THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

Clifton Newman, Circuit Court Judge

Common Pleas Case No. 2016-CP-40-05857

Appellate Case No. 2021-001849

Joshua Steven Stone, Respondent,

v.

George Hunter McMaster, Appellant.

PETITION FOR REHEARING AND SUGGESTION FOR EN BANC REHEARING

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Pursuant to Rules 221 and 240, SCACR, Appellant, George Hunter McMaster, hereby petitions this Court to Rehear and Reconsider its ruling in Joshua Steven Stone, v. George Hunter McMaster, Unpublished Op. No. 2021-UP-308 (S.C. Ct. App. filed September 1, 2021) and suggests that the hearing be *en banc* as consideration by the full Court is necessary to secure or maintain uniformity of decisions and due to the exceptional importance of the questions involved. Appellant asserts this Court overlooked or misapprehended the points as stated herein in affirming the trial court's rulings under the appropriate standard of review, in that on appeal from a case tried before a jury in an action at law, the appellate court only has the authority to correct errors of law. *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976). Thus, the jury's factual findings will not be disturbed "unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." *Id.; see, e.g. Berberich v. Jack*, 392 S.C. 278, 709 S.E.2d 607 (2011); *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010); *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E. 2d 653 (2006). Appellant asks this Court to recognize that but for the errors stated, as the same was an abuse of discretion or the commission of legal error prejudicing the defendant, there would have been insufficient evidence for the verdict. *Wright v Craft*, 372 S.C. 1 at 33, 640 S.E. 2d 486 at 503 (Ct. App. 2006).

1. The Court overlooked or misapprehended the finding or failure to find that the denial of Appellant's post-trial motions based on lack of specificity mandates reversal. While the denial of review states that the rationale behind the

denial of the post-trial motions was discernable from the record on appeal, *Woodson v. DLI Properties, LLC*, 406 S.C. 517 at 527, 753 S.E.2d 428 433 (2014) requires that the circuit court's reasoning be clear from the order by reference to facts relied upon, which is absent from the ruling complained of and both *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct.App.1996) and *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct.App.2005) require some explanation or reasoning for the denial, both of which are missing from the order in question.

2. The Court overlooked or misapprehended that the trial court erred in allowing evidence of the guilty plea from the criminal proceeding, because it contained impermissible hearsay, tainting the civil trial, as interpreted by *Zurcher v. Bilton*, 379 S.C. 132, 666 S.E. 2d 224 (2008). While the Court recognized that the evidence of the guilty plea did not fall under the exception for judgments of previous convictions as noted in *Zurcher*, *supra*, the Court then overlooked or misapprehended that while other rules may allow hearsay under certain circumstances, overall the rule against hearsay prohibits the admission of evidence of an out of court statement to prove the truth of the matter asserted unless an exception to the rule applies *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58 at 69, 773 S.E.2d 607 at 613 (Ct. App. 2015) citing *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 411, 764 S.E.2d 249, 253 (Ct. App. 2014). At every stage of the proceeding, Appellant objected to the hearsay concerning the magistrate court plea, and this hearsay violation contaminated the trial from the outset. Appellant was clearly harmed by the admission into evidence that was

clearly an error of law, and thus an abuse of discretion. *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 623 S.E. 2d 373 (2005). To warrant reversal, an error must result in prejudice to the appealing party. *State v. Commander,* 396 S.C. 254, 721 S.E.2d 413 (2011). Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson,* 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Appellant would suggest that the Court overlooked or misapprehended the gravity and impact of the prejudicial situation in a civil trial of having the jury informed, not only by the reading of a pleading containing the inadmissible material, but also the reading of criminal proceedings to the jury, in a civil case, subsequent to a guilty plea, that is not admissible into evidence. For these reasons, Appellant requests a reversal on the basis of the allowance into evidence of the guilty plea to the magistrate court offense and all related evidence of the same.

3. The Court overlooked or misapprehended that the trial court's admission of the inadmissible guilty plea to the non-sexual magistrate court offense so tainted the trial from the reading of the complaint, which included the forbidden hearsay, and the related testimony from deposition, carrying through to the inaccurate claims of a violation of law that did not exist as to that plea, that such virtually eliminated any opportunity for the jury to weigh the scant non hearsay evidence in a proper fashion, and to properly evaluate the claims made in front of the jury, of improper influence, which were unsubstantiated, and the evidence that was submitted that Stone himself admitted that in the three written statements he

gave prior to this suit being filed, he never claimed he was groped or grabbed by Appellant (R. p. 81, line 10- p. 82, line 19), that on the night in question, he was already thinking about how much money his claim would be worth (R. p. 92, lines 8-11), and the confirmation by his then girlfriend (R. p. 114, line 19- p. 115, line 19) of those statements of financial gain were made, such that the jury was simply unable to properly and fairly evaluate the claims and defenses.

4. The Court overlooked or misapprehended that although a highly deferential standard of review is used when examining the denial of motion for new trial, either as a new trial absolute or in the alternative, as a new trial *nisi remittitur*, citing *Burke v AnMed Health*, 393 S.C 48, 57, 710 S.E.2d 84, 89 (Ct. App. 2011), due to the pervasive and highly prejudicial nature of the impermissible evidence of the guilty plea to the magistrate court offense being repeatedly allowed into evidence and being placed before the jury, any effort to rebut the claims of Respondent, fell on deaf ears. Further, although Appellant must admit to some evidence of the harm attributable to claims may have been admissible, that evidence amounted to a limited damages claim of only a short term of therapy, and Respondent admitted in his testimony to no adverse effects on his social life, educational advancement, and employment advances (R. p. 85, line 19- p. 90, line 15). In *Burke, supra*, the damages claimed were readily apparent, and were continuing for more than three years after the complained of surgery. As such, even were the Court to uphold the denial of a new trial absolute, the denial of new trial *nisi remittitur,* should not be upheld.

ACCORDINGLY, Appellant respectfully requests that this Court grant his Petition for Rehearing and Suggestion for En Banc Rehearing, appropriately reverse, amend, vacate, withdraw, and or amend its prior decision, rehear the matter allowing oral argument and issue a new decision reversing the family court or such other relief as this Court deems just and proper.

Respectfully submitted,

s/Brian Dumas
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Columbia, South Carolina
September 15, 2021.

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Sep 15 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Common Pleas Case No. 2016-CP-40-0312

Appellate Case No. 2018-05857

Joshua Steven Stone, Respondent,

v.

George Hunter McMaster, Appellant.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing and Suggestion for En Banc Rehearing on Joshua Steven Stone by email to reecewilliams@callisontighe.com and yanimouratev@callisontighe.com and by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2021, addressed to his attorneys of record, D. Reece Williams, III and Yani G. Mouratev, Callison Tighe & Robinson, LLC, PO Box 1390, Columbia, South Carolina 29202-1390.

s/Brian Dumas

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September 15, 2021

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Joshua Stone v. George McMaster
Appellate Case No.: 2018-001849

Dear Ms. Kitchings,

Per Supreme Court Order 2021-08-25-02 and my conversation with your office, enclosed is the filing fee of $50.00 by regular mail for the Petition for Rehearing in the above matter, that being electronically filed today.

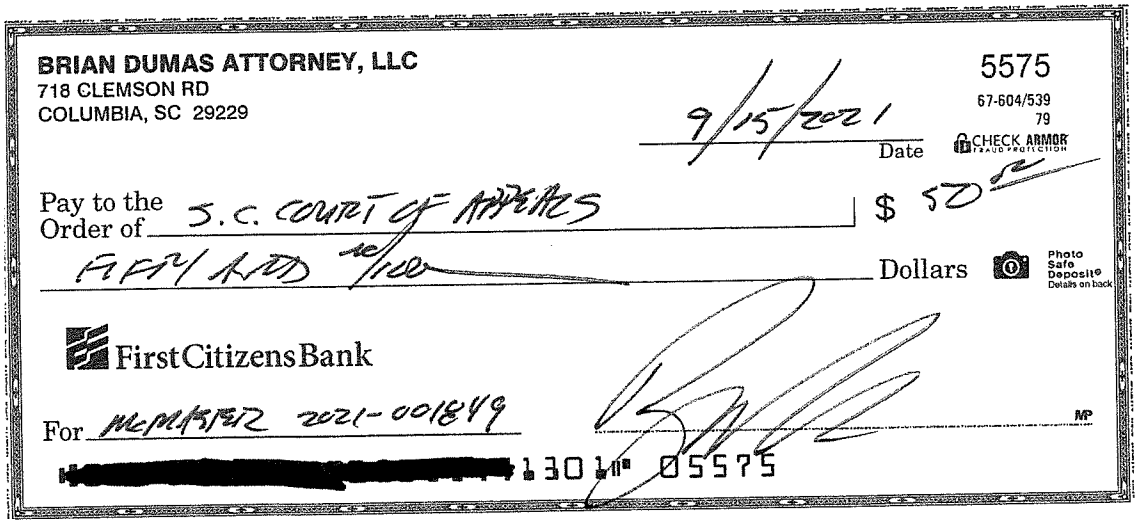
Sincerely,

Brian Dumas

BD/dh

Enclosures

cc: Reece Williams
Yani Mouratev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9/15/2021
Date

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Pay to the Order of S.C. COURT OF APPEALS $ 50

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For McMASTER 2021-001849

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