23790

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2017-001046

Brian MacDermant, ... Appellant,

v.

State of South Carolina, ... Respondent.

RECEIVED
APR 02 2018
SC Court of Appeals

AMENDED RECORD ON APPEAL

March 29, 2018

Signed/
Brian MacDermant, Pro se
15 Dulamo Bluff
Saint Helena Island, SC 29920
843-271-8838
Pro se

Alan Wilson, Esquire
PO Box 11549
Columbia, SC 29211-1549
803-734-3727
Attorney for Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

)

COUNTY OF BEAUFORT) CASE NO.: 2016-CP-07-01856

BRIAN MACDERMANT,)

)

APPELLANT,)

)

v.) TRANSCRIPT OF RECORD

)

STATE OF SOUTH CAROLINA,)

)

RESPONDENT.)

)

APRIL 11TH, 2017

COMMENCING AT

BEAUFORT COUNTY COURTHOUSE

BEAUFORT, SOUTH CAROLINA

BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

BRIAN MACDERMANT

APPEARING PRO-SE

ASST. SOL. JEAN KISER MCCORMICK, ESQUIRE

14TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE

BLUFFTON, SOUTH CAROLINA

Attorney for the State of South Carolina

Rebecca H. Hill

Official Court Reporter

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EXHIBITS

NONE.

THE COURT: All right. I've read the Return. I see that Judge Marvin Dukes is recused in this matter. Mr. Macdermant, this is your motion, sir. Please proceed whenever you are ready, sir.

MR. MACDERMANT: I just have some housekeeping. There is a small error in my appeal.

THE COURT: Okay.

MR. MACDERMANT: When I wrote the appeal, I had no help. And then, like on the eighth day, I just did it real quick. I did the best I could. Then, time went on and then I got an audio recording of the trial. So item number six, I was in error. I said the judge made a comment, but it was actually the police officer who was acting as the prosecutor; he made a comment in the closing arguments. I had wrongly said that the judge made the comment about the ---

THE COURT: That the trial was taking longer than expected or something along those lines?

MR. MACDERMANT: Yeah, he said it usually don't take this long. He said that trials usually don't take this long.

THE COURT: The officer said that?

MR. MACDERMANT: Yes, Your Honor.

THE COURT: Okay.

MR. MACDERMANT: I just wanted to clear that out the way. That was an honest error. At that point in the trial, I was not even in the room, because they came at me any way they could with perjury,

exaggerations, and lies. My main basis, which is not on the appeal, there were so many unusual things in this trial from the very beginning to the end, and I'm not here to quivel (sic) about the perjury, because it would take longer than two minutes to expose and I'm not sure that it would be one hundred percent exposed.

So this is one hundred percent; I witnessed it. That there was testimony from the audience during the trial. It was atrocious, and I could not cross examine the witness because they testified from the audience. I have the minutes of the -- where in the trial. It's one hour, six minutes, and nineteen seconds is where the vicinity of the questioning starts. Not only did the witness testify from the audience -- I mean, excuse me, not only did the audience member testify, they were the wife of the alleged victim. And so, the alleged victim is on the witness stand, I'm cross-examining that person, the wife of this person on the witness stand testifies from the audience.

THE COURT: So did she just interject herself? Is that what happened?

MR. MACDERMANT: Yes, yes, yes, one hundred percent.

THE COURT: She wasn't under oath?

MR. MACDERMANT: One hundred percent, Your Honor.

THE COURT: Okay.

MR. MACDERMANT: And then as soon as she testified, it looked like an eight and a half by eleven, like this, then she got up from

her seat like this, I can demonstrate. She walked all the way up to the witness stand with a piece of paper. It was never entered into evidence. I didn't see what was on it, and then while all this happened, no sound came out of the judge's mouth. The jury is sitting there watching this, and I saw their reaction, and it was not to my benefit. I can go on and on.

THE COURT: And you don't know what the piece of paper was?

MR. MACDERMANT: I never saw the piece of paper -- what was on the piece of paper.

THE COURT: Okay.

MR. MACDERMANT: It was never put into evidence.

THE COURT: Okay.

MR. MACDERMANT: I don't know if you have a copy of this audio. If you have -- what you call it, a tape of the audio trial, because I have a copy; they gave me a copy, but that was after I filed my appeal.

THE COURT: How long is the audio, roughly?

MR. MACDERMANT: I think it's something like -- I'm not exactly -- uh, maybe, I'm not sure. It's at least an hour and forty minutes; I know that much, I think.

THE COURT: Okay. Did you, with your appeal, submit a copy of that audio tape?

MR. MACDERMANT: I'm sorry --

THE COURT: Did you, with your appeal, submit a copy of that audio tape?

MR. MACDERMANT: No, I have a copy right here.

THE COURT: That's what I'm asking you.

MR. MACDERMANT: I did not. I don't know how this works. I'm not an attorney. I have a fool for a client. I tried to get an attorney for this hearing and the only help I got -- it was too late. I did go to the attorney, they just threw out a number like $5,000 . I didn't know if they were serious. I couldn't pay that, so they had said I should have asked for a mis-trial at the time the person testified from the audience. It never crossed my mind. What crossed my mind was there was no way I could get a fair trial at that point. And the witness had already lied at that point. There's no doubt in my mind, he committed perjury; but I'm not here to quivel (sic) with that.

And then, the attorney also mentioned that -- you are in the business, so the person did mention to me to comment that more often than not the people who bring the suit are doing the lying. But anybody can lie, so. That's not really much help, those two things; it doesn't really help me. So I don't know if that makes sense.

THE COURT: I don't quite understand -- the person that brings the suit?

MR. MACDERMANT: That was the comment to me from the attorney, because I told them everything that happened and -- it didn't work out. So I'm up here by myself; that's why I'm up here by myself, as

far as not having representation.

THE COURT: Did you apply for the public defender's office?

MR. MACDERMANT: Uh, not in this case, Your Honor.

THE COURT: And the charge in this was assault and battery, third degree; is that correct?

MR. MACDERMANT: Yes, Your Honor.

THE COURT: Okay. But you didn't apply for a public defender?

MR. MACDERMANT: No, Your Honor.

THE COURT: Is there a reason you didn't?

MR. MACDERMANT: Uh, well I didn't know it was ever going to go to trial. I didn't do anything to this person to -- he lied about his behavior, and then he lied about my behavior on the witness stand. I mean, I don't know what else to say.

And then there was another unusual thing. They provided the audio trial -- I'm sorry, the audio of the trial, and then so -- the day of the trial, I had a pre-trial motion, so we went across the hall. There's no recording of that. So, I went back to them and asked for that -- please, can I have this please? And they said they didn't have to give it to me.

THE COURT: Was the reason why they didn't do it in the actual courtroom, was the jury already there?

MR. MACDERMANT: Yes, Your Honor.

THE COURT: So they were doing it outside of the presence of the jury pool?

MR. MACDERMANT: Yes.

THE COURT: Okay.

MR. MACDERMANT: So we -- and also, during the trial, I had forgotten something, so we went back across the hall and I had another motion.

THE COURT: Okay.

MR. MACDERMANT: But I'm not worried about that. But that wasn't given in the recording either. So that's pretty much it, ma'am. I have a quote from another judge -- and I don't know how to look up stuff, but I just use google. I couldn't find anything, so I had a friend in another state, and they're not an attorney, so I just asked, "Can you help me? Do you know some attorneys?" So they googled -- I think they did tell me they googled -- but they found another case in another state where -- the family members are making comments from the jury and they're related to the person who got killed and some kind of, you know, the person was arrested for -- she said it was self defense. So there was a mis-trial in that one and I have a quote from the judge, Your Honor. I have the website. The quote is, "There is never an excuse or justification for members of the audience to make comments about the lawyer's statements or witnesses," said Judge so-and-so, which I have his name. But this is a recent case, and then that case was a mis-trial. It was rescheduled for April 4th, 2017. So, I think that's pretty much it,

Your Honor.

THE COURT: Okay. I appreciate it. Let me go ahead and hear from Solicitor. Yes, ma'am?

ASST. SOL. MCCORMICK: Yes, Your Honor, I don't have much to add past what the return from the Magistrate has already filed with the Court.

MR. MACDERMANT: I'm so sorry to interrupt, I do have a copy of the point in the trial where it's one hour, six minutes, and nineteen -- I gave her a copy, I'll give you copy. It's transcribed. I think that's the right word to say. Sorry. Sorry. Excuse me.

ASST. SOL. MCCORMICK: No problem at all. I obviously do not have a copy of the transcript as well, as it was not filed with the appeal. He did mention that he didn't know that this case would be going to trial yet. It's clear from the record that he did sign a jury request form. He had, as far as issue number one, he obviously was notified of his right to counsel when he was mirandized. Again, at his bond hearing on November 15th, 2015, and then of course again when he signed that jury request form. He did have nine months between his date of arrest and the date of the trial to obtain counsel.

Additionally, there are several points that he just raised that were not raised in his notice of appeal. I'd just like to point that out for the record. But other than that, the State does not have anything further -- to add from what is in the magistrate's return.

THE COURT: Okay. Thank you. Can I have a copy of that

transcribed portion, sir?

MR. MACDERMANT: The reason it's not with the appeal is I did not have the audio trial.

THE COURT: At the time.

MR. MACDERMANT: Yes, Your Honor.

THE COURT: I understand that you said you typed up that portion or someone did. So let me take a look at that. I will say two things. Number one, even in Magistrate Court, if you request a lawyer they send them up here and I appoint one, so you could have had a public defender appointed, which I wish you had. Secondly, you have to raise objections contemporaneously during trials, and it would probably be before me if you had raised a motion for a mistrial at the time an audience member interjected, but you have to do it at the time of the trial and object to it. It could have just been strategy, who knows, that person could have helped you, not that she did in this case, obviously; but it would had to had be done at the time for me to be able to hear it.

MR. MACDERMANT: I had a fool for a client. I'm not sure, Your Honor.

THE COURT: Listen, lawyers who represent themselves have a fool for a client, so I think you're doing pretty good.

MR. MACDERMANT: I try to hold my own, Your Honor.

THE COURT: Okay, hold on a second.

MR. MACDERMANT: Your Honor, this person was not at the trial.

THE COURT: Were you all running for something -- were you running for a position or ---

MR. MACDERMANT: No, Your Honor. I was not.

THE COURT: Okay. Was the person that testified against you, were they running for a position?

MR. MACDERMANT: They are a -- what do you call it -- an elected official. Yes, Your Honor.

THE COURT: Okay. All right. I'm going to take this under advisement and I'll issue an order, but thank you both. I appreciate it.

MR. MACDERMANT: Okay. Thank you, Your Honor.

STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF COLLETON)

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas Non-Jury for Beaufort County, South Carolina, on the 11th day of April 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 27, 2017

Rebecca H. Hill

Rebecca H. Hill,

Official Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT	)	Warrant Number 2015A0710400456
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent	)	
	)	
Vs.	)	RETURN OF APPEAL
	)	
BRIAN J. MacDERMANT,	)	
Defendant/Appellant	)	
	)	

2016 SEP 22 PM 12: 14
2016-CP-07-1856

THIS MATTER COMES BEFORE THE COURT on an Appeal filed August 24, 2016, by the Defendant/Appellant, pro se, seeking reversal of a conviction and sentence in this Court in the above-referenced matter.

The Defendant, Brian J. MacDermant, on or about November 15, 2015, was arrested and charged with Assault and Battery, 3rd Degree [S.C. Code 16-3-600 (E) (1)] on the authority of Warrant Number 2015A0710400456 by Sgt. Andrew Rice of the Beaufort County Sheriff's Office.

Defendant/Appellant appeared before this Court on August 16, 2016, for a jury trial at which Sgt. Rice, Thomas Klein (the victim), and the Defendant/Appellant testified. (A recording of the proceeding is submitted along with this Return.) Based on the testimonial evidence presented at trial, the jury found the Defendant, Brian J. MacDermant, guilty beyond a reasonable doubt. This Court sentenced the Defendant to 30 days in jail, suspended upon payment of a fine plus court costs in the statutory amount of $1,087.50.

Appellant raises a number of issues on appeal. This Court will address each individually:

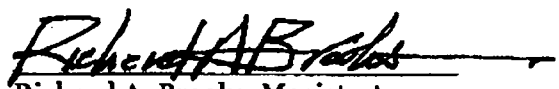
1. Defendant/Appellant alleges a 6th Amendment violation. Defendant/Appellant was notified of his right to legal counsel at his bond hearing on November 15, 2015, and signed a Faretta Warning form to that effect. Defendant/Appellant also was notified of his right to legal counsel and his responsibility to notify the Court whether or not he had obtained counsel on January 13, 2016, and signed a Jury Trial Request Form to that effect. Defendant/Appellant had nine (9) months between the date of his arrest and the trial date to secure legal counsel. His motion on the date of the trial for a continuance to seek legal counsel was denied.
2. Defendant/Appellant alleges a Brady violation. Defendant/Appellant requested evidence under Rule 5 of the S.C. Rules of Criminal Procedure on January 13, 2016. The record does not indicate when the Rule 5 evidence was delivered; however, he had the evidence in question (a 911 dispatch audio

recording) at trial and made reference to it in his defense. Defendant/Appellant did not raise the issue at or before trial.

3. Defendant/Appellant alleges improper notice of the trial date. The case file indicates Defendant/Appellant was summoned by mail for a Jury Trial Roster Meeting on April 21, 2016; following a continuance, he was summoned by mail to another roster meeting on June 27, 2016, at which the August 16, 2016, trial date was set. Defendant/Appellant failed to appear at the June 27, 2016, roster meeting and jury selection on the same day.
4. Defendant/Appellant alleges error at trial in not allowing him to "argue the law." The Court asked the Defendant/Appellant to argue the facts and told the jury that he would provide the law as part of the jury charge.
5. Defendant/Appellant alleges violation of his right to a speedy trial. The Court resolved the matter as quickly as was practicable given the Defendant/Appellant's request for a jury trial which then had to be scheduled and jurors summoned. The State was granted two continuances in the Court's discretion, one for time to provide Rule 5 evidence and another because Sgt. Rice's wife was in labor.
6. Defendant/Appellant alleges error at trial because the Court told the jury the trial was taking longer than expected. The Court did tell the jury the trial was taking longer than expected for the purpose of asking the jurors if they needed a restroom break, which they did.
7. Defendant/Appellant alleges a 6th Amendment violation. See #1 above.
8. Defendant/Appellant alleges error at trial in not allowing introduction of evidence (referred to in the appeal as "piece of paper"). The Court ruled that affidavits in lieu of personal appearance by witnesses who live in the area and could have been summoned are hearsay and not admissible as evidence.
9. Defendant/Appellant alleges perjury by a State's witness. The Court charged the jury with making the determination as to the truthfulness of testimony at trial.
10. Defendant/Appellant alleges a 6th Amendment violation. See #1 and #7 above.

Case notes and a recording of the proceeding accompany this Return.

RESPECTFULLY SUBMITTED.



Richard A. Brooks, Magistrate

Beaufort, South Carolina
September 23, 2016

ARREST WARRANT

2015A0710400456

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Beaufort

THE STATE 15S201332

against

Brian Joseph Macdermant

Address: 1103 Paris Ave

Port Royal, SC 29935-

Phone: SSN:

Sex: M Race: W Height: 6 Weight: 152

DL State: SC DL #:

DOB: Agency ORI #: SC0070000

Prosecuting Agency: Beaufort County Sheriffs Office

Prosecuting Officer: A. Rice - R4737

Offense: Assault / Assault & Battery 3rd degree

Offense Code: 3414

Code/Ordinance Sec: 16-03-0600(E)(1)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____ The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Brian Joseph MacDermant on 11-15-15

Zay A. Kraft

Signature of Constable/LEA Enforcement Officer

RETURN WARRANT TO:

Beaufort Magistrate
104 Ribaut Road
Post Office Box 2207
Beaufort, SC 29901

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Beaufort)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant A. Rice who being duly sworn deposes and says that defendant Brian Joseph Macdermant did within this county and state on or about 11/ 4/2015 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Beaufort) in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 3rd degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on November 04, 2015, at about 1954 hours, the defendant, one Brian Joseph MacDermant, did knowingly and willingly violate the criminal laws of the State of South Carolina in the offense of Assault and Battery 3rd Degree. The accused did shove the victim several times and then verbally threaten to throw onto the ground. No injuries were reported by . This incident did occur at 1003 Paris Avenue, Port Royal, South Carolina, within the County of Beaufort. The affiant is prepared to prove the charge.

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Beaufort)

Affiant's Address 2001 Duke St
Beaufort, SC 29902-
Affiant's Telephone (843)255-3200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 11/ 4/2015 defendant Brian Joseph Macdermant did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Beaufort) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 3rd degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me)
on 11/13/2015)
Rod H. Sproatt (L.S.))
Signature of Judge/Magistrate
Rod H. Sproatt)
Judge Code: 7144)

Judge's Address Post Office Box 2207
Beaufort 29901-2207
Judge's Telephone (843)470-5215

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

BAIL set by

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge R Brodie

on 8/16/16

by jury trial
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: Guilty

Sentence: 30 days suspended upon payment of fine of $1087.50

JURORS

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
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Name:
Address:
Telephone:

CODEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

BRIAN MACDERMANT
Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA
Defendant(s)

CIVIL ACTION COVERSHEET

2016 -CP -07- 1856

2016 AUG 24 PM 12:14

Submitted By: BRIAN MACDERMANT
Address: 1103 PARRIS AVE #3
PORT ROYAL, SC 29935

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☐ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: [signature] **Date:** 8/24/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

2016-CP07-1856
COMMON PLEAS CASE NUMBER

2015A0710400456
MAGISTRATE COURT CASE NUMBER

BRIAN MACDERMANT
APPELLANT(S)

VS.

STATE OF SOUTH CAROLINA
RESPONDENT(S)

NOTICE OF APPEAL

The appellant(s), above named, hereby gives notice of appeal from the judgment/sentence of the magistrate/municipal court in the above action, to the Circuit Court of Common Pleas, in the county of Beaufort.

This notice of appeal is made subsequent to personal notice of judgment/sentence received on the 16 day of AUGUST, 2016, in which Judge BROOKS Presided (THE JUDGE'S NAME MUST BE FILLED IN OR THIS DOCUMENT WILL NOT BE ACCEPTED BY THE CLERK OF COURT)

The appellant's exceptions to the judgment/sentence of the magistrate/municipal court are set forth as follows:

(SEE ATTACHED PAPER)

(Attach additional sheets if necessary)

Date: 8/24/16

Appellant Signature

BRIAN MACDERMANT
Address/Phone/email for Appellant
1103 PARRIS AVE #3
PORT ROYAL, SC 29935
(843) 271-8838
brianmacde@hotmail.com

SCANNED
AUG 24 2016
BY:

****THIS NOTICE OF APPEAL MUST BE PRESENTED TO THE CLERK OF COURT FOR THE COURT OF COMMON PLEAS, ALONG WITH A COMPLETED CIVIL ACTION COVER SHEET (ATTACHED).

****A COPY OF THE CLOCKED NOTICE OF APPEAL MUST BE SERVED ON THE MAGISTRATE / MUNCIPAL COURT JUDGE WHO HEARD THE CASE.

1. **Violation of 6th Amendment to the U.S. Constitution**
Alabama v. Shelton (2001) states explicitly that a defendant is entitled to a public defender if the defendant is indigent and facing a jail sentence as an option from the judge.

2. **Violation of SCRCP Brady Material within 30 days**
I did not receive Brady Material within 30 days of the Brady motion.

3. **Improper notice of trial date**
I received a letter from the court notifying me of the trial for Tuesday, August 16, 2016 at 1 p.m. Letter said nothing about jury selection. I received letter Saturday, August 6. 2016 via certified mail. I then went out of town Saturday, August 6, 2016 and came back Monday night August 8, 2016. I went to court Tuesday, August 9, 2016 and asked when was jury selection. I was told August 16, 2016 at 1 p.m. I then went back to the court next day, Wednesday, August 10, 2016 and asked when the trial would be. I was told that the trial would take place right after jury selection. This gave me 6 days notice. My 2 witnesses could not make the date: one had to work and the other was going to be out of town. I filled out a continuance form at clerk's window stating I wanted to hire an attorney and was denied approximately 10 minutes later. I think I was denied by Judge Sadler but am not sure.

4. Judge Brooks erred during trial in not allowing me to argue the law, I said "We go by the law" and that "attempt to injure" must be proven. He improperly ruled and didn't allow me to go further. The trial was about the law and nothing else.

5. **Violation of speedy trial**

6. Judge Brooks erred during trial in telling the jury toward the very end that trials usually don't go this long. A trial takes as long as it takes. I have been before this judge previously in an unrelated matter and he was utmost professional, however in this case the judge was biased in favor of prosecution in just about every ruling if not all of them.

7. **Improper ruling in pre-trial motion in violation of 6th Amendment to the U.S. Constitution**
On August 16, 2016, before jury selection, I asked for a continuance so I could hire an attorney. I was denied by Judge Brooks.

8. **Improper ruling during trial**
Judge Brooks erred in not reading a piece of paper or asking what I was trying to accomplish with piece of paper that was presented to prosecution witness. I was going to expose lies by a witness.

9. **Perjury by alleged victim occurred twice during trial**
I can prove to the court or anyone else that the alleged victim lied twice under oath. The alleged victim lied under oath on the witness stand: once about his own actions and once about my actions.

10. This criminal case where I could have been sentenced to jail time should have never proceeded to trial because there were no attorneys representing both sides: prosecution or defense.

BEAUFORT MAGISTRATE
P.O. BOX 2207
BEAUFORT, SC 29901

2016-CP-07-1856

STATE V. BRIAN J. MACDERMANT
JURY TRIAL 8/16/2016
AUDIO RECORDING

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL CASE NUMBER 2016CP07001856
Brian J. MacDermant,	)	
Appellant	)	NOTICE OF FILING RETURN
vs	)	
State of South Carolina,	)	
Respondent	)	

2016 SEP 23 PM 3:48
BEAUFORT COUNTY, S.C.
CLERK OF COURT

To each party and their attorney or agent in the action titled above:

The above captioned action has been appealed from the Beaufort County Magistrate's Court to the Court of Common Pleas on August 24, 2016. On September 22, 2016, the Magistrate's Court filed the Return for this appeal. Any pleadings filed will now need to be filed in the Court of Common Pleas using the above civil case number. You will receive notice when the appeal is scheduled for a hearing.

DATED: September 23, 2016

Alronnie Roberts

Alronnie Roberts, Clerk of Court Staff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL CASE NUMBER: 2016CP0701856
Brian J. MacDermant,	)	
Appellant,	)	
vs	)	CERTIFICATE OF SERVICE
State of South Carolina,	)	
Respondent	)	

2016 SEP 23 PM 3:48
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I, Alronnie Roberts, staff member of the Office of Beaufort County Clerk of Court, hereby certify that I have served Brian MacDermant, Appellant, and Jean K. McCormick, Esq., Attorney for Respondent, with the **Notice of Filing Return**, by first class mail, United States Postal Service, on, to the addresses as follows:

SERVED:

Brian MacDermant
1103 Paris Ave #3
Port Royal, SC 29935
Appellant

Jean K. McCormick, Esq.
P. O. Box 1880
Bluffton, SC 29910
Attorney for Respondent

Beaufort Magistrate's Court
P. O. Box 2207
Beaufort, SC 29901-2207

PLEADINGS:
Notice of Filing Return

Alronnie Roberts
Staff Member, Clerk of Court

Date: September 23, 2016

ARREST WARRANT

2015A0710400456

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Beaufort

THE STATE 15S201332

against

Brian Joseph Macdermant

Address: 1103 Paris Ave

Port Royal, SC 29935-

Phone: SSN: 239-08-1911

Sex: M Race: W Height: 6 1 Weight: 152

DL State: SC DL #: 008611765

DOB: 3/27/1970 Agency ORI #: SC0070000

Prosecuting Agency: Beaufort County Sheriffs Office

Prosecuting Officer: A. Rice - R4737

Offense: Assault / Assault & Battery 3rd degree

Offense Code: 3414

Code/Ordinance Sec: 16-03-0600(E)(1)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Brian Joseph MacDermott on 11-15-15

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort Magistrate
104 Ribaut Road
Post Office Box 2207
Beaufort, SC 29901

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Beaufort)

AFFIDAVIT

DEFENDANT COPY

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant A. Rice who being duly sworn deposes and says that defendant Brian Joseph Macdermant did within this county and state on or about 11/4/2015 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Beaufort) in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 3rd degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on November 04, 2015, at about 1954 hours, the defendant, one Brian Joseph MacDermant, did knowingly and willingly violate the criminal laws of the State of South Carolina in the offense of Assault and Battery 3rd Degree. The accused did shove the victim Thomas Klein several times and then verbally threaten to throw Klein onto the ground. No injuries were reported by Klein. This incident did occur at 1003 Paris Avenue, Port Royal, South Carolina, within the County of Beaufort. The affiant is prepared to prove the charge.

COPY

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Beaufort)

Affiant's Address 2001 Duke St
Beaufort, SC 29902-

Affiant's Telephone (843)255-3200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 11/4/2015 defendant Brian Joseph Macdermant did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Beaufort) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 3rd degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me)
on 11/13/2015)
(L.S.))
Signature of Issuing Judge
Rod H. Sproatt)
Judge Code: 7144)

Judge's Address Post Office Box 2207
Beaufort 29901-2207

Judge's Telephone (843)470-5215

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

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Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

_____

_____

The State of South Carolina VS Brian Joseph Macdermant

Ticket/Warrant Number(s): **2015A0710400456**

Offense(s) Charged: **Assault / Assault & Battery 3rd degree**

Penalty: 30 DAYS OR FINE

FARETTA WARNINGS

You have been charged with the criminal offense(s) listed above. Before you can plead guilty or not guilty to this charge(s) or proceed to trial, you must be informed that you have the right to an attorney. If you cannot afford an attorney (and meet certain income guidelines established by the Court), an attorney will be appointed to represent you, if you so choose. If you do not meet the eligibility guidelines to have an attorney appointed to represent you, you still have the right to an attorney to represent you on the charge(s) listed above, however the attorney must be retained at your own expense.

You do have the constitutional right to represent yourself and proceed without an attorney; however, I must inform you of the following:

- Self-representation can be dangerous and you have the right to have the assistance of a lawyer at all stages of the proceedings, and if you cannot afford a lawyer, a lawyer can be appointed to represent you.
- Criminal defense is a highly specialized and technical area of the law.
- There may be certain factual, legal, or other defenses to the charge(s) you are facing and if you choose to proceed without the services of a licensed attorney, you may not be aware of certain defenses.
- There may be issues related to the conduct of trial or a guilty plea that could arise in the future that you may not be aware of and it would be your attorney's responsibility to be aware of those issues and how to properly address them before the Court, and, if necessary, preserve the issues for appellate review.
- There may be collateral consequences of a conviction or plea that you are not aware of, including, but not limited to, you could face increased penalties for subsequent offenses, suspension of your driver's license, the restriction of the right to possess firearms and/or ammunition, or your immigration status may be affected.
- If you exercise your right to proceed without the services of an attorney, you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.
- You understand that if you waive screening for a court-appointed attorney, that you are responsible for hiring a private attorney if you want one.

I state that I have fully and completely read this document regarding self-representation and I have had any and all of my questions answered to my complete satisfaction. At this time, I **DO/DO NOT** (circle one) wish to be screened for a court-appointed attorney and I wish to proceed with my trial at this time.

Signature of Defendant 11/15/2015

Signature of Judge 11/15/2015

MC100
SCCA 684 (1/14)

Audio (USB memory stick) of Magistrate jury trail that occurred on August 16, 2016 is below:

Certificate of Counsel

I, Brian MacDermant, do hereby certify that the Amended Return of Appeal contains all material proposed to be included and not any other material.

RECEIVED
APR 02 2018
SC Court of Appeals

March 29, 2018

Signed/ _____

Brian MacDermant, Pro se
15 Dulamo Bluff
Saint Helena Island, SC 29920
843-271-8838
Pro se

Alan Wilson, Esquire
PO Box 11549
Columbia, SC 29211-1549
803-734-3727
Attorney for Respondent

J. Benjamin Aplin, Esquire
PO Box 11549
Columbia, SC 29211-1549
803-734-3727
Attorney for Respondent

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PO Box 1880
Bluffton, SC 29910
843-255-5880
Attorney for Respondent