and now asks this honorable Court to allow Appellant to pay, again, for its errors.

The Municipal Court certainly had a Court Reporter there taking record of the trial, and operating the audio recorder. This is the same Court Reporter who reported in the Case Disposition that Appellant had been removed from the courtroom, and it was the audio recording that this same Court Reporter made, which Appellant referenced when he said that the audio record of the hearing directly controverts the false claims made by the Municipal Judge in his Return.

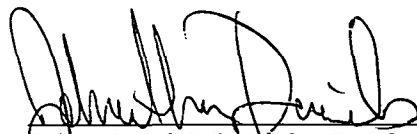
Now, if the Municipal Court had followed the law and had its Court Reporter prepare a transcript of the trial, then sent that transcript of Appellant’s Municipal Court trial to the Circuit Court with its Return, then that transcript would have shown the Circuit Court that Appellant was not informed or aware of his rights; and that the Municipal Judge had made a false record.

## CONCLUSION

Appellant had a right to equal protection under the law, which in this criminal case, was a right to counsel and a right to a jury trial, and adequate notices of these rights before proceeding with trial. The notices were not given, and Appellant was unaware of his rights. The Circuit Court Judge hearing Appellant's Appeal was denied full knowledge and information by the Municipal Court not complying with the law governing making its Return to the Circuit Court. This non-compliance by the Municipal Court resulted in an incomplete record at the Circuit Court or an error by the Circuit Court Judge.

The Municipal Court in this case is attempting to twice deny Appellant a fair hearing in the matter that was before it on October 18<sup>th</sup>, 2011. Appellant respectfully requests that this honorable Court not allow this to be done, and that this Court issue an order vacating Appellant's conviction or remanding the case back to the Circuit Court to make a proper ruling on a full record, including transcript.

September 7<sup>th</sup>, 2012



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**PROOF OF SERVICE OF FINAL BRIEFS OF APPELLANT**

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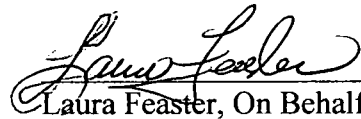
Appellant.

**SC Court of Appeals**

**PROOF OF SERVICE**

I certify that I have served the Final Briefs Of Appellant on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 27th, 2012, addressed to Respondent's attorney of record, Richard W. Lingenfelter Jr., Post Office Box 190016, North Charleston, South Carolina 29419.

October 27<sup>th</sup>, 2012

  
\_\_\_\_\_  
Laura Feaster, On Behalf Of Appellant

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**CERTIFICATE OF COMPLIANCE REGARDING FINAL BRIEFS  
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**CERTIFICATE OF COMPLIANCE**

Appellant, *Pro Se*, Johnathan M. Daniels, hereby certifies that the FINAL BRIEFS OF APPELLANT include (1) Appellant's Initial Brief and (2) Appellant's Reply Brief, and is in compliance with Rule 211(b).



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Attorney for Respondent

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**SC Court of Appeals**