

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Appeals

Stephanie McDonald – Circuit Court Judge

Case Number 2011200006

State of South Carolina,

Respondent,

v.

William A. Ferrara,

Appellant.

BRIEF OF APPELLANT

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SC Court of Appeals

WAF

William Ferrara

P. O. Box 711

New Ellenton, SC 29809

TABLE OF CONTENTS

Statement of the Case..... 3

Table of **Authorities**..... 4

State of Issues on Appeal..... 5

Facts..... 7

Argument..... 8

Conclusion..... 15

STATEMENT OF THE CASE

On April 28, 2011 William Ferrara received a traffic citation for reckless driving from Sgt. Maurice Hunt, Hampton County Sheriff's Office, in Hampton County. R. p. 54. A jury trial was requested, and the matter was heard before Hampton County Magistrate Carolyn Williams on June 16, 2011. The appellant was convicted of reckless driving and filed a timely appeal to the South Carolina Circuit Court. On September 6, 2011 an appeal hearing was held before Circuit Court Judge Stephanie McDonald who affirmed the lower court's decision. R. p. 77. The appellant filed a timely notice of appeal to the S. C. Court of Appeals.

TABLE OF AUTHORITIES

South Carolina State Law, section 56-5-2920, reckless driving

South Carolina State Law, section 16-9-10, perjury

South Carolina State Law, section 56-5-1520, general rules as to maximum speed limits

STATEMENT OF ISSUES ON APPEAL

The following issues were presented to Circuit Court Judge Stephanie McDonald for her consideration of appellant's request to either reverse or remand his conviction of reckless driving in Hampton County magistrate's court:

- (1) Pre-trial discovery issues as the magistrate's court failed to grant appellant's motion to compel discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure R. pp. 6, 8, 25, 27-28, 34, 42-48, 50-51, 62-63, 69-71, 73, 75-76.
- (2) Appellant's repeated requests to be represented by counsel and the magistrate court's refusal to continue the case although application and payment had been made to be represented by the Public Defender's office. R. pp. 6, 25, 28, 34-35, 49, 75-76.
- (3) Failure of the magistrate court to honor a properly made request for witness subpoena. The witness was Hampton County Sheriff Thomas Smalls who injected himself into this case by interfering with appellant's attempt to collect potentially exculpatory evidence during the pre-trial discovery phase of the case. R. pp. 6-7, 21, 25, 28-29, 35-37, 50-51, 63-64, 73-76.
- (4) Ex-parte communications between the prosecuting officer and the court upon completion of the jury strike on May 25, 2011 at which time appellant not present and had been disconnected on the telephone by the magistrate court judge who then proceeded to discuss material facts associated with this case with the prosecuting officer, Sgt. Maurice Hunt. R. pp. 7-9, 25-26, 29, 37-38, 65, 75-76.
- (5) Ex-parte communications between the director of the prosecuting agency, Sheriff Thomas Smalls, and Judge Carolyn Williams, Hampton County Summary Court Judge,

- resulting in the magistrate court's failure to honor a duly requested subpoena and abuse of judicial discretion. R. pp. 9-10, 21, 25-26, 28-29, 35-38, 64-65, 74-76.
- (6) Magistrate courts allowance of inappropriate jesters made by Hampton County Sheriff Thomas Smalls to the jury while conducting the trial. R. p. 10, 26, 30, 37, 75-76.
 - (7) Failure of the magistrate court to recognize that factual grounds of prosecutorial misconduct existed and ordering the appropriate judicial remedy of dismissing the action. R. pp. 10-11, 26, 30, 38, 57, 75-76.
 - (8) Failure of the magistrate court to suppress evidence provided by the State's hearsay witness, Sgt. Smith, who did not observe the alleged offense, upon several timely motions to do so. R. pp. 11-12, 26, 30-31, 38-39, 57, 66-67, 75-76. The court never instructed the jury to disregard this testimony during their deliberations. Further, the magistrate attempted to mislead the court in her return by stating that the appellant did not object to any evidence submitted by the State during the trial to include Sgt. Smith's direct testimony. R. p. 57.
 - (9) Failure of the magistrate court to suppress evidence presented by the State after resting its case. R. pp. 12, 26, 39, 57, 75-76. Further, the court never instructed the jury to disregard this testimony during their deliberations. R. pp. 12, 26, 39, 57, 75-76.
 - (10) Failure of the magistrate court to suppress evidence provided by the State's hearsay witness, Sgt. Smith, who did not observe the alleged offense, upon several timely motions to do so. R. pp. 11-12, 26, 30-31, 38-39, 57, 66-67, 75-76. Further, the court never instructed the jury to disregard this testimony during their deliberations. R. pp. 11-12, 26, 30-31, 38-39, 66-67, 75-76.

- (11) Magistrate court failed to permit closing remarks before charging the jury and having them begin deliberations. R. pp. 14-16, 27, 31, 41, 75-76. Upon objection, Judge Williams admitted on the record that she was “only human” and that “judges make mistakes too.” R. pp. 14, 27, 31, 75-76.
- (12) Magistrate court’s erred to grant a motion for a directed verdict as the State failed to meet its burden of proof regarding the charge of reckless driving. R.-pp. 12-14, 27, 31-32, 39-40, 57, 75-76.
- (13) Knowingly false material evidence presented to jury by the State. SGT Hunt’s testimony was false and intentionally misleading (perjury in violation of SC law, section 16-9-10). The prosecuting officer falsely stated that one of the two required traffic infractions he observed was the illegal crossing of a solid double line constituting “improper passing”. A solid double line does not exist in the roadway where the traffic infraction was falsely and improperly alleged. R. pp. 27, 32, 39-41, 75-76.
- (14) The State failed to submit a proper return/answer to the Circuit Court as the magistrate failed to sign her answer. R. p. 68. In addition, the State failed to provide a copy of this answer to the appellant prior to or during the appeal hearing held before Circuit Court Judge Stephanie McDonald on September 6, 2011.

FACTS

A hearing was held before Circuit Court Judge Stephanie McDonald on September 6, 2011 R. p. 3. The appellant represented himself and the state was represented by Mr. Tabor Vaux, Esq. R. p. 3. Numerous written and oral arguments were presented by the appellant during this hearing, to include a written brief, requesting that the lower court reverse or remand his

reckless driving conviction. R. pp. 3-32. The appellant filed a timely written of notice of appeal to the circuit court with supporting arguments; however, the State failed to submit a proper written answer, but did provide eight recorded audio tape cassettes from both the jury strike and trial for her review and consideration as part of the record file R. pp. 55-76. Further, the court stated that she reviewed the entire record file and found no error of law R. p. 20, 75-76. The circuit court issued an order affirming appellant's conviction of reckless driving R. p. 77.

ARGUMENTS

Circuit Court Judge Stephanie McDonald erred in her finding that there were no errors of law in this matter as follows:

(1) The magistrate's court failed to grant appellant's motion to compel discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure R. pp. 42-48. In this case a request for discovery under Rule 5 was made on May 19, 2011 and received by certified mail by the State on May 20, 2011. The State refused to comply with this discovery request; therefore, a motion to compel discovery was mailed by certified mail to the summary court on June 9, 2011 R. pp. 46-47. During the pre-trial hearing on June 16, 2011 once again a request was made of the magistrate's court to compel discovery at which time the court erred by improperly refusing to grant appellant's motion R. p. 62, 75-76. During the trial the State disclosed that radio transmissions were in fact used as well as telephone communications R. pp. 75-76. The State refused to provide a copy of these recorded transmissions which were potentially exculpatory. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law R. pp. 6, 8, 25, 27-28, 34, 42-48, 50-51, 62-63, 69-71, 73, 75-76.

(2) On several occasions the appellant's repeated his request to be represented by counsel and the magistrate court erred by refusing to continue the case although evidence of application and payment had been made to be represented by the Public Defender's office R. pp. 6, 25, 75-76. During the pre-trial hearing Judge Williams was informed that payment had been made and accepted by the Hampton County Clerk of Court's office for a public defender R. p. 49. Appellant requested that the case be continued until he could be properly represented by counsel. R. pp. 25, 52. The magistrate's court erred as a matter of law and refused to continue the case. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 6, 25, 28, 34-35, 49, 75-76.

(3) The magistrate court erred as a matter of law by failing to honor a properly made request from appellant for a witness subpoena R. pp. 6, 9-10, 75-76. The witness was Hampton County Sheriff Thomas Smalls who injected himself into this case by interfering with appellant's attempt to collect potentially exculpatory evidence during the pre-trial discovery phase of the case. R. pp. 6-7, 21, 25, 28-29, 35-37, 50-51, 63-64, 73-76 On May 25, 2011 a written request to subpoena Sheriff Thomas Smalls was made by certified mail (attached letter and USPS certification) and received by Judge Williams on May 31, 2011. R. pp. 50-51. During the pre-trial hearing on June 16, 2011 Judge Williams admitted that she failed to subpoena Sheriff Thomas Smalls as requested. R. pp. 64, 75-76 The circuit court failed to recognize this fact, although being informed by the appellant, that this witness directed the agency who brought and prosecuted this criminal charge against him and that this witness attempted to block appellant's attempt to collect potentially exculpatory evidence which supported his defense. R. pp. 21, 25, 28-29. Initially, the arresting officer claimed that one of the two reasons for the reckless driving charge was appellant's attempt to evade him although Sgt. Hunt drove an unmarked vehicle without

turning his blue lights on for well over two miles in an apparent attempt to entrap the appellant in a traffic citation. R. pp. 75-76. At trial he changed his story since the sheriff has interfered with the case, dropped the evasion infraction, and added the improper passing infraction along with an unknown speed in excess of the posted speed limit as alternative way to support the unfounded reckless driving charge lodged against the appellant. R. pp. 75-76. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 6-7, 21, 25, 28-29, 35-37, 50-51, 63-64, 73-76.

(4) The magistrate court erred as a matter of law by allowing ex-parte communications between the prosecuting officer and her court upon completion of the jury strike on May 25, 2011 at which time the appellant was not present and had been disconnected on the telephone by the magistrate court judge who then proceeded to discuss material facts associated with this case with the prosecuting officer, Sgt. Maurice Hunt. R. pp. 7-9, 25-26, 29, 37-38, 65, 75-76. An audio cassette tape of this jury strike proceedings was provided to Judge McDonald for her consideration. R. pp. 75-76. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this judicial misconduct. R. pp. 7-9, 25-26, 29, 37-38, 65, 75-76.

(5) The magistrate court erred as a matter of law by allowing ex-parte communications between the director of the prosecuting agency, Sheriff Thomas Smalls, and Judge Carolyn Williams, Hampton County Summary Court Judge, resulting in the magistrate court's failure to honor a duly requested subpoena and abuse of judicial discretion. R. pp. 9-10, 21, 25-26, 28-29, 35-38, 64-65, 74-76. During the pre-trial hearing Judge Williams was asked if she had issued a subpoena to Thomas Smalls at which time she responded that she failed to do so, but that she had taken the liberty to speak to him directly about the case during an Ex-Parte meeting. Thomas

Smalls had interfered with appellant attempts to collect potentially exculpatory evidence, is the director of the prosecuting agency, and supervisor of the prosecuting officer, Sgt Maurice Hunt. Judge Williams stated that she learned from Ex-Parte conversation that Thomas Smalls was not involved in the case; therefore, she unilaterally, without informing appellant, decided not to honor his duly and properly requested subpoena. Judge McDonald erred in not recognizing this error of law. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 9-10, 21, 25-26, 28-29, 35-38, 64-65, 74-76.

(6) The magistrate court erred as a matter of law by allowing inappropriate jesters to be made by Hampton County Sheriff Thomas Smalls to the jury while conducting the trial. R. p. 10, 26, 30, 37, 75-76. Thomas Smalls was allowed to enter the courtroom, remain standing and making inappropriate jesters to the jury while trial was being conducted in an attempt to improperly influence and intimidate the jury. This inappropriate conduct was observed by all in the courtroom to include Judge Williams. R. pp. 56, 60-61, 75-76. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. p. 10, 26, 30, 37, 75-76.

(7) The court erred as a matter of law by failing to recognize that factual grounds of prosecutorial misconduct existed and ordering the appropriate judicial remedy of dismissing the action. R. pp. 10-11, 26, 30, 38, 57, 75-76. Undisputed facts of prosecutorial conduct were presented to Judge Williams and a motion was made to dismiss the case as a judicial remedy to such misconduct. R. pp. 10-11, 26, 30, 38, 57, 75-76. Judge Williams was aware and acknowledged that she had inappropriate Ex-Parte discussions with both Sgt Maurice Hunt and Sheriff Thomas Smalls, but failed to grant appellant's motion for dismissal on the grounds of

prosecutorial misconduct. Failure to grant appellant's motion was inappropriate and abuse of judicial discretion. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 10-11, 26, 30, 38, 57, 75-76.

(8) The court erred as a matter of law by failing to recognize that the magistrate's court failed to properly suppress evidence, upon appellant's timely motion(s) at trial to do so, provided by the State's hearsay witness, Sgt. Smith, who did not observe the alleged offense. R. pp. 11-12, 26, 30-31, 38-39, 57, 66-67, 75-76. Further, the court never instructed the jury to disregard this testimony during their deliberations. In addition, the magistrate's return falsely stated that the appellant did not make any objections to any evidence, direct or otherwise, that the State sought to introduce during the trial to include the testimony of Sgt. Smith. R. p. 57. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 11-12, 26, 30-31, 38-39, 57, 66-67, 75-76.

(9) The court erred as a matter of law by waiving the following issue during oral arguments when both the appellant and State were represented. R. pp. 21-22. The magistrate court erred by failing to permit closing remarks before charging the jury and having them begin deliberations. R. pp. 14-16, 27, 31, 41, 75-76. During the trial after each side had presented its case Judge Williams sent the jury into deliberations without permitting closing remarks. R. pp. 14-16, 27, 31, 41, 75-76. Clearly this is an abuse of process violation and error of law. Upon appellant's objection, Judge Williams admitted her mistake by stating, "I only human" and that "judges make mistakes too." R. pp. 14, 27, 31, 75-76. At that point the jury had retired to the deliberation room and the door had been closed without them having the benefit of closing remarks. R. pp.

14, 75-76. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 14-16, 27, 31, 41, 75-76.

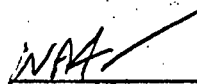
(10) The court erred as a matter of law because the magistrate court refused to grant appellant's motion for a directed verdict as the State failed to meet its burden of proof regarding the charge of reckless driving. R. pp. 12-14, 27, 31-32, 39-40, 57, 75-76. The prosecuting officer, Sgt Maurice Hunt, stated under oath that he needed to observe at least two traffic infractions in order to make a case for reckless driving. In this case he claimed those two infractions were driving above the posted speed limit and improper passing. Although he initially stated that the appellant was attempting to evade his unmarked SUV without having any blue lights flashing for approximately two (2) miles. With regard to the driving above the posted speed limit he stated that he did not know the driver's speed as it was unknown, and with regard to improper passing he stated that this infraction occurred because he observed the vehicle crossing a non-existent solid double line along the section of strait highway in question. The lesser included offense of speeding under SC law section 56-5-1520(h) states: "a citation for violating the speed limits issued by any authorized officer must note on it the rate of speed for which the citation is issued." R. p. 31. However, Sgt Hunt stated under oath that he was unable to cited the driver's speed; therefore, could not meet the required elements of this offense. Further, a solid double line does not exist along the strait road section Sgt Hunt testified he observed the vehicle cross in support of the lesser included offense of improper passing; therefore, he was unable to meet the required elements of this offense except by committing perjury. Sgt Hunt knew or should have known that a solid double line along this road did not exist as he patrols this road frequently in line of his duties. Since the State failed to meet is burden of proving all the elements required in the alleged offense, the trial court erred in not granting a directed verdict as a matter of law and

is factual grounds for granting this appeal request. R. pp. 12-14, 27, 31-32, 39-40, 57, 75-76. The record provided to the circuit court provided evidence of this error of law. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 12-14, 27, 31-32, 39-40, 57, 75-76.

(11) The court erred as a matter of law because SGT Hunt's testimony was false and intentionally misleading (perjury in violation of SC law, section 16-9-10). R. pp. 27, 32, 39-41, 75-76. The prosecuting officer falsely stated that one of the two required traffic infractions he observed was the illegal crossing of a solid double line constituting "improper passing". A solid double line does not exist in the roadway where such a traffic infraction was falsely and improperly alleged. The appeal record (written and/or verbal) provided to Circuit Court Judge Stephanie McDonald contained information regarding this error of law. R. pp. 27, 32, 39-41, 75-76.

CONCLUSION

The Circuit Court Judge's order affirming appellant's conviction of reckless driving is not supported by the evidence as a matter of law. Therefore, appellant prays that this Court reverse the order of the Circuit Court, and either dismiss or remand this case back to the Hampton County Summary Court for retrial.



William Ferrara
P. O. Box 711
New Ellenton, SC 29809

Aiken, South Carolina
March 12, 2012

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CERTIFICATION

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 12, 2012



William Ferrara
P. O. Box 711
New Ellenton, SC 29809
