

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

JUN 10 2019

S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

JEFFREY BOYD COOPER

Respondent.

Appellate Case No: 2019-000612

APPENDIX
(Redacted)

ROBERT J. BUTCHER
The Camden Law Firm, PA
PO Box 610
Camden, SC 29021
(803) 432-7599

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Attorney General

DAVID SPENCER
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

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P.O. Box 192
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(803) 576-1800

ATTORNEYS FOR PETITIONER

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
COURT OF COMMON PLEAS

G. THOMAS COOPER, CIRCUIT COURT JUDGE

CASE No. 2014-CP-28-00416
APPELLATE CASE No. 2016-000189

STATE OF SOUTH CAROLINA, RESPONDENT,

v.

JEFFREY BOYD COOPER, APPELLANT.

RECORD ON APPEAL

FOR APPELLANT:

ROBERT J. BUTCHER
ATTORNEY FOR DEFENDANT
221 GLENWOOD DRIVE
MANNING, SOUTH CAROLINA 29102
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FOR RESPONDENT:

DAVID SPENCER
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POST OFFICE BOX 11549
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S.C. BAR No.: 68571

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AUG 29 2016
SC Court of Appeals

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STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Kershaw VERSUS
 FIRST NAME Jeffery MIDDLE NAME Boyd LAST NAME Cooper
 STREET AND NO. Brookgreen ST Camden SC CITY Camden STATE SC
 DRIVERS LICENSE NO. [REDACTED] DR. LIC. CLASS P
 VEH. LIC. NO. 5L STATE SC TRUCK COMB.
 HAZ. WT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER: R. Todd STREET AND NO. POB 1528/1121 Brads
 DATE OF TRIAL 10/13/2011 TIME OF TRIAL 0930 CITY Camden STATE SC ZIP CODE 29020
 VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. Breach of Peace C.R.
 OWNER OF VEHICLE [REDACTED] DATE OF ARREST 10/6/2011
 ADDRESS OF OWNER [REDACTED] DATE OF VIOLATION 10/6/2011

NAME OF ARRESTING OFFICER: E. B. J. Coyle RANK Det

PRESENT THIS SUMMONS TO THE TRIAL OFFICER SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR Nolo Contendere OR ARE CONVICTED AFTER A TRIAL THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

COUNTY Kershaw NUMBER 28
 DISTRICT 28

D	S	M	T	W	T	F	S
A	1	2	3	4	5	6	7

 TIME OF VIOLATION 225 HOURS AM
 DISTANCE IN FEET FROM INTERSECTION OF SC Siaronsk
 AND

N	E	S	W
1	2	3	4

 HPTL NO. Camden
 OFFENSE CODE (I.A. LEVEL)

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET
 VIOLATOR'S COPY A262-50 41928 AI
2011-5005

JURY TRIAL REQUEST FORM

DATE OF VIOLATION: 10/6/11

OFFICER: Corbett

I, Jeff B Cooper DO HEREBY REQUEST A JURY TRIAL
ON THE CHARGES LISTED BELOW:

TICKET/WARRANT#: 41928
VIOLATION Breach of Peace

(PLEASE PRINT)

NAME: Jeff B Cooper

ADDRESS: [REDACTED] Brookgreen Ct.
Camden SC 29020

PHONE#: 803 [REDACTED] HOME — WORK: _____

Jeff B Cooper
SIGNATURE

DATE OF REQUEST: 10/19/11

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
STATE OF SOUTH CAROLINA,

v.

Jeffrey Boyd Cooper,

Defendant.

IN THE SUMMARY COURT
FOR KERSHAW COUNTY

41928-AI

NOTICE OF APPEARANCE

YOU WILL PLEASE TAKE NOTICE that Defendant is represented by Deborah J. Butcher of the South Carolina Bar.

Respectfully submitted,

THE CAMDEN LAW FIRM, PA



Deborah J. Butcher, #74029
Attorney for Defendant
509 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
Facsimile: 803.432.7466

Camden, South Carolina
December 30, 2013

SUMMARY COURT
KERSHAW COUNTY
2014 JAN 13 PM 12:00

STATE OF SOUTH CAROLINA

COUNTY/CITY OF KERSHAW

**Deborah Butcher
509 Walnut Street
Camden, SC 29020**

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear in the **Kershaw County Magistrate, 1121 Broad Street, on March 5, 2014 at 3:30 PM**, to serve as a defendant/defense counsel/witness in the Jury Trial of **State vs. Jeffery Boyd Cooper, Case Number: 41928AI, Charge: Breach / Breach of peace, nonaggravated in nature.**

Failure to appear by the defendant, without leave of the Court, may subject the defendant to trial in absentia.



JUDGE

**Kershaw County/City
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044**

January 31, 2014

STATE OF SOUTH CAROLINA
COUNTY/CITY OF KERSHAW

Jeffery Cooper
■ **Brookgreen Ct**
Camden, SC 29020-3715

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear in the **Kershaw County Magistrate, 1121 Broad Street, on March 5, 2014 at 3:30 PM**, to serve as a defendant/defense counsel/witness in the Jury Trial of **State vs. Jeffery Boyd Cooper, Case Number: 41928AI, Charge: Breach / Breach of peace, nonaggravated in nature.**

Failure to appear by the defendant, without leave of the Court, may subject the defendant to trial in absentia.

JUDGE

Kershaw County/City
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044

January 31, 2014

STATE OF SOUTH CAROLINA

COUNTY/CITY OF KERSHAW

Jack Corbett
Ridgeway Rd.
Lugoff, SC 29078

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear in the Kershaw County Magistrate, 1121 Broad Street, on March 5, 2014 at 3:30 PM, to serve as a defendant/defense counsel/witness in the Jury Trial of State vs. Jeffery Boyd Cooper, Case Number: 41928AI, Charge: Breach / Breach of peace, nonaggravated in nature.

Failure to appear by the defendant, without leave of the Court, may subject the defendant to trial in absentia.



JUDGE

Kershaw County/City
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044

January 31, 2014

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

)
)
)
)

BENCH WARRANT

2014B2810100133

Case Number

41928AI

To any Lawful Constable or Officer:

WHEREAS: One Jeffery Boyd Cooper on March 5, 2014 was convicted in this court of:

Breach / Breach of peace, nonaggravated in nature with sentence imposed/balance due of \$262.50 or 30 Days to run consecutively with any and all other sentences. (Failure to Appear)

This order is to command you to take and convey him/her to the common jail. The keeper of said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; and for so doing, this shall be your good and sufficient warrant.

Witness: The due execution of this warrant on March 13, 2014.

Judge James E. Davis
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020

This Bench Warrant is CERTIFIED FOR SERVICE in the County / Municipality of

_____. The defendant is to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

Date

OFFICER'S RETURN

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

I hereby certify that pursuant to the command of the within warrant, I have placed the said Jeffery Boyd Cooper in the jail this day.

Officer's Name

Date

Name: Jeffery Boyd Cooper
Address: [REDACTED] Brookgreen Ct
Camden, SC 29020-3715
DL#: [REDACTED]
State: SC
Height: 5'10"

Weight: 160
SSN: [REDACTED]
DOB: January 7, [REDACTED]
Sex: M
Race: W

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
STATE OF SOUTH CAROLINA,

v.

Jeffrey Boyd Cooper,

}
Defendant.

IN THE SUMMARY COURT
FOR KERSHAW COUNTY

41928-AI

**MOTION TO VACATE JUDGMENT
AND RETRIAL**

This case appears to be noticed for trial on January 28, 2014 for February 21, 2014. On March 7, 2014, Defendant was tried in absence and no attorney appeared on behalf of Defendant.

After searching the law firm for correspondence from the Court giving notice of this hearing, Counsel for Defendant cannot find any record of receiving any notice. When Robert Butcher first learned that this matter was tried in absence, he assumed that notice was provided to the law firm and informed the Court that the law firm was accountable for failing to calendar the trial date.

Upon further investigation by Counsel for Defendant, Deborah Butcher, and her staff, there is no record of receiving notice of the hearing.

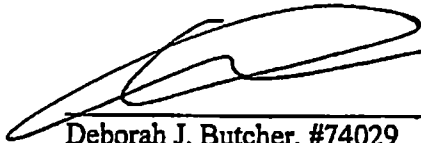
The Camden Law Firm has created certain safeguards to prevent the loss of misfiling of documents. First, all mail and correspondence is scanned to the computer server and placed in the client's file. Important dates are immediately calendared. Then the hardcopy of each document is placed in the in-box of each attorney. See attached Exhibits.

Defendant asserts that he has shown good cause for the trial court to vacate judgment and order a new trial. It would be in the interests of justice to do so.

Respectfully submitted,

THE CAMDEN LAW FIRM, PA

SUMMARY COURT
KERSHAW COUNTY
2014 MAR 17 PM 4:29



Deborah J. Butcher, #74029
Robert J. Butcher, #74722
Attorneys for Defendant
509 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
Facsimile: 803.432.7466

Camden, South Carolina
March 17, 2014

SUMMARY COURT
BERSHAW COUNTY
2014 MAR 17 PM 4: 29

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

State of South Carolina,
Plaintiff,
v.
Jeffery Cooper,
Defendant.

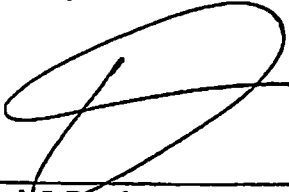
IN THE SUMMARY COURT OF THE
FIFTH JUDICIAL CIRCUIT
Case No.: 41928-AI

**AFFIDAVIT OF
DEBORAH J. BUTCHER**

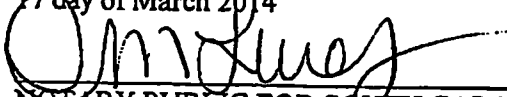
PERSONALLY APPEARED before me Deborah J. Butcher who, being duly sworn,
deposes and says the following:

I am the attorney of record for Jeffery Cooper. My office did not receive notice of a trial date of March 7, 2014 for this defendant. Our office policy is when any document or notice comes into our office it placed on my paralegal, Michelle Ludy's, desk. My paralegal opens the mail, faxed document, or hand delivered document, and immediately scans the document to the file. It is then calendared. The document is then placed in my in-box on my desk along with the physical file. Once I have reviewed the document it is filed in the client's physical file. I have searched our scanned documents as well as the client's file in this matter. I have found no notice. Additionally, no one in my offices has any knowledge that a trial was scheduled for March 7, 2014. I personally was in court in another county that day and Robert Butcher was out of town for a conference in a Federal case.

Further, Affiant sayeth not.


Deborah J. Butcher

SWORN TO and subscribed before me this
17 day of March 2014


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 11/22/2019

SUMMARY COURT
KERSHAW COUNTY
2014 MAR 17 PM 4: 29

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

State of South Carolina,

Plaintiff,

v.

Jeffery Cooper,

Defendant.

IN THE SUMMARY COURT OF THE
FIFTH JUDICIAL CIRCUIT

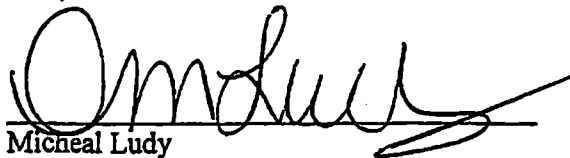
Case No.: 41928-AI

**AFFIDAVIT OF
MICHEAL LUDY**

PERSONALLY APPEARED before me Micheal Ludy who, being duly sworn, deposes and says the following:

I am the paralegal for the Camden Law Firm, PA. To my knowledge my office did not receive notice of a trial date of March 7, 2014 for this defendant. Our office has policies in place to insure that no documents are lost or important dates missed. Our policy is that when any document or notice comes into our office it is given straight to me. I then scan the document into the client's file on our computer, calendar the event, and then pull the client's physical file and place it on the desk of the attorney handling the case. I am the one that opens the mail, faxed document, or hand delivered document. I have searched our scanned documents as well as the client's file in this matter. I have found no notice. Additionally, no one in my offices has any knowledge that a trial was scheduled for March 7, 2014.

Further, Affiant sayeth not.


Micheal Ludy

SWORN TO and subscribed before me this
17 day of March 2014


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 4-27-14

SUMMARY COURT
KERSHAW COUNTY
2014 MAR 17 PM 4:29

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Jack Corbett
Ridgeway Rd.
Lugoff, SC 29078

SUMMARY COURT SUMMONS

STATE VS.	Jeffery Boyd Cooper
CASE #(S)	41928AI
OFFICER	Corbett, Jack
AGENCY	Kershaw County Sheriff
CHARGE	Breach / Breach of peace, nonaggravated in nature

Please be advised that a Motion has been filed on the above referenced case and that Motion Hearing is now scheduled to be heard on May 7, 2014 at 10:00 AM.

You are hereby summoned to appear in the Kershaw County/City Kershaw County Magistrate, 1121 Broad Street, on that date.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.

JUDGE

Kershaw County
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044

April 7, 2014

MC17

State v. Cooper, 2016-000189

ROA Page No. 000012

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Deborah J Butcher
509 Walnut Street
Camden, SC 29021

SUMMARY COURT SUMMONS

STATE VS.	Jeffery Boyd Cooper
CASE #(S)	4192SAI
OFFICER	Corbett, Jack
AGENCY	Kershaw County Sheriff
CHARGE	Breach / Breach of peace, nonaggravated in nature

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HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.

JUDGE

Kershaw County
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044

April 7, 2014

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Jeffery Boyd Cooper
[REDACTED] Brookgreen Ct
Camden, SC 29020-3715

SUMMARY COURT SUMMONS

STATE VS.	Jeffery Boyd Cooper
CASE #(S)	41928AI
OFFICER	Corbett, Jack
AGENCY	Kershaw County Sheriff
CHARGE	Breach / Breach of peace, nonaggravated in nature

Please be advised that a Motion has been filed on the above referenced case and that Motion Hearing is now scheduled to be heard on **May 7, 2014 at 10:00 AM.**

You are hereby summoned to appear in the Kershaw County/City Kershaw County Magistrate, 1121 Broad Street, on that date.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.

JUDGE

Kershaw County
Kershaw County Magistrate
1121 Broad Street
Camden, SC 29020
Phone: (803) 425-7226 Fax: (803) 425-6044

April 7, 2014

MCI7

State v. Cooper, 2016-000189

ROA Page No. 000014

A-17

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW) CASE NO. 41928AI

STATE OF SOUTH CAROLINA,)
)
VS.) MOTION HEARING
)
JEFFREY COOPER,)
)
DEFENDANT.)
_____)

The within MOTION HEARING was held at Kershaw County Summary Court, 1121 Broad Street, Camden, South Carolina.

LAKELANDS REPORTING

*Post Office Box 555
Laurens, South Carolina 29360
(864) 575-9942
lakelandsreporting@gmail.com*

(COOPER MOTION HEARING)

A P P E A R A N C E S

Honorable James Davis
Kershaw County Summary Court
1121 Broad Street
Camden, South Carolina 29020

REPRESENTING THE STATE:

OFFICER JACK CORBETT

REPRESENTING THE DEFENDANT:

ROBERT J. BUTCHER, ESQUIRE
Post Office Box 486
(221 Glenwood Drive)
Manning, South Carolina 29102-486

(COOPER MOTION HEARING)

I N D E X

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E X H I B I T S

(All exhibits, if entered, were marked by the Court.)

REPORTER NOTES

Dashes [--] indicates interruption; incomplete phrases; unfinished sentences.

[sic] written as said.

(This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

P R O C E E D I N G S

1
2 THE COURT: Okay. Madam Clerk, where is
3 that with the Motion to reopen? Okay, Madam
4 Clerk. We're here today for the State vs. Mr.
5 Jeffrey Boyd Copper, on a Motion to Vacate
6 Judgement. And Mr. Cooper is not present, but
7 he's -- his -- he's represented by his attorney,
8 Mr. Butcher, who's here, who's here to give --
9 make a Motion to Vacate, to reopen this case.
10 So, at this time we're going to hear from Mr.
11 Butcher.

12 MR. BUTCHER: Your Honor, attached to the
13 Motion is an affidavit from my partner, Deborah
14 Butcher, and my paralegal. They've looked
15 throughout the office, and we have a very
16 centralized way of take -- taking up mail,
17 scanning mail, putting it on the server and
18 calendar and things. We did not get the copy of
19 the Notice. That same month, I did not get a
20 copy of a final Order from a judge, and I did not
21 get a copy of something else that was important.
22 We're in the process and we've changed with the
23 Supreme Court our address. We think that our
24 next-door neighbor is 509A, and they may not --
25 we don't think they're giving us our mail back,

1 if it gets mis-delivered. And we talked to the
2 postman, so we're going to just -- we're going to
3 just try and solely use our post office box, but
4 we have no notice of this case. And due to the
5 lack of notice and, you know, the affidavits that
6 are included by my staff members, I would ask
7 that this Court vacate the judgement and order a
8 new trial.

9 THE COURT: And I'm sorry. Also put on
10 record that the arresting officer, who is Jake
11 Corbett, is also present with us. Anything you
12 want to say?

13 MR. CORBETT: Did your client get -- did
14 your client get a copy of all this paperwork that
15 you supposedly didn't?

16 MR. BUTCHER: I'm not sure, but it doesn't
17 matter. The attorney needs to be served with a
18 copy. You know, I can't -- I mean, but that's
19 not relevant. It's whether the attorney got it.

20 MR. CORBETT: When did the (indiscernible)

21 THE COURT: Well, according to the records
22 and to the records here, I don't know whether you
23 have a copy of this, Mr. Butcher, but here is
24 when it was sent out on April the 7th. This is
25 when it was sent -- May 7th. Oh, that's when it

1 was scheduled. But it was sent out?

2 MADAM CLERK: Yeah. This is for the Motion
3 Hearing.

4 THE COURT: That's the Motion. When was it
5 sent to the (indiscernible) and Butcher?

6 MADAM CLERK: January the 31st, 2014.

7 THE COURT: January the 31st.

8 MADAM CLERK: Scheduled for May the 7th.

9 MR. BUTCHER: Your Honor, that's where I --
10 I don't doubt that you sent it, and you've got --
11 your clerk is very competent and faithful. And
12 the assumption in law is that mail gets to where
13 it's supposed to go, but sometimes it doesn't;
14 and that's why you're allowed to do motions to
15 reconsider and motions to reopen.

16 THE COURT: I understand.

17 MR. BUTCHER: Those are -- because things do
18 happen where people don't get notice; and when
19 they do, the courts generally give it because
20 it's in interest of justice and fairness.

21 THE COURT: So, what do you think -- you're
22 not blaming nobody for not -- you're saying that
23 we didn't -- the Court didn't do it; you're just
24 saying that your firm never received it?

25 MR. BUTCHER: Yes, Your Honor. And if -- if

1 that happened, and it looks and it appears that
2 our next-door neighbor, who doesn't like us,
3 hasn't passed on the mail, then I've got a
4 problem because I'm not receiving notice. And,
5 you know, the courts aren't supposed to punish
6 you if you don't know about something. I would
7 have been here, just like I'm here now, you know,
8 if I had received notice. I mean, you know, it's
9 not a got-you thing. And if you don't get it, if
10 it doesn't show up in your office, you don't have
11 notice; then in the interest of justice, the
12 Court is supposed to give a new trial and reopen
13 the case.

14 THE COURT: Anything else, sir?

15 MR. CORBETT: That's all.

16 THE COURT: Yeah, let me (indiscernible) the
17 Motion. Okay. After consideration and after
18 hearing the Motion from Mr. Butcher, this is
19 going to be my ruling: Mr. Butcher, I think the
20 Court has met their obligation of sending this
21 information to your law firm, so I'm going to
22 respectfully deny your Motion, sir. No
23 objection, and have a good day.

24 (End of proceedings)

25

Certificate of Reporter

I, ANDREA SHORB, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that a Motion Hearing was held; that I was not present at the hearing; that the foregoing pages constitute a transcription of said hearing as accurate as possible from the audio provided by counsel.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript was thereafter sealed and mailed/ delivered to Robert J. Butcher, 221 Glenwood Drive, Manning, South Carolina, who will retain this sealed original transcript and shall be responsible for filing same with the court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof, I have set my hand and seal on April 12, 2016.

Andrea Shorb

Andrea Shorb, Court Reporter
My commission expires January 12, 2020

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

State,

Respondent,

v.

Jeffrey Boyd Cooper,

Appellants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 14-CP-28-416

NOTICE OF APPEAL

JOYCE HERRON
CLERK OF COURT
KERSHAW COUNTY, S.C.

2014 MAY 15 AM 10:36

FILED FOR RECORD

Appellant, Defendant Jeffrey Boyd Cooper in the matter below, amend their notice of appeal and allege that the judgment be reversed for the following reasons:

FACTS

Plaintiff was arrested on October 6, 2011 for breach of peace. He was visiting a friend and on his friend's property, which was substantially set back from the public road. Words were exchanged between Defendant and the arresting officer, Deputy Jack Corbett, and Defendant was arrested for breach of peace because the officer did not like what Defendant said to him, and for no other cause.

Notice was sent out by the trial court, yet Defendant's counsel never received notice. Defendant was tried in his absence and convicted. Counsel for Defendant filed a motion to reopen the case and submitted affidavits that showed that his office did not receive notice of the hearing. The trial court denied his motion.

GROUND

1. The magistrate court convicted Defendant of the Crime of Breach of Peace even though the state failed to prove the elements of the crime.

The state failed to prove that Defendant was violating public order or disturbing public tranquility by any act or conduct inciting to violence. See State v. Edwards, 239 S.C. 339, 123

ATTEST: True, Correct & Certified
Copy of Original on File in this
Court
Debra M. Wilson
Clerk of Court Kershaw County

S.E.2d 247 (1961) (In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense.)

2. **The magistrate court has disregarded Defendant's right to be present at Court when Counsel for Defendant was not provided notice of the hearing, due to no fault of Counsel for Defendant or the trial court.**

It is in the interest of justice that Defendant be given a new trial when his attorney is not given notice of the hearing. Counsel for Defendant has provided the Court with un-contradicted evidence that she did not receive notice of the hearing and it was not her fault that she did not receive notice of the hearing.

CONCLUSION

Appellants ask the Court to enter an Order reversing the magistrate court's judgment and granting Defendant a new trial.

Respectfully Submitted,

THE CAMDEN LAW FIRM, PA


Deborah J. Butcher, #74029

Attorney for Defendant

509 Walnut Street

Camden, South Carolina 29020

Post Office Box 610

Camden, South Carolina 29021

2016 MAY 15 AM 10:11
RECEIVED
CLERK OF COURT
JUDICIAL DEPARTMENT
CAMPDEN, SOUTH CAROLINA

Camden, South Carolina
May 14, 2014

Telephone: 803.432.7599
Facsimile: 803.432.7466

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
2014 MAY 15 AM 10:11

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE MAGISTRATE'S COURT

Case No.: 14-CP-28-416

Jeffrey Boyd Cooper,)
)
Defendant/Appellant)
)
vs.)
)
Kershaw County Summary Court)
James E. Davis, Jr., Summary)
Court Judge,)
)
Plaintiff/Respondent.)

RETURN

FILED FOR RECORD
2014 MAY 22 PM 3:48
JEROME HARRISON
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO: PRESIDING JUDGE, FIFTH JUDICIAL CIRCUIT COURT OF COMMON PLEAS:

In reference to the above matter, this court finds:

¶ That on January 8, 2014, the defendant Jeffrey Boyd Cooper, the Attorney's Office, The Camden Law Firm, and Officer Jack Corbett were noticed for court scheduled for February 21, 2014 at 11:00 A.M.

¶ That on February 20, 2014 the Kershaw County Magistrate's Office received notice for continuance from The Camden Law Firm. The court date had previously been rescheduled due to an overscheduling of cases for trial from the previous Pre-Trial Conference and re-notice for rescheduled court date of March 5, 2014 was mailed to all parties involved.

¶ That on January 31, 2014, notice was sent to the defendant, Jeffrey Boyd Cooper; the attorney, The Camden Law Firm, and the officer, Jack Corbett notifying all parties that court date had been rescheduled for March 5, 2014.

¶ That on March 5, 2014 (not March 7th, 2014 as stated by the Attorney, The Camden Law Firm, in the Motion filed), the Criminal Clerk attempted to make contact via telephone with the The Camden Law Firm because neither the defendant nor the Attorney were present, to no avail. The Defendant's jury trial was held in absentia and the Defendant was found guilty by a

jury of his peers based on the credible testimony given by the officer on the date of the trial, March 5, 2014.

¶ That on March 17, 2014, motion to vacate judgment was filed with the Kershaw County Magistrate's office.

¶ That on April 7, 2014, a motion hearing was scheduled for the date of May 7, 2014 at 10:00 A.M.

¶ That on May 7, 2014 The Camden Law Firm's motion to vacate was denied based on the fact that notice was sent to the address listed at that time with the South Carolina Bar Association for all appearance dates and was mailed in a sufficient amount of time for the Attorney, The Camden Law Firm, and the Defendant, Jeffrey Boyd Cooper, to be present.

Respectfully submitted,



JAMES E. DAVIS, JR.
Magistrate, Kershaw County Summary Court

Camden, South Carolina
May 21, 2014

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

State,

Respondent,

v.

Jeffrey Boyd Cooper,

Appellants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 14-CP-28-416

SUPPLEMENT TO APPELLANT'S
NOTICE OF APPEAL

2014 NOV 12 PM 1:18
CLERK OF COURT
KERSHAW COUNTY, S.C.
FILED FOR RECORD

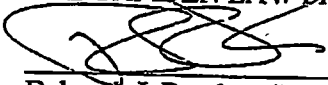
Appellant, Defendant Jeffrey Boyd Cooper in the matter below, supplements his notice of appeal and allege that the judgment be reversed due to the Court's failure to provide proper notice:

ADDITIONAL FACTS

Appellant was required to send correspondence to the magistrate regarding the Court's repeated failures to provide notice for hearings, including Mr. Cooper's court date. Please see attached.

Respectfully Submitted,

THE CAMDEN LAW FIRM, PA


Deborah J. Butcher, #74029
Attorney for Defendant
509 Walnut Street
Camden, South Carolina 29020
Post Office Box 610
Camden, South Carolina 29021
Telephone: 803.432.7599
Facsimile: 803.432.7466

Camden, South Carolina
November 10, 2014

Robert J. Butcher
Deborah J. Butcher

The Camden Law Firm, PA
509 WALNUT STREET
CAMDEN, SOUTH CAROLINA 29020
POST OFFICE BOX 610
CAMDEN, SOUTH CAROLINA 29021

Telephone: 803.432.7599
Facsimile: 803.432.7466

July 2, 2014

Via Email and U.S. mail

Roderick M. Todd
Chief Magistrate Judge
Kershaw County Summary Court
First Community Bank Building
631 West DeKalb Street, Suite A
Camden, South Carolina 29020

Re: Summary Court Notices of Hearings

Dear Judge Todd:

Again, I apologize for the tenor of the message I left with your office. I had just found out for the seventh time since May that your court scheduled a hearing but failed to inform my office of the hearing. After I left your office, a client was in the driveway with his notice for another hearing, bringing the number to eight.

The Summary Court has failed to provide me notice of eight separate hearings. Specifically:

1. Jeffrey Cooper, Case No. 41928-I, Hearing Date: March 7, 2014;
2. Jacob Sharpe, Case No. 04489 and 04490, Hearing Date: June 6, 2014;
3. Paul Kiser, Case No. 56863-GA, Hearing Date: May 16, 2014;
4. Christian Ives, Case No. 56811-GA, 56812-GA, 56813-GA, Hearing Date:
5. Jay Wojcik, Case No. G-534495, Hearing Date:
6. Shon Cuellar, Case No. F-748820, Hearing Date: July 10, 2014
7. Quandarius Mickle, Case No. 2012A2810100017, Hearing Date August 28, 2014;
8. Christian Ives, Case No. 56811-GA, 56812-GA, 56813-GA, Hearing Date: July 22, 2014;

In the past month, when the Summary Court has actually sent notices, the notice was sent to our old address on Broad Street. This is a shame because we have noticed the Summary Court of our proper address once we learned of the problem with your court and after we had confirmed our addresses on the South Carolina Supreme Court Attorney Information System (AIS). Today we also learned that the Summary Court sent an answer and counterclaim to the Plaintiff in *Floyd v. Lee*, 2014-CV-28-10100785 and the Clerk informed Mr. Floyd that our address was on Broad Street.

Upon investigation, it appears that my office has not received a notice of hearing directly from your office since February 27th or 28th of 2014. All of the notices we have received since that date have been from our clients or from the prosecuting law enforcement officers. This failure to notice our office in writing presents several problems should our clients be:

1. Incarcerated;
2. Hospitalized;
3. At a new address;
4. Deployed; or
5. Out of town working.

I spoke with Tommy Morgan, the County attorney, and he stated that he has had similar problems with receiving notice. He also stated that other attorneys are having similar problems.

In the Jeffrey Cooper case, Mr. Cooper was convicted in absentia because the wheelchair-bound man was in the hospital and I was not noticed of the hearing. I asked for a motion to reconsider and Judge James denied the motion with the implication from the bench that I was not being truthful about our office not receiving notice from the Summary Court. This may be because when I first learned that we missed the court hearing, I spoke with Judge James and told him that it doesn't make sense that we did not receive notice of hearing if the Summary Court has a copy of a notice sent to our address. I immediately and automatically assumed the fault was on my office's part. When we investigated and found out that it was not our fault, our statements to the Court fell on deaf ears.

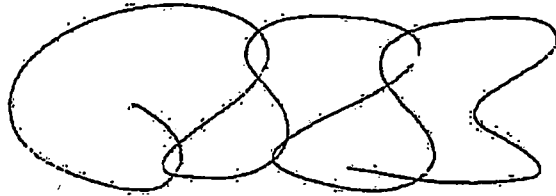
We have looked for fault on our part, to include searching case files in the office (my cases are kept separate at the house and employees do not have access to them), searching our scanned file database, questioning employees, changing employees' job duties, terminating employees, conferring with the postman and the postmaster, checking our addresses with the Summary Court, and confirming our addresses on AIS with the Supreme Court. After a thorough investigation, we do not believe the problem is at the law firm.

I have discussed this issue with Judge James, Judge Corbett, and Autumn, the clerk. Please understand that my frustration is compounded with the poor result in remedying the Jeffrey Cooper situation and knowing that my client received an unfair conviction from a court that would not revisit the unjust result. Each missed notice reinforces that fact that there is a likely chance that my clients will not receive access to justice because of the Summary Court's errors in handling paper work should my client be sick, out of town, or incarcerated.

The error could be as simple as failing to check the proper boxes when printing batches of notices for court hearings. I hope it is that simple and I hope you are able to remedy this problem. I look forward to your response.

Again, my frustration was relayed to you in a very poor fashion. Please forgive my impertinence.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and curves, appearing to be the initials 'RJB'.

Robert J. Butcher

THE CAMDEN LAW FIRM, PA
509 Walnut Street (29020)
Post Office Box 610
Camden, South Carolina 29021



Roderick M. Todd
Chief Magistrate Judge
Kershaw County Summary Court
First Community Bank Building
631 West DeKalb Street, Suite A
Camden, South Carolina 29020

State v. Cooper, 2016-000189
A-35

ROA Page No. 000032

STATE OF SOUTH CAROLINA)
County of Kershaw)
THE STATE,)
RESPONDENT,)
vs.)
JEFFREY BOYD COOPER,)
APPELLANT,)

COURT OF COMMON PLEAS
2014-CP-28-00416

TRANSCRIPT OF RECORD

November 20, 2015
Camden, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE.

APPEARANCES:

BRETT PERRY, ASSISTANT SOLICITOR
Attorney for the State

ROBERT J. BUTCHER, ESQ.
Attorney for the Appellant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right, Mr. Butcher, your appeal. You
2 may proceed.

3 MR. BUTCHER: Yes, sir. Thank you, Your Honor.

4 Your Honor, the main issue in this case was the
5 magistrate court was -- there was a problem sending notice
6 to our office. They were sending notices to an old
7 address on our office, and my office never received the
8 notice of the trial date.

9 My client was in the hospital at the time. He is a
10 paraplegic. He has bed sores, and he didn't give me -- he
11 didn't tell me that he had gotten notice.

12 THE COURT: It's a TIA?

13 MR. BUTCHER: Yes, sir, but the bottom line is when I
14 asked for a -- or filed a motion to reconsider with the
15 Court, Judge Davis who -- this was probably during his
16 first few weeks of being a magistrate judge, the -- his
17 logic was that, you know, the client got sent good notice,
18 so I -- so I should have known. Now --

19 THE COURT: Has your client appeared?

20 MR. BUTCHER: No. My client was in the hospital at
21 the time.

22 THE COURT: Okay. You told me that.

23 MR. BUTCHER: Which is -- I understand that logic to
24 some point, but part of the point of having an attorney is
25 that he does get -- he does get notice and that he can

1 appear when -- even when the client is there.

2 If my client had been fishing or off robbing a store,
3 he still had the Constitutional right to have his attorney
4 present and properly noticed, and so Your Honor, I don't
5 think it matters what my client was doing or whether he
6 got notice. If the attorney didn't get notice --

7 THE COURT: How had -- had you given the Magistrate's
8 Court notice that you -- that you made a Notice of
9 Appearance in Magistrate's Court?

10 MR. BUTCHER: Yes. Yes, sir, Your Honor.

11 THE COURT: You have?

12 MR. BUTCHER: That should be in the file. I
13 conducted discovery, and I did get a copy of -- later from
14 the Magistrate's Court file of the Notice of Hearing, Your
15 Honor. That should be in there.

16 It -- we had a series of cases about six or so -- six
17 or eight cases where the Magistrate Court was sending
18 notices to an old address, and I -- later Judge Todd, we
19 brought this issue up with Judge Todd, and he corrected
20 that.

21 But -- so from that perspective, we do not believe
22 that it was -- you know, we believe that my client's due
23 process -- procedural due process rights were violated in
24 not noticing his attorney.

25 As an alternative argument, we argue that the facts

1 do not support the public disorderly conduct because
2 everything occurred on private property.

3 So one -- and I don't have the record on how it was
4 stated, but you know, I do not think that all of the
5 elements were present in order to be able to convict my
6 client for the crime for which he was convicted. But I
7 think the big thing are the procedural due process issues,
8 Your Honor, and ask that this -- the decision of the
9 Court --

10 THE COURT: All right. I see your notice of July 2nd
11 saying you represent -- no, I'm sorry. That's saying if
12 they will to provide you notice. I'm looking for your
13 notice to the court that you, indeed, were representing
14 Mr. Cooper at the time of the hearing.

15 MR. BUTCHER: Yes, sir.

16 (Pause).

17 December 30th, 2013.

18 THE COURT: Okay.

19 MR. BUTCHER: That's -- that was the Notice of
20 Appearance, Your Honor.

21 THE COURT: All right. March 5th it looks like the
22 date.

23 MR. BUTCHER: Of --

24 MR. PERRY: That was the date of the hearing, Your
25 Honor.

1 THE COURT: According to the return, notices were
2 sent to you on January 31st. That's what the return says.

3 MR. BUTCHER: Yes, Your Honor.

4 THE COURT: Okay. You say that's not correct. Are
5 you saying it went to the wrong address?

6 MR. BUTCHER: Your Honor, it is my understanding
7 and -- it is my understanding that the notices itself had
8 the proper address, but the envelopes were addressed to
9 the wrong -- to an old address.

10 THE COURT: 509 Walnut Street?

11 MR. BUTCHER: No, sir. That's the proper address.

12 THE COURT: I'm looking at --

13 MR. BUTCHER: Oh, yes; yes, sir, but the envelopes I
14 guess were printed out through a different program. I'm
15 not...

16 THE COURT: It says -- this says Deborah Butcher 509
17 Wall [sic] Street, January 31st --

18 MR. BUTCHER: Yes, sir.

19 THE COURT: -- 2014. You say that you never received
20 that?

21 MR. BUTCHER: No, Your Honor. In fact, we had --
22 I've got a memo that was sent to the Summary Court on
23 July 2nd that basically --

24 THE COURT: I have that.

25 MR. BUTCHER: -- went through the eight cases that --

1 where we didn't receive notice.

2 THE COURT: Didn't receive notice on any of these
3 cases?

4 MR. BUTCHER: No, Your Honor.

5 THE COURT: All right. Let me hear from the State.

6 MR. PERRY: Your Honor, first of all, the State would
7 point out that on January 8th, notice was sent to the
8 Camden Law Firm at the same address that it was sent on
9 January 31st. They got that notice --

10 THE COURT: I figured.

11 MR. PERRY: -- because on February 25th -- or 20th --

12 THE COURT: Slow down, slow down. Where? I'm
13 looking for that notice you're referring to.

14 MR. PERRY: Your Honor, it's mentioned in the return.

15 THE COURT: Well, I'm looking for the actual...

16 MR. PERRY: Yes, sir. I don't have that file.

17 THE COURT: Just one at a time.

18 Okay. The -- it says on January 31st notice was
19 sent.

20 MR. PERRY: On January 8th, Your Honor.

21 THE COURT: I'm looking at the return on
22 January 31st, notice was sent to the Defendant, Jeffrey
23 Boyd Cooper, the attorney with the Camden Law Firm, and
24 the Office of Jeff Corbett, notifying all parties the
25 court date had been rescheduled for March 5th.

1 MR. PERRY: That's correct, Your Honor.

2 THE COURT: This says -- he says that one was sent to
3 the wrong address.

4 MR. PERRY: And Your Honor, the point that I'm trying
5 to make is that when they were originally noticed on
6 January 8th, okay, at the same address that we sent the
7 notice to on January 31st --

8 THE COURT: Okay. You're going back to January 8th?

9 MR. PERRY: Yes, sir. The Camden Law Firm received
10 that notice because on February 20th, they contacted the
11 Court and asked for the case to be continued. So a prior
12 notice that we sent to the same address, they received.

13 THE COURT: No. It didn't have a -- didn't have a
14 March 5th trial date on it.

15 MR. PERRY: No, sir, it didn't, but the point I'm
16 trying to make is that we would have sent it to the same
17 address. When we sent it previously, they received it.

18 We sent it back to that same address where we assumed
19 they would get it because they got it the first time, and
20 now, they're saying they didn't.

21 THE COURT: Okay.

22 MR. PERRY: The defendant was also noticed. You
23 know, opportunity was there, you know, for him to notify
24 his attorney.

25 The Court sent it to the same address that they had

1 previously sent it successfully. So I mean, I don't think
2 that they would have had any obligation to personally
3 serve them or hand carry a notice over there and be sure
4 that somebody got it.

5 Also, too, Your Honor, on March 5th, 2014 folks that
6 work in the clerk's office tried to call over to the
7 Camden Law Firm and say, "Hey, you know, where are you
8 guys at? We have got a hearing scheduled," and that was
9 to no avail.

10 THE COURT: Do you know that for a fact?

11 MR. PERRY: That's what's on the return, Your Honor.
12 I mean, I wasn't there. I don't work for the clerk's
13 office, but that's what's in the return. It's -- it's
14 signed by Judge Davis.

15 THE COURT: All right. All right. Anything further?

16 MR. BUTCHER: Yes, Your Honor.

17 In the motion to reconsider, there is an affidavit
18 from my paralegal, an affidavit from my partner, and we
19 had changed our information in the Attorney Information
20 System with the South Carolina Supreme Court. We changed
21 it on all of our pleadings.

22 Your Honor, the bottom line is that we would have
23 been there if we had received notice for the client, and
24 we didn't receive notice. You know, addresses were
25 changed where they were supposed to be changed.

1 The Clerk of Courts and the Magistrate's Courts use
2 the Attorney Information System to -- to for addressing
3 but under -- from my understanding of Judge Todd's
4 investigation, they weren't using an updated format when
5 they were addressing the envelopes. So we did not receive
6 it, and we can't predict, you know...

7 THE COURT: All right.

8 MR. BUTCHER: We didn't have any knowledge. I think
9 it's in the interest of justice to overturn this, Your
10 Honor.

11 THE COURT: All right. I'll review the file, and
12 I'll let you know.

13 MR. BUTCHER: Thank you, Your Honor.

14 THE COURT: Thank you very much.

15 (Whereupon, the proceedings were concluded.)
16
17
18
19
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21
22
23
24
25

State of South Carolina

FILED FOR RECORD

CASE NUMBER: 2014CP2800416

Jeffrey Boyd Cooper

2015 JAN 26 PM 1:52

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

JAMES MCDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j), SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Appeal is CONTINUED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

[Signature]

Judge Code

2124

Date

1-26-15

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Deborah J. Butcher

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert J. Butcher

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court

[Signature]

ROA Page No. 000044 jntj

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2800416

State	Jeffrey Boyd Cooper
-------	---------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other;

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Circuit Court Judge

Judge Code _____ Date _____

For Clerk of Court Office Use Only

Kershaw County

This judgment was entered on December 23, 2015, and a copy mailed first class or placed in the appropriate attorney's box on December, 23, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

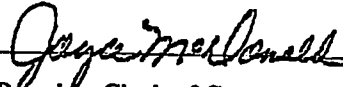
State KC Sheriff's Office/J. Corbett 821 Ridgeway Rd
Lugoff, SC 29078

Robert J. Butcher PO Box 610 Camden, SC 29021
Deborah J Butcher PO Box 610 Camden, SC 29021

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter


Joyce McDonald - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Jeffrey Boyd Cooper,)
)
 Defendant/Appellant,)
)
 vs.)
)
 State of South Carolina,)
)
 Plaintiff/Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-28-416


ORDER

2015 DEC 23 PM 4:27
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

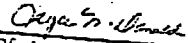
This matter came before the Court on November 20, 2015, by way of Mr. Cooper's appeal from his conviction for Breach of Peace. Mr. Cooper was tried *in absentia* by a jury before Kershaw County Magistrate, Judge James Davis, on March 5, 2015. Mr. Cooper and his counsel were not present for the trial. This Kershaw County jury found Mr. Cooper guilty, and Judge Davis sentenced him to a thirty (30) days suspended sentence and a fine of \$262.00. Subsequent to the trial, Mr. Cooper's counsel moved to vacate judgment and for a retrial. Judge Davis denied this motion.

After considering the record in this case, this Court finds no reason to reverse Judge Davis' sentence or his denial of Mr. Cooper's Motion to Vacate Judgment and For a Retrial. Accordingly, this Court hereby affirms the rulings of Judge Davis.

AND IT IS SO ORDERED.


 The Honorable G. Thomas Cooper, Jr.
 Presiding Judge, Fifth Judicial Circuit

December 23, 2015
CAHOEN, South Carolina

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court

 Clerk of Court Kershaw County

Joyce McDonald
Clerk of Court, Kershaw County
P.O. Box 15
Camden, SC 29020-8557

Robert J Butcher
Deborah J Butcher
Attorney at Law
PO Box 486
Manning, SC 29102

COLUMBIA

29 DEC 2015



State v. Cooper 01Bap00NB8 000048

~~X~~

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

State,

Respondent,

v.

Jeffrey Boyd Cooper,

Appellants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2014-CP-28-00416

MOTION TO RECONSIDER

Appellant, Defendant Jeffrey Boyd Cooper in the matter below, asks the Court to reconsider its judgment dated December 23, 2015.

ARGUMENT

It is in the interest of justice that the Court reconsider its denial of Mr. Cooper's appeal for the following reasons:

1. The magistrates' office failed to provide any notice to counsel that it had scheduled a trial for the Appellant.
2. Counsel for Appellant raised the failure to provide notice for this issue and seven other cases with the magistrate's office. Attached. This was part of the appellate record.
3. The chief magistrate, Rick Todd, found that an assistant clerk was not using the Attorney Information System to address envelopes and instead, she was using old envelope formats with counsel's old address.
4. The magistrate failed to serve his return on the Appellant. Nonetheless, it is disheartening that the magistrate would not even acknowledge the office's errors or even the possibility that the office committed an error. It appears that the magistrate

2015 JAN -6 PM 12:54
CLERK OF COURT
KERSHAW COUNTY, S.C.

may be more concerned with winning a case rather than the pursuit of justice. This is unjust for Mr. Cooper.

5. If the unjust conviction in this case were the fault of counsel for Appellant, counsel for Appellant would take full responsibility.

Respectfully Submitted,


THE CAMDEN LAW FIRM, PA

Robert J. Butcher, #74722
Attorney for Defendant
221 Glenwood Avenue
Manning, South Carolina 29102
Post Office Box 486
Manning, South Carolina 29102
Telephone: 803.432.7599
Facsimile: 803.432.7466

Camden, South Carolina
January 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

State of South Carolina,

Plaintiff,

v.

Jeffrey Boyd Cooper,

Defendant.

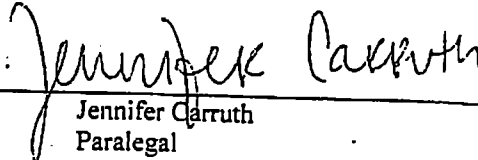
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No.: 14-DR-28-416

AFFIDAVIT OF SERVICE

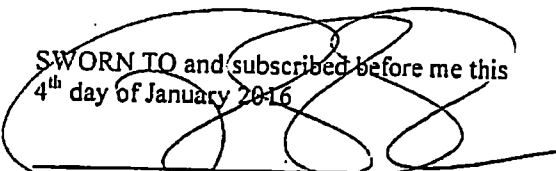
PERSONALLY APPEARED before me Jennifer Carruth, who being duly sworn, deposes and says that she is not a party to these proceedings and has no interest therein; that on the 4th day of January, 2016, she served, via U.S. Mail, a copy of the Motion to Reconsider in the above-stated case by causing the same to be deposited in an authorized United States mailbox; that the envelopes containing said document were properly addressed, securely wrapped and sealed, and bore the proper postage; and the said envelopes were addressed to the following addresses:

Kershaw County Solicitor's Office
Brett Allen Perry
1121 Broad Street
Camden, SC 29020

The Honorable G. Thomas Cooper
P.O. Box 192
1701 Main Street, Room 320
Columbia, SC 29020


Jennifer Carruth
Paralegal

SWORN TO and subscribed before me this
4th day of January 2016


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 6-21-23

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

State,
Respondent,
v.
Jeffrey Boyd Cooper,
Applicant.

C/A No.: 2014-CP-28-00416

ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER


2016 JAN 13 PM 3:49
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before the Court by way of Applicant's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Applicant asks this Court to reconsider its December 23, 2015 Order Affirming the rulings of Magistrate Judge Davis in Applicant's March 5, 2015 trial.

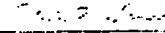
After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Applicant's Motion under Rule 59(e), SCRPC, to Reconsider this Court's Order filed December 23, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
January 12, 2015


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

ATTEST: I have compared & Certified
Copy of Original on file in this
Court


Clerk of Court

Joyce McDonald
Clerk of Court, Kershaw County
P. O. Box 1557
Camden, S.C. 29021-8557

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Robert J. Butcher
Attorney at Law
PO Box 486
Manning, SC 29102

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A-56

Kershaw County Magistrate Court

CASE HISTORY FOR CASE 41928AI

The State of South Carolina VS Jeffery Boyd Cooper

FILED DATE: 10/11/2011
INDICTMENT NUMBER:

CASE TYPE: CR

STATUS: Disposed

ASSIGNED JUDGE: Todd, Roderick M. Jr.

DISPOSITION JUDGE: Davis, James E Jr

ARRESTING AGENCY: Kershaw County Sheriff

CASE PARTIES:

Defendant Cooper, Jeffery Boyd
[REDACTED] Brookgreen Ct, Camden, SC 29020-3715

Officer Corbett, Jack
821 Ridgeway Rd., Lugoff, SC 29078

Defendant Attorney Butcher, Deborah J
509 Walnut Street, Camden, SC 29021

I hereby certify that the foregoing is
a true and exact copy of the original on
file in this office.

James E. Davis
Magistrate, Kershaw County
Summary Court

CASE HISTORY FOR CASE 41928AI

Cooper, Jeffery Boyd
[REDACTED] Brookgreen Ct

Age: 53

DOB: [REDACTED] 1963

DL#: [REDACTED]

SSN: [REDACTED]

Camden, SC 29020-3715

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0891 Breach / Breach of peace, nonaggravated in nature	10/6/2011	Guilty Bench Trial	5/7/2014

SENTENCING

Fine or Jail Time

Fine

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Breach / Breach of peace, nonaggravated in nature				
Fine to General Fund	\$100.00	\$0.00	\$100.00	999
Victim Services Asm 38.0013% / 5.783	12.00	0.00	12.00	999
Victim Conviction Surcharge \$100 / \$2!	25.00	0.00	25.00	999
Law Enforcement Funding Surcharge \$:	25.00	0.00	25.00	999
SC Criminal Justice Academy Training	5.00	0.00	5.00	999
State Assessment	95.50	0.00	95.50	999
Total:	\$262.50	\$0.00	\$262.50	

DATE	TIME	EVENT DESCRIPTION
10/19/2011	9:19 AM	Filing recorded: Jury Trial Requested
10/20/2011	12:00 AM	C28SCHAVIS recorded the following Case Note: Jury Trial Requested by victim Cooper.
4/10/2013	12:00 AM	Filing recorded: Archived Court Summons
4/30/2013	9:30 AM	Court event: Criminal/Traffic Pre-Trial Hearing

Print Date: 03/02/2016
Print Time: 12:32:08PM
Requested By: C28DSTEELE

CaseHistory.rpt V6.1

Page 1 of 2

CASE HISTORY FOR CASE 41928AI

5/1/2013	12:00 AM	Filing recorded: Archived Court Summons
5/6/2013	2:00 PM	Court event: Criminal/Traffic Jury Trial
11/19/2013	12:00 AM	Filing recorded: Archived Court Summons
12/13/2013	9:00 AM	Court event: Criminal/Traffic Pre-Trial Hearing
1/8/2014	12:00 AM	Filing recorded: Archived Court Summons
1/31/2014	12:00 AM	Filing recorded: Archived Court Summons
2/21/2014	11:00 AM	Court event: Criminal/Traffic Jury Trial
2/21/2014	12:00 AM	C28AFURNIS recorded the following Case Note: rescheduled by atty
3/5/2014	3:30 PM	Court event: Criminal/Traffic Jury Trial
3/6/2014	12:00 AM	Filing recorded: Failure to Comply
3/6/2014	12:00 AM	C28AFURNIS recorded the following Case Note: Guilty on Jury Trial. Judge Davis issued BW for Failure to Appear
4/7/2014	12:00 AM	C28AFURNIS recorded the following Case Note: Motion Hearing has been scheduled for May 7, 2014 per the Motion recived from the Butchers to Reopen the case
4/7/2014	12:00 AM	Filing recorded: Archived Court Summons
5/7/2014	12:00 AM	Filing recorded: Archived STP Agreement
5/7/2014	12:00 AM	C28AFURNIS recorded the following Case Note: motion was denied to reopen the case. BW lifted and Judge Davis said give him 3 months to pay.
8/7/2014	12:00 AM	Case STP frequency.One Time Payment STP Payments established for \$262.5 through 2014-08-07
8/7/2014	12:00 AM	Scheduled Time Payment
1/4/2016	12:00 AM	C28CMCCASK recorded the following Case Note: Per Judge Davis - STP 30 days from today
1/5/2016	12:00 AM	C28HBROWN recorded the following Case Note: Appeal was dismissed--letter mailed to defendant and his atty on 01/05/2016.
1/28/2016	11:21 AM	Received payment of \$262.5 from Jeffery Boyd Cooper for Jeffery Boyd Cooper . Printed receipt #2367864.

Print Date: 03/02/2016
 Print Time: 12:32:08PM
 Requested By: C28DSTEELE

CaseHistory.rpt V6.1

Page 2 of 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW) MAGISTRATE COURT
)
) NO. 41928AI

STATE OF SOUTH CAROLINA,)
)
VS.) TRIAL
)
JEFFREY COOPER,)
)
DEFENDANT.)
)

The within TRIAL was held at Kershaw County
Summary Court, 1121 Broad Street, Camden, South Carolina.

LAKELANDS REPORTING

*Post Office Box 555
Laurens, South Carolina 29360
(864) 575-9942
lakelandsreporting@gmail.com*

(COOPER TRIAL)

A P P E A R A N C E S

Honorable James Davis
Kershaw County Summary Court
1121 Broad Street
Camden, South Carolina 29020

REPRESENTING THE STATE:

OFFICER JACK CORBETT
Kershaw County Sheriff's Office

(COOPER TRIAL)

I N D E X

	PAGE
PROCEEDINGS:	4
CERTIFICATE OF REPORTER	21

E X H I B I T S

(All exhibits, if entered, were marked by the Court.)

REPORTER NOTES

Dashes [--] indicates interruption; incomplete phrases; unfinished sentences.

[sic] written as said.

(This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

P R O C E E D I N G S

1
2 THE COURT: Okay. Ladies and Gentlemen,
3 thank you so much for taking your time out of
4 your busy schedule in order to come and
5 participate in the judicial process. I know
6 that, as I said earlier, you all really wanted to
7 be here. To give you an example, last year
8 through the Magistrate Office there was about
9 56,000 cases that came through this Magistrate
10 Office. And I'm pretty sure it's going to
11 probably be the same in 2014, but it's people
12 like you that come and help us dispose of these
13 cases. And there's some instruction that I'm
14 going to give you throughout the process; but
15 again, first of all, I'd just like to welcome you
16 and thank you so much for participating. Thank
17 you so much.

18 Okay. Today's case is -- this is a case of
19 the *State of South Carolina vs. Jeffrey Cooper*,
20 on the charge of the state of -- let's see, on
21 the charge of breach of trust. The State is
22 represented here today by --

23 OFFICER CORBETT: Excuse me, Your Honor.
24 It's a breach of peace.

25 THE COURT: It's a breach of peace.

1 OFFICER CORBETT: Yes, sir.

2 THE COURT: So sorry, wrong one. Yes, sir.
3 Breach of peace. And the -- the State is
4 represented here today by Officer Corbett.

5 OFFICER CORBETT: Yes, sir.

6 THE COURT: And, as you can see, the
7 Defendant is Mr. Jeffrey Cooper, who I would like
8 to put on record that Mr. Cooper has been
9 notified to be here. All of the party letters
10 were sent to them to be here, present today, and
11 it is his will whether he wanted to be here or
12 not. But you can see that he's absent here, so
13 we don't have a Defendant here with us, with us
14 today. And to just let you know that the jury --
15 the juror, the failure of the Defendant does not
16 create any perfunction [sic] against him, you
17 know. I charge you that you must not permit this
18 fact to weigh in in the slightest -- slightest
19 against the Defendant, nor should this fact
20 either enter into the deliberation of the jury in
21 any manner just because he's not here. I just
22 want you to keep that in mind.

23 Okay. I know you've been qualified earlier
24 in order to been so graciously picked to serve on
25 the jury, but there is a couple of question that

1 I'm going to have to ask you again to make sure
2 that you are qualified again to serve on this
3 jury. I have certain question to ask you, to
4 determine your qualification to serve as juror in
5 this Court. Each question has an important
6 bearing upon your qualification as a juror, and
7 each question is based upon a requirement of the
8 law with respect to such qualifications. Each
9 question is ask -- asked each of -- is asked of
10 each of you as though each of you were being
11 questioned separately; each question require an
12 answer. So that if your answer is yes, please
13 stand so I will know that you have answered yes.
14 If you will do that for me. The first question:
15 is there any person who is related by blood or
16 marriage to the -- to the arresting officer or
17 with any other prosecution witness on his behalf
18 of the State, which he doesn't have any witness
19 today? Is there any juror who is related by
20 blood or marriage to the Defendant, Mr. Jeffrey
21 Boyd Cooper? Is there any juror who has formed
22 and/or expressed an opinion as to the guilt or
23 innocent of the Defendant? Is there any juror
24 who feel he or she cannot give both the State and
25 the Defendant a fair and an impartial trial? So,

1 I see no one standing. I will now say you are
2 qualified to serve as jurors. Thank you so much.

3 At -- at this time I'm going to ask the
4 clerk to come and give you your -- your oath and
5 she will swear you in.

6 (Jury is sworn)

7 **THE COURT:** Okay. There will be some time
8 when I, the Judge, need to confer with both
9 parties, as you see, or with the party outside of
10 your presence to ensure that both sides receive a
11 fair trial under the law and Rules of Evidence.

12 During these times and other appropriate
13 time, I will allow you the opportunity to refresh
14 yourself. During these breaks, it is
15 inappropriate for you to talk with anyone, even
16 the other -- other jurors about the case. Should
17 this occur, please report it to me immediately.
18 Of course, it would be -- also be improper for
19 you to form, in your own mind, any opinion as to
20 the innocent or guilt of the Defendant until all
21 of the evidence are -- is presented and I have
22 explained to you the law that applies. Remember
23 that you have sworn to be fair and impartial to
24 both the State and to the Defendant.

25 To tell you a little bit about the case, let

1 me also make a few remarks. Before we begin the
2 testimony, I will explain some things to those of
3 you who are not familiar with the criminal
4 justice system.

5 Your function as jurors is to decide the
6 fact of this -- of this case from the evidence
7 presented during the trial. I know a little
8 about this case, but that doesn't matter since
9 you, the jury, must decide the fact based upon
10 the evidence presented from the -- from the
11 witness stand.

12 Although I know a little about the case, I'm
13 rather sure that there will be some conflict in
14 the testimony; and therefore I ask you to pay
15 careful attention to the witnesses as they
16 testify, since you have to determine which
17 witness is telling the truth for you to decide
18 the fact in this case.

19 The warrant charging against the Defendant
20 with the crime of breach of peace, there's no
21 evidence against the Defendant. It is only the
22 mean of bringing this matter before you for
23 trial.

24 As I also pointed out, the Defendant has
25 entered a plea of not guilty. Under our system

1 of justice, anyone accused of a crime can plea
2 not guilty; and when he does so, the State has
3 the burden of proof, his guilt beyond a
4 reasonable doubt. Anyone accused of this crime
5 is presumed to be not guilty. And this
6 presumption of innocent remains with the accused
7 until his guilt is proved to you, the jury,
8 beyond a reasonable doubt.

9 Just to remind, a reasonable doubt is the
10 kind of doubt that would call for a reasonable
11 person to hesitate to act. I just want you to
12 keep that in mind.

13 There is -- there is a procedure that will
14 be followed in this trial. Each side will have
15 the opportunity. As you know, we don't have a
16 Defendant to address you to explain the side --
17 position as to the -- the charge, which we won't
18 worry about that because we don't have a
19 Defendant today. Proceed with this evidence
20 against the Defendant; then the Defendant, if he
21 desire, may present evidence. If the Defendant
22 were here, that's what he -- just to let you know
23 that could have been. That's his right to do
24 that.

25 When all the evidence is in, each side will

1 have the opportunity to argue his respected
2 cases, respected cases that I will explain to you
3 the law that applies to the breach of peace.
4 Then you will determine the fact of the case and
5 applying the law, as well as -- as I will explain
6 it, determine the guilt or innocent to the
7 Defendant. Okay?

8 At this time I'm going to -- before I do
9 that and since you all had to sit and listen, I
10 know we have the four alternates. I'm going to
11 let you know today that you are welcome to sit
12 here and listen and listen to me go on and on and
13 listen to the case, or you can be excused, which
14 I do thank you so much for being here. This is
15 to the four alternate. You don't have to stay.
16 All right. Thank y'all so much.

17 Okay. First, I will ask Officer Corbett
18 will there be any opening statement.

19 **OFFICER CORBETT:** Yes, Your Honor.

20 **THE COURT:** Since there's opening statement,
21 if you will rise for me and raise -- and raise
22 your right hand. You swear the testimony that
23 you're going to give in this case the truth, the
24 whole truth and nothing but the truth, so help
25 you God?

1 OFFICER CORBETT: I do.

2 THE COURT: All right. At this time I will
3 give an opportunity to give his opening
4 statement, and then we will go from there.
5 Please listen carefully.

6 OFFICE CORBETT: Judge Davis, Ladies and
7 Gentlemen of the jury, I'm Detective Corbett with
8 the Kershaw County Sheriff's Office. On 10/6 of
9 2011, approximately almost eleven p.m. at night,
10 myself and Deputy Willhoit (phonetic), who is
11 another deputy on the Kershaw County Sheriff's
12 Department, were attempting to serve a lawful
13 arrest warrant on a subject at ■ Simmons Drive,
14 a David Dukes. ■ Simmons Drive is well known to
15 us and in the community as a place of address
16 that's, you know, for sale of narcotics and use
17 of narcotics. It's well known to us and in the
18 neighborhood.

19 When we arrived, myself and Deputy Willhoit
20 arrived, we saw two males sitting in a red Chevy
21 truck in the front yard. They were both drinking
22 beer. They were found to be the driver was
23 Jeffrey Cooper, who is the Defendant in this
24 case. The passenger was Bobo Jackson.

25 THE COURT: Excuse me, Officer Cooper --

1 Corbett.

2 OFFICER CORBETT: Corbett.

3 THE COURT: Sorry. Approach the bench for
4 me, please.

5 (Sidebar conversation)

6 OFFICER CORBETT: At that time Mr. Cooper
7 became very verbally aggressive. Mr. Dukes was
8 found to be hiding under the truck. We did place
9 Mr. Dukes in custody for warrant, and Mr. Cooper
10 was at that time arrested for breach of peace.

11 THE COURT: Okay, you listened. That's just
12 the opening statement from Officer Corbett. Now
13 I'm going to give him an opportunity to -- since
14 he's been sworn in, to go ahead and give
15 testimony of this -- of this case.

16 And you -- if you want to submit anything,
17 any evidence, you do it at that time and so we
18 can give it to the jurors. So, at this time
19 either you can take the stand or you can stand
20 there, then give your testimony about the case.

21 OFFICER CORBETT: Okay. I'll just stand
22 here, if it's all right, Your Honor.

23 At the time we arrived, myself and Deputy
24 Willhoit, who's also a deputy at the Kershaw
25 County Sheriff's Department, we found Mr. David

1 Dukes, who had the legal lawful warrant on him,
2 hiding up under the truck that these two
3 individuals were sitting in, drinking beer. At
4 that time he was placed into custody in the back
5 of the patrol car.

6 Mr. Cooper, who was the driver of the
7 vehicle or actually sitting in the driver seat,
8 he became very verbally aggressive, used a lot of
9 profanity. And at that time I noticed several
10 types of various ammunition on the dash and
11 within the tail of the truck. Mr. Cooper seemed
12 to be kind of defensive about a sweatshirt that
13 he had on the driver's seat beside him, which was
14 in plain view to myself and Deputy Willhoit. For
15 our safety, I informed Mr. Cooper that I was
16 going to check up under the sweatshirt for
17 possible weapons. When I did reach for the
18 sweatshirt, Mr. Cooper grabbed at what appeared
19 to me to be -- lunged at me from where he was
20 sitting in the truck and appeared to be an
21 attempt to grab my arm.

22 At that time I told Mr. Cooper that he was
23 under arrest. He used a lot more profanity and
24 he stated nobody was going to take him to jail,
25 he wasn't going anywhere. At that time, after

1 telling Mr. Cooper several times that he was
2 under arrest, I did place my hands on Mr.
3 Cooper's shoulder in an attempt to get him out of
4 the truck and get him handcuffed. He did begin
5 to swing his elbows in what I would say was an
6 attempt to strike me. We were in very close
7 quarters. He then grabbed the steering wheel
8 with both hands. I did grab his hands and pry
9 him loose from the steering wheel and placed him
10 on the ground.

11 And at that time he told me that he was a
12 paraplegic and he had two colostomy bags on him.
13 He also told me that one of the colostomy bags
14 had broke when he hit the ground. At no time
15 before this did he inform me of that. He told me
16 that he was injured, but couldn't give any
17 specific injuries. At that time I placed him in
18 handcuffs in front.

19 EMS was called and EMS arrived shortly. He
20 stated that he didn't want medical care, and I
21 left him in the presence of Bobo Jackson at that
22 address of ■ Simmons Drive. He stated to me
23 that he felt all right. Due to all his health
24 problems, he was just issued a courtesy summons
25 instead of taking him to jail. And he stated

1 that -- Mr. Cooper stated that he was going to
2 stay there the night because he was too drunk to
3 drive home.

4 And, Your Honor, I'd like to -- I know you
5 don't like a lot of profanity in your courtroom.
6 I'd like to submit this into evidence and the
7 jury to read it. That is a report of the
8 incident.

9 THE COURT: Okay. That's all you have?

10 OFFICER CORBETT: That's all I have, Your
11 Honor.

12 THE COURT: So, does the State rest?

13 OFFICER CORBETT: Yes, sir. The State
14 rests.

15 THE COURT: Okay. All right. Ladies and
16 Gentlemen, you have listened to the proceeding
17 and the evidence in the case. And it is now my
18 legal duty to instruct you as to the law which
19 applies to the fact of this case.

20 The law of the State of South Carolina do
21 not permit a magistrate or a trial judge to
22 commit on the -- to comment on the fact in the
23 case. You, as jurors, are the sole and executive
24 inclusive judges of the fact in this case.
25 However, it is my duty to give you the law, and

1 you must accept and apply the law as I gave --
2 give it to you and be guided thereby to your
3 consideration and in your deliberation upon the
4 evidence in the case. Not only are you the sole
5 and exclusive judges of the fact in this case;
6 but you, as a juror, are the sole and exclusive
7 judges of the fact and the value of the evidence
8 in this case, as well as the credibility of all
9 the witnesses who have testified in this case.
10 In other words, Ladies and Gentlemen, you are the
11 sole judges of the weight of the sufficient and
12 of the evidence in the case. It is for you to
13 determine which witness or which witnesses are
14 recalling or truthfully related or transpire at
15 the time of the alleged commission of the crime
16 as described in the warrant.

17 To weigh the evidence, you must consider the
18 credibility of the witness. You will apply the
19 test of truthfulness, which you are accustomed to
20 applying in your daily lives. You may consider
21 the manner of testifying and the appearance of
22 the witness upon the witness stand and the
23 reasonableness that -- the reasonableness of the
24 testimony, of the opportunity the witness has to
25 see or hear, the accuracy of memory,

1 intelligence, interest and bias, if any, together
2 with all the fact and circumstances surrounding
3 the testimony.

4 You are the sole judges of the fact, the
5 credibility of the witness, and the weight of the
6 evidence. You may believe or disbelieve all or
7 any part of the testimony of the witness. It is
8 your province to determine what testimony is
9 worthy of belief and what testimony is not worthy
10 of belief according to the weight you assign to
11 the testimony of each witness. Kind that in
12 mind.

13 And what I'm going to do at this -- this
14 point, I am going to go down and -- I'm going to
15 select someone to -- as I say, to be in charge to
16 -- will handle deliberation when you go back to
17 the jury's room. And I'm just going to go down
18 and pick a number, and I'm going to pick No. 52.
19 Who is that? All right. Okay. You will be the
20 foreman for this jury. Okay? Thank you so much.

21 Now, as my duty now, I'm going to read the
22 law to you for breach of peace, for you to keep
23 that in mind. Okay? Where is that
24 (indiscernible) breach of peace.

25 The Defendant in this case has been charged

1 with a breach of peace. Breach of peace is a
2 violation of the public order or the disturbance
3 of a public peace or any act or conducting
4 inciting violence. This include any violation of
5 any law enacted to preserve peace and good order.
6 Peace, mean the peace which enjoyed by the
7 citizen of a community. Whether certain conduct
8 constitutes a breach of the peace depend on the
9 time, place and nearness of other persons.

10 Although a breach of the peace include act
11 which are likely to produce violence, the State
12 is not required to prove that actual violence
13 took place or that the peace was actually broken.
14 If you were -- if what was done was unjustifiable
15 and unlawful, tending to the -- tending with
16 sufficient directness to break the peace, no more
17 is required.

18 That is the law of a breach of peace. So,
19 in your deliberation, please keep that in mind
20 with the law of a breach of peace. And there is
21 not a statute for this, but it's basically just
22 the South Carolina common law of breach of peace
23 is -- is where we are.

24 Okay. Since we -- I will -- you will take
25 the evidence into the jury room with you. You're

1 able to look at it and come back. I'm going to
2 give you -- where is that sheet at
3 (indiscernible) Madam Foreman, I'm going to give
4 this sheet to you. You will go into the
5 deliberation room. You will find guilty or not
6 guilty from the testimony that you have heard.
7 Okay?

8 And I need to tell you now it must be
9 unanimous. Okay? So if you could try to; and
10 then if it's not unanimous, we'll deal with that
11 when you get back.

12 But I will give this to you, and you will
13 return this after you get done of your own
14 deliberations. Okay? If you will follow my
15 clerk to the deliberation room.

16 (Court recess)

17 **THE COURT:** Okay. Madam Foreman, have you
18 reached a verdict?

19 **MADAM FOREMAN:** Yes, sir.

20 **THE COURT:** Is it unanimous?

21 **MADAM FOREMAN:** Yes, sir.

22 **THE COURT:** Okay. It's your verdict. I can
23 see your verdict is guilty. Is that correct?

24 **MADAM FOREMAN:** Yes, sir.

25 **THE COURT:** And that was unanimous?

1 MADAM FOREMAN: Yes, sir.

2 THE COURT: All right. Okay, Madam Clerk.
3 We will accept your guilty plea. And again, I
4 want to thank you all for your service, for your
5 time out of your busy schedules to come and help
6 this court system, help the judicial system,
7 because it's really -- I can't thank you enough
8 for doing this for us and doing this for your
9 county, your Kershaw County. Thank you so much.

10 (End of proceedings)

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Certificate of Reporter

I, ANDREA SHORB, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that a trial of Jeffrey Cooper was held; that I was not present at the trial; that the foregoing pages constitute a transcription of said trial as accurate as possible from the audio provided.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript was thereafter sealed and mailed/ delivered to Robert J. Butcher, 221 Glenwood Drive, Manning, South Carolina, who will retain this sealed original transcript and shall be responsible for filing same with the court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof, I have set my hand and seal on May 6, 2016.

Andrea Shorb

Andrea Shorb, Court Reporter
My commission expires January 12, 2020

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 29 2016
SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
COURT OF COMMON PLEAS

G. THOMAS COOPER, CIRCUIT COURT JUDGE

CASE No. 2014-CP-28-00416
APPELLATE CASE No. 2016-000189

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY BOYD COOPER,

APPELLANT.

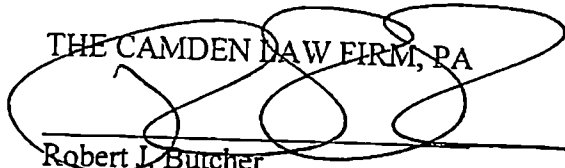
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I certify that this Record on Appeal contains no matter which is irrelevant to this appeal.

Respectfully submitted,

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August 11, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
COURT OF COMMON PLEAS

G. THOMAS COOPER, CIRCUIT COURT JUDGE

CASE No. 2014-CP-28-00416
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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY BOYD COOPER,

APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT FAIL TO PROVIDE NOTICE OF THE TRIAL TO COOPER'S COUNSEL IN VIOLATION OF COOPER'S UNITED STATES CONSTITUTIONAL RIGHTS AND HIS THE SOUTH CAROLINA CONSTITUTIONAL RIGHTS?

- II. DID THE TRIAL COURT ERR BY CONVICTING COOPER OF THE CRIME OF BREACH OF PEACE EVEN THOUGH THE STATE FAILED TO PROVE THE ELEMENTS OF THE CRIME?

STATEMENT OF THE CASE

Jeffrey Boyd Cooper alleges that he was tried without proper notice. Appellant asserts that while he was hospitalized, his attorneys were not properly noticed of the trial, as the Summary Court was not using the proper address for Defendant's counsel. Cooper asserts that the failure to notice his attorneys, regardless of whether he was noticed at his address, is a violation of his due process rights under the South Carolina and the United States Constitution.

FACTS

Jeffrey Boyd Cooper was arrested on October 6, 2011 for Breach of Peace. On October 19, 2011 Jeffrey Boyd Cooper requested a jury trial. ROA 2. An appearance was filed with the Kershaw County Summary Court by Deborah J. Butcher on January 13, 2014. The Summary Court issued Summonses on January 31, 2014 to the various parties involved in this matter setting trial for March 5, 2014. ROA 4 – 6; 26. It is uncontroverted and it has been unchallenged that Jeffrey Boyd Cooper was hospitalized during this time. ROA 35. Counsel for Jeffrey Boyd Cooper never received notice of the hearing. ROA 8 – 11. Counsel for Cooper at first believed that the notices were delivered to the wrong address. ROA 18 – 19. It now appears that the Summary Court sent notices related to eight different hearings to the wrong address and not to the Counsel of record. ROA 29 – 31. Although the address on the notice was correct, the clerk at the Summary Court was sending the envelopes to an old address that the law firm had left several years ago and not the address listed on the Attorney Information System. ROA 30, 36, 38, 41 - 42.

Jeffrey Boyd Cooper was tried in his absence on March 5, 2014. ROA 26 – 27, 56 – 76. Cooper filed a timely motion to vacate judgment, and for a retrial on March 17, 2014. ROA 8 – 11. The motion was denied on May 7, 2014. ROA 12 – 22. A notice of appeal was filed on May 15, 2014. ROA 23 – 25. The magistrate filed a return on May 22, 2014. ROA 26 – 27. Cooper filed a supplement to his notice of appeal on November 12, 2014. ROA 28 – 32. The supplement detailed the issues Cooper’s counsel was having with receiving correspondence from the Summary Court. ROA 29 – 31.

The appeal was heard by the Honorable G. Thomas Cooper, Jr. on November 20, 2015 in the Court of Common Pleas. ROA 33 – 43. The appeal was denied. ROA 45 – 47. A motion to reconsider was filed on January 6, 2016 and was denied by Judge Cooper on January 13, 2016.

ARGUMENTS

Cooper’s main concern in this appeal is whether his attorney is entitled to notice of trial and when there is substantial evidence that the Summary Court was not providing proper notice to Cooper’s counsel, is it in the interests of justice to vacate judgment and retry the case?

I. STANDARD OF REVIEW AND JURISDICTION

In criminal cases, the appellate court sits to review errors of law only. *City of Aiken v. Koontz*, 368 S.C. 542, 546, 629 S.E.2d 686 (Ct.App. 2006); *State v. Gault*, 375 S.C. 570, 572, 654 S.E.2d 98 (Ct.App. 2007); S.C. Code Ann. § 18-3-70 (requiring that the appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without examination of witnesses in that court).

II. THE TRIAL COURT FAILED TO PROVIDE NOTICE OF THE TRIAL TO COOPER'S COUNSEL IN VIOLATION OF COOPER'S UNITED STATES CONSTITUTIONAL RIGHTS AND OF HIS SOUTH CAROLINA CONSTITUTIONAL RIGHTS.

A criminal defendant has a right to be present during the trial of the charges against him. The Constitution of the State of South Carolina guarantees this right by affording a defendant, like Cooper, this right by affording him the right "to be confronted by the witnesses against him..., and to be fully heard in his defense by himself or by his counsel or by both." S.C. Const. of 1895, art. I, § 14; see also *State v. Bell*, 293 S.C. 391, 360 S.E.2d 706 (1987); *State v. Patterson*, 367 S.C. 219, 625 S.E.2d 239 (Ct.App. 2006) (a criminal defendant has a constitutional right guaranteed by the Confrontation Clause of the Sixth Amendment to be present at trial).

The United States Constitution also guarantees the defendant's right "to be confronted with the witnesses against him..., and to have the assistance of counsel for his defense." U.S. Const. amend VI; see also *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990) (right to be present rooted largely in the confrontation clause of the Sixth Amendment), citing *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970); *Ellis v. State*, 267 S.C. 257, 227 S.E.2d 304 (1976). This right is not absolute and may be waived by a defendant in misdemeanor and felony cases. *Bell*, at 401.

Rule 16 of the South Carolina Rules of Criminal Procedure provides:

Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon 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 the court.

While Rule 16, SCRCrimP, permits a knowing and intelligent waiver of the right to be

present, the waiver is permitted online in limited circumstances. *State v. Wright*, 304 S.C. 529, 405 S.E.2d 825 (1991). A trial judge must determine a defendant voluntarily waived his right to be present at trial in order to try the case in absentia. *Patterson*, at 229. Additionally, a trial judge must make findings of fact that the defendant (A) received notice of the right to be present and (b) was warned the trial would proceed in his absence. *Patterson*, at 229. The trial judge must make the findings on the record prior to the beginning of the trial. *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).

The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicates nothing less than an intention to obstruct the orderly processes of justice. *Ellis*, at 261; *State v. Ravenell*, 387 S.C. 449, 692 S.E.2d 554 (Ct.App. 2010).

A rebuttable presumption of notice arises upon proof that notice was mailed to the defendant and not returned by the postal authorities. *State v. Langston*, 275 S.C. 439, 272 S.E.2d 436 (1980). Cooper asserts that his absence and the absence of counsel was not deliberate and, at a minimum, his attorney was not noticed for the trial. Although it is impossible to show the Court that the magistrate court failed to address the envelopes properly, Cooper would show that the Court failed to provide notice for eight separate hearings in the same time period. This is too much for a coincidence. Cooper cannot be said to have entered a knowing and intelligent waiver of his right to be present, or at least to be represented by counsel at his trial. *State v. Goode*, 299 S.C. 479, 482, 385 S.E.2d 844 (1989).

In order to claim the protection of Rule 16, SCRCrimP, counsel must, and has, raised the issue at the first opportunity. *State v. Williams*, 292 S.C. 231, 355 S.E.2d 654 (1990).

Cooper asserts that once the Kershaw County Summary Court learned that there was a pattern and practice of failing to properly address its summonses to the Camden Law Firm, PA, the Court should have immediately sought to ensure that justice was done. For instance, it should have amended its return to show that it failed to properly notice Cooper's attorney's on eight occasions, including the matter at bar. ROA 29-30. It should have advocated for the retrial of Cooper once it knew that Cooper's counsel was not notified. See *In re English*, 367 S.C. 297, 305 – 306, 625 S.E.2d 919 (2006) (disparate treatment afforded the State and the accused gives an appearance of impropriety and suggests a bias towards the State); *McCullough v. Commission on Judicial Performance*, 776 P.2d 259, 264 – 265 (Cal. 1989) (A justice court judge who violated two criminal defendants' right to representation by ordering their trials to proceed despite the absence of their attorneys was guilty of willful misconduct as to each case); Rule 501, SCACR, Canon 1.

III. THE TRIAL COURT ERRED BY CONVICTING COOPER OF THE CRIME OF BREACH OF PEACE EVEN THOUGH THE STATE FAILED TO PROVE THE ELEMENTS OF THE CRIME.

Breach of peace is a common law offense, which is not susceptible of exact definition. ROA 1; *State v. Edwards*, 239 S.C. 339, 343, 123 S.E.2d 247 (1961), *reversed*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963). Breach of Peace is a generic term, embracing a great variety of conduct destroying or menacing public order and tranquility. *Id.*; *State v. Simms*, 412 S.C. 590, 594-595, 774 S.E.2d 445 (2015).

A breach of the peace may be generally defined as such a violation of the public order as amounts to a disturbance of the public tranquility, by act or conduct either directly having this effect, or by inciting or tending to incite such a disturbance of the public tranquility. Under this general definition, therefore, in laying the foundation for a prosecution for the offense of breach of the peace it is not necessary that the peace actually be broken; commission of an unlawful and unjustifiable act, tending with sufficient directness to

breach the peace, is sufficient. *Simms*, at 595.

A brief reading of the trial transcript shows that the deputy testified that he entered private property to serve an arrest warrant of a third party. ROA 66 – 68. After the deputy had arrested the third party and placed him in the patrol car, “Mr. Cooper...became very verbally aggressive, used a lot of profanity.” ROA 68. Instead of quitting the premises, the deputy, by his own words, began looking for reasons to search Cooper’s vehicle. ROA 68. When Cooper protested, he was arrested for breach of peace. ROA 68.

Cooper asserts that the evidence shows that the incident was provoked by law enforcement and that it occurred on private property. Cooper’s verbal aggression and use of profanity without fighting words do not amount to breach of peace. *In the Interest of Jeremiah W.*, 361 S.C. 620, 622, 606 S.E.2d 766 (2004) (Citing *State v. Perkins*, 306 S.C. 353, 412 S.E.2d 385 (1991)) (State may not punish a person for voicing an objection to a police officer where no fighting words are used.).

There was no testimony that there was evidence that the Defendant’s, “actions/speech caused at least a minimal level of “nervousness, frustration, anxiety,” anger, or other evidence that the peacefulness of the neighborhood had been breached. *In the Interest of Jeremiah W.*, 361 S.C. 90, 94, 576 S.E.2d 185 (2003), *reversed on other grounds*, 361 S.C. 620, 606 S.E.2d 766 (2004), (Citing *State v. Peer*, 320 S.C. 546, 552, 466 S.E.2d 375, 378 (Ct.App. 1996)). There is no testimony about the way the only other person present, Bobo Jackson, behaved.

The freedom to verbally criticize law enforcement, while not very smart in Kershaw County, is protected by the First Amendment. *City of Houston v. Hill*, 482 U.S. 451, 461-63, 96 L. Ed. 2d 398, 107 S. Ct. 2502 (1987).

CONCLUSION AND RELIEF REQUESTED

Our system functions on the belief that the United States Mail gets to where it is supposed to go. This is why the record shows an immediate apology and acceptance of responsibility by counsel for Cooper. When it was shown that the defect was not in processing of mail and calendaring of court dates, and that the defect was in fact due to the magistrate's failure to address envelopes properly, the magistrate failed to seize the opportunity to do justice. Cooper is entitled to procedural due process. The Court violated Cooper's State and Federal constitutional right to counsel by failing to properly notice counsel.

Alternatively, the State failed to present a breach of peace and a directed verdict should have been entered at the close of the State's case.

Cooper asks the Court to grant him a new trial.

Respectfully submitted,

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August 11, 2016

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BOYD COOPER,

Appellant.

Appellate Case No. 2016-000189

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STATEMENT OF ISSUES ON APPEAL

I.

The Magistrate did not err in denying the motion to vacate judgment where the evidence before the Magistrate indicated that notice was mailed to both Appellant and his counsel well in advance of trial.

II.

Evidence supported the conviction for breach of peace and the sufficiency of evidence was never raised to the Magistrate, so it is not preserved for review.

STATEMENT OF THE CASE

On March 5, 2014, Appellant Cooper was tried by jury in absentia for Breach of Peace before the Honorable Magistrate James Davis. Neither Cooper nor his attorney were present. Cooper was found guilty, and Magistrate Davis sentenced Cooper to thirty days imprisonment suspended to a \$262 fine.

Cooper's counsel (Counsel) moved to vacate the judgment and a retrial on March 17, 2014, arguing Counsel failed to receive notice of the trial. Magistrate Davis denied the motion at the conclusion of the hearing, finding the Magistrate's Office met its obligations to provide notice. In the Magistrate's Return dated May 21, 2014, Magistrate Davis explained, "[N]otice was sent to the address listed at that time with the South Carolina Bar Association for all appearance dates and was mailed in a sufficient amount of time for the Attorney, the Camden Law Firm, and the Defendant, Jeffrey Boyd Cooper, to be present." R. 27.

Cooper appealed to Common Pleas. The Honorable G. Thomas Cooper, Jr., heard oral argument on November 20, 2015. Judge Cooper affirmed the conviction and sentence by order dated December 23, 2015, finding, "After considering the record in this case, this Court finds no reason to reverse Judge Davis' sentence or his denial of Mr. Cooper's Motion to Vacate Judgment and For a Retrial." R. 47. Judge Cooper denied the subsequent motion to reconsider by order dated January 12, 2016. R. 52.

STATEMENT OF FACTS

At trial, the only witness was Officer Corbett, who also prosecuted the case. Officer Corbett testified he and Deputy Willhoit were serving a warrant on David Dukes, who was hiding underneath the truck Cooper and a passenger were sitting in. The two men were drinking beer. The Officers placed Dukes in the patrol car. Meanwhile, Cooper became verbally aggressive and used lots of profanity. Officer Corbett noticed ammunition on the dashboard and in the tail of the truck. Officer Corbett also noticed Cooper seemed defensive about a sweatshirt on the driver's seat next to him. Officer Corbett told Cooper he was going to check under the sweatshirt for possible weapons. When Officer Corbett reached for the sweatshirt, Cooper lunged for his arm. Officer Corbett told Cooper he was under arrest. Cooper responded with more profanity and exclaimed no one was taking him to jail, he was not going anywhere. R. pp. 67-69.

Cooper continued to refuse to cooperate despite Officer Corbett informing him he was under arrest several times. Finally, Officer Corbett put his shoulder on Cooper in an attempt to have Cooper exit the vehicle and be handcuffed. Cooper swung his elbows toward Officer Corbett and grabbed the steering wheel with both hands. Officer Corbett pried Cooper's hands loose and placed him on the ground. R. p. 69. Only at this point did Cooper complain he was a paraplegic and he had two colostomy bags on him. R. p. 69.

Cooper complained one of the bags had broken and also claimed he was injured, but would not give any specific injury. Officer Corbett called EMS, but when EMS arrived, Cooper said he did not want medical care. Officer Corbett issued him a courtesy summons in lieu of taking him to jail. Officer Corbett left Cooper with an individual known as Bobo Jackson, Cooper said he was going to stay the night there because he was too drunk to drive home. R. pp. 69-70.

ARGUMENT

I.

The Magistrate did not err in denying the motion to vacate judgment where the evidence before the Magistrate indicated that notice was mailed to both Appellant and his counsel well in advance of trial.

At the hearing on motion to vacate, counsel noted it appeared the Magistrate sent notice for trial to the right address on January 31, 2014, but attested the office did not receive notice. Counsel surmised the next door neighbor may not have been passing on the mail. R. pp. 20-21. No explanation was provided to the Magistrate why Cooper failed to appear: Counsel indicated he was unaware whether or not his client received the paperwork and argued it did not matter because counsel needs to be served with notice. R. p. 19, lines 13-19. Magistrate Davis ruled on the record as follows: “After consideration and after hearing the Motion from Mr. Butcher, this is going to be my ruling: Mr. Butcher, I think the Court has met their obligation of sending this information to your law firm, so I’m going to respectfully deny your Motion, Sir.” R. 21, lines 16-23.

At oral argument before Judge Cooper, Counsel admitted his client received notice, explaining: “My client was in the hospital at the time. He is a paraplegic. He has bed sores, and he didn’t give me – he didn’t tell me that he had gotten notice.” R. p. 35, lines 9-11.

In criminal cases the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. State v. Parker, 391 S.C. 606, 611, 707 S.E.2d 799, 801 (2011); State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge’s ruling is supported by any evidence. Parker at

611-12, 707 S.E.2d at 801. A defendant may waive the right to be present and tried in the defendant's absence if the defendant receives notice of the right to be present. State v. Goode, 299 S.C. 479, 385 S.E.2d 844 (1989).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988).

In the instant case, the evidence before the Magistrate showed Cooper was personally provided notice and no explanation was provided why he was not present. Further, the evidence before the Magistrate indicated notice was properly sent to Counsel and Counsel offered no explanation for why he did not receive notice. A trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). In the instant case, the Magistrate's decision to deny the motion to vacate judgment was supported by evidence and not controlled by an error of law.

Counsel alleged in a supplemental notice of appeal to circuit court that the Magistrate's Office was using an old address on the envelopes and that counsel failed to receive notice in several other cases. The only evidentiary basis for this is a letter Counsel wrote to Chief Magistrate Roderick Todd, not Magistrate Davis, who presided over trial. R. pp. 29-32. The supplemental notice of appeal was not supported by affidavits or any other acknowledgement of the error by the Magistrate's Office. Further, this explanation was never brought to Magistrate Davis' attention at

the motion to vacate and counsel did not seek a remand or leave for the Magistrate to consider this argument. The ground asserted on appeal must be supported by the objection raised at trial. State v. Silver, 314 S.C. 483, 486, 431 S.E.2d 250, 251 (1993). Given that Magistrate Davis was never confronted with the contention that the Magistrate's Office was sending notice to the wrong address, Judge Cooper was constrained by the standard of review to affirm the Magistrate's denial of the motion to vacate.

II.

Evidence supported the conviction for breach of peace and the sufficiency of evidence was never raised to the Magistrate, so it is not preserved for review.

Cooper argues there was insufficient evidence to support the verdict for breach of peace and the Magistrate should have granted directed verdict. However, this issue was never raised to the Magistrate, even in the motion to vacate judgment. "A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below." State v. Kennerly, 331 S.C.442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999).

Cooper argued to Judge Cooper on appeal that directed verdict should have been granted because the incident occurred on private property. However, events occurring on private property may still constitute breach of peace. See State v. Byrnes, 100 S.C. 230, 84 S.E. 822, 824 (1915) (finding that evidence supported verdict for breach of the peace when defendant "uttered the profane language" from his house).

Cooper made a more generic statement that directed verdict should be granted because all the elements of the offense were not met. In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001)

(finding more than a general directed verdict motion is required to preserve a directed verdict ruling).

Further, the Magistrate did not err in allowing the jury to determine the proper verdict. When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. The task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

“The term ‘breach of peace’ is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. . . . In general terms, it is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence.” State v. Peer, 320 S.C. 546, 552, 466 S.E.2d 375, 379 (Ct. App. 1996) (citations omitted). “Although it includes acts likely to produce violence in others, actual violence is not an element of breach of peace.” Id. (citations omitted). Peer quotes American Jurisprudence in part as follows: “[I]t is not necessary that the peace actually be broken; commission of an unlawful and unjustifiable act, tending with sufficient directness to breach the peace is sufficient.” Id. (quoting 12 Am.Jur.2d Breach of Peace, etc. § 4.).

In the instant case, the evidence indicates Cooper was loud, boisterous, and cursing when law enforcement was seeking to serve a valid warrant on a fugitive hiding under his truck in the front yard of a residence. He attempted to grab the officer’s hand and flailed his elbows in resistance to the officer’s lawful orders. Cooper was drinking and admitted he was unable to drive home after his arrest. Despite being advised he was under arrest, Cooper resisted by locking his hands on the

steering wheel so that it became necessary for the officer to forcibly remove Cooper and place him on the ground. A reasonable juror could find Cooper claimed to be injured in an attempt to cause further commotion, and his ruse was exposed when Cooper refused treatment after it became necessary due to Cooper's claims of injury for an ambulance to respond to the scene. Cooper's decision to cry "wolf" caused further disturbance to public tranquility. These actions, taken together, are sufficient evidence for a reasonable juror to believe Cooper attempted, and succeeded, to menace or destroy public order and tranquility by his outrageous behavior. Peer supra.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 16, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BOYD COOPER,

Appellant.

Appellate Case No. 2016-000189

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DANIEL E. JOHNSON
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A-107

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September 16, 2016

A-108

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jeffrey Boyd Cooper, Appellant.

Appellate Case No. 2016-000189

Appeal From Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-049
Heard April 11, 2018 – Filed February 6, 2019

REVERSED AND REMANDED

Robert J. Butcher, of The Camden Law Firm, PA, of
Camden, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Jeffrey B. Cooper appeals the circuit court's order affirming his conviction for breach of the peace, arguing the magistrate's court erred in failing to vacate his conviction after he was tried *in absentia* without receiving proper notice of the trial date. We reverse and remand for a new trial.

On October 6, 2011, Detective Jack Corbett, of the Kershaw County Sheriff's Office, cited Cooper for breach of peace. The uniform traffic ticket indicated a trial would be held at 9:30 a.m. on October 19, 2011. Cooper requested a jury trial.

On January 13, 2014, Deborah Butcher (trial counsel), of the Camden Law Firm, PA, (the Firm) filed a notice of appearance on Cooper's behalf. In a January 31, 2014 summons, the Kershaw County Magistrate noticed Cooper's trial for March 5, 2014 at 3:30 p.m. The summonses in the record are addressed to Cooper, Cooper's attorney, and Detective Corbett. However, the summons to Cooper is unsigned.

On March 5, 2014, the magistrate's court held a jury trial on Cooper's charge. The magistrate stated,

[A]s you can see, the Defendant is Mr. Jeffrey Cooper, who I would like to put on record that Mr. Cooper has been notified to be here. All of the party letters were sent to them to be here, present today, and it is his will whether he wanted to be here or not. But you can see that he's absent here

Detective Corbett testified at trial, and the jury found Cooper guilty. On March 13, 2014, the magistrate's court issued a bench warrant for Cooper for failure to appear.

After Cooper's counsel learned Cooper had been tried *in absentia*, Robert Butcher (appellate counsel), who also worked at the Firm, promptly contacted the magistrate's court office in an effort to determine how he and trial counsel had missed the hearing.¹

¹ Cooper's appellate counsel provided the chronology of this case in his brief and at oral argument. Although some of this timeline is not detailed in the record, we accept counsel's representations to this court. See *Elkachbendi v. Elkachbendi*, 2014-MO-035 (S.C. Sup. Ct. filed Sept. 17, 2014) (reversing family court and Court of Appeals' findings of untimeliness based on counsel's representations to the family court (citing *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651-52, 661 S.E.2d 791, 795-96 (2008) (citing Rule 704(1), SCACR, in presuming counsel was being truthful when she told the circuit court that she filed a motion during the proscribed time period)); Rule 407(1), SCACR ("A lawyer, being a

On March 17, 2014, Cooper moved to vacate the judgment and for a new trial, arguing neither trial counsel nor the Firm received notice of Cooper's trial date. Cooper attached the affidavits of trial counsel and Michael Ludy, the Firm's paralegal, to his motion to vacate; both noted the Firm had procedures in place to prevent loss or misfiling of documents and averred the Firm did not receive notice of Cooper's trial. On April 7, 2014, the magistrate's court mailed a summons for the hearing on Cooper's motion to trial counsel at the same erroneous address the court used to send notice of Cooper's trial.²

At a May 7, 2014 hearing on the motion to vacate, Cooper's appellate counsel stated that although he did not doubt the magistrate's court sent the notice of Cooper's trial, the Firm did not receive it. Appellate counsel surmised several potential reasons the notice had not been received: (1) the Firm was in the process of moving and had changed its address with the Supreme Court Attorney Information System (AIS), (2) the Firm's neighbors may not have been giving the Firm its mail, or (3) the mail was otherwise misdelivered. When asked if Cooper received notice of his trial, appellate counsel responded, "I'm not sure, but it [does not] matter." Before ruling, the magistrate told appellate counsel the court's records indicated notice was sent to trial counsel on January 31, 2014. The magistrate's court denied Cooper's motion to vacate, stating:

Okay. After consideration and after hearing the Motion from Mr. Butcher, this is going to be my ruling: Mr. Butcher, *I think the Court has met their obligation of*

member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."); Rule 3.3(a)(1)("A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."); Rule 4.1(a)("In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person."); Rule 8.4(d)("It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

² Eventually, Cooper learned the notice problem stemmed from an address "syncing" issue the magistrate's court had with the computer program used to print the envelopes enclosing the notices.

sending this information to your law firm, so I'm going to respectfully deny your Motion, sir. No objection, and have a good day.

(emphasis added). Cooper appealed on May 15, 2014.

After the circuit court's hearing, appellate counsel contacted the magistrate's court to discuss notice issues and had at least two meetings with the then-chief magistrate.

On July 2, 2014, appellate counsel followed up a message to the then-chief magistrate with a letter apologizing for his "impertinence" and expressing his frustration with the magistrate court's ongoing notice problems. He memorialized the problems in detail:

In the past month, when the Summary Court has actually sent notices, the notice was sent to our old address on Broad Street. This is a shame because we have noticed the Summary Court of our proper address once we learned of the problem with your court and after we had confirmed our addresses on the South Carolina Supreme Court Attorney Information System (AIS). Today we also learned that the Summary Court sent an answer and counterclaim to the Plaintiff in [another case] and the Clerk informed [the client] that our address was on Broad Street.³

Upon investigation, it appears that my office has not received a notice of hearing directly from your office since February 27th or 28th of 2014. All of the notices we have received since that date have been from our clients or from the prosecuting law enforcement officers. This failure to notice our office in writing presents several problems should our clients be:

1. Incarcerated;

³ It was not. Months prior, counsel had updated the firm's address to Walnut Street in AIS and with the summary court.

2. Hospitalized;
3. At a new address;
4. Deployed; or
5. Out of town working.

I spoke with [], the County attorney, and he stated that he has had similar problems with receiving notice. He also stated that other attorneys are having similar problems.

In the Jeffrey Cooper case, Mr. Cooper was convicted in absentia because the wheelchair-bound man was in the hospital and I was not notified of the hearing. I asked for a motion to reconsider and [the magistrate's court trial judge] denied the motion from the bench with the implication that I was not being truthful about our office not receiving notice from the Summary Court. This may be because when I first learned that we missed the court hearing, I spoke with [the trial judge] and told him that it doesn't make sense that we did not receive notice of [the hearing] if the Summary Court has a copy of a notice sent to our address. I immediately and automatically assumed the fault was on my office's part. When we investigated and found out that it was not our fault, our statements to the Court fell on deaf ears.

We have looked for fault on our part, to include searching case files in the office (my case files are kept separate at the house and employees do not have access to them), searching our scanned file database, questioning employees, changing employees' job duties, terminating employees, conferring with the postman and the postmaster, checking our addresses with the Summary Court, and affirming our addresses on AIS with the Supreme Court. After a thorough investigation, we do not believe the problem is at the law firm.

I have discussed this issue with [two other Summary Court judges in the same county] and [], the clerk. Please understand that my frustration is compounded with [the]

poor result in remedying the Jeffrey Cooper situation and knowing that my client received an unfair conviction from a court that would not revisit [its] unjust result. Each missed notice reinforces that fact that there is a likely chance that my clients will not receive access to justice because of the Summary Court's errors in handling paper work should my client be sick, out of town, or incarcerated.

The error could be as simple as failing to check the proper boxes when printing notices for court hearings. I hope it is that simple and I hope you are able to remedy this problem. I look forward to your response.

Again, my frustration was relayed to you in a very poor fashion. Please forgive my impertinence.

(emphasis added). Appellate counsel also explained the Firm did not receive notice of hearings in seven other cases and learned of the hearing dates from opposing counsel. The then-chief magistrate's response was to call appellate counsel in to his office for a "sit down." According to appellate counsel, during this meeting, the chief magistrate acknowledged the magistrate's court had been experiencing issues with its envelope-printing software: the magistrate's court's envelope-printing software did not sync its attorney addresses with those on the notices themselves. Or, apparently, with attorney addresses updated in AIS.

It is unclear what, if any, other action the magistrate's court then took following this chambers meeting. However, it is clear that *no* action was taken to rectify the notice problem affecting Cooper's conviction. It is difficult to understand why—upon receipt of counsel's letter detailing the notice problems in at least eight of his firm's cases, not to mention those known by the county attorney and others—neither the chief magistrate nor the presiding magistrate set a hearing to properly address the notice problems in this case and in any other matters in which non-notified attorneys may have requested such. Another alternative would have been to simply schedule Cooper a proper trial, at which Cooper could have appeared

with counsel,⁴ exercised his Confrontation Clause rights,⁵ and had an opportunity to be heard.⁶

On November 12, 2014, Cooper supplemented his notice of appeal with the July 2, 2014 letter.⁷ However, the magistrate who presided over Cooper's *in absentia* trial did not supplement his Return to the Notice of Appeal or otherwise notify the circuit court that the repeated problems with attorney notices had been traced to the magistrate's court's envelopes.⁸

After a November 20, 2015 hearing, the circuit court affirmed Cooper's conviction by order dated December 23, 2015.

The question of notice is fundamental to the due process clause of both the United States Constitution and South Carolina Constitution. *See* U.S. Const. amend. XIV ("No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); S.C. Const. art. I, § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."); *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) ("Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal."). We find questions of fundamental fairness and concern for the integrity of the judicial process require that Mr. Cooper receive a properly noticed trial. Although the record contains notices addressed to Cooper and his attorneys, the notices were mailed to the wrong address and trial counsel never received them.

⁴ U.S. Const. amend. VI

⁵ U.S. Const. amend. VI

⁶ U.S. Const. amend. V, XIV

⁷ Appellate counsel explained he waited until November to inform the circuit court because he wanted to discuss the notice issue with the magistrate's court in hopes of rectifying the situation.

⁸ And he had ample opportunity to do so. For some reason, both the presiding magistrate and then-chief magistrate attended the circuit court hearing for this appeal.

Because the record indicates the notices were not received due to mailing problems within the magistrate's court, the circuit court erred in affirming Cooper's conviction. *See City of Aiken v. David Michael Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006) ("Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. If the record, however, does not include evidence to support a finding that the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand."); *see also State v. Wrapp*, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017) ("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.").

Moreover, we decline to accept the State's preservation argument here because as soon as trial counsel became aware of the notice issues, her Firm brought them to the attention of the magistrate court and attempted to rectify them. However, the record indicates the magistrate's court made no effort to address the problem, even after learning of errors in its own administration. Appellate counsel believed his communications with the chief magistrate were not well-received; thus he did not formally request a hearing to put the notice issues on the record because he thought his letters and discussions with the magistrates were sufficient.

Attorneys are placed in precarious positions when forced to repeatedly call a court's attention to its own errors. This is the very reason our preservation rules recognize "that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused." *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005).

Therefore, the circuit court's order affirming Cooper's conviction for breach of the peace is

REVERSED AND REMANDED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY BOYD COOPER,

Appellant.

Appellate Case No. 2016-000189

STATE'S PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended. In so doing, the State maintains all its prior arguments as set out in its brief of respondent.

Respondent respectfully submits that this Court's opinion is unfair to Magistrate Davis. It presupposes Magistrate Davis could not be fair. It finds Magistrate Davis was made aware of the magistrate's court's failure to send notice to the right address when no motion was made to him seeking new trial on this error. This Court's ruling is based on alleged facts that if true, were never presented to Magistrate Davis. Nothing in the record indicates that Cooper's trial/appellate counsel, after discovering a clerical error resulted in notice being sent to the prior

office address, brought the problem to Magistrate Davis' attention and he did not attempt to seek a new trial from Magistrate Davis. While opposing counsel apparently discussed this issue with the chief magistrate, nothing in the record indicates he asked the chief magistrate to set aside the conviction, assuming the chief magistrate had jurisdiction to do so. Opposing counsel could have brought this issue before Magistrate Davis by way of a Rule 29, SCRCrimP motion, but failed to do so.

The opinion of this Court rejects the State's position that the error was not preserved by concluding:

Attorneys are placed in precarious positions when forced to repeatedly call a court's attention to its own errors. This is the very reason our preservation rules recognize "that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused." State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005).

However, opposing counsel did not bring this error to the presiding magistrate's attention. In his motion for new trial, he agreed with the magistrate that he was not blaming the magistrate's office for the lack of notice. R. pp. 20-21. That is the only motion presented to Magistrate Davis. This Court notes opposing counsel waited until November 12, eight days before the November 20th oral argument in circuit court, to send a supplemental notice of appeal complaining for the first time of the apparent clerical error. This Court then indicates Magistrate Davis and the chief magistrate did not respond to the supplemental notice of appeal. This Court further concludes they could have done so because they were both present at the circuit court argument; the source of this claim is solely based on representations of counsel at oral argument before this Court. However, it would have been highly irregular in an appeal for the judge whose ruling is being reviewed to intervene in an oral argument. Undersigned counsel, in

eighteen years of experience, has never been in a situation where a trial judge intervened or supplemented the record during oral argument in any reviewing court and is unaware of any authority to do so. Opposing counsel did not move to continue the proceedings for a supplemental return.

Invocation of the futility doctrine is simply inappropriate in the instant case because there is no indication that the motion never made would be futile. The opinion paints the magistrate in a light that is not favorable and presupposes the magistrate was incapable of being fair and impartial. Further, the opinion fails to note that at oral argument before Judge Cooper, opposing counsel acknowledged he corrected the address issue. R. p. 36. Therefore, the suggestion that the magistrate's court did not take any steps to resolve the issue is inaccurate.

Further troubling is that this Court reached this conclusion on self-serving letters from counsel and his representations made at oral argument. While it is often tempting for the State to present matter outside the record its appellate attorneys learn from prosecutors, the State refrains from doing so in observance of the rules. See Rule 210(c), SCACR. This appeal was decided after only hearing a one-sided version of events. This is why post-conviction relief, in the absence of the more appropriate Rule 29 motion, was the most appropriate vehicle to review the matters this Court instead decided in contravention of the rules of error preservation and the appellate court rules.

This Court relied on State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). In that case, this Court recognized the limits of the futility doctrine and affirmed the decision of the family court, observing, "Regrettably, Appellant has suffered a violation of her right to a jury trial in this case. However, because she failed to raise an objection at trial, we are

compelled to let the unconstitutional sentence stand.” This Court distinguished Passmore’s situation from State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999), in which the futility doctrine was employed to reverse an illegal sentence because of the danger Johnston’s incarceration would exceed beyond the legal sentence during the pendency of a collateral challenge. This Court observed Passmore already served her sentence so Johnston did not control. As in Passmore, that problem does not exist in the instant case.

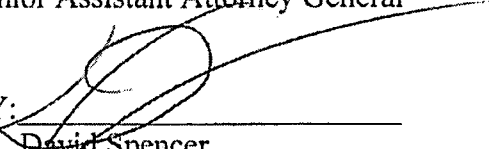
This Court should grant the State’s petition for rehearing and find the issue was not preserved. At a minimum this Court should amend the opinion to reflect that the day of trial, Magistrate Davis attempted to contact opposing counsel’s law firm “to no avail.” R. p. 26.

WHEREFORE, the State requests this Court to grant the petition for rehearing and affirm the convictions and sentences.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER/RESPONDENT

February 7, 2019

The South Carolina Court of Appeals

The State, Respondent,

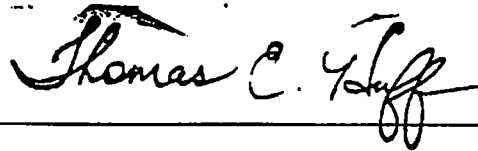
v.

Jeffrey Boyd Cooper, Appellant.

Appellate Case No. 2016-000189

ORDER

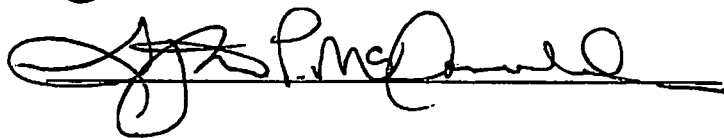
The State's petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn.



J.



J.



J.

Columbia, South Carolina

cc:

Robert J. Butcher, Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
The Honorable G. Thomas Cooper, Jr.

FILED

March 13, 2019

A-121

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jeffrey Boyd Cooper, Appellant.

Appellate Case No. 2016-000189

Appeal From Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-049
Heard April 11, 2018 – Filed February 6, 2019
Withdrawn, Substituted, and Refiled on March 13, 2019.

REVERSED AND REMANDED

Robert J. Butcher, of The Camden Law Firm, PA, of
Camden, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Jeffrey B. Cooper appeals the circuit court's order affirming his conviction for breach of the peace, arguing the magistrate's court erred in failing to

vacate his conviction after he was tried *in absentia* without receiving proper notice of the trial date. We reverse and remand for a new trial.

On October 6, 2011, Detective Jack Corbett, of the Kershaw County Sheriff's Office, cited Cooper for breach of peace. The uniform traffic ticket indicated a trial would be held at 9:30 a.m. on October 19, 2011. Cooper requested a jury trial.

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On March 5, 2014, the magistrate's court held a jury trial on Cooper's charge. The magistrate stated,

[A]s you can see, the Defendant is Mr. Jeffrey Cooper, who I would like to put on record that Mr. Cooper has been notified to be here. All of the party letters were sent to them to be here, present today, and it is his will whether he wanted to be here or not. But you can see that he's absent here

Detective Corbett testified at trial, and the jury found Cooper guilty. On March 13, 2014, the magistrate's court issued a bench warrant for Cooper for failure to appear.

After trial counsel learned Cooper had been tried *in absentia*, Robert Butcher (appellate counsel), who also worked at the Firm, promptly contacted the magistrate's court office in an effort to determine how he and trial counsel had missed the hearing.¹

¹ Appellate counsel provided the chronology of this case in his brief and at oral argument. Although some of this timeline is not detailed in the record, we accept counsel's representations to this court. See *Elkachbendi v. Elkachbendi*, 2014-MO-035 (S.C. Sup. Ct. filed Sept. 17, 2014) (reversing family court and Court of Appeals' findings of untimeliness based on counsel's representations to the family court); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651-52, 661 S.E.2d 791, 795-96 (2008) (citing Rule 704(1), SCACR, in presuming counsel was being truthful when she told the circuit court that she filed a motion during the applicable time period); Rule 407(1), SCACR ("A lawyer, being a member of the

On March 17, 2014, Cooper moved to vacate the judgment and for a new trial, arguing neither trial counsel nor the Firm received notice of Cooper's trial date. Cooper attached the affidavits of trial counsel and Michael Ludy, the Firm's paralegal, to his motion to vacate; both noted the Firm had procedures in place to prevent loss or misfiling of documents and averred the Firm did not receive notice of Cooper's trial. On April 7, 2014, the magistrate's court mailed a summons for the hearing on Cooper's motion to trial counsel at the same erroneous address the court used to send notice of Cooper's trial.²

At a May 7, 2014 hearing on the motion to vacate, appellate counsel stated that although he did not doubt the magistrate's court sent the notice of Cooper's trial, the Firm did not receive it. Appellate counsel surmised several potential reasons the notice had not been received: (1) the Firm was in the process of moving and had changed its address with the Supreme Court Attorney Information System (AIS), (2) the Firm's neighbors may not have been giving the Firm its mail, or (3) the mail was otherwise misdelivered. When asked if Cooper received notice of his trial, appellate counsel responded, "I'm not sure, but it [does not] matter." Before ruling, the magistrate told appellate counsel the court's records indicated notice was sent to trial counsel on January 31, 2014. The magistrate's court denied Cooper's motion to vacate, stating:

Okay. After consideration and after hearing the Motion from Mr. Butcher, this is going to be my ruling: Mr. Butcher, *I think the Court has met their obligation of sending this information to your law firm, so I'm going to*

legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."); Rule 3.3(a)(1), RPC ("A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."); Rule 4.1(a), RPC ("In the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person."); Rule 8.4(d), RPC ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

² Eventually, Cooper learned the notice problem stemmed from an address "syncing" issue the magistrate's court had with the computer program used to print the envelopes enclosing the notices.

respectfully deny your Motion, sir. No objection, and have a good day.

(emphasis added). Cooper appealed on May 15, 2014.

After the hearing, appellate counsel contacted the magistrate's court to discuss notice issues and had at least two meetings with the then-chief magistrate.

On July 2, 2014, appellate counsel followed up a message to the then-chief magistrate with a letter apologizing for his "impertinence" and expressing his frustration with the magistrate court's ongoing notice problems. He memorialized the problems in detail:

In the past month, when the Summary Court has actually sent notices, the notice was sent to our old address on Broad Street. This is a shame because we have noticed the Summary Court of our proper address once we learned of the problem with your court and after we had confirmed our addresses on the South Carolina Supreme Court Attorney Information System (AIS). Today we also learned that the Summary Court sent an answer and counterclaim to the Plaintiff in [another case] and the Clerk informed [the client] that our address was on Broad Street.³

Upon investigation, it appears that my office has not received a notice of hearing directly from your office since February 27th or 28th of 2014. All of the notices we have received since that date have been from our clients or from the prosecuting law enforcement officers. This failure to notice our office in writing presents several problems should our clients be:

1. Incarcerated;
2. Hospitalized;
3. At a new address;
4. Deployed; or

³ It was not. Months prior, counsel had updated the firm's address to Walnut Street in AIS and with the summary court.

5. Out of town working.

I spoke with [], the County attorney, and he stated that he has had similar problems with receiving notice. He also stated that other attorneys are having similar problems.

In the Jeffrey Cooper case, Mr. Cooper was convicted in absentia because the wheelchair-bound man was in the hospital and I was not notified of the hearing. I asked for a motion to reconsider and [the magistrate's court trial judge] denied the motion from the bench with the implication that I was not being truthful about our office not receiving notice from the Summary Court. This may be because when I first learned that we missed the court hearing, I spoke with [the trial judge] and told him that it doesn't make sense that we did not receive notice of [the hearing] if the Summary Court has a copy of a notice sent to our address. I immediately and automatically assumed the fault was on my office's part. When we investigated and found out that it was not our fault, our statements to the Court fell on deaf ears.

We have looked for fault on our part, to include searching case files in the office (my case files are kept separate at the house and employees do not have access to them), searching our scanned file database, questioning employees, changing employees' job duties, terminating employees, conferring with the postman and the postmaster, checking our addresses with the Summary Court, and affirming our addresses on AIS with the Supreme Court. After a thorough investigation, we do not believe the problem is at the law firm.

I have discussed this issue with [two other Summary Court judges in the same county] and [], the clerk. Please understand that my frustration is compounded with [the] poor result in remedying the Jeffrey Cooper situation and knowing that my client received an unfair conviction from a court that would not revisit [its] unjust result. Each missed notice reinforces that fact that there is a

likely chance that my clients will not receive access to justice because of the Summary Court's errors in handling paper work should my client be sick, out of town, or incarcerated.

The error could be as simple as failing to check the proper boxes when printing notices for court hearings. I hope it is that simple and I hope you are able to remedy this problem. I look forward to your response.

Again, my frustration was relayed to you in a very poor fashion. Please forgive my impertinence.

(emphasis added). Appellate counsel also explained the Firm did not receive notice of hearings in seven other cases and learned of the hearing dates from opposing counsel. The then-chief magistrate's response was to call appellate counsel in to his office for a "sit down." According to appellate counsel, during this meeting, the chief magistrate acknowledged the magistrate's court had been experiencing issues with its envelope-printing software: the magistrate's court's envelope-printing software did not sync its attorney addresses with those on the notices themselves or, apparently, with attorney addresses updated in AIS.

It is unclear what, if any, other action the magistrate's court then took following this chambers meeting. However, it is clear that *no* action was taken to rectify the notice problem affecting Cooper's conviction. It is difficult to understand why—upon receipt of counsel's letter detailing the notice problems in at least eight of his firm's cases, not to mention those known by the county attorney and others—neither the chief magistrate nor the presiding magistrate set a hearing to properly address the notice problems in this case and in any other matters in which non-notified attorneys may have requested such. Another alternative would have been to simply schedule Cooper a proper trial, at which Cooper could have appeared with counsel,⁴ exercised his Confrontation Clause rights,⁵ and had an opportunity to be heard.⁶

⁴ U.S. Const. amend. VI.

⁵ U.S. Const. amend. VI.

⁶ U.S. Const. amend. V, XIV.

On November 12, 2014, Cooper supplemented his notice of appeal with the July 2, 2014 letter.⁷ After a November 20, 2015 hearing, the circuit court affirmed Cooper's conviction by order dated December 23, 2015.

The question of notice is fundamental to the due process clause of both the United States Constitution and South Carolina Constitution. *See* U.S. Const. amend. XIV ("No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); S.C. Const. art. I, § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."); *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) ("Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal."). We find questions of fundamental fairness and concern for the integrity of the judicial process require that Mr. Cooper receive a properly noticed trial. Although the record contains notices addressed to Cooper and his attorneys, the notices were mailed to the wrong address, and trial counsel never received them. Because the record indicates the notices were not received due to mailing problems within the magistrate's court, the circuit court erred in affirming Cooper's conviction. *See City of Aiken v. David Michael Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006) ("Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. If the record, however, does not include evidence to support a finding that the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand."); *see also State v. Wrapp*, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017) ("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.").

Moreover, we decline to accept the State's preservation argument here because as soon as trial counsel became aware of the notice issues, the Firm brought them to the attention of the magistrate's court and attempted to rectify them. However, the record indicates the magistrate's court made no effort to address the problem even

⁷ Appellate counsel explained he waited until November to inform the circuit court because he wanted to discuss the notice issue with the magistrate's court in hopes of rectifying the situation.

after learning of errors in its own administration. Appellate counsel believed his communications with the chief magistrate were not well-received; thus, he did not formally request a hearing to put the notice issues on the record because he thought his letters and discussions with the magistrates were sufficient.

Attorneys are placed in precarious positions when forced to repeatedly call a court's attention to its own errors. This is the very reason our preservation rules recognize "that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused." *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005).

Therefore, the circuit court's order affirming Cooper's conviction for breach of the peace is

REVERSED AND REMANDED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 10 2019

Appeal From Kershaw County
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No: 2019-000612

THE STATE,

Petitioner,

v.

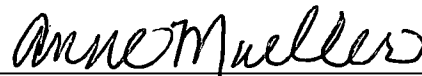
JEFFREY BOYD COOPER,

Respondent.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within redacted Appendix on Respondent by depositing one copy of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert J. Butcher, Esquire, The Camden Law Firm, PA, PO Box 610, Manning, SC 29021.

I further certify that all parties required by Rule to be served have been served.
This 10th day of June, 2019.



Anne A. Mueller
Legal Assistant

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