THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2017-002621

JOHN GILBERT SINGLETARY

APPELLANT,

V.

THE STATE,

RESPONDENT.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

DID THE CIRCUIT COURT ERR IN AFFIRMING A MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL, WHERE THE MUNICIPAL COURT HAD GIVEN APPELLANT NO PROPER NOTICE OF THE INITIAL TRIAL, TRIED HIM IN HIS ABSENCE (TREATING IT AS A BOND FORFEITURE) WITHOUT MAKING FINDINGS AS TO NOTICE OR HEARING TESTIMONY, GAVE APPELLANT NO NOTIFICATION OF THE DISPOSITION, REFUSED TO CONDUCT A HEARING ON THE MOTION FOR NEW TRIAL, RULING IT LACKED JURISDICTION, AND PROVIDED THE CIRCUIT COURT AN INADEQUATE RETURN?

STATEMENT OF THE CASE

Appellant, John Gilbert Singletary, was arrested on January 26, 2010, for Solicitation of Prostitution under a North Charleston Municipal Ordinance. He appeared in court on the date for trial listed on the ticket. (1-Uniform Traffic Ticket # 70055 FB, 1-26-10). The Court continued the case. (2-NCMC Preliminary Docket, 2-23-10).[1] Eventually, on May 26, 2017, Mr. Singletary went to the Municipal Court and received a copy of the Uniform Traffic Ticket in lieu of any other formal record of the disposition of his charges. (1-UTT #70055FB, 1-26-10). The Clerk of Court wrote the date, initialed it, and stamped it in the bottom right corner of the ticket. Then, within five days, on May 31, 2017, Mr. Singletary filed his Motion for New Trial with the Municipal Court. That Court claimed it lacked jurisdiction to hear Mr. Singletary's Motion, and refused to conduct a hearing. This was communicated by letter dated June 15, 2017 from the Chief Municipal Court Judge to former counsel for Mr. Singletary, (8-Judge Coleman's letter, 6-15-17). Former counsel received it on June 19, 2017, and filed a Notice of Appeal with the Court of Common Pleas for Charleston County four days later, on June 23, 2017. (9-Notice of Appeal, p. 3, 6-23-17).

The Honorable J. C. Nicholson conducted a hearing on the Appeal on November 13, 2017. (7-Transcript, 11-13-17). On December 14, 2017, Judge Nicholson filed a Form 4, Judgement in a Civil Case, with a statement of Judgement by the Court: "Court heard appeal on November 13, 2017 and respectfully denied the appeal." (10-Form 4, 12-14-17).

Former counsel filed a Notice of Intent to Appeal on December 27, 2017. (11-Notice, 12-27-17). Many delays occurred and former counsel was given numerous opportunities to file pleadings. At some point thereafter, he was suspended indefinitely from the practice of law for reasons unknown to current counsel. Mr. Singletary hired the undersigned, current counsel for Appellant, who then filed a Motion for Leave to File an Amended Initial Brief on February 22, 2019. (12-Motion, 2-22-19). The Court of Appeals granted the Motion on April 4, 2019, and gave Appellant thirty (30) days within which to file the Amended Initial Brief and proposed Record on Appeal and to serve those on Respondent. (13-Order of Court of Appeals, 4-4-19).

[1] Thereafter, he never received notice--written or otherwise--as to when he should appear for trial. This fact may be in dispute; therefore, its further discussion more properly will be placed in the "Argument" section of this brief.

ARGUMENT

THE CIRCUIT COURT ERRED IN AFFIRMING A MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL BECAUSE THE MUNICIPAL COURT HAD NOT GIVEN APPELLANT PROPER NOTICE OF THE INITIAL TRIAL, TRIED HIM IN HIS ABSENCE (TREATING IT AS A BOND FORFEITURE) WITHOUT MAKING FINDINGS AS TO NOTICE OR HEARING TESTIMONY, GAVE APPELLANT NO NOTIFICATION OF THE DISPOSITION, REFUSED TO CONDUCT A HEARING ON THE MOTION FOR NEW TRIAL, RULING IT LACKED JURISDICTION, AND PROVIDED THE CIRCUIT COURT AN INADEQUATE RETURN.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. McEachern, 399 S.C. 125, 135, 731 S.E.2d 604, 609 (Ct.App.2012). This court simply determines whether the trial court's factual findings are supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). Appellate courts review questions of law de novo. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012). State v. Blakely, 402 S.C. 650, 742 S.E.2d 29 (S.C. App., 2013).

LACK OF PROPER NOTICE OF THE MUNICIPAL COURT TRIAL

John Singletary was arrested on January 26, 2010, by North Charleston Police using Uniform Traffic Ticket (Ticket # 70055FB), charging him with "Solicitation of Prostitution," under the North Charleston Municipal Code Section 13-22. Police took him to jail, where his brother posted his cash bond of $470.00, and Mr. Singletary was released by the jail later that day without a bond hearing.[2]

Acting *pro* se, on January 28, 2018, he mailed a request for discovery to the names listed as the arresting officer(s) on the ticket, "Glenn/Willie" citing Rule 5 of the Rules of Criminal Procedure. He never received a response to that request. That correspondence seems not to have

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[2] There is nothing in the record showing a bond hearing was held. Given the Municipal Court's refusal to conduct a hearing, Appellant lacks any means to document a hearing that did not occur. Rather, Appellant would assert no bond form has been or can be produced to show that Mr. Singletary received notice that, should he fail to appear for trial, the trial may go forward in his absence.

been made part of the Municipal Court's records; however, the Circuit Court seems to have received a copy of it. (7-Transcript 11-13-17, p. 16, line 4 through p. 20, line 13).

The ticket summoned him to appear before the Municipal Court of North Charleston on February 23, 2010. He did. That day the Court told him his trial had been continued, it was to be rescheduled, and he would be notified when to appear for trial.[3]

UNRELIABLE MUNICIPAL COURT RECORDS

The available Municipal Court records which should document when the new date for trial was set, whether the Defendant/Appellant was notified of it, and, if so, how he was notified make difficult, if not impossible, to determine precisely what efforts were made to notify the Defendant/Appellant as to when his trial would be heard.

A critical look at the Dockets and the "Case History," (6-NCMC Case History, Filed date 1-31-10, Print date 10-13-15), reveals the Municipal Court's record keeping, upon which Respondent relies to show notice was given Mr. Singletary by telephone are demonstrably and patently unreliable. For example, the records show five entries dealing with bond hearing, when in fact no bond hearing was ever held. (*See*, footnote 2.)

Page two of the Case History documents that on 1-26-2010 at 12:00 am Bond was set in the amount of $470.00 by Singletary, John Gilbert; that on 1-27-2010 at 9:00 am there was a Bond Hearing; that on 1-31-2010 at 9:00 am "guthris recorded the following Case Action Note: BONDED OUT;" that on 2-3-2010 at 12:00 am "Bond was posted in the amount of $470 by Sheldon Morris Singletary;" and that on 2-3-2010 at 7:43 pm "Received payment of $470.00 from Sheldon Morris Singletary for John Gilbert Singletary. Printed receipt #183859." (Id. at p. 2.)

Other relevant records kept by the Municipal Court are vague, if not inaccurate. The entries seem to show Mr. Singletary may have been telephoned to advise him of the rescheduled trial dates; however, the record lacks documentation as to who may have made such calls, what number may have been called, whether the caller spoke with anyone, what the caller may have said, etc. (2-Preliminary Docket, 2-23-10; 3-Preliminary Docket, 3-9-10; 4- Preliminary Docket, 4-14-10; 5-Preliminary Docket, 5-4-10).

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[3] It is disputed who requested the continuance. However, this would seem to be irrelevant. The Court continued the case on the originally scheduled date for trial without announcing a new date for the trial.

Mr. Singletary cites the fact that he mailed a request under Rule 5 to the arresting officer listed on the ticket as evidence he had no intention of forfeiting bond.[4] That correspondence seems not to have been made part of the Municipal Court's records; however, the Circuit Court seems to have received a copy of it. (7-Transcript 11-13-17, p. 16, line 4 through p. 20, line 13).

Given these obvious inconsistencies, any reliance by the trial court upon these records alone to determine that Mr. Gilbert had received notice of his trial would seem imprudent. Mr. Singletary should be granted a new trial.

NO NOTICE OF THE MUNICIPAL COURT DISPOSITION

The Court never notified Mr. Singletary of the disposition of his case. His first indication that his case had been decided against him came, not from the North Charleston Municipal Court, but through media reports in 2015 that the City went "on record" stating Mr. Singletary had been convicted or tried in his absence, or that he had missed court and forfeited his bond, tantamount to a conviction. Respondent likely will contend these media reports constitute "notice" to Mr. Singletary. Mr. Singletary contends that media reports do not constitute proper notice.

Nevertheless, in October of 2015, when he heard through news reports that the Court <u>may have</u> tried him in his absence--or the Court <u>may have</u> considered his bond forfeited without a trial-- he Immediately began requesting the Court provide him the written records relevant to his case, specifically and especially the disposition sheet or record of the judgement of the Court.[5] He has still never received that.

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[4] Mr. Singletary is at a disadvantage here. He contends he never received a phone call or a message from the Court, that the Court did not even have his telephone number, and that he would have been in court had he been notified. However, because the Municipal Court refused to conduct a hearing on the Motion for New Trial, these contentions are not part of any official record. Still, the Preliminary Dockets and the Case History list no telephone number at which to contact Mr. Singletary.

[5] The timing here is revealing. It was in 2015, just after Mr. Singletary announced his candidacy for Mayor of North Charleston against the incumbent, who had held the office since 1993, that the media somehow received information of which Mr. Singletary had never been notified by the Municipal Court--that he had been found guilty or his bond forfeited in his absence. Between October 13 and October 16, 2015, local news media published stories referencing the 2010 arrest, citing various sources including "public records," and giving differing facts regarding this subject.

The Court seems to have had records to provide the media, but the Court refused, until May 26, 2017, to give Mr. Singletary anything in writing to document its handling of his criminal case, telling him the case was so old that the Court had not retained those documents.

Eventually, Mr. Singletary went to the Municipal Court Clerk's Office to request a written disposition, something to formally notify him as to what happened to his case in that court, something he could appeal. He had been asking for this since 2015 by email, telephone and other correspondence.

Although the media seems to have been granted great access to the Court records, it was not until May 26, 2017, the Clerk finally gave Mr. Singletary a copy of the Uniform Traffic Ticket, heavily redacted or "whited out."[6] A notation on that ticket shows the disposition as "forfeited bond." This is the closest thing to being notified by the Court that Mr. Singletary has ever gotten to receiving "actual notice" in writing of the judgement against him. When he received it, Mr. Singletary filed a timely Motion for New Trial. (15-Motion for New Trial, 5-27-17).

RULE 29 SCRCrimP

Rule 29 of the South Carolina Rules of Criminal Procedure requires that "in cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after receipt of written notice of entry of the order or judgment disposing of the appeal. The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of **written** notice of entry of the order granting or denying such motion."

The Rule says nothing about receiving notice from media reports, over the telephone, or verbally. Arguably, he has never received the kind of notice Rule 29 requires. Still, he filed his Motion for New Trial within ten days of receiving something--the Uniform Traffic Ticket--in writing from the Clerk of Court.

The Motion for new Trial was not "untimely." The facts here make clear the Municipal Court not only should have heard the Motion; it should have granted it.

TRIAL IN *ABSTENSIA*

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[6] For example, using small white strips of tape designed for "whiting out" documents, the Uniform Traffic Ticket contains eight such alterations or redactions, such that--among other things--the name of the "trial officer" and the "date of trial, if any" have been obscured entirely; five other entries on that ticket have been taped over and amended.

At the South Carolina Judicial Branch's website, www.sccourts.org, one may find the South Carolina Bench Book for Magistrates and Municipal Judges https://www.sccourts.org/summaryCourtBenchBook/. In the Section on Criminal Law, under subsection H., the proper procedure to follow in Summary Courts when a defendant fails to appear on the date of trial is described in great detail:

> 4. Trial in Absentia
>
> As a general rule, the accused has a right to insist that he be present at all stages of the proceedings in a criminal case. But summary cases have always been treated somewhat differently. The accused may elect not to be present in trials before magistrate or municipal courts without the consent of the court. Although it is to be avoided if feasible, an accused may be tried in absentia. The proper course of action if this occurs is for the trial judge, before the start of defendant's trial in absentia, to make findings of fact regarding 1) whether the defendant had received notice of her right to be present, and 2) whether the defendant had been warned that the trial would proceed in his or her absence upon a failure to attend court. State v. Jackson, 288 S.C. 94, 341 S.E.2d 375 (1986). See, City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 685 (2006), where municipal trial court correctly proceeded with a trial in defendant's absence, after making appropriate factual findings on the issue of whether defendant had notice of trial and whether he was warned the trial would proceed in his absence.
>
> When a defendant who has been properly notified does not appear when the trial is scheduled, the magistrate or municipal judge should call his name, or direct that the constable call his name, three times from the courthouse door. After waiting a reasonable time, the magistrate or municipal judge may proceed.
>
> A trial in absentia, as a procedural matter, is only slightly different from a trial at which the defendant appears. The complaining citizen or law enforcement officer is placed under oath and allowed to present his evidence. Other witnesses, if any, are permitted to testify under oath. Additionally, the constable is summoned to testify that he called the defendant's name from the courthouse door and that there was no response. In those cases where the magistrate or municipal judge himself called the defendant's name, he lets the record show that the defendant's name was called and that he did not respond.
>
> When the evidence is complete, the magistrate or municipal judge makes his findings. If the defendant is acquitted, the

> proceedings are terminated. If the defendant is found guilty, the magistrate or municipal judge imposes sentence, according to the penalty allowed for the offense by law. He may use the testimony presented, and any other facts at his disposal, in determining the sentence to be imposed. If the sentence is a fine, the judge may (but does not have to) apply the forfeited bond to the sentence; if the sentence is a jail term, a bench warrant is issued for the arrest of the defendant.
>
> Although a trial in absentia is more complicated and more time-consuming than a simple declaration that the defendant's bond is forfeited for failure to appear, it is preferred to a forfeiture because the trial in absentia is a final determination of the matter. Where there is a forfeiture of bond and nothing more, demand by the defendant may entitle him to a trial at a later date. However, the South Carolina Supreme Court has held that a bond forfeiture is equivalent to a conviction when the Legislature has defined it as a conviction by statute. Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999). Therefore, if a statute provides that forfeiture of bond is the equivalent of a conviction, and absent a timely motion for new trial or filing of appeal, the forfeiture would preclude a trial at a later date. As an example, §56-5-6220 provides the entry of any plea of guilty, the forfeiture of any bail posted or the entry of a plea of nolo contendere for a violation of traffic laws in this State or any political subdivision thereof shall have the same effect as a conviction after trial under the provisions of such traffic laws. However, in any such case effective until ten days following the date of arrest, unless the defendant above, a forfeiture of bond for a traffic offense would constitute a conviction.

Benchbook, Criminal Section, Trials, H. 4. (Emphasis added.) There is simply no record the Municipal Court followed these directives, and the only reasonable conclusion to be drawn is that the Court did not. Mr. Singletary should be granted a new trial, or--more precisely, he should be granted *a* trial.

CRIMINAL PROCEDURE RULES 37 AND 16

Rule 37 of the South Carolina Rules of Criminal Procedure makes clear that those rules apply in municipal courts. Thus, Rule 16 SCRCrimP applies in municipal court. It requires that before, "a person...may voluntarily waive his right to be present and may be tried in his

absence," the Municipal Court must make "a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend court." State v. Truesdale, 345 S.C. 542, 548 S.E.2d 896 (2001). Rule 16, SCRCrimP. "A trial judge must determine a defendant voluntarily waived his right to be present at trial in order to try the case in absentia." Id.; State v. Ritch, 292 S.C. 75, 354 S.E. 2d 909 (1987); State v. Jackson, 288 S.C. 94, 341 S.E.2d 375 (1986); State v. Castineira, 341 S.C. 619, 535 S.E.2d 449 (Ct.App.2000). "The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present; and (2) was warned that the trial would proceed in his absence should he fail to attend." Jackson, 288 S.C. at 96, 341 S.E.2d at 375; Castineira, 341 S.C. at 623, 535 S.E.2d at 451.

The Municipal Court has provided no evidence whatsoever that it made findings of fact as to Mr. Singletary's receiving notice of his right to be present, a warning the trial would proceed in his absence, and indeed no finding he even received notice of his trial.

Correspondence from the Municipal Court leaves little room for doubt that the court made no record or inquiry as to whether Mr. Singletary had been given notice of the trial date or whether he had been notified the trial would proceed in his absence if he chose not to appear. In an e-mail dated May 26, 2017, the Chief Magistrate wrote Mr. Singletary:

> In response to your email, I have no recollection of any documents related to the matter referenced in the body of your email below.
>
> In addition, as a municipal judge, I do not maintain or keep any documents that could be reviewed related to the allegations that you are referencing in your email below.
>
> I hope this response provides some clarification related to your requests.
>
> Sincerely,
>
> Samuel Coleman

(14-E-mail from Judge Coleman, 5-26-17).

THE HEARING IN THE CIRCUIT COURT

The Court of Common Pleas for Charleston County heard the appeal and conducted a hearing on November 13, 2017. During the hearing, Judge Nicholson stated, although nothing in the record supports the statement, "[Appellant] knew that [his trial in Municipal Court] was continued to a certain date. I'm sure the judge continued it to a certain date at that time [referring to the initial appearance when Mr. Singletary was present]." (7-Transcript, p. 6, lines 4-6, 11-13-17).[7] Later, the Judge stated, "and it's not the court's responsibility, it's [Appellant's] responsibility to keep up with the case." *Id.* at lines 9-10.)(Emphasis added.) Judge Nicholson also commented during the hearing: "You don't think [Appellant] was obligated to go try the--hey, this is 2010. He appeared before the judge in 2010. Judge, I'm sure told him, we're going to try it. ... So, it's not like he didn't have notice." (*Id.* at p. 7, lines 13-18). There was no basis in the record for Judge Nicholson to arrive at such a conclusion. The findings are clearly erroneous. State v. McEachern, 399 S.C. 125, 135, 731 S.E.2d 604, 609 (Ct.App.2012). These findings are unsupported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). This warrants reversal.

The Court also stated during the hearing, "[w]ell, Rule 5 does not--is not binding on municipal courts." (*Id.* at p. 19, lines 4-5).

Judge Nicholson's rational or reasoning regarding his ruling is difficult to determine. Other than a Form 4 "Judgement in a Civil Case, filed December 14, 2017, there is no written Order. However, the transcript of the November 13, 2017 hearing shows that when the Honorable J. C. Nicholson denied the appeal, he stated:

"I'm going to deny the appeal. I think the defendant apparently is knowledgeable of the criminal justice system somewhat in that he

> wrote a letter and asked for Rule 5. I don't think it was his obligation, and to appear, and he thought was the case, not wait five years later or even seven years later and try to appeal, because of the time frame and failure to comply with the Rule 5 notice of appeal within 10 days, the appeal is denied.

7-Transcript, p. 22, lines 14-21, 11-13-17.

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[7] Candor requires inclusion of Mr. Singletary's former attorney's statement to the Court. He erroneously replied: "He did, Judge. I believe it was a date in March or April." (7-Transcript, p.6, lines 7-8, 11-13-17). No records support the proposition that the Court continued the case to a date certain show the case was Former counsel apparently was unprepared (and is currently under suspension for reasons unknown to current counsel for the Appellant).

ERRONEOUS INFORMATION PRESENTED AT THE HEARING

Counsel for the City of North Charleston apparently made some presumably honest misstatements that Judge Nicholson may have relied upon, when his rationale for denying the appeal is taken into account. (The City's poorly kept records make this quite understandable.) For example, during the hearing, asked about notice to Mr. Singletary, counsel for the City answered, "he was given a new date of March 9th, and...was notified by telephone of the new court date and time. And then on April 14th he was also notified of a continuance to the 19th of April, and then on April 19th of 2010, he was a no show for court[8]. They continued it, and held court on May 4th." *But see*, Municipal Court Case History reflecting "4-12-10 at 1:00 pm Notified by Burgess." The next entry shows, "4-14-10 1:00 pm Court Event: Court date," with no entry as to whether Mr. Singletary was present or not. Then, a notation: "4-19-10 1:00 pm ... NO SHOW FOR PRIOR COURT." Oddly, all but one of these "records" show the relevant events as occurring at 1:00 pm. Most notably, there is no indication Mr. Singletary was ever notified he was rescheduled to be in court on May 4, 2010, but it is on that date he was "Tried in Absence (Bail Forfeited). (6-Case History, 10-13-15).

Judge Nicholson asked "[h]ow was [Mr. Singletary] notified for May 4th?" (7-Transcript, p. 12, 11-13-17). In reply, however, again perhaps through inadvertence and perhaps because the records are so confusing, counsel for Respondent erroneously stated written notice had been sent to Mr. Singletary. Despite the written Case History, she said, "the "Clerk's office says that they sent a written notification of the trial date, that they no longer have a copy of it because it's not something we're required to...[interrupted by objection]." *See,* 7-Transcript, p. 12, line 14, 11-13-17. In any event, not only is there no documentation of this assertion, it amounts to unsworn hearsay testimony given by opposing counsel as to facts appearing nowhere else in the record, and contradicted by the Case History. Nowhere in the record does there appear proof of this contention that the Court sent <u>written</u> notice to Mr. Singletary as to when his

[8] *But see*, Municipal Court Case History reflecting "4-12-10 at 1:00 pm Notified by Burgess." Then, the next entry shows, "4-14-10 1:00 pm Court Event: Court date," with no entry as to whether Mr. Singletary was present or not. Then, a notation: "4-19-10 1:00 pm ... NO SHOW FOR PRIOR COURT." Oddly, all but one of these "records" show the relevant events as occurring at 1:00 pm. Most notably, there is no indication Mr. Singletary was ever notified he was rescheduled to be in court on May 4, 2010, but it is on that date he was "Tried in Absence (Bail Forfeited). (6-Case History, 10-13-15).

trial would be heard. (*See,* 15-NCMC Preliminary Docket, 5-4-10) (*See also,* 7-Transcript, p.15, line 15-p. 16, line 1, 11-13-17).

Mr. Singletary's lawyer objected. "The docketing sheet [sic] [should be Case History] that she just handed up to the Court shows on there nothing about a clerk saying she mailed notice to Mr. Singletary about any sort of a May 4th court date. ... " (7-Transcript p. 12, line 18; p. 15, lines 15-24, 11-13-17).

THE MUNICIPAL COURT JUDGE'S RULING DENYING A HEARING AND DECLARING HE LACKED JURISDICTION

The Chief Municipal Court Judge, by letter dated June 15, 2017, mailed to Mr. Singletary's former counsel a ruling in which he makes clear that he will not conduct a hearing on the Motion. "As the Motion to Reopen was not timely filed, I am without jurisdiction in this case. Therefore, I will not be issuing any ruling or taking further action in this matter." (8-Judge Coleman's Denial of Motion without a Hearing, 6-15-17).

Had the Judge granted a hearing before deciding this matter, he might have been persuaded that he indeed did have jurisdiction and the new trial should have been granted. When he did not, he ensured that to this day Mr. Singletary has not had his day in court, nor has he had an opportunity to be heard. This is clearly an error of law under the authorities already discussed.

JUDGE COLEMAN'S RETURN

Judge Coleman has never filed a proper return[9] as required by statute with the Court of Common Pleas. *See,* S.C. Code Section 22-3-790, (requiring in the trial of any case before a magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses, with certain exceptions). Instead, the Judge simply found the Motion untimely. (16-Document Captioned "Return," 7-25-17.

[9] The Municipal Court did file on July 28, 2017 a document captioned "Return of Municipal Judge," dated July 25, 2017. However, it does not conform to the requirements of the applicable statutes.

Former counsel for Mr. Singletary filed a Motion for Subpoena Power and/or for Limited Discovery (which could have been styled as a Writ of Mandamus), with the Court of Common Pleas. (17-Motion dated August 16, 2017.) This was to no avail. (Transcript of November 13, 2017 hearing in Court of Common Pleas, page. 16, lines 3-20.) Judge Nicholson declined to require the Municipal Court to Supplement the Record.

Such as they are, the records still may provide some insights: The North Charleston Municipal Court's Case History, a two-page document, lists Mr. Singletary's Age, Driver's License Number, etc. His street address is (properly) redacted. However, just below that the rest of his address was not. It shows: North Charleston 29405. However, Mr. Singletary's address, then and now, is listed on the ticket: 4321 Waterview Circle, North Charleston, SC 29418. On the "Preliminary Docket" from May 4, 2010, beside the listing of Mr. Singletary's case, someone stamped, "TRIED IN ABSENCE." However, next to that, someone wrote "BF," which would seem to indicate "Bond Forfeiture."

CONCLUSION

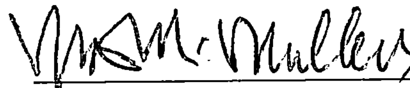
> A motion for a new trial must be made (and should be required to be in writing) within ten days from the time the party receives notice of the judgement; but if the judgement resulted from a default and failure of the party to appear at trial, or in a situation in which appellate [sic] did not have notice of the trial, the ten-day period begins to run on the day after personal notice is received.

https://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=GeneralD#D7; Brewer v. South Carolina State Highway Dept., 261 S.C. 52, 198 S.E 2nd 256 (1973). Clearly, in this case, the ten-day deadline was met. Mr. Singletary sought a new trial immediately after personal notice was received. He deserves his day in court.

The City of North Charleston would not be prejudiced by granting a new trial. Mr. Singletary deserves one. Fundamental fairness and due process requires one. Finally, perhaps the best argument that Mr. Singletary should be granted a new trial was stated most forcefully by this Court in a similar case. "It seems logical that for one to voluntarily fail to attend trial or otherwise waive his trial appearance, one must actually know when the trial is to occur." State v. Wrapp, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017).

Based on the foregoing, Appellant respectfully requests a new trial.

Respectfully submitted,



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
MAY 06 2019
SC Court of Appeals

J. C. Nicholson, Jr, Circuit Court Judge
Trial Court Case No. 2017-CP-10-03226

Appellate Case No. 2017-002621

John Gilbert Singletary,.. Appellant,

v.

The State, ...Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal on counsel of record for Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on May 6, 2019, addressed to Robin L. Jackson, Esq., Senn Legal, Post Office Box 12279, Charleston, South Carolina 29422.

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May 6, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
MAY 06 2019
SC Court of Appeals

Re: John Gilbert Singletary v. The State
Appellate Case No.: 2017-002621
Motion for Leave to File an Amended or Substitute Initial Brief

Dear Madame Clerk:

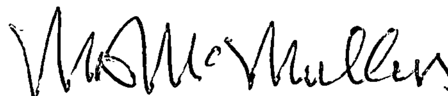
Enclosed for filing please find the following:

(1) Initial Brief of Appellant;
(2) Appellant's Designation of Matter to be Included in the Record on Appeal; and
(3) Proof of Service.

If you would be so kind, please file these originals. As stated in the Proof of Service, I am serving the Respondent, through counsel, on this date.

Thank you for your assistance.

Respectfully submitted,



Michael D. McMullen
Attorney for the Appellant

cc: Robin L. Jackson, Esquire