

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

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APR 13 2018

SC Court of Appeals

Brian MacDermant, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

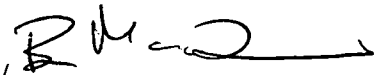
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FINAL BRIEF

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April 12, 2018

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## STATEMENT OF ISSUES ON APPEAL

1. DID JUDGE MULLEN ERR IN NOT AGREEING THAT I (DEFENDANT) WAS NOT GIVEN A FAIR JURY TRIAL, A VIOLATION OF THE 5<sup>th</sup> and 14<sup>th</sup> AMENDMENTS OF THE U.S. CONSTITUTION BECAUSE JUDGE BROOKS DID ABSOLUTELY NOTHING WHEN JUDGE BROOKS WITNESSED TESTIMONY FROM AN INDIVIDUAL SITTING IN THE COURTROOM AUDIENCE, WHO WAS THE ALLEGED VICTIM'S WIFE?
2. DID JUDGE MULLEN ERR IN NOT AGREEING THAT I (DEFENDANT) WAS NOT GIVEN A FAIR JURY TRIAL, A VIOLATION OF THE 5<sup>th</sup> and 14<sup>th</sup> AMENDMENTS OF THE U.S. CONSTITUTION IN REGARDS TO TESTIMONY FROM AN INDIVIDUAL SITTING IN THE COURTROOM AUDIENCE, WHO WAS THE ALLEGED VICTIM'S WIFE?
3. DID JUDGE MULLEN ERR IN NOT FINDING A VIOLATION OF THE 6TH AMENDMENT OF THE U.S. CONSTITUTION IN REGARDS TO A MOTION I (DEFENDANT) HANDWROTE FOR A CONTINUANCE TO HIRE AN ATTORNEY ON AUGUST 10, 2016, WHICH WAS 6 DAYS BEFORE VOIR DIRE AND THE JURY TRIAL, AND I WAS DENIED THE MOTION?
4. DID THE ALLEGED VICTIM COMMIT PERJURY WHILE ON THE WITNESS STAND, BECAUSE THE ALLEGED VICTIM'S WITNESS STATEMENT JUST MINUTES AFTER THE ALLEGED INCIDENT, DIDN'T CONTAIN ANYTHING ABOUT THE DEFENDANT "GRABBING" THE ALLEGED VICTIM, HOWEVER ON THE WITNESS STAND DURING THE JURY TRIAL, THE ALLEGED VICTIM TESTIFIED THAT THE DEFENDANT "...HE HAD ME BY THE SHIRT...", BUT DIDN'T SAY WHERE ON HIS BODY DURING DIRECT-EXAMINATION AND SUBSEQUENTLY ON CROSS-EXAMINATION GESTURED WITH HIS HANDS TO HIS BODY WHEN ASKED WHERE I GRABBED HIS SHIRT?
5. DID JUDGE MULLEN BIAS HERSELF IN FAVOR OF THE ALLEGED VICTIM WHEN SHE ASKED INAPPROPRIATE QUESTIONS AND GELANED THE ANSWERS FROM ME WHEN JUDGE MULLEN ASKED ME IF I RAN FOR OFFICE AND WHETHER THE ALLEGED VICTIM RAN FOR OFFICE?
6. DID JUDGE BROOKS ERR IN NOT ALLOWING ME TO INTRODUCE EVIDENCE DURING MY DEFENSE PORTION OF THE JURY TRIAL, EVIDENCE WHICH WAS THE WITNESS STATEMENT, WRITTEN (JUST MINUTES AFTER THE ALLEGED CRIME) BY THE ALLEGED VICTIM?

## STATEMENT OF THE CASE

- A. On Aug. 16, 2016, I, Brian J. MacDermant, was convicted of Assault and Battery in the 3<sup>rd</sup> Degree without an attorney present in a magistrate court jury trial before Judge Brooks. No crime occurred, having read the statute for Assault and Battery in the 3<sup>rd</sup> Degree. The jury trial was immediately after jury selection. I meticulously transcribed the audio recording of the jury trial. I currently possess the audio recording and the transcript I transcribed.

Just minutes before voir dire and the jury trial, Judge Brooks, Joni Fields (the jury clerk), Beaufort County Sherriff's Officer Andrew Rice (acting as prosecutor), the alleged victim, and myself went across the hall into a very small courtroom, because I had a pre-trial motion. The jury pool stayed in the courtroom. I remember Judge Brooks saying something to the effect that "we are on the record," like it was being verbally recorded. I verbally requested a motion for continuance to hire an attorney. Judge Brooks denied my motion. Judge Brooks denied my motion, so I said, "Don't let a room full of jurors sway your decision," referring to the room next door containing the jury pool. He shot back something to the effect that he remembered who I was and that for me not to say he doesn't have "jurisdiction" over the case. He may (I am relying on memory) have even used the word "sovereign" in saying that I was one of those sovereign people. He definitely used the word "jurisdiction". I told him it wasn't me and that I would have remembered saying something like that. I had only one previous encounter with Judge Brooks: on December 13, 2012, Judge Brooks presided over a jury trial for a traffic citation I received, (I was pro se), and the jury came back in approximately 15 minutes and unanimously reached a not guilty verdict. [These false comments from Judge Brooks, show that he was severely biased against me, and the comments came before voir dire and the jury trial even began.] [I verbally told Judge Mullen there was a missing piece of audio pertaining to this pre-trial motion made in front of Judge Brooks. Judge Brooks denying my motion for continuance to hire an attorney is contained in my written appeal to Master-in-Equity and is a violation of the 6<sup>th</sup> Amendment of the U.S. Constitution]

- B. I, Brian J. MacDermant, went before Judge Mullen (appeals hearing) 'pro se' on April 11, 2017 and verbally told Judge Mullen there was audience interference during the jury trial. (R. p. 6, line) The alleged victim was on the witness stand, and as I was cross-examining him, his wife interjected verbally from where she was sitting in the audience. The wife then immediately walked (she did not run) all the way up to the witness stand with what appeared to be an 8<sup>1</sup>/<sub>2</sub> x 11" piece of white paper in her hand and showed the paper to her husband/alleged victim. Judge Brooks made no sound verbally or showed any physical expression. The white piece of paper was never introduced into evidence, nor did I get to see the paper, nor did I get to cross-examine the wife. The 8<sup>1</sup>/<sub>2</sub> x 11" piece of white paper was supposedly the email list of people invited to the party hosted by the alleged victim. There is recorded audio of the verbal interjection from the courtroom audience. There was no recorded video taken of the jury trial. When I filed my original written appeal with Master-in-Equity, I did not have the luxury of the audio tape; it takes more than 10 days to receive the audio tape.

C. I received a certified letter on Saturday, August 7, 2016 informing me of the date of the "jury trial" as "August 16 2016 at 1:00 PM". The letter didn't contain anything about voir dire. I came back on Monday night the 9<sup>th</sup> of August, 2016 from being out-of-town. On Tuesday, August 9, 2016, I asked Joni Fields (jury clerk) in person when was jury selection. She told me August 16, 2016 at 1 p.m. On Wednesday, August 10, 2016, I went back down to the clerk's office and I asked Joni Fields (jury clerk) in person when the trial would be. I was told that the trial would take place right after jury selection. This gave me 6 days notice, so 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. Joni Fields (jury clerk) verbally told me the motion was denied.

[This denial of my motion is contained in my written appeal to Master-in-Equity and is a violation of the 6<sup>th</sup> Amendment of the U.S. Constitution].

D. On September 30, 2016, I requested an audio recording of the jury trial and subsequently received the audio. The recording was missing the audio in regards to the pre-trial motion (just minutes prior to voir dire and the jury trial) where I verbally asked Judge Brooks for a continuance to hire an attorney. Joni Fields (jury clerk) told me to my face to come back because Judge Brooks was out of town. I subsequently went back down to speak with Joni Fields (jury clerk) and requested the portion that was missing. She told me that by law the recording did not have to be given.

[This development was real fishy, although there were so many unusual developments in the case.]

E. The audience interference during the jury trial by the alleged victim's wife, was "cherry-picking" by her to help the prosecution's case because there was a similar line of questioning by me 3 minutes and 44 seconds earlier than the interference, where I asked a similar question to the alleged victim on the witness stand (I was cross-examining), and the alleged victim's wife said nothing from the audience.

Basically there was a party hosted by the alleged victim, and he testified he never invited me to the party (where the alleged crime took place). I interviewed Dale Owens before the day of the trial as part of my investigation into the so-called e-mail list of people who were invited. I asked Dale Owens if he would send me the e-mail invitation because he was at the party. He told me he was verbally invited. The similar line of questioning where the alleged victim's wife remained silent from the audience, was at 1:02:54 in the audio transcript: (R. p. 29)

**Defendant (Brian J. MacDermant):** Did you have Dale Owen's name on the e-mail list?

**Tom Klein (alleged victim on the witness stand):** Um, I'd need to look at the list again. My wife, again, my wife did the list. I did not do the list. She had kept track of all the people who supported our. We had campaigned together at multiple times.

## F. Timeline

On Nov. 15, 2015, I (Brian J. MacDermant) was wrongfully arrested for Assault and Battery in the 3<sup>rd</sup> degree.

On Aug. 10, 2016, I filed a handwritten motion for continuance to hire an attorney, and was denied.

On Aug. 16, 2016, just minutes prior to voir dire and the jury trial, I verbally made a motion in front of Judge Brooks for a continuance to hire an attorney. He denied the motion.

On Aug. 16, 2016, the jury was selected from the jury pool and a jury trial was conducted. I represented my self (pro se) was wrongfully convicted (no crime actually occurred) of Assault and Battery in the 3<sup>rd</sup> degree. I know this because I read the statute for Assault and Battery in the 3<sup>rd</sup> degree.

On Aug. 24, 2016, I filed/mailed my appeal with the Master-in-Equity.

On April 11, 2017, I (Brian J. MacDermant), went before Judge Mullen (appeals hearing).

Judge Mullen ruled on the case, electronically dated April 17, 2017 which affirmed my conviction in magistrate court. Written notice of this ruling is dated, April 20, 2017.

On Apr. 26, 2017, I filed my appeal with the South Carolina Court of Appeals

### FACTS (from the transcripts)

- Here is the excerpt of audience interference during the jury trial as I (defendant Brian J. MacDermant) cross-examined the prosecution's witness who was the alleged victim:(R. p. 29)

**Defendant cross-examining witness (1:06:19):** So, some people was anybody at this people that was verbally invited?

**Alleged victim on witness stand:** Not that I'm aware of. Maybe last minute, maybe Mr. Ashmore. (1.06:38)

**Alleged victim's wife from the audience:** He's on the list.

**Alleged victim on witness stand:** He's on the list, ok. Again, I was not responsible for the list of attendees. My wife maintained that list based on my supporters during during the campaign. But since the 3 of us, Mr. Ashmore and Mr. Owens had campaigned together, we were you know we campaigned as a as a threesome, not so much as against each other but just we're the we're the 3 people that you have to choose from to elect the 2 seats for Council. May the best person win.

**Defendant cross-examining witness:** Give me a minute your Honor, please. Um.

- The alleged victim's witness statement handwritten just minutes after the alleged incident, doesn't contain anything about the defendant "grabbing", "grabbed", or "grab" the alleged victim. During the jury trial, on direct-examination, the alleged victim testified:

**Alleged victim (direct-examination):** He had me by the shirt and pushing me up against the walls.

The alleged victim never said where on his body I grabbed him. During cross-examination, the alleged victim was asked where he was grabbed and the alleged victim testified by gesturing to barely above his belly button. **The alleged victim spoke no words in answering the question, because he knew he was lying and committed perjury.**

**Defendant cross-examining the alleged victim:** In your, in your, you testify that I grabbed you shirt, where did I grab your shirt?

**Klein:** (gestures to just above his belly button with his hands)

- Towards the very end of the appeals hearing in front of Judge Mullen, the transcript (prepared by court reporter Rebecca H. Hill) reads:

**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.

- This is the portion of the jury trial transcript where Judge Brooks denied my right to introduce evidence during my defense side:

**Def (Brian MacDermant):** ...I'm not sure I'm gonna wrap it up your Honor. I'm gonna introduce a piece of paper. I can do that right?

**Judge:** It depends on what they are.

**Def:** These are the witness statements and then I also, I also have a photograph of the alleged scene of the crime.

**J:** Show that, that to, ah, Sergeant Rice.

**Def:** I'll just hand it all at once.

**Rice (police officer):** I have no objections your Honor.

**J:** Ah, actually, affidavits are considered hearsay because an affidavit can't be cross-examined. If you have a witness they can come into court and testify, but you can't

**Rice:** I have no objection to the picture.

**J:** you can't introduce ah, ah, an affidavit from a witness who's not here. The picture is

**Def:** No, these witnesses are here I mean or I'm not sure I follow you your Honor.

**J:** Who's affidavits are they?

**Def:** Joe Devito and Tom Klein.

**Rice:** Joe Devito and Thomas Klein.

**J:** Oh, ok. Never the less, they've already testified, so.

**Rice:** They have. Yes, sir.

**J:** What's, what's in the affidavit that's different from the testimony that you could not have asked them on cross-examination?

**Def:** I guess I made a mistake. I don't know. That, that he doesn't all he mentions, Mr. Klein, in his witness statement was the pushing. He doesn't mention that I grabbed his shirt. I never grabbed his shirt. And then Tom but Joe Devito does mention it, so maybe he (Klein) is trying to align his testimony. I can't get inside somebody's head, your Honor.

**J:** What I'm saying here is that their testimony in court is the evidence to be considered.

**Def:** I, I guess I forgot to ask him. Um, so, it's not, it's not admissible? It's part of the incident report.

**J:** You had an opportunity

**Def:** Ok, I just clarify

**J:** to cross-examine the witnesses.

**Def:** I'm very stressed. This is a difficult process yes your Honor. Ok, thank you. It's not admissible. That's the answer. Thank you so much.

## ARGUMENT

I and II. There's never an excuse or justification for any member of the audience to make comments about a witness' testimony. I was entitled to a fair and impartial trial. Both instances: the wife's interjection and the Judge Brooks remaining silent in reaction to the interjection, are clear and blatant violations of the Due Process Clause which is included in the 5<sup>th</sup> & 14<sup>th</sup> Amendments to the U.S. Constitution ["deprived of life, liberty, or property, without due process of law"].

Judge Brooks, in remaining silent and giving no warning to the person testifying from the audience during the jury trial, crossed the line of neutrality, and no longer had impartiality. Judge Brooks not only worked for the prosecution but worked against me. Judge Brooks blatantly failed to maintain the integrity of the courtroom in not warning the alleged victim's wife to not speak out from the audience. The behavior of the alleged victim's wife and Judge Brooks' lack of behavior caused the trial to no longer be an adversary proceeding. At that point in the trial, a prejudicial hearing was taking place, if it hadn't already occurred, and Judge Brooks no longer maintained impartiality.

These most outrageous and unusual occurrences jeopardized my right to a fair trial which are in clear violation of both the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution. The Due Process Clause contained in both of these Amendments are nearly identical.

The 5<sup>th</sup> Amendment of the U.S. Constitution states, "...nor be deprived of life, liberty, or property, without due process of law..."

The 14<sup>th</sup> Amendment of the U.S. Constitution states, "...nor shall any state deprive any person of life, liberty, or property, without due process of law..."

The State sentenced me without due process and I have been convicted of a crime that never took place. The property is \$1,087.50, which I paid in cash and coins to the clerk's office on August 17, 2016 and have a receipt that says I paid that amount.

- III. There's never an excuse for an alleged victim to commit perjury or use exaggerations while on the witness stand. The alleged victim lied on the witness stand about his initial contact with me on the day of the alleged crime. He also lied and exaggerated on the witness stand about what took place physically between the two of us.
- IV. Seeking information on who ran for office does not help determine anything pertinent to the appeals hearing and makes no difference that the alleged victim was an elected official of a municipality at the time of the alleged crime. The alleged victim is no longer an elected official because he resigned on Aug. 9, 2017.
- V. Judge Brooks denied my right to introduce the witness statement, that was written by the alleged victim, minutes after the alleged crime. I was trying to introduce the evidence to show the alleged victim committed perjury on the witness stand.  
[This is contained in my written appeal to Master-in-Equity]

### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Master-in-Equity/Circuit Court Judge (Judge Mullen) and overturn the guilty verdict in magistrate court for Assault and Battery in the 3<sup>rd</sup> Degree.

April 12, 2018

Respectfully submitted,

Brian J. MacDermant

Brian MacDermant, ..... Petitioner,

v.

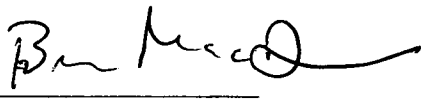
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\_\_\_\_\_  
CERTIFICATE OF COUNSEL  
\_\_\_\_\_

I, Brian MacDermant, Pro se, do hereby certify that the Final Brief complies with Rule 211(b).

April 12, 2018

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