

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP1100609

Benjamin Paul Hannon

State

RECEIVED

May 19 2022

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

SC Court of Appeals

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. Non suit);
 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: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, SC
2022 JAN 26 PM 1:02
BANDY M. MOBBE

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: *attached*

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

R. Keith Kelly
Circuit Court Judge

#7165
Judge Code

25 JAN 2022
1/18/2022
Date

For Clerk of Court Office Use Only

This judgment was entered on 01/26/2022 and a copy mailed first class or placed in the appropriate attorney's box on 1/26/2022, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Michael Bain 221 East Floyd Baker Blvd.
Gaffney, SC 29340

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julie A. Cendroski

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

** see attached **

Appellant came before the Court on 19 January 2022 by way of appeal from his convictions in the Magistrate Court, the Honorable Robert B. Howell, presiding. Judge Howell timely prepared and filed a Return to the Notice of Appeal. In this action, this Court reviews the record for errors of law or an abuse of discretion. This Court does not conduct a *de novo* hearing.

The charges made against appellant and the dates and times are contained in the Notice of Appeal and the Return and are omitted here; they are not in controversy. Under South Carolina law, the Return prepared by the trial judge is the record on appeal and this Court is without authority to examine witnesses or receive evidence not in the Return. (S.C. Code Ann. § 18-3-70).

Appellant's first issue on appeal is he was not offered reasonable accommodations or an alternative to wearing a mask in the courtroom. The record on appeal is clear and unambiguous that when confronted by the Judge, not only did appellant refuse to wear a mask, he declined to wear a face shield as well. Furthermore, he opined that the South Carolina Supreme Court's order applied to the Judge but not him.

Appellant's second issue on appeal is the trial Judge abused his discretion in trying the cases in appellant's absence. The record on appeal is clear and unambiguous that the trial Judge advised appellant if he refused to comply with the face covering requirement, the Court would proceed without him where, as here, the case had been continued in the past to allow appellant to retain a lawyer and proceed to a jury trial. Interestingly, appellant appeared *sans* a lawyer. Counsel for appellant argues this notice should have been on the record. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730). The record is the Return.

Appellant's third issue on appeal is whether or not appellant waived his right to a jury trial. Again, the record on appeal is clear and unambiguous that appellant verbally stated he did not need a d*** jury trial as he walked out the door. The trial Judge found the appellant's words and actions constituted his voluntary and intelligent waiver of his previously asserted right to a jury trial. Counsel for appellant argues this should have been on the record. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrate courts are summary. (S.C. Code Ann. § 22-3-730). The record is the Return.

This Court finds appellant refused to wear any type of face covering as required by refusing to acknowledge the applicability of the South Carolina Supreme Court's order to himself; that he acknowledged the cases would be tried in his absence if he did not comply with the South Carolina Supreme Court's order; and, that he knowingly and voluntarily waived his right to a jury trial by his words and actions.

The learned Magistrate Judge is **AFFIRMED**.

FILED IN OFFICE OF
CLERK OF COURT
SHERBORN COUNTY, S.C.
2022 JAN 25 PM 1:02
ROBERT B. HOWELL

R. Keith Kelly
#2165
25 January 2022

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Benjamin Paul Hannon,)
APPELLANT,)
vs.)
State of South Carolina)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2021-CP-11-00609

**NOTICE OF MOTION
AND MOTION**

TO: Matt Kendall, Assistant Solicitor, Attorney for the State

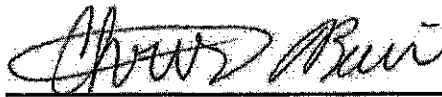
NOTICE is hereby given that the Appellant, Benjamin Paul Hannon, by and through his undersigned attorney will move for an Order of the Court altering or amending its Order dated January 25, 2022 which was received by counsel on January 26, 2022. Said Motion is brought pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure and/or pursuant to a motion for rehearing on the following grounds.

1. The Appellant believes a decision regarding his right to a jury trial was determined prior to any statements made by the Appellant. The Appellant ask the Court to consider the Return where he was told he would be found guilty, fine only, no jail time prior to any statement concerning a jury trial. The Appellant asserts this shows the Magistrate Court pre-determined his guilt prior to any testimony concerning the facts of the case. The Magistrate Court could not have told the Appellant he would be found guilty, because the Magistrate Court could not have known what verdict a jury would have reached. Appellant believes this

shows he was being denied a right to a jury trial for not wearing mask and not based on any statement he made outside the courtroom.

2. The Appellant ask the Court to consider the statement "Well if I'm not going to jail I don't need no damn jury trial", if made, could only be made in response to the Appellant being told what the outcome of his case would be ... "fine only, no jail time." The Appellant ask the Court to take this into consideration in making a determination whether his statement was a knowing and voluntary waiver of his right to a jury trial.
3. The Appellant ask the Court to consider the Return does not contain any analysis into the Appellant's background or experience required by *Spoon v. State*, 379 S.C. 138, 142, 665 S.E.2d 605, 607 (S.C. 2008) to determine if the Appellant made a knowing and voluntary waiver of his right to a jury trial.
4. The Appellant ask the Court to consider all the statements contained in the Return by Appellant were made without the Appellant being fully informed of his right(s) and made with the Appellant not being placed under oath by the Magistrate Court.
5. The Appellant ask the Court to consider all statements contained in the Return were made outside of the courtroom and that out of court statements should not be considered part of the record.
6. The Appellant seeks clarification on whether a recording his counsel provided to the Court was considered in the Judgement.

For the reasons set forth above, Appellant, Ben Hannon moves this Honorable Court to alter or amend its Order dated January 25, 2022 pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure and/or Appellant be granted a rehearing. Further, the Appellant seeks clarification on whether a recording provided to the Court was considered.



Christopher M. Bain
WINTER & RHODEN
Attorneys at Law
221 E. Floyd Baker Blvd.
Gaffney, South Carolina 29340
TEL: (864) 489-8128
FAX: (864) 489-8806

Attorney for Appellant.

Gaffney, South Carolina
February 2, 2022.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Benjamin Paul Hannon)
APPELLANT)
VS)
State of South Carolina)
RESPONDENT)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

ORDER DENYING MOTION TO RECONSIDER

Docket 2021-CP-00609

RECEIVED
May 19 2022
SC Court of Appeals

This matter came before the court upon the motion of the appellant, Benjamin Paul Hannon, seeking to reconsider this court's order, Matt Kendall represented the State and Chris Bain represented the Appellant. Pursuant to the South Carolina Supreme Court's order from January 28, 2022, this matter was handled without an additional hearing.

Upon reviewing the case before the court, this court finds that the order as previously submitted is appropriate. Therefore, the defendant's motion is hereby DENIED. Moreover, the appellant requested clarification regarding a recording taken by the defendant. As this was not made part of the record from the magistrate's court, this recoding was not considered on appeal.

Therefore, the Appellant's motion to reconsider is hereby DENIED.

IT IS SO ORDERD

s/ R. Keith Kelly
The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Judicial Circuit

April 19, 2022
Spartanburg, SC

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 APR 19 PM 3:26
BRANDY W. MOBEE