

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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

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**RECEIVED**

JUN 17 2019

Appellate Case No. 2017-002621

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SC Court of Appeals

John Gilbert Singletary,..... Appellant,

v.

The State, .....Respondent.

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APPELLANT'S REPLY BRIEF

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Michael D. McMullen  
1720 Main Street, Suite 301  
Columbia, South Carolina 29201  
Phone: 803-252-4433  
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....N/A

ARGUMENT IN REPLY.....1

## ARGUMENT IN REPLY

Respondent's Brief elicits replies from Appellant in two regards: a reply to clarify Appellant's contention he lacked of notice from the Respondent Municipal Court until May 26, 2017, and a reply to the Respondent Municipal Court's assertion its refusal to conduct a hearing on Appellant's Motion to Reopen is the only issue properly before this Court.

### **"NOTICE"**

Appellant's initial brief seems to have been construed by Respondent to represent that Appellant had no notice whatsoever from any source as to the disposition of his case prior to May 26, 2017.

If anything in Appellant's initial brief gave Respondent such an impression, then clarification seems necessary.

Appellant's position is that until May 26, 2017, he had never been provided legally sufficient, reliable, proper notice from the Municipal Court--either in the form of an executed Order from that Court or in the form of the ticket, itself--bearing the judge's signature and documenting the Court's disposition of the charges.

The latter is what he finally did receive from the Municipal Court on May 26, 2017. (1-Uniform Traffic Ticket # 70055 FB, 1/26/10). He filed a Motion for New Trial on May 31, 2017. Therefore, his Motion was timely filed and should be granted.

### **ISSUES PROPERLY BEFORE THE APPELLATE COURT**

Respondent argues the only issue properly before the Circuit Court previously and before this Court now is whether the Municipal Court's ruling it lacked jurisdiction to hear Appellant's Motion for a New Trial was proper. The Municipal Court Judge filed no Return with the Circuit Court.

Instead, the Chief Municipal Court Judge, by letter dated June 15, 2017, mailed to Mr. Singletary's former counsel a ruling in which the Judge writes, "[a]s the Motion to Reopen was not timely filed, I am without jurisdiction in this case. Therefore, I will not be issuing any ruling or taking further action in this matter." (8-Judge Coleman's Denial of Motion without a Hearing, 6/15/17). This is the closest thing to a "Return" from the Municipal Court.

This was an appeal from a municipal court criminal case. The Circuit Court was not conducting a *de novo* hearing. However, during arguments at the Circuit Court level, Counsel for Respondent introduced evidence not made a part of the record in the form of the Judge's return. This was in the form Counsel's summary of out-of-court statements supposedly made by Municipal Court personnel who were neither under oath nor present to testify, and in the form of documents for which no foundation was laid. Counsel simply handed materials up to Judge Nicholson, and in effect gave testimony as to what the documents and the notations thereon proved. None of this was part of the "record" below; none of this was part of the Return. Much of it is irrelevant to "jurisdiction." Thus, while Respondent argues jurisdiction is the only matter at issue, at the same time it seeks to include in the Record on Appeal here numerous sources not relevant to the that issue.

To support of its argument that timeliness is the only issue, Respondent claims the Circuit Court affirmed the Municipal Court's denial of Appellant's Motion for New Trial on that basis, stating: "Judge Nicholson denied the appeal, because the underlying Motion to Reopen/Motion for New Trial was not timely filed. (19-Order denying Appeal, 12/14/17)." (Respondent's Brief, p.1, para. 2.) Judge Nicholson's Order, *id.*, does not say that.

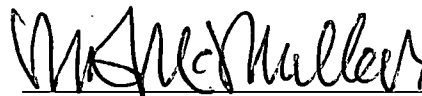
Judge Nicholson's Order, (19-Order, 12/14/17), is simply Form 4 "Judgement in a Civil Case," filed December 14, 2017. There is no other written Order. However, the transcript of the November 13, 2017 hearing shows that when the Honorable J. C. Nicholson denied the appeal, he stated:

"I'm going to deny the appeal. I think the defendant apparently is knowledgeable of the criminal justice system somewhat in that he wrote a letter and asked for Rule 5. I don't think it was his obligation, and to appear, and he thought was the case, not wait five years later or even seven years later and try to appeal, because of the time frame and failure to comply with the Rule 5 notice of appeal within 10 days, the appeal is denied."

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

Appellant contends the real issues here are due process and fundamental fairness. He contends that he should be granted what the Municipal Court could so easily grant, but would deny him-- his day in court. The issue here is whether due process and fundamental fairness require that. He argues that they do and asks this Court to hold a defendant is entitled to a relief where, as here, the Municipal Court: (1) failed to notify the defendant when his or her trial will be held, (2) held the trial (or forfeited bond) in defendant's absence without making findings regarding notice, (3) made no effort to notify the defendant of an adverse decision. Under these facts, Appellant asks this Court to reverse the lower courts and order that he be granted a trial.

Respectfully submitted,



Michael D. McMullen  
1720 Main Street, Suite 301  
Columbia, South Carolina 29201  
Phone: 803-252-4433  
S.C. Bar # 65483  
Attorney for Appellant

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CERTIFICATE OF SERVICE

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I certify that I have served the Appellant's Substitute Reply Brief on counsel of record for Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on June 17, 2019, addressed to Robin L. Jackson, Esq., Senn Legal, Post Office Box 12279, Charleston, South Carolina 29422.



Michael D. McMullen  
1720 Main Street, Suite 301  
Columbia, SC 29201  
Ph: 803-252-4433  
SC Bar #65483

**MICHAEL D. McMULLEN**

ATTORNEY AT LAW

1720 MAIN STREET, SUITE 301  
COLUMBIA, SOUTH CAROLINA 29201

lawyerinsc@aol.com

PHONE: 803-252-4433

FAX: 803-799-4059

mcmullenlawsc.com

June 17, 2019

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

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Re: John Gilbert Singletary v. The State  
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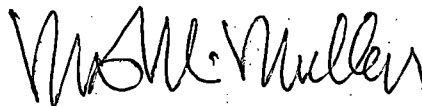
Dear Madame Clerk:

Enclosed for filing please find the following:

- (1) Reply Brief of Appellant and
- (2) Proof of Service.

I have served the Respondent, through counsel, on this date. Thank you for your assistance.

Respectfully submitted,



Michael D. McMullen  
Attorney for the Appellant

cc: Robin L. Jackson, Esquire