The Supreme Court of South Carolina

In the Matter of William Randall Sims, Respondent.

ORDER

On October 13, 2008, respondent was definitely suspended from the practice of law for ninety (90) days. In the Matter of Sims, Op. No. 26550 (S.C. Sup. Ct. filed October 13, 2008) (Shearouse Adv. Sh. No. 38 at 24). Accordingly, we hereby appoint an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Robin Page, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Ms. Page shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Ms. Page may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Robin Page, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Robin Page, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Ms. Page's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
October 13, 2008

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 38
October 13, 2008
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2008-UP-553-The State v. Marvin Meek
(Orangeburg, Judge James C. Williams, Jr.)

2008-UP-554-The State v. James Prather
(Aiken, Judge Doyet A. Early, III)

2008-UP-555-The State v. Troy A. Brown
(Charleston, Judge Daniel F. Pieper)

2008-UP-556-The State v. Christopher L. Grate
(Georgetown, Judge Steven H. John)

2008-UP-557-The State v. John Joseph Meredith, Jr.
(York, Judge Lee S. Alford)

2008-UP-558-The State v. David Frasier
(Charleston, Judge G. Thomas Cooper, Jr.)

2008-UP-559-S.C. Department of Social Services v. Katrina P. and William C.
(Barnwell, Judge C. David Sawyer, Jr.)

PETITIONS FOR REHEARING

4422-Fowler v. Hunter	Pending
4423-State v. D. Nelson	Pending
4436-State v. Whitner	Pending
4437-Youmans v. SCDOT	Pending
4438-State v. Martucci	Pending
2008-UP-214-State v. James Bowers	Pending
2008-UP-283-Gravelle v. Roberts	Pending
2008-UP-321-SCDSS v. Miller, R.	Pending
2008-UP-375-State v. Gainey	Pending
2008-UP-485-State v. Cooley	Pending

2008-UP-486-State v. T. Mack	Pending
2008-UP-502-Johnson v. Jackson	Pending
2008-UP-507-State v. R. Hill	Pending
2008-UP-512-State v. Kirk	Pending
2008-UP-517-State v. Gregory	Pending
2008-UP-523-Lindsey v. SCDC	Pending
2008-UP-526-State v. A. Allen	Pending
2008-UP-531-State v. Collier	Pending
2008-UP-534-State v. Woody	Pending
2008-UP-539-Pendergrass v. SCDPP&P	Pending
2008-UP-543-O'Berry v. Carthens	Pending

PETITIONS – SOUTH CAROLINA SUPREME COURT

4237-State v. Rebecca Lee-Grigg	Granted 09/18/08
4279-Linda Mc Co. Inc. v. Shore	Pending
4285-State v. Danny Whitten	Pending
4289-Floyd v. Morgan	Granted 09/18/08
4292-SCE&G v. Hartough	Denied 09/18/08
4300-State v. Carmen Rice	Pending
4304-State v. Arrowood	Pending
4306-Walton v. Mazda of Rock Hill	Pending
4307-State v. Marshall Miller	Pending
4308-Hutto v. State	Granted 10/09/08

4309-Brazell v. Windsor	Pending
4310-State v. John Boyd Frazier	Pending
4312-State v. Vernon Tumbleston	Pending
4314-McGriff v. Worsley	Pending
4315-Todd v. Joyner	Pending
4316-Lubya Lynch v. Toys “R” Us, Inc	Pending
4318-State v. D. Swafford	Pending
4319-State v. Anthony Woods (2)	Pending
4320-State v. D. Paige	Pending
4325-Dixie Belle v. Redd	Pending
4327-State v. J. Odom	Denied 09/17/08
4328-Jones v. Harold Arnold’s Sentry	Denied 10/09/08
4335-State v. Lawrence Tucker	Pending
4338-Friends of McLeod v. City of Charleston	Pending
4339-Thompson v. Cisson Construction	Pending
4342-State v. N. Ferguson	Pending
4344-Green Tree v. Williams	Pending
4350-Hooper v. Ebenezer Senior Services	Pending
4353-Turner v. SCDHEC	Pending
4354-Mellen v. Lane	Pending
4355-Grinnell Corp. v. Wood	Pending
4369-Mr. T. v. Ms. T.	Pending

4370-Spence v. Wingate	Pending
4371-State v. K. Sims	Pending
4372-Robinson v. Est. of Harris	Pending
4373-Partain v. Upstate Automotive	Pending
4374-Wieters v. Bon-Secours	Pending
4375-RRR, Inc. v. Toggas	Pending
4376-Wells Fargo v. Turner	Pending
4377-Hoard v. Roper Hospital	Pending
4382-Zurich American v. Tolbert	Pending
4383-Camp v. Camp	Pending
4384-Murrells Inlet v. Ward	Pending
4385-Collins v. Frasier	Pending
4386-State v. R. Anderson	Pending
4387-Blanding v. Long Beach	Pending
4388-Horry County v. Parbel	Pending
4391-State v. L. Evans	Pending
4392-State v. W. Caldwell	Pending
4394-Platt v. SCDOT	Pending
4395-State v. H. Mitchell	Pending
4397-Brown v. Brown	Pending
4401-Doe v. Roe	Pending

4402-State v. Tindall	Pending
4403-Wiesart v. Stewart	Pending
4405-Swicegood v. Lott	Pending
4407-Quail Hill, LLC v Cnty of Richland	Pending
4409-State v. Sweat & Bryant	Pending
4412-State v. C. Williams	Pending
4413-Snavely v. AMISUB	Pending
4414-Johnson v. Beauty Unlimited	Pending
4419-Sanders v. SCDC	Pending
2007-UP-125-State v. M. Walker	Pending
2007-UP-151-Lamar Florida v. Li'l Cricket	Pending
2007-UP-255-Marvin v. Pritchett	Denied 09/17/08
2007-UP-272-Mortgage Electronic v. Suite	Pending
2007-UP-341-Auto Owners v. Pittman	Denied 09/04/08
2007-UP-350-Alford v. Tamsberg	Pending
2007-UP-354-Brunson v. Brunson	Granted 09/05/08
2007-UP-364-Alexander Land Co. v. M&M&K	Pending
2007-UP-460-Dawkins v. Dawkins	Pending
2007-UP-498-Gore v. Beneficial Mortgage	Pending
2007-UP-513-Vaughn v. SCDHEC	Pending
2007-UP-530-Garrett v. Lister	Denied 10/08/08
2007-UP-544-State v. C. Pride	Pending

2007-UP-546-R. Harris v. Penn Warranty	Pending
2007-UP-554-R. Harris v. Penn Warranty (2)	Pending
2007-UP-556-RV Resort & Yacht v. BillyBob's	Pending
2008-UP-047-State v. Dozier	Pending
2008-UP-048-State v. Edward Cross (#1)	Denied 09/04/08
2008-UP-060-BP Staff, Inc. v. Capital City Ins.	Pending
2008-UP-070-Burriss Elec. v. Office of Occ. Safety	Pending
2008-UP-081-State v. R. Hill	Pending
2008-UP-082-White Hat v. Town of Hilton Head	Pending
2008-UP-084-First Bank v. Wright	Pending
2008-UP-104-State v. Damon Jackson	Pending
2008-UP-126-Massey v. Werner Enterprises	Pending
2008-UP-131-State v. Jimmy Owens	Pending
2008-UP-132-Campagna v. Flowers	Pending
2008-UP-135-State v. Dominique Donte Moore	Pending
2008-UP-140-Palmetto Bay Club v. Brissie	Pending
2008-UP-141-One Hundred Eighth v. Miller	Denied 10/08/08
2008-UP-151-Wright v. Hiester Constr.	Pending
2008-UP-173-Professional Wiring v. Sims	Pending
2008-UP-187-State v. Rivera	Pending
2008-UP-192-City of Columbia v. Jackson	Pending

2008-UP-194-State v. D. Smith	Pending
2008-UP-200-City of Newberry v. Newberry Electric	Pending
2008-UP-204-White's Mill Colony v. Williams	Pending
2008-UP-205-MBNA America v. Baumie	Pending
2008-UP-207-Plowden Const. v. Richland-Lexington	Pending
2008-UP-209-Hoard v. Roper Hospital	Pending
2008-UP-223-State v. C. Lyles	Pending
2008-UP-240-Weston v. Margaret Weston Medical	Pending
2008-UP-244-Magaha v. Greenwood Mills	Pending
2008-UP-247-Babb v. Est. Of Watson	Pending
2008-UP-251-Pye v. Holmes	Pending
2008-UP-256-State v. T. Hatcher	Pending
2008-UP-261-In the matter of McCoy	Pending
2008-UP-271-Hunt v. State	Pending
2008-UP-279-Davideit v. Scansource	Pending
2008-UP-289-Mortgage Electronic v. Fordham	Pending
2008-UP-296-Osborne Electric v. KCC Contr.	Pending
2008-UP-297-Sinkler v. County of Charleston	Pending
2008-UP-310-Ex parte:SCBCB (Sheffield v. State)	Pending
2008-UP-320-Estate of India Hendricks (3)	Pending
2008-UP-331-Holt v. Holloway	Pending

2008-UP-332-BillBob’s Marina v. Blakeslee	Pending
2008-UP-335-D.R. Horton v. Campus Housing	Pending
2008-UP-340-SCDSS v. R. Jones	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

William H. Gaines, Jr., Appellant.

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Opinion No. 26549
Heard March 18, 2008 – Filed October 6, 2008

AFFIRMED

Robert T. Williams, Sr., and Benjamin A. Stitely, of Williams, Hendrix, Steigner & Brink, of Lexington, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R.J. Shupe, of Columbia, for Respondent.

JUSTICE WALLER: Appellant, William H. Gaines, was convicted of three counts of criminal solicitation of a minor, in violation of a recently enacted statute, S.C. Code Ann. § 16-15-342 (Supp. 2006). He appeals contending, a) evidence of prior chat room conversations was improperly

admitted; b) he was entitled to an entrapment instruction; and c) he was entitled to a directed verdict. We disagree and affirm the convictions.

FACTS

Gaines, using the computer alias of HMMRTHEGRT8, engaged in internet communications on AOL chat rooms with a person he believed to be a twelve year old girl in Philadelphia, PA. The girl used the screen name "LilAshleyPA." The online chats occurred in an America Online (AOL) chat room between February and June 2004 during which time Gaines encouraged LilAshleyPA to travel to Greenville, South Carolina to see him. Gaines repeatedly made detailed sexual references as to how he wanted to spend time with LilAshleyPA when she arrived in South Carolina and proposed to rent a hotel room where she could stay with him. He also offered to buy LilAshleyPA clothing and lingerie and requested that she send him nude photos of herself. He emphasized that LilAshleyPA needed to keep their plans a secret because "guys my age aren't allowed to date girls your age."

Unbeknownst to Gaines, LilAshleyPA was actually Lisa Carroll, an undercover detective with the Pennsylvania Internet Crimes Against Children Task Force. Detective Carroll obtained a court order to obtain information on Gaines's identification and upon discovering Gaines lived in South Carolina, Detective Carroll referred the matter to South Carolina authorities.

Thereafter, South Carolina Law Enforcement Division (SLED) agents set up an AOL internet account using the screen name "Allyinsc13." In October 2004, Allyinsc13 contacted HMMRTHEGRT8 online by saying "hey." Gaines responded and the two began to chat. After discovering that Allyinsc13 was a thirteen-year-old living in Columbia and disclosing that he was twenty-eight years old, Gaines inquired into the possibility of their meeting up for the purpose of engaging in various forms of sexual intercourse. Allyinsc13 indicated that she was interested in HMMRTHEGRT8's visiting her in Columbia, and in their subsequent chats, Gaines proposed renting a hotel room and theorized the details of their first sexual encounter. He also offered to buy Allyinsc13 jeans and lingerie and requested she send him a photo. Gaines reminded Allyinsc13 that she needed

to keep their relationship a secret because "guys my age aren't supposed to date girls under 18."

Based on Gaines's chats with Allyinsc13, which continued until the end of January 2005, SLED agents procured an order to obtain HMMRTHEGRT8's records from AOL. SLED agents confirmed that the online chats originated from the home that Gaines shared with his parents in Traveler's Rest and obtained a search warrant under which they confiscated Gaines's computer. Gaines subsequently provided oral and written statements admitting that he used the screen name HMMRTHEGRT8 and that he communicated with girls on the Internet using that name, but claimed he was "just talking" with them.

Gaines was indicted on three counts of criminal solicitation of a minor in violation of S.C. Code Ann. § 16-15-342 for online chats with Allyinsc13 on October 25, 2004, November 30, 2004, and January 27, 2005. A jury convicted Gaines on all three counts. He was sentenced to concurrent ten-year terms, suspended to four years incarceration with five years probation on each count. This appeal followed.

ISSUES

1. Did the trial court properly admit Gaines' chat room conversations with LilAshleyPA?
2. Did the trial court err in refusing a jury charge on the law of entrapment?
3. Did the trial court err in denying Gaines' motion for a directed verdict?

1. CHATS WITH LILASHLEY PA

Gaines contends the internet chats he had with LilAshleyPA between February and July 2004 were improperly admitted at trial. We disagree.[1] We find the chats were proper admitted.

[1] Gaines' First Amendment objection was not ruled upon by the trial court, such that we need not address it. We note, however, that the First Amendment does not prohibit the evidentiary use

Initially, Gaines contends that since S.C. Code Ann. § 16-15-342 (Supp. 2006) did not become effective until April 26, 2004,[2] and most of his chats with LilAshleyPA occurred prior to that date, the earlier chats should not have been admitted inasmuch as they were not criminal behavior. We disagree. The fact that the offense of criminal solicitation of a minor did not become a crime in South Carolina until April 24, 2004 is not dispositive. The chats with LilAshleyPA were at all times illegal under Pennsylvania law. See 18 Pa. C.S.A. § 6318 (unlawful contact with a minor if intentional contact with minor for purposes of engaging in sexual activity). Further, Gaines was not **indicted** for the chats with LilAshleyPA. Accordingly, we find no merit to this contention.

Further, although many of the chats Gaines had with LilAshleyPA occurred prior to April 24, 2004, there were also chats in June 2004, in which he reiterated both his desire to make love to LilAshleyPA before she turned 13, and his desire to fly her to SC to be with her. Accordingly, the earlier chats were cumulative. State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999) (to qualify for reversal on ground of cumulative effect of trial errors, defendant must demonstrate errors adversely affected right to fair trial); State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890(1995) (error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted).

In any event, evidence of the chats with LilAshleyPA were properly admitted by the trial court pursuant to Rule 404(b), SCACR, because they were relevant to demonstrate a common scheme or plan, intent, and/or the absence of mistake.

Evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is,

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of speech to establish the elements of a crime or to prove motive or intent. See United States v. Curtin, 489 F.3d 935 (9th Cir. 2006). Gaines' reliance on Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004) is misplaced; Ashcroft involved an overbreadth challenge to the Child Online Protection Act.

[2] Section 16-15-342 was added by 2004 Act No. 208, § 4, effective April 26, 2004.

however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE; State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. Id.; State v. Beck, 342 S.C. 129, 135-36, 536 S.E.2d 679, 682-83 (2000). Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rules 403, 404(b), SCRE; State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001).

Where there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the Court of Appeals have held prior bad acts are admissible to demonstrate a common scheme or plan. See State v. Hallman, 298 S.C. 172, 175, 379 S.E.2d 115, 117 (1989) (evidence of prior bad acts bears such close similarity to the offense charged in this case that its probative value clearly outweighs its prejudicial effect); State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (such evidence is inadmissible unless the close similarity of the charged offense and the previous act enhances the probative value of the evidence so as to overrule the prejudicial effect); State v. Patrick, 318 S.C. 352, 356 457 S.E.2d 632, 635 (Ct.App.1995) (sufficient similarities between the Georgia case and present case to apply the Lyle common scheme or plan exception); State v. Blanton, 316 S.C. 31, 32, 446 S.E.2d 438, 439 (Ct.App.1994) (prior acts were sufficiently similar to the charged offense to be admissible); State v. Wingo, 304 S.C. 173, 176, 403 S.E.2d 322, 324 (Ct.App.1991) (prior bad acts tended to show common plan or scheme when the experiences of each victim paralleled that of the other victims).

Under the facts presented here, it is clear the prior chats with LilAshleyPA were properly admitted. In both cases, HMMRTHEGRT8 engaged in AOL chat room conversations with young females whom he believed to be twelve and thirteen years old. He told both girls he was twenty-seven or twenty-eight years old and explained that it was illegal for

him to date them. He proposed to both the idea of taking them to a motel room and also expressed his desire for each to come and live with him. He sought confirmation from both girls that they had not been intimate with anyone before, requested that each send him photos of themselves, offered to buy them clothing and lingerie, and suggested similar sexual acts for the girls to perform. Accordingly, we find the chats with LilAshleyPA were properly admitted.

2. ENTRAPMENT

Gaines next asserts he was entitled to a jury instruction on the defense of entrapment. We disagree.

The law to be charged to the jury is determined by the evidence presented at trial. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) *cert. denied* 2008 WL 1699517 (U.S. Sup. Ct. April 14, 2008); State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002).

"The affirmative defense of entrapment is available where there is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer." State v. Brown, 362 S.C. 258, 607 S.E.2d 93 (Ct. App. 2004) (citation omitted). The defense of entrapment is not available to a defendant who is predisposed to commit a crime independent of governmental inducement and influence. Thus, the entrapment defense consists of two elements: (1) government inducement, and (2) lack of predisposition. Id. The fact that a government official merely affords opportunities or facilities for the commission of the offense does not constitute entrapment. State v. Johnson, 295 S.C. 215, 367 S.E.2d 700 (1988), *citing* Sherman v. United States, 356 U.S. 369 (1958).

The mere fact that Gaines' initial contact with Allyinsc13 was instigated by a SLED agent contacting him and stating, "hey" does not entitle

him to an entrapment instruction. The initial contact merely afforded Gaines the opportunity to solicit sex. Gaines was in no way induced to commit the crime of criminal solicitation of a minor. Accord State v. Cooper, 302 S.C. 184, 186, 394 S.E.2d 717, 718 (Ct. App.1990) (defendant was not entitled to a jury instruction on entrapment where she engaged in the illegal activity because of her own preexisting readiness to do so and not because of incessant demands made upon her by an undercover agent). Gaines' request to charge was properly denied.

3. DIRECTED VERDICT

Gaines lastly asserts he was entitled to a directed verdict as there was no evidence of any "overt act" on his part in an attempt to actually engage in the sexual acts. We disagree; we find no such act required by S.C. Code Ann. § 16-15-342.

When ruling on a motion for a directed verdict, the trial judge is concerned with the existence or nonexistence of evidence, not its weight. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006); State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, the Court views the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury. Id.

S.C. Code Ann. § 16-15-342(A) provides:

> (A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he **knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen,** or a person reasonably believed to be under the age of eighteen, **for the**

> **purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity** as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen. (emphasis supplied).

Gaines contends this Court should construe the statute to require some "overt act" in furtherance of the criminal solicitation, such as travel to a destination, arrival with condoms, booking of hotel rooms, etc. The plain language of the statute imposes no such requirements.

In interpreting statutes, we look to the plain meaning of the statute and the intent of the Legislature. State v. Dingle, ___S.C.___, 659 S.E.2d 101(2008). All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id.

S.C. Code Ann. § 16-15-342(A) requires that a person over the age of eighteen knowingly communicate with a person believed to be under the age of eighteen for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity. It is patent that Gaines communicated with Allyinsc13 with the intent of enticing her to participate in sexual activity. Nothing more is required by the statute.

Gaines bases his "overt act" contention on cases from other jurisdictions. The cases cited by Gaines are simply inapposite and involve statutes which are dissimilar to the South Carolina statute. We find S.C.

Code Ann. § 16-15-342 requires no overt act in furtherance of the criminal solicitation such that the trial court properly denied Gaines' motion for a directed verdict.

Gaines' convictions are affirmed.

AFFIRMED.

TOAL, C.J., BEATTY, J., and Acting Justice E. C. Burnett, III, concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I agree that the evidence of appellant's communications with LilAshley PA were admissible under Rule 404(b), SCRE. Having concluded the Pennsylvania evidence was admissible under 404(b), the next issue is whether the prejudicial impact of this evidence outweighs its probative value. Rule 403, SCRE. While this is a close question, appellant cannot demonstrate reversible error. Even if the LilAshley PA evidence were not admissible in the State's case-in-chief, once appellant interposed the defense of entrapment his earlier efforts to entice a young girl to come to South Carolina would have been admissible to prove appellant's prior disposition to commit the offense. Accordingly, I concur in the majority's decision to affirm appellant's convictions.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William Randall Sims, Respondent.

Opinion No. 26550
Submitted September 8, 2008 – Filed October13, 2008

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel

William Randall Sims, of Kershaw, pro se

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of any sanction ranging from an admonition to a nine (9) month suspension from the practice of law. See Rule 7(b), RLDE, Rule 413, SCACR. We accept the Agreement and definitely suspend respondent from the practice of law in this state for a ninety (90) day period. The facts, as set forth in the Agreement, are as follows.

FACTS

Matter I

The Resolution of Fee Disputes Board of the South Carolina Bar (the Board) ordered respondent to pay the sum of $2,500.00 to a former client. Respondent did not pay the ordered amount. As a result, the Board issued a Certificate of Non-Compliance. Respondent has since paid the ordered amount to the client.

By letter dated November 6, 2007, ODC notified respondent of the Board's complaint. ODC requested a response within fifteen (15) days. Respondent failed to respond or otherwise communicate with ODC.

On December 20, 2007, ODC sent respondent a letter pursuant to In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982), again requesting a response. Respondent failed to respond or otherwise communicate with ODC following the Treacy letter.

On February 19, 2008, respondent was served with a Notice of Full Investigation. The Notice requested a written response within thirty (30) days. Respondent failed to submit a response to the Notice of Full Investigation.

Matter II

In 2007, Complainant retained respondent to file a divorce action on his behalf. Complainant paid respondent a $650.00 retainer. Respondent failed to file a divorce action on Complainant's behalf. In addition, respondent failed to keep Complainant reasonably informed regarding the status of his case, failed to return Complainant's telephone calls, and failed to make reasonable efforts to expedite Complainant's case consistent with Complainant's interests and

requests. Respondent has since refunded the entire retainer fee paid by Complainant.

On March 3, 2008, respondent was served with a Supplemental Notice of Full Investigation. The Notice requested a written response within thirty (30) days. Respondent failed to submit a response to the Supplemental Notice of Full Investigation.

LAW

Respondent admits that by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client), Rule 1.4 (lawyer shall promptly respond to client's reasonable requests for information); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with client's interests), Rule 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority), Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct), and Rule 8.4(e) (lawyer shall not engage in conduct that is prejudicial to the administration of justice). In addition, respondent admits his misconduct constitutes a violation of Rule 7, RLDE, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers), Rule 7(a)(3) (it shall be ground for discipline for lawyer to knowingly fail to respond to lawful demand from disciplinary authority), and Rule 7(a)(10) (it shall be a ground for discipline for lawyer to willfully fail to comply with a final decision of the Resolution of Fee Disputes Board of the South Carolina Bar).

CONCLUSION

We accept the Agreement for Discipline by Consent and definitely suspend respondent from the practice of law for a ninety (90) day period. Within fifteen days of the date of this opinion, respondent

shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Clyde L. Pennington, Jr., Respondent.

Opinion No. 26551
Heard August 20, 2008 – Filed October 13, 2008

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Robert W. Dibble, Jr., of McNair Law Firm, of Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary proceeding, the Commission on Lawyer Conduct filed formal charges against Respondent under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, with regard to four matters. Respondent entered into stipulations of fact on these initial matters. At the disciplinary hearing, the record was kept open pending the resolution of two new matters, and the Commission ultimately filed additional charges for the new matters. By consent order, the parties agreed the new allegations could be decided on the pleadings. Thereafter, a subpanel of the Commission issued a report recommending that Respondent be suspended indefinitely from the practice of law, that he be required to pay

the costs incurred in this disciplinary proceeding, and that an attorney be appointed to represent his clients' interests. The full panel adopted the findings of the subpanel. Respondent seeks review, challenging two of the panel's findings and arguing the sanction imposed is too harsh. We conclude Respondent shall receive a definite suspension of two years and shall be responsible for the payment of costs.

FACTS

Respondent faced formal disciplinary charges in connection with the following six matters:

Matter I

Respondent was hired to help a separating couple obtain a custody arrangement with relatives that would allow their child to stay within his current school district until the end of the school year. Respondent later represented the husband in his separation and his divorce. A custody dispute subsequently arose when the relatives wanted to retain custody of the couple's child and a consent order was improperly filed granting full custody to the relatives. Respondent admittedly did not review the clocked copy of the consent order regarding custody and did not advise the parties regarding a conflict of interest. Further, he failed to timely respond to the complaint in this matter or to respond to the notice of full investigation. The subpanel concluded Respondent had violated the following Rules of Professional Conduct contained in Rule 407, SCACR: Rule 1.1 (Competence); Rule 1.3 (Diligence); Rule 1.7 (Conflicts of Interest); and Rule 8.1 (Disciplinary Matters).

Matter II

Respondent admits that he failed to respond to the initial inquiry from the Office of Disciplinary Counsel (ODC), the Treacy[1] letter, and the notice

[1] In re Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982). A Treacy letter "point[s] out that the failure to respond to ODC constitutes sanctionable conduct." In re Cabaniss, 369 S.C. 216, 217, 632 S.E.2d 280, 281 (2006).

of full investigation in this matter. No other allegations of misconduct remain. The subpanel concluded Respondent violated Rule 8.1 (Disciplinary Matters) of the Rules of Professional Conduct, Rule 407, SCACR.

Matter III

Respondent stipulated to the following facts. Respondent represented a client in a civil matter that was originally filed by another attorney. Respondent failed to act with diligence in obtaining an order of substitution. Once substituted, he entered into a verbal agreement with opposing counsel that he would not respond to discovery requests until a motion for partial summary judgment was resolved, but he did not confirm this in writing or advise his client of the alleged agreement. Respondent also failed to file a reply to the motion for partial summary judgment, although he attended the hearing. After partial summary judgment was granted against the client, the client asked Respondent to file an appeal. Respondent told the client that she should find another attorney for the appeal because he did not handle appellate work and his fee arrangement limited the scope of his representation. The client told Respondent that she did not think she could get another attorney. The client later filed a pro se notice of appeal with the South Carolina Court of Appeals while Respondent was hospitalized. Respondent filed a motion to be relieved as counsel in which he stated the client had "proceeded on her own without the advice or knowledge of counsel." He also had the client sign a release stating she had no complaint about him, although the client had a grievance pending against him at the time. Respondent later moved to be relieved from the remainder of the circuit court case that had not been disposed of by partial summary judgment and he did not respond to the client's inquiries about the case or to the client's request for a refund of attorney's fees.

Respondent did not respond to the initial inquiry in this matter from ODC, the Treacy letter, or the notice of full investigation. The subpanel found Respondent had violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (Competence); Rule 1.2 (Scope of Representation); Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.8(h) (Prohibited Transactions); Rule 3.3 (Candor to the Tribunal); Rule 8.1 (Disciplinary Matters); Rule 8.4(d) (Dishonesty, Fraud, Deceit, or

Misrepresentation); and Rule 8.4(e) (Conduct Prejudicial to the Administration of Justice).

With regard to Rules 1.1, 1.2, 1.3, and 1.4, the subpanel noted Respondent admitted he failed to diligently pursue portions of the client's case and to adequately communicate with her, and he admitted he failed to comply with requests for information from ODC. The subpanel found Respondent violated Rule 1.8(h) when he presented the client a document containing language absolving him of liability for his representation and asked her to sign it without independent representation. With regard to Rule 3.3, the subpanel stated, "[W]e find it likely that Respondent mischaracterized the grounds for his motion to be relieved in [the client's] appeal as her conduct in proceeding 'on her own without the advice or knowledge of counsel' when[] she was likely proceeding on Respondent's advice and with his knowledge."

Matter IV

Respondent represented a client in a divorce matter in which opposing counsel served Respondent with a counterclaim and a subpoena for medical records. At the disciplinary hearing, Respondent stated he had or assumed he had responded to the counterclaim and the subpoena. The documents were not in the client file and Respondent left the hearing agreeing to locate the documents and send them to ODC.

A reply and two letters addressed to opposing counsel were subsequently faxed to ODC by Respondent's secretary. The three documents were not signed by Respondent. ODC challenged the authenticity of the documents. Respondent admitted the documents were fabricated and backdated, but stated he believed his secretary might have fabricated the documents as an act of revenge.

After reviewing the evidence, including the fact that Respondent had admitted the documents sent to ODC were fabricated, the subpanel concluded that regardless of whether the documents were personally fabricated by Respondent or someone else, the documents came from Respondent's office on his letterhead and he was responsible for their submission to ODC. The

subpanel explained: "We may be unable to determine that ODC has proved Respondent fabricated the documents, however, the totality of the evidence presented makes it difficult for us to free the Respondent from any responsibility."

The subpanel stated Respondent had admitted that his conduct did not comply with his ethical obligations under the Rules of Professional Conduct, Rule 407, SCACR, citing Rule 5.3 (Responsibilities Regarding Non-Lawyer Assistants) and Rule 8.1 (Disciplinary Matters). The subpanel further found that, based on Respondent's level of involvement in the fabrication of documents sent to ODC, he had violated Rule 8.4(d) (Dishonesty, Fraud, Deceit, or Misrepresentation) and Rule 8.4(e) (Conduct Prejudicial to the Administration of Justice).

Matter V

A client hired Respondent to represent him in a domestic matter and to assert a malpractice action against a prior attorney who had handled the case. Respondent obtained a favorable outcome for the client in the domestic matter, but he admitted that he failed to competently and diligently pursue the malpractice claim and that he should have moved to withdraw from the malpractice case. Respondent conceded that, among other things, he failed to respond to discovery requests, to a motion to compel discovery, and to requests from the court regarding the status of the case. He also failed to respond to a motion for summary judgment and to attend a hearing on the motion, to advise the client that summary judgment had been granted, and to file an appeal.

The subpanel found that Respondent had admitted in his answer sufficient facts to support the conclusion that he had violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (Competence); Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.5 (Fees); Rule 3.1 (Meritorious Claims and Contentions); Rule 3.2 (Expediting Litigation); Rule 3.4(c) (Disobedience of Obligation under the Rules); and Rule 3.4(d) (Failure to Comply with Discovery Requests).

Matter VI

Respondent admitted that he settled a client's claims without withholding or paying the costs and fees owed under a lien to a prior attorney who handled the matter, despite receiving notice of the lien from the prior attorney and a copy of the client's signed acknowledgement of the obligation. The subpanel concluded Respondent violated Rule 1.15 (Safekeeping Property) of the Rules of Professional Conduct, Rule 407, SCACR.

After establishing the rules that had been violated by Respondent, the subpanel considered both mitigating and aggravating circumstances before determining the appropriate sanction to recommend for Respondent.

In mitigation, the subpanel considered the testimony of Respondent's two character witnesses, a bailiff at his local courthouse and a detective with a local police department. Both witnesses testified that, in their opinions, Respondent was an honest, law-abiding citizen.

In aggravation, the subpanel considered three factors: (1) the egregiousness of some of the rule violations, (2) the apparent pattern of other rules violations, and (3) Respondent's disciplinary history.

First, the subpanel found Respondent's misconduct involved some of the most serious violations a lawyer can commit, including allowing the fabrication of documents, making false and misleading statements, and failing to cooperate in a disciplinary investigation. Second, the subpanel found Respondent appears to have a pattern of committing some of the more routine violations, such as failing to adequately communicate with clients, to diligently pursue his clients' interests, and to provide competent representation. Third, Respondent's disciplinary history was considered the most significant factor. The subpanel noted that in 2000 he was given a letter of caution with a finding of minor misconduct and in 2001 he received an admonition. In both of the prior instances Respondent failed to cooperate in the disciplinary investigations.

After considering the foregoing, the subpanel recommended that (1) Respondent be indefinitely suspended from the practice of law,

(2) Respondent be ordered to pay the costs of this proceeding, and (3) an attorney be appointed to protect the interests of Respondent's clients. The full panel adopted the findings of the subpanel.

LAW

In his brief, Respondent challenges two of the findings and the recommendation of an indefinite suspension.

"The authority to discipline attorneys and the manner in which the discipline is given rests entirely with this Court." In re Tullis, 375 S.C. 190, 191, 652 S.E.2d 395, 395 (2007). The Court "has the sole authority . . . to decide the appropriate sanction after a thorough review of the record." In re Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000). "The Court is not bound by the panel's recommendation and may make its own findings of fact and conclusions of law." In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008). A disciplinary violation must be proven by clear and convincing evidence. In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006); see also Rule 8 of Rule 413, SCACR ("Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel.").

I. Mischaracterization in Motion to be Relieved as Counsel.

Respondent first argues the panel erred in finding he violated Rule 3.3 of the Rules of Professional Conduct, Rule 407, SCACR, in Matter III by mischaracterizing the basis for his request to be relieved as counsel. In the motion he filed with the South Carolina Court of Appeals, Respondent stated the client had "proceeded on her own without the advice or knowledge of counsel." Respondent asserts the panel found the statement was true and the report on its face demonstrates that ODC failed to establish this violation by clear and convincing evidence. We agree.

The subpanel noted that the client in Matter III had filed a pro se notice of appeal during Respondent's hospitalization and that "Respondent did not know [the client] had done this and did not advise her about it at the time because of his medical condition." The subpanel found Respondent's

statement in his motion was truthful: "We note that the statement in the motion to be relieved as counsel was true. [The client] did, in fact, proceed to actually file the appeal without the advice or knowledge of the Respondent. He was in the hospital incommunicado at the time."

The subpanel further found, however, that Respondent did advise his client about an appeal at some point, even if he did not do so at the time the client actually filed a notice of appeal. The subpanel noted: "In fact, [the client] had received advice from Respondent that she could appeal, but that he would not be able to represent her on appeal." The subpanel concluded, and the panel agreed, that Respondent had, therefore, violated Rule 3.3 (Candor to the Tribunal): "With regard to Rule 3.3, we find it likely that Respondent mischaracterized the grounds for his motion to be relieved in [the client's] appeal as her conduct in proceeding 'on her own without the advice or knowledge of counsel' when[] she was likely proceeding on Respondent's advice and with his knowledge."

The subpanel's finding that Respondent "likely" mischaracterized the ground for his motion to be relieved does not meet the clear and convincing standard of proof. This is especially true in light of the fact that the subpanel found Respondent's statement that he did not know about the client's decision to proceed with a pro se appeal was, in fact, true. The subpanel implied that Respondent's statement was a mischaracterization because he spoke to the client about an appeal at some point, although not necessarily when she decided to proceed pro se. We conclude Respondent's statement simply advised the tribunal that he had no involvement in the client's filing of a pro se appeal and that there is no sanctionable conduct in this instance.

II. Submission of Falsified Documents to ODC.

Respondent next argues the panel erred in finding he violated the Rules of Professional Conduct in Matter IV by being involved in the submission of fabricated documents to ODC. Respondent asserts (a) ODC failed to prove he fabricated the documents; (b) there was insufficient proof that he submitted the false documents to ODC; (c) the testimony of his secretary was not credible; and (d) the panel applied the wrong standard of proof in finding he violated Rules 8.4(d) and (e) of Rule 407, SCACR.

After reviewing the testimony, we find there is clear and convincing evidence that Respondent allowed the submission of falsified documents to ODC. Respondent's secretary testified in detail about the circumstances surrounding the faxing of the backdated documents to ODC. She stated Respondent sent her to the courthouse to retrieve the client's file, and when she returned Respondent told her the documents in question had "magically" appeared. Respondent asked her to sign the letters and fax them to ODC, which she did. Respondent then shredded the originals. In contrast, Respondent testified that he did not produce the documents and had no knowledge of them before they were sent to ODC as he did not review them. He stated his secretary might have fabricated the documents as a means of revenge against him.

Respondent contends the panel applied the wrong burden of proof because, in the report prepared by the subpanel, it is stated: "We may be unable to determine that ODC has proved Respondent fabricated the documents, however, the totality of the evidence makes it difficult for us to free the Respondent from any responsibility." Respondent asserts this shows a mere preponderance of the evidence standard was applied rather than a clear and convincing evidence standard. We disagree. The subpanel (and panel) found Respondent was involved in the submission of the admittedly falsified documents, regardless of whether Respondent personally prepared them.

This conclusion is supported by the following evidence relied upon by the subpanel, which noted (1) the format of the falsified letters does not match the format typically used by Respondent's secretary, such as the signature line and the initials indicating who prepared the letter; (2) the properties on the electronic version of the documents indicate they were prepared at a time when the secretary's cell phone records show she was not in the office; (3) Respondent's disciplinary history reveals a pattern of attempting to place blame on his staff for his own conduct; and (4) Respondent testified falsely regarding a number of inconsequential issues, only to retract his testimony when ODC pointed out his contrary statements in his prior appearances. Accordingly, we find there is clear and convincing

evidence indicating Respondent was involved in the submission of falsified documents to ODC, which is sanctionable conduct.

III. Appropriate Sanction.

Respondent lastly asserts the panel's recommended sanction of an indefinite suspension from the practice of law is too harsh in light of his violations and his admission of certain facts in these matters. We adopt the findings of the panel as to the determination of misconduct in each of the above matters except as to Matter III. As for Matter III, we find there does not exist clear and convincing evidence that Respondent mischaracterized the basis for his motion to be relieved as counsel and thus make no finding of misconduct in that regard.

Based on the remaining violations and the mitigating and aggravating factors, particularly Respondent's initial failure to cooperate in this proceeding, we find an appropriate sanction is a definite suspension from the practice of law for two years. Within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of this Court showing that he has complied with Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR (regarding the duties of an attorney following disbarment or suspension). Within thirty (30) days of the date of this opinion, Respondent shall pay the costs incurred by ODC and the Commission in the investigation of these matters.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Denmark Municipal Court
Judge Myron V. Anderson, Respondent.

Opinion No. 26552
Heard September 18, 2008 – Filed October 13, 2008

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and James B. Bogle, Jr., Senior Assistant Attorney General, both of Columbia, for Office of Disciplinary Counsel.

The Honorable Myron V. Anderson, of Denmark, pro se.

PER CURIAM: In this judicial disciplinary matter, the Commission on Judicial Conduct Panel (the Panel), recommended that respondent, Myron V. Anderson, be removed from office. We agree respondent committed judicial misconduct, but we impose a public reprimand which is the most severe sanction we currently are able to impose under the circumstances.[1] After a

[1] After oral argument in this case, respondent submitted his resignation to the Town of Denmark, effective September 30, 2008. Because the Town accepted respondent's resignation, a public reprimand is the most severe sanction available. See, e.g., In the Matter of Gravely, 321 S.C. 235, 467 S.E.2d 924 (1996) ("A public reprimand is the most severe sanction that can be imposed when the respondent no longer holds judicial office.").

period of ninety (90) days from the date of this opinion, the Town of Denmark may reappoint respondent to the position of municipal court judge.

FACTS

The Office of Disciplinary Counsel filed formal charges in January 2006 against respondent.[2] Respondent wrote a letter in February 2006 acknowledging receipt of the formal charges. In this letter, respondent contended he had not committed misconduct and requested a hearing. Respondent, however, failed to attend the hearing held on September 17, 2007. The Panel thereafter issued its report and recommended that respondent be removed from office and be required to pay the costs of the proceedings.

The following facts are taken from a stipulation of facts between respondent and Disciplinary Counsel wherein respondent admitted certain allegations regarding two separate matters.

Motorist Matter

On August 19, 2004, respondent was about to enter Highway 321 from his driveway when he noticed a pick-up truck traveling toward Denmark at what he thought was a high rate of speed. Respondent estimated the truck's speed to be 100 miles per hour. Once he entered the highway himself, respondent observed the truck attempting to pass slower vehicles, almost causing some oncoming cars to veer off the road.

Gregory Brown was driving the truck. Brown eventually stopped at a red light in Denmark. Respondent pulled up on the left side of the truck, looked at Brown, and shook his head in a disapproving manner. Brown rolled down the window and asked what respondent was looking at, to which respondent replied, "I'm looking at you," and made a comment about Brown's driving. Brown responded that he did not care what respondent thought, to which respondent replied: "You might ought to care, you might

[2] Respondent has served as the Municipal Judge for the Town of Denmark in Bamberg County since 2003.

run into me at some point." When Brown asked why, respondent said that he was the municipal judge for Denmark.

The light changed, and as the truck pulled forward, respondent turned right, across the traffic lane and pulled in behind the truck to an adjacent parking lot. According to respondent, he pulled off the road in order to retrieve his cell phone, which had slid off the passenger seat, so he could call police.

As respondent exited his vehicle, he noticed the truck coming backward toward him. Respondent assumed the truck was trying to run over him, reported that it narrowly missed him and would have hit him had he not jumped out of the way. According to Brown, however, he did not know who respondent was or what he was doing, and he drove backwards to keep respondent in front of him in order to see what respondent was doing.

After additional verbal exchange between respondent and Brown, respondent entered his vehicle, drove through a red light, and proceeded to the Denmark police department where respondent reported that someone had tried to run over him. An officer accompanied respondent back to the scene, and a bystander reported that the truck had gone toward Barnwell. The bystander gave them Brown's license plate number. Respondent then went to the local magistrate's office and began the process of taking out a warrant against Brown for the offense of threatening a public official.

Brown was stopped by police a short while later in Barnwell. A Denmark police officer brought Brown back to the magistrate's office where respondent was seeking a warrant.

The presiding magistrate examined the applicable statute and determined that a warrant for the offense of threatening a public official should not be issued and suggested that perhaps another charge would be more appropriate. After some discussion, the officer issued a reckless driving ticket to Brown. The magistrate set bond, and Brown was transported back to his truck. Brown subsequently mailed in a $200 bond, which was forfeited; he was convicted for reckless driving.

Respondent asserted to Disciplinary Counsel that his intention was to dissuade Brown from further dangerous driving that he believed was an imminent threat to other motorists. Respondent acknowledges that reference to his judicial office was not appropriate.

Foreclosure Matter

This matter relates to a foreclosure action on respondent's marital home which was titled solely in the name of his wife.

On October 6, 2004, a *lis pendens* and mortgage foreclosure action were filed concerning the marital home. An Order and Judgment of Foreclosure and Sale were filed on February 17, 2005, and the home was scheduled to be sold at public auction on March 7, 2005. However, the sale was delayed nearly a year by three bankruptcy filings, each of which was dismissed.

The home was eventually auctioned on February 6, 2006. The successful bidder was the plaintiff in the foreclosure action, which then assigned its rights to the Federal National Mortgage Association (FNMA). On February 15, 2006, the property was deeded to FNMA, and the next day, the Referee issued an "Order for Writ of Assistance and Writ of Assistance" directing the occupants to vacate the property on or before March 20, 2006.

By letter dated February 15, 2006, respondent represented to counsel for the plaintiff that respondent had purchased the subject property on February 3, 2006. The letter further stated that a deed was signed and recorded on that date at the Bamberg County courthouse. Respondent requested that plaintiff's counsel file a motion to vacate the sale. Counsel gave four extensions of time for the occupants to vacate the property, extending the date until May 19, 2006.

When the broker arrived at 9:00 a.m. on May 19, 2006, to take possession of the property, respondent was present and produced a document titled "Motion to Dismiss Order of Writ of Assistance and Writ of

Assistance;" respondent told the broker it had been filed that morning. For this motion, respondent used the same docket number as the foreclosure action, but styled the caption to show himself as the plaintiff, the original plaintiff as defendant, and FNMA as an additional defendant. Respondent, however, had never been a named party to the foreclosure action and he did not serve any of the parties with the motion. Moreover, he made representations in the motion that were factually incorrect, including that he was the record owner of the property. Respondent's actions delayed the eviction which ultimately occurred on May 22, 2006.

Respondent told Disciplinary Counsel that he researched the Internet for advice on foreclosure actions and this research gave him the idea that his wife should deed the property to him. Respondent believed the transfer of title was effective because it had been accepted at the courthouse and he subsequently was shown as the property owner on tax records. Respondent thought his actions were legitimate methods to resolve the foreclosure and he had intended to procure the financing necessary to avoid foreclosure.

LAW

Respondent's failure to appear at the hearing before the Panel results in the factual allegations being deemed admitted by respondent. Rule 24, the Rules for Judicial Disciplinary Enforcement (RJDE), Rule 502, SCACR.

By his conduct, respondent has violated the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (judge shall uphold integrity of the judiciary); Canon 1A (judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved); Canon 2 (judge shall avoid impropriety and the appearance of impropriety in all activities); Canon 2A (judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2B (judge shall not allow family, social, political or other relationships to influence the judges judicial conduct or judgment); Canon 4 (a judge shall conduct extra-judicial activities so as to minimize the risk of conflict with

judicial obligations); Canon 4(A)(1) (a judge shall conduct extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge); Canon 4(A)(2) (a judge shall conduct extra-judicial activities so that they do not demean the judicial office).

By violating the Code of Judicial Conduct, respondent has also violated Rule 7(a)(1), RJDE.

CONCLUSION

We find respondent's misconduct warrants a public reprimand which, as previously noted, is the harshest punishment we can give respondent due to his recent resignation. See In re Gravely, supra. This sanction is imposed with the limitation that respondent may not hold judicial office for ninety (90) days from the date of this opinion. At the end of this 90-day term, the City of Denmark is at liberty to reappoint respondent as municipal court judge.

PUBLIC REPRIMAND.

TOAL, C.J., WALLER, PLEICONES, BEATTY, and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Irene E. Armstrong,	Respondent,
v.	
Atlantic Beach Municipal Election Commission and Retha Pierce,	Respondents,
of whom Retha Pierce is	Appellant.
Retha Pierce,	Appellant,
v.	
Atlantic Beach Mayoral Election of November 6, 2007, Election Commission of the Town of Atlantic Beach and Irene Armstrong,	Respondents.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Opinion No. 26553
Submitted October 9, 2008 – Filed October 10, 2008

AFFIRMED IN PART; REVERSED IN PART

Irby E. Walker, Jr., of Conway, for Appellant.

Amanda A. Bailey and Jessica A. Stokes, of McNair Law Firm, of Myrtle Beach; and David James Canty, of Myrtle Beach, for Respondents.

PER CURIUM: Irene Armstrong and Retha Pierce were candidates for mayor of Atlantic Beach. Pierce was certified the winner by a one vote margin. Armstrong filed a protest of the election, and the Atlantic Beach Municipal Election Commission ordered a new election. Both Armstrong and Pierce appealed the Commission's decision, and the appeals were consolidated before the circuit court. In affirming the decision of the Commission, the circuit court modified the decision to require a *de novo* election, with the filing period for candidates to be reopened.

Pierce has appealed the order of the circuit court. We affirm the decision of the circuit court upholding the Commission's decision to order a new election. However, we reverse the decision of the circuit court requiring a *de novo* election be held.

The record supports the finding that four voters were denied the right to vote despite the fact they met the residency requirement of S.C. Code Ann. § 7-6-610(3) (Supp. 2007). Because Pierce won the election by one vote, this renders the result of the election doubtful and requires a new election. *Gecy v. Bagwell*, 372 S.C. 237, 642 S.E.2d 569 (2007); *Taylor v. Town of Atlantic Beach Election Comm'n*, 363 S.C. 8, 609 S.E.2d 500 (2005). Therefore, the circuit court judge properly affirmed the decision ordering a new election.

However, the circuit court judge improperly considered allegations of fraud as well as media reports of criminal charges not presented to the Commission in the election protest. *Taylor v. Town of Atlantic Beach Election Comm'n*, 363 S.C. 8, 609 S.E.2d 500 (2005) (the circuit court may not consider issues which were not raised to the

Commission). After considering these facts, the circuit court judge indicated he was invoking the court's equitable powers and ordered the election be conducted *de novo* and the filing period for candidates be reopened.

The only relief the Commission may order is "a new election as to the parties concerned." S.C. Code Ann. § 5-15-130 (2004). The circuit court does not have the authority to order any further relief. Accordingly, the circuit court judge erred in ordering the reopening of the filing period for candidates for mayor. We, therefore, reverse that portion of the circuit court's order requiring a *de novo* election.

AFFIRMED IN PART; REVERSED IN PART.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Federal Financial Company, a general partnership, Respondent,

v.

Carol D. Hartley, individually and as trustee for the Daniel Wayne Hartley (a/k/a D. Wayne Hartley) Trust; Anita Beth Hartley, individually and as Trustee for the Daniel Wayne Hartley (a/k/a D. Wayne Hartley) Trust; Daniel Wayne Hartley (a/k/a D. Wayne Hartley); South Carolina Employment Security Commission; Charleston County Business License User Fee Dept.; Kenneth Smith d/b/a Servpro of North Charleston; Alliance Mortgage Company; Lori A. Hartley; Kenneth W. Day; Wachovia Bank, National Association; Thomas B. Daniels (a/k/a Thomas Daniels); and John Doe and Mary Roe, fictitious names used to designate all other defendants whose names are unknown, and persons in the military service within the meaning of Title 50, United States Code, commonly referred to as the Soldiers and Sailors Civil Relief Act of 1940, as amended, if any, and the unknown heirs at law, devisees,

widows, widowers, executors, administrators, personal representatives, successors, and assigns, firms or corporations of any of the defendants who may be deceased, and any and all other persons claiming any right, title estate, interest in or lien upon the Complaint or any part thereof, Defendants,

Of whom

Carol D. Hartley, individually and as trustee for the Daniel Wayne Hartley (a/k/a D. Wayne Hartley) Trust; Anita Beth Hartley, individually and as Trustee for the Daniel Wayne Hartley (a/k/a D. Wayne Hartley) Trust; Daniel Wayne Hartley (a/k/a D. Wayne Hartley); and Thomas B. Daniels (a/k/a Thomas Daniels) are Appellants.

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 26554
September 17, 2008 – Filed October 13, 2008

REVERSED

David K. Haller, of Haller Law Firm, of Charleston, and Lawrence E. Richter, Jr., of The Richter Law Firm, of Mt. Pleasant, for Appellants.

Merrill Anthony Cox, of Cox Law Firm, of Goose Creek, for Appellants.

Timothy A. Domin, of Charleston, for Respondent.

JUSTICE PLEICONES: Respondent brought this declaratory judgment action to determine the validity of its mortgage, and the priority of its mortgage and one given by appellant Daniels on property owned by appellant Hartley.[1] Hartley and Daniels appeal a master's order finding respondent's mortgage is valid, and has priority over Daniel's mortgage. We reverse.

FACTS

Respondent held a mortgage on property owned by Hartley. The property was sold at a tax sale to the Forfeited Land Commission (Commission)[2] in 1999. Both respondent and Hartley denied receiving notice of the sale[3] and in June 2000 they agreed to modify certain of the mortgage's terms. While respondent was given timely notice of the expiration of the redemption period in August 2000, neither it nor Hartley

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[1] For simplicity's sake we refer to Carol Hartley and the other Hartley appellants as Hartley in this opinion.

[2] S.C. Code Ann. §§ 12-59-10 et seq. (2000). Each county has a Commission which exists to bid on real property otherwise unsold at a tax sale (§ 12-51-55), and to hold title to that property as an asset of the county and then sell or dispose of the property on such terms and conditions as appear to be in the county's best interest. See S.C. Code Ann. §§ 12-59-10, -20 and -40 (2000).

[3] The sale's validity is not at issue here.

redeemed the property within a year after the sale as permitted by S.C. Code Ann. § 12-51-90 (Supp. 2007). After the year passed, the Charleston County Delinquent tax collector deeded the property to the Commission in December 2000. See S.C. Code Ann. § 12-51-130 (Supp. 2007). Hartley continued to make payments on the mortgage through August 2001. She purchased the property from the Commission in February 2002 and in July 2003 executed a note and mortgage in favor of Daniels. Respondent brought this declaratory judgment action in 2005.

Pursuant to S.C. Code Ann. § 12-51-160:

> In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of the sale as provided in Section 12-51-90(C).

The two year limitation in this statute is the period in which an owner who lost title to the property through a tax sale may bring an action to recover that property. Corbin v. Carlin, 366 S.C. 187, 620 S.E.2d 745 (Ct. App. 2005). Once two years have passed after the sale, the sale is not a cloud on the property's title. Wilson v. Moseley, 327 S.C. 144, 488 S.E.2d 862 (1997).

ISSUE

> Whether the master-in-equity erred in holding that respondent holds a valid first mortgage on the property?

ANALYSIS

The master characterized Hartley's reacquisition of the property from the Commission not as a "purchase," but as a "redemption." By

characterizing Hartley as a "redeemer" rather than a "purchaser," the master concluded the respondent's mortgage was not cancelled but retained its status as the first lien on the property. The master also held "assuming Hartley or her representative appeared and was the successful bidder at the delinquent tax sale, in South Carolina 'a mortgagor cannot, by his negligence or fraud, suffer the mortgaged lands to be sold for taxes and then, by purchase at tax sale…acquire a title which he may set up to defeat the mortgagee's lien….'" citing Interstate Bldg. & Loan Ass'n v. Waters, 50 S.C. 459, 468 27 S.E. 948, 951 (1897).

We address the master's reasoning in reverse order. First, the master hypothesized that had Hartley bid at the tax sale as part of a negligent or fraudulent scheme to defeat respondent's mortgage, then respondent's mortgage would still be valid. In point of fact, however, neither Hartley nor her representative appeared at the tax sale: the property was sold to the Commission. Moreover, there is no evidentiary support in the record for the proposition that Hartley was a participant in any fraud to have the land sold at a tax sale, let the redemption period run, and then repurchase the property from the Commission in order to remove respondent's mortgage. In fact she continued to make payments to respondent for 22 months after the tax sale, lending credibility to her testimony that she was unaware of the sale and subsequent tax deed. The master's findings and conclusions are premised on the hypothesis that Hartley purchased the property at the tax sale, and the suggestion that she was engaged in a "deliberate scheme…to defeat [respondent's] lien." Neither the hypothesis nor the master's suggestion is supported by any evidence in the record.

The master also found Hartley redeemed the property rather than purchased it from the Commission. This is erroneous. The statutory redemption period ran from October 4, 1999 to October 5, 2000. See S.C. Code Ann. § 12-51-90. After the redemption period passed, the property was deeded to the Commission, and under § 12-51-160, that deed was *prima facie* evidence of good title. Moreover, Hartley purchased the property from the Commission at the price it set; she did not redeem the property "by paying to the person officially charged with the collection of delinquent taxes,

assessments, penalties, and costs… [plus statutory] interest…," the procedure when property is redeemed following a tax sale. § 12-51-90.

Implicit in the master's order is a suggestion that the Commission breached its statutory duty to sell property, which it owns by virtue of a tax deed, when the sale and its terms "appear to be in the best interest of the county…." § 12-59-40. There is no claim, much less any evidence, that the Commission, which is not a party to this suit, did anything improper in selling the property back to Hartley. Moreover, the evidence does not support the master's finding that Hartley "made arrangements with the 'RMC man' to pay the delinquent taxes." Rather, Hartley testified that while she went to the "RMC man" to see if she could pay the delinquent taxes, she learned she must instead purchase the property from the Commission.

CONCLUSION

We reverse the master's order which characterized Hartley's reacquisition of the property as a redemption rather than a sale and consequently concluded that respondent's mortgage was valid.[4] We hold that the tax sale extinguished respondent's mortgage, and that Hartley's purchase of the property from the Commission did not resurrect it. Accordingly, Daniel's mortgage is the first lien on the property. The order under appeal is

REVERSED.

TOAL, C.J., WALLER, BEATTY and KITTREDGE, JJ., concur.

[4] Respondent raises an additional argument on appeal to sustain the master's order. Exercising our discretion, we decline to consider this contention. E.g., Gecy v. Bagwell, 372 S.C. 237, 642 S.E.2d 569 (2007). Even if we were to consider this claim on the merits, it would not result in an affirmation of the appealed order.

The Supreme Court of South Carolina

In the Matter of Heather Anne Glover, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(c), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Thomas E. Player, Jr., Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Player shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Player may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law

office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Thomas E. Player, Jr., Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Thomas E. Player, Jr., Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Player's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

October 1, 2008

The Supreme Court of South Carolina

In re: Amendment to Rule 401,
South Carolina Appellate Court Rules

O R D E R

Pursuant to Rule 401, South Carolina Appellate Court Rules, students at the University of South Carolina School of Law and the Charleston School of Law may represent and assist indigent defendants and State agencies under the supervision of the Clinical Legal Education programs at each respective school.

The South Carolina Commission on Alternative Dispute Resolution has proposed amending Rule 401 to allow eligible law students to serve as mediators in certain matters. The proposed amendment permits an eligible law student to mediate a dispute under the supervision of an on-site attorney who is licensed to practice law in South Carolina and holds a current certification in mediation from the Board of Arbitrator and Mediator Certification. The student must also complete a forty-hour mediation training program approved by the Board of Arbitrator and Mediator Certification in order to be eligible to participate in a mediation program.

Pursuant to Article V, § 4, of the South Carolina Constitution, we hereby amend Rule 401, South Carolina Appellate Court Rules, as set forth in the attachment to this Order.

The amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

Columbia, South Carolina
October 10, 2008

RULE 401
STUDENT PRACTICE RULE

. . .

(c) An eligible law student may engage in other activities, under a lawyer's general supervision, but outside the lawyer's presence, including:

(1) preparation of the pleadings, briefs and other legal documents to be approved and signed by the supervising lawyer;

(2) assisting indigent inmates of correctional institutions in preparing applications and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by that attorney and all documents submitted to the court on behalf of the inmate must be signed by the attorney. Solicitation of representation of indigent inmates shall be a violation of this Rule;

(3) mediate a dispute in a court annexed mediation program; provided the eligible law student has successfully completed a 40 hour mediation training program approved by the Board of Arbitrator and Mediator Certification of the Supreme Court's Commission on Alternative Dispute Resolution, and provided the eligible law student is supervised on-site by an attorney who is licensed to practice law in South Carolina and holds a current certification in mediation from the Board of Arbitrator and Mediator Certification.

. . . .

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex Parte: Joe W. Kent,	Appellant/Respondent.
Leroy E. Capps and Harriette Capps,	Respondents,
v.	
South Carolina Department of Transportation,	Respondent/Appellant.

Appeal From Florence County
J. Michael Baxley, Circuit Court Judge

Opinion No. 4434
Submitted May 1, 2008 – Filed August 28, 2008
Refiled October 6, 2008

AFFIRMED IN PART AND REVERSED IN PART

Charles E. Carpenter, Jr., and Carmen V. Ganjehsani, both of Columbia, for Appellant-Respondent.

William P. Hatfield, of Florence, for Respondents.

D. Malloy McEachin, of Florence, for Respondent-Appellants.

WILLIAMS, J.: In this case, the trial court granted a new trial and issued sanctions for contempt. We affirm in part and reverse in part.

FACTS

This case arises from a motor vehicle accident. A tractor trailer truck driven by Bobby Connor (Connor)[1] made a turn while on a detour road. While making the turn, Connor traversed into the opposing lane of travel. Leroy E. Capps and Harriette Capps (collectively the Capps) were traveling in the opposing lane when the tractor trailer collided with the Capps' vehicle. The Capps filed suit against Connor and the South Carolina Department of Transportation (the SCDOT).[2]

As a basis of their suit, the Capps alleged the SCDOT: (1) knowingly selected a route which could not safely accommodate tractor trailers because the tractor trailers would encroach into the opposing lane of travel; (2) failed to place advance warning signs alerting oncoming motorists of this danger; and (3) failed to modify the detour route to make it safer or failed to choose a safer alternative route.

During the trial, the SCDOT attempted to assert Connor's superseding negligence as a defense. In support of this defense, the SCDOT retained the services of Joe Kent (Kent). Kent is an expert in accident reconstruction and highway engineering related to accidents. Kent testified that an accident report was important in forming the foundation for his opinions.

When asked what factors within the accident report he relied on in arriving at his conclusion, Kent responded, "The orientation of the vehicles and the motion of the vehicles. . . . There was also an estimated speed . . . of 45 [MPH] for Mr. Capps and five [MPH] for Mr. Conner. . . . I also noted

[1] The trial court's order spells Connor's name as "C-o-n-n-o-r" but the court reporter spells his last name as "C-o-n-n-e-r." We will use the former in the opinion except when we quote directly from the record.

[2] The Capps pursued a case against Connor in federal district court.

(sic) that from this report that Mr. Conner was cited for failure to yield right of way." The Capps immediately moved for a mistrial, arguing evidence of whether Connor received a ticket was inadmissible. The trial court denied the Capps' motion for a mistrial but did issue a curative instruction to the jury. Additionally, the trial court issued contempt sanctions in the amount of $1,500 against Kent. Initially, the trial court ordered Kent to pay this amount to the Florence County Humane Society. Subsequently, the trial court determined that payment to the Humane Society did "not further the ends of justice" and ordered payment be made to the Capps' counsel.

The jury returned a verdict in favor of the SCDOT. The Capps moved for a new trial pursuant to Rule 59, SCRCP, and separately under the thirteenth juror doctrine. The Capps specifically asked the trial court to reconsider its denial of the Capps' motion for a mistrial. The trial court granted the Capps' motion for a new trial. Kent and the SCDOT appeal the trial court's rulings. We address each parties' argument in turn.

A. Kent's appeal

Kent argues the trial court committed reversible error when it issued contempt sanctions against him. We agree.[3]

The determination of contempt ordinarily rests within the sound discretion of the trial judge. State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). Contempt is an extreme measure and the power to find an individual in contempt is not to be lightly asserted. Id. at 128, 447 S.E.2d at 216. Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. Id.

[3] The Capps contend this issue is not preserved for review; we disagree. The issue of whether the sanctions were proper was raised to and ruled upon by the trial court; thus, it is preserved for our review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding for an issue to be preserved for appeal it must have been raised to and ruled upon by the trial judge).

at 129, 447 S.E.2d at 217. A willful act is an act "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." Id. (internal quotations omitted). If the primary purpose of the sanctions imposed is to preserve the court's authority and to punish for disobedience of its orders, the contempt is considered criminal. Id. at 128, 447 S.E.2d at 217. Conversely, if the purpose of the sanctions is to coerce obedience to a court order, the contempt is civil. Id. at 129, 447 S.E.2d at 217.

In the instant case, the trial court issued contempt sanctions upon Kent on the basis that Kent deliberately gave inadmissible testimony in the form of Connor's citation. In issuing contempt sanctions, the trial court reasoned that Kent had substantial and continuous involvement in court proceedings as an expert witness over a number of years and should have known that evidence regarding a citation was inadmissible. The following colloquy during the trial indicates the trial court made no inquiry to determine Kent's knowledge regarding the admissibility or inadmissibility of a citation.

> Q: Did you . . . review . . . the accident report in regard to this case?
>
> [Kent]: I did.
>
> Q: Did that . . . have any significance to you in your evaluation?
>
> A: It does. It has basically a description of the vehicles. It has a description of the motions of the vehicles and also it helps clarify the pictures of the accident scene taken by the State Patrol right after that accident that I reviewed. And it reveals in the narrative portion--
>
> [Counsel for the Capps]: I'm going to object. That's hearsay, if your honor please.
>
> [Counsel for the SCDOT]: Your honor, may I respond now?

The Court: Yes, sir.

[Counsel for the SCDOT]: Let me get the rule out but under the rule an expert is entitled to rely on hearsay.

The Court: There is a distinction between relying on it and publishing it counsel.

[Counsel for the Capps]: Plus there's a specific statute.

The Court: What says [sic] you? What say you to that?

[Counsel for the SCDOT]: Your honor I think he would be entitled to testify if he had figures regarding speed for instance. I think he would be able to rely on that and say that's what he relied on in regard to – to a speed. I think he would be able to testify as to how he arrived at his opinion just as the plaintiff's expert testified relying on hearsay.

The Court: All right. Counsel, I'm going to **overrule your objection and allow that**. Again the basis of his opinion is for the jury to determine whether or not that opinion is credible or believable. The court will allow that. You may proceed [Counsel for the SCDOT].

[Counsel for the SCDOT]: Thank you, your honor.

Q: In . . . examining the accident report were there factors that you relied on in arriving at your conclusion in this case?

A: There were.

Q: All right, sir. And . . . what were those?

A: The orientation of the vehicles and the motion of the vehicles as described in the narrative portion and as shown in the diagram. There also was an estimated speed listed by the investigating officer of 45 miles per hour for Mr. Capps and fives miles an hour for Mr. Conner who was driving the tractor trailer who pulled out onto Highway 51. I also noted that – from this report that Mr. Conner was cited for failure to yield right of way.

(emphasis added)

Based upon the testimony at trial and the evidence in the record, we find there is not sufficient evidence to suggest that Kent, in fact, knew the testimony was inadmissible or that he willfully disobeyed a court order. See Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982) ("Contempt results from the willful disobedience of an order of the court, and before a person may be held in contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based."); see also State v. Passmore, 363 S.C. 568, 571-72, 611 S.E.2d 273, 275 (Ct. App. 2005) (applying the requirement of willfulness in the context of criminal contempt). Furthermore, there was no court order forbidding Kent's testimony. In fact, the trial court allowed Kent to testify after overruling the Capps' objection regarding Kent's ability to rely on the narrative portion of the accident report. Kent was not asked a question to which there was a sustained objection and thereafter answered without a ruling from the trial court. Rather, the trial court overruled the objection and allowed Kent to testify.

While we are mindful of the trial court's concern and recognize the possibility of such knowledge of inadmissible evidence by an individual who regularly appears in court, we nonetheless find the extent of such knowledge for the purposes of determining willfulness must be sufficiently established by the record prior to an imposition of a contempt sanction. The extent of Kent's knowledge was not established in the record and may not be established by speculation. Accordingly, we must confine our review to the record presented. Thus, we hold the trial court's decision to impose contempt

sanctions upon Kent lacks evidentiary support and we reverse the sanction.[4] Having adjudicated Kent's appeal, we now turn our attention to the SCDOT's appeal.

B. The SCDOT's appeal

The SCDOT appeals the trial court's grant of a new trial arguing the court misapplied the thirteenth juror doctrine and the court's application of the thirteenth juror doctrine was controlled by an error of law. We need not address this issue.

In the instant case, the trial court granted a new trial based on two separate grounds: (1) pursuant to Rule 59, SCRCP; and (2) pursuant to the court's authority under the thirteenth juror doctrine. On appeal, the SCDOT challenges only one of these grounds: the trial court's reliance on the thirteenth juror doctrine. Since the trial court granted a new trial based on Rule 59, SCRCP, and separately under the thirteenth juror doctrine, we must affirm the trial court's decision to grant a new trial on the basis of Rule 59,

[4] The dissent characterizes the nature of the contempt involved as civil, rather than criminal. Although the trial judge never characterized the contempt as civil or criminal, the movant proceeded as if it were criminal contempt and filed a motion asking the trial court to "reconsider the criminal contempt order." The trial court ultimately issued an order denying reconsideration of the "sanction" imposed but modified its decision as to the payee of the monetary sanction. Arguably, modification of the sanction itself might impact upon its characterization, but the trial court ultimately never characterized its sanction as civil or criminal. While we would normally attempt to ascertain the type of contempt involved for the purposes of our review, we need not characterize the contempt herein in light of our reversal of the sanction since each type of contempt sanction, criminal or civil, requires a finding of willfulness. Therefore, even if we were to agree with the dissent that this proceeding involves civil contempt, we conclude the trial court nonetheless erred in imposing the sanction as the record fails to support a finding of willful conduct.

SCRCP, because that independent ground for a new trial was not also appealed. See Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) (holding when a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case).

Notwithstanding, even if we were to review the court's use of the thirteenth juror doctrine, we nonetheless would affirm since the court possesses broad, inherent authority to grant a new trial for any prejudicial errors committed during the trial as a matter of fundamental fairness. See Howard v. State Farm Mut. Auto. Ins. Co., 316 S.C. 445, 449, 450 S.E.2d 582, 584-85 (1994) (holding the court may order a new trial based upon the erroneous admission of testimony when the record shows error and prejudice). Moreover, the court retains the inherent authority to reconsider its denial of the motion for a mistrial.

CONCLUSION

Accordingly, the trial court's decision is

AFFIRMED IN PART AND REVERSED IN PART.[5]

PIEPER, J., concurs.

THOMAS, J., concurring in part and dissenting in part by separate opinion:

I respectfully dissent. In my opinion the trial court's ruling should be affirmed in full since the record provides evidence supporting the trial court's issuance of civil contempt sanctions against Kent.

"A determination of contempt is a serious matter and should be imposed sparingly; whether it is or is not imposed is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without

[5] We decide this case without oral arguments pursuant to Rule 215, SCACR.

evidentiary support." Haselwood v. Sullivan, 283 S.C. 29, 32-33, 320 S.E.2d 499, 501 (Ct. App. 1984). A decision regarding contempt should be reversed only if it lacks evidentiary support or the trial judge has abused his discretion. Stone v. Reddix-Smalls, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988).

"The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings." Browning v. Browning, 366 S.C. 255, 262, 621 S.E.2d 389, 392 (Ct. App. 2005). A court's ability to find someone in contempt "is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts; and consequently to the due administration of justice." In re Terry, 128 U.S. 289, 303 (1888) (citations omitted), quoted with approval in Miller v. Miller, 375 S.C. 443, 453, 652 S.E.2d 754, 759 (Ct. App. 2007). Those who commit offenses calculated to obstruct, degrade, and undermine the administration of justice are subject to the court's inherent authority to levy contempt, and this power cannot be abridged. State ex rel. McLeod v. Hite, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979). Without the power to find individuals in contempt of court, "the administration of the law would be in continual danger of being thwarted by the lawless." Miller, 375 S.C. at 453-54, 652 S.E.2d at 759 (citing Terry, 128 U.S. at 303).

Contempt results from the willful disobedience of a court order. Lindsay v. Lindsay, 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct. App. 1997). A willful act is one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." Spartanburg County Dep't of Soc. Servs. v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) (citing Black's Law Dictionary 1434 (5th ed. 1979)). The determination of contempt ordinarily resides in the sound discretion of the trial judge. State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). "A finding of contempt . . . must be reflected in a record that is 'clear and specific as to the acts or conduct upon which such finding is based.'" Tirado v. Tirado, 339 S.C. 649, 654, 530 S.E.2d 128, 131 (Ct. App. 2000) (quoting Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982)).

The majority holds the record lacks evidence demonstrating Kent knew a traffic citation is inadmissible in a court of law. I disagree. The majority's finding disregards the courtroom experience Kent presented while being qualified as an expert witness. During his qualification as an expert witness, Kent explained he has testified "a couple of hundred" times in "the areas of accident reconstruction and roadway effect on vehicular accidents." Kent further explained he has evaluated accidents for twenty-two years and even formed his own engineering firm that engages in accident reconstruction.

The record also evinces the willfulness of Kent's utterance. Ignoring his prior courtroom experience, Kent was still aware of the inadmissibility of accident reports since immediately before he announced, "I also noted that – from this report that Mr. Conner was cited for failure to yield right of way," the Capps' counsel made a hearsay objection to the narrative portion of the accident report being published to the jury and the parties argued about the parameters of Kent's testimony. In the ongoing discussion, the trial court noted "there is a distinction between relying on [the accident report] and publishing it [to the jury]." The Capps' counsel also mentioned that a statute prohibits publishing an accident report to the jury. Indeed, Kent displayed his familiarity with the rules of court by admitting he misspoke and stating he had never done that before. After Kent's statement and the ensuing objection, the jury was removed from the courtroom while the Capps' counsel argued for a mistrial. The attorney for SCDOT responded by stating, "I didn't know that was coming in at that time, your Honor."

The majority also disregards the trial court's extensive explanations to the jury regarding the contemptuous conduct and Kent's willfulness in disclosing Connor's citation to the jury. "[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." Widman v. Widman, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001). The trial court patiently explained to the jury its belief Kent knew the comment was inappropriate and still deliberately mentioned the citation with the knowledge that "evidence of whether or not a citation was issued is just inadmissible in any civil trial." In assessing sanctions against Kent for civil contempt, the trial court explained Kent made a "leap far beyond what the court would ever allow in an intentional way from a witness

who's testified many times . . . [and] would well know that evidentiary rule." The trial court also cited Kent's demeanor, which cannot be reviewed on appeal, as support for holding him in civil contempt.

The majority does not fully address whether the sanctions against Kent constituted civil or criminal contempt. I would find the sanctions were civil in nature. "The determination of whether contempt is criminal or civil depends upon the underlying purpose of the contempt ruling." Miller, 375 S.C. at 456, 652 S.E.2d at 761. "In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order." Hicks v. Feiock, 485 U.S. 624, 635 (1988). "If the sanction is a fine, it is remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine." Miller, 375 S.C. at 457, 652 S.E.2d at 761 (citing Floyd v. Floyd, 365 S.C. 56, 75-76, 615 S.E.2d 465, 475-76 (Ct. App. 2005)).

The trial court never referred to the sanctions as criminal contempt. To the contrary, the trial court made efforts to indicate the contempt was civil in its order denying reconsideration of the sanctions when it stated, "the Court has determined that payment to the Humane Society does not further the ends of justice in this case, and instead directs that the payment be made to Plaintiff's counsel, to be credited against the costs of making and prosecuting the motion for a new trial." See Hicks, at 631 ("If it is for civil contempt the punishment is remedial, and for the benefit of the complainant."); Jarrell v. Petoseed Co., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998) ("Civil contempt sanctions serve two functions: to coerce future compliance and to remedy past noncompliance."). In addition to compensating the Capps for Kent's wrongful conduct, the remedial sanction issued by the trial court also resulted in Kent's continued testimony without further mention of the citation issued to Connor.

In light of this court's standard of review, the support found in the record, and the clear explanations given by the trial court, I would affirm the trial court's order in full.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ted Corbett, Appellant,

v.

Jordan William Weaver and
Michael Joel Weaver, Defendants,

Of Whom Michael Joel Weaver
is the Respondent.

Appeal From Florence County
Daniel F. Pieper, Circuit Court Judge

Opinion No. 4440
Heard September 16, 2008 – Filed October 7, 2008

AFFIRMED

E. Leroy Nettles, Sr. and Marian D. Nettles, both of Lake City, for Appellant.

Robert Brown, of Columbia, for Respondent.

WILLIAMS, J.: Ted Corbett (Corbett) brought a negligence action against Jordan William Weaver (Jordan) and Michael Joel Weaver (Michael) following a motor vehicle accident. Corbett asserted Jordan was negligent and sought to assert liability against Michael under the family purpose doctrine. The trial court denied Corbett's motion for a directed verdict as to the applicability of the family purpose doctrine and his motion for a new trial. Corbett appeals the trial court's rulings. We affirm.

FACTS

On April 27, 2004, sixteen-year-old Jordan was driving a 1994 Jeep Wrangler to NAPA Auto Parts to purchase an auto part for his father, Michael. As Jordan was returning to the family home in Timmonsville, South Carolina, he approached a T-intersection with a stop sign. Jordan testified he stopped at the stop sign and looked twice in both directions before turning left onto the main road. At the same time, Corbett was traveling in a northeasterly direction on the main road. As Jordan attempted to turn left onto the main road, the front passenger side of his Jeep collided with Corbett's vehicle. Corbett's vehicle rolled several times rendering him a paraplegic.

Thereafter, Corbett commenced an action against Jordan and Michael (collectively "the Weavers") based on the family purpose doctrine. While Jordan admitted liability based on his negligence, Michael contested liability arguing the family purpose doctrine did not apply.

At trial, it was stipulated that the case would be tried on two issues: (1) the amount of damages Corbett was entitled to and (2) whether Michael was liable pursuant to the family purpose doctrine.

During trial, Jordan testified[1] he normally drove the Jeep and used the Jeep to transport his brother to their school. In addition, Jordan stated his

[1] Because both parties stipulated the issue of liability and were only litigating the issues of damages and the applicability of the family purpose doctrine, the testimony references for Jordan and Michael are excerpts from Jordan and Michael's depositions, which were submitted into evidence during trial.

father gave the Jeep to him as a gift several months before he received his driver's license.

Michael also testified regarding the ownership and use of the Jeep, which was titled in his name. He stated Jordan lived at home on the date of the accident and was going to NAPA Auto Parts to purchase a part for Michael before the accident occurred. Michael also stated he owned three personal vehicles, including the Jeep, and these vehicles were for his use, his wife's use, and his children's use. However, Michael also testified the Jeep was a present to Jordan, as Jordan drove the Jeep more than any of the other family vehicles.

After the Weavers rested, Corbett moved for a directed verdict based on the family purpose doctrine. Corbett argued Michael purchased the Jeep, the Jeep was titled in Michael's name, Jordan was running an errand for Michael at the time of the accident, and the overall use of the vehicle was for family purposes, so Michael, as Jordan's father, should be vicariously liable for Jordan's actions. The trial court denied Corbett's motion finding conflicting testimony was introduced regarding the ownership of the Jeep such that a jury question existed as to whether the family purpose doctrine applied. The trial court charged the jury and specifically discussed the family purpose doctrine. Thereafter, the jury returned a verdict awarding $2,000,000 in actual damages against Jordan but found in favor of Michael and thus awarded no damages against him. Corbett made a post-trial motion for a new trial, which the trial court denied. This appeal follows.

LAW/ANALYSIS

I. DIRECTED VERDICT MOTION

"In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence." Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001). The trial court must view the evidence in the light most favorable to the nonmoving party. Id. at 714, 541 S.E.2d at 860. If the evidence as a whole is susceptible to more than one reasonable inference, the case should be

submitted to the jury. Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002).

When reviewing the denial of a motion for directed verdict, this Court must apply the same standard and view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Id. "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Estate of Carr ex rel. Bolton v. Circle S Enters., Inc., 379 S.C. 31, 39, 664 S.E.2d 83, 86 (Ct. App. 2008). The trial court can only be reversed by this Court when no evidence supports the ruling below or when the ruling is controlled by an error of law. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006).

At trial, Corbett moved for a directed verdict regarding Michael's liability pursuant to the family purpose doctrine. For the family purpose doctrine to apply, the following elements must be proven: (1) the defendant is the head of the family; (2) the defendant owns, furnishes, and maintains a vehicle; (3) the vehicle is for the general use and convenience of the family; (4) the family member has general authority to operate the vehicle for those purposes; and (5) the family member was negligent in the use of the vehicle. Evans v. Stewart, 370 S.C. 522, 527, 636 S.E.2d 632, 635 (Ct. App. 2006). The applicability of the family purpose doctrine is generally a question of fact for the jury to decide, unless no factual issue exists, therefore, making its applicability an issue of law for the trial judge to determine. Id.

In support of his directed verdict motion, Corbett argued the testimony at trial supported Michael's liability under the family purpose doctrine. Corbett argued that Michael was the owner of the vehicle because he purchased and had title to the Jeep. He also argued in the alternative that although Michael had given Jordan the Jeep, it was still used for family purposes. Corbett also made the argument that "[a] young person can't own a vehicle." In response to Corbett's arguments, the Weavers argued there was evidence that Jordan owned the Jeep. Michael and Jordan both testified the Jeep was a gift from Michael to Jordan.

Viewing the evidence in the light most favorable to Michael, a jury issue existed regarding the ownership of the Jeep. The trial court was presented with conflicting evidence concerning ownership of the Jeep, allowing for two reasonable inferences about which party was the owner of the Jeep. The Jeep being titled in Michael's name was not conclusive evidence Michael was the owner of the Jeep, because title alone is not dispositive of ownership. See id., at 528, 636 S.E.2d at 636 (explaining a vehicle titled in one's name is not always indicative of ownership of that vehicle). Furthermore, because there was evidence the Jeep was not provided by Michael for the general use and convenience of the family but rather was a gift to Jordan, a question of fact existed as to whether Michael should be held liable under the family purpose doctrine. See Thompson v. Michael, 315 S.C. 268, 273, 433 S.E.2d 853, 856 (1993) ("Since there is evidence the car was not provided by [the father who is the title-owner] for the general use and convenience of the family but rather was a gift to [the driver's sister], a question of fact exists whether [the father] is liable under the family purpose doctrine.").

One of the elements that must be proven for the family purpose doctrine to apply is that the head of the household owns the vehicle. Evans, 370 S.C. at 527, 636 S.E.2d at 635. With the conflicting evidence, ownership was a proper issue for the jury to determine, making the trial court's decision to deny the directed verdict motion proper. Pond Place Partners, Inc., 351 S.C. at 15, 567 S.E.2d at 888 ("If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.").

II. MOTION FOR A NEW TRIAL

A trial court's order granting or denying a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence or the conclusion was controlled by an error of law. Folkens v. Hunt, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990). When an order pertaining to a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order. Id. at 255, 387 S.E.2d at 267.

As explained above, the record contains conflicting evidence as to who owned the Jeep, which was the basis for the trial court sending that issue to the jury. There was evidence Michael owned the Jeep, but there was also evidence Jordan owned the Jeep because it was a gift. The jury was required to make the decision as to who was the owner and decided Jordan was the owner of the Jeep. Sufficient evidence in the record supports this finding, which makes the trial court's denial of Corbett's motion for a new trial proper. See Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 293, 628 S.E.2d 496, 504 (Ct. App. 2006) (stating if there is any evidence that could support the jury's findings, a motion for a new trial is properly denied).

CONCLUSION

Based on the foregoing, the trial court's decision to deny the motion for a directed verdict and the motion for a new trial is

AFFIRMED.

ANDERSON and KONDUROS, JJ., concur.