

1 **THE PRESBYTERIAN CHURCH IN AMERICA**
2 **STANDING JUDICIAL COMMISSION**

3
4 **CASE 2021-13**

5
6 ***RE PHIL DUDT***

7 ***V.***

8 ***NORTHWEST GEORGIA PRESBYTERY***

9
10 **DECISION ON APPEAL**

11 **April 27, 2022**

12
13
14 **I. SUMMARY OF THE FACTS**

- 15
16 07/16/18 The Midway Presbyterian Church (MPC) Session determined not to invite Dan
17 Crouse to participate in officer training after being nominated for the office of
18 Ruling Elder by RE Dudd.
19
20 08/20/18 A motion to rescind the July 19, 2018 action by the MPC Session not to invite
21 Dan Crouse to the training class failed.
22
23 08/30/18 Dan and Angelia Crouse filed a Complaint that the MPC Session action on July
24 16, 2018 was a violation of the officer training and examination process outlined
25 in the *BCO*.
26
27 01/21/19 The MPC Session denied the Complaint and appointed a Shepherding Committee
28 of five REs and one TE to assist in shepherding Dan and Angelia Crouse.
29
30 02/18/19 Four REs, including RE Dudd, filed a dissent with the MPC Session regarding the
31 denial of the Complaint.
32
33 04/02/19 The Northwest Georgia Presbytery (NWGP) adopted the recommendation of its
34 Judicial Commission that the Complaint be denied.
35
36 04/04/19 Dan Crouse carried his Complaint to the General Assembly.
37
38 10/18/19 The Standing Judicial Commission (SJC 2019-03) ruled that the MPC Session
39 erred in setting aside the nomination of Crouse to be a ruling elder prior to
40 training and examination.
41
42 05/11/20 RE Dudd made a speech at a MPC Session meeting imploring the Session to call a
43 congregational meeting to inform them of the SJC 2019-03 decision, publicly
44 repent, and apologize to Dan and Angelia Crouse. No motion was made related to
45 the speech.
46

1 06/15/20 RE Dudt made a motion at a MPC Session meeting “That the Midway Session
2 inform the Midway Congregation of case 2019-3, the SJC’s decision, and the
3 Session’s formal response. That this be done before the nomination process starts
4 on the 2020 elections.” The motion failed when a substitute motion passed.
5

6 07/08/20 The MPC Session called a Congregational Meeting for July 19, 2020 to elect
7 three assistant pastors as associate pastors.
8

9 07/12/20 Seven days prior to the congregational meeting, RE Dudt emailed the
10 congregation the following (emphasis original):
11

12 RE: The congregational meeting of July 19, 2020
13

14 I am writing to you as an Elder of Midway Presbyterian Church with
15 regards to the congregational meeting set for Sunday 7-19-2020, however
16 I am not representing the Midway Session.
17

18 Whereas: This recommendation was hastily established. A Session
19 meeting was called on July 4, 2020 and the Session met on July 8, 2020 to
20 discuss and decide this matter.
21

22 Whereas: The entire Session was not able to be present for the meeting.
23

24 Whereas: This was not a unanimous decision by the Midway Session and
25 a significant minority is opposed to this motion.
26

27 Whereas: The current pandemic will prohibit full participation by the
28 congregation in said meeting.
29

30 Whereas: According to the Book of Church Order of the PCA (chapter 20-
31 2) “A church shall proceed to elect a pastor in the following manner: The
32 Session shall call a congregational meeting to elect a pulpit committee
33 which may be composed of members from the congregation at large or the
34 Session, as **designated by the congregation.**”
35

36 Whereas: The Standing Judicial Committee of the PCA ruled against the
37 Midway Session and the Northwest Georgia Presbytery in the case of Dan
38 and Angelia Crouse vs. the Northwest Georgia Presbytery (SJC Case
39 2019-03) **for unconstitutionally handling officer nominations.** See
40 pages 44-47 of the following link: [https://pcaga.org/wp-](https://pcaga.org/wp-content/uploads/2020/06/SJC-Report-to-GA-2020-6-9-20.pdf)
41 [content/uploads/2020/06/SJC-Report-to-GA-2020-6-9-20.pdf](https://pcaga.org/wp-content/uploads/2020/06/SJC-Report-to-GA-2020-6-9-20.pdf)
42

43 Whereas: The proposed action will expand the Session to 16 members and
44 unduly enhance the influence of the church staff in the governance of the
45 church. This will give the staff a voting block that will require a

1 supermajority of ruling elders to prevail on any motion including the
2 budget and other financial issues.

3
4 Therefore: I am asking the congregation to support a substitute motion to
5 postpone this meeting until January 2021 to allow the congregation
6 reasonable time to prayerfully consider the church's needs, the men's
7 qualifications, the establishment of a pulpit committee, and the subsidence
8 of the global pandemic to allow for greater congregational participation.
9

10 09/21/20 The MPC Session approved a resolution defining how a member of the Session
11 can dissent from an action of the Session which included, among other
12 requirements, that an elder must first resign from his office if he feels compelled
13 to publicly communicate "dissatisfaction with or any opposition to a decision or
14 action of the Session." Otherwise, the elder would be in violation of vow #5
15 and/or vow #6.
16

17 10/07/20 The MPC Session approved moving forward with process against RE Dudt and
18 issued an indictment with two charges. Those charges are shown below:
19 (1) Violating of his ordination vows (#5, 6) distributing the SJC case
20 2019-03 [Crouse v. NW GA] to the entire congregation against the express
21 will of the Session and therefore failing to be in subjection to his brethren
22 (vow #5), and
23 (2) Violating the ninth commandment and vow #6 in the letter he sent
24 [to the congregation] on July 12, 2020.
25
26

27 10/19/20 RE Dudt pled "not guilty" to the two charges outlined in the indictment.
28

29 10/22/20 Three MPC Session ruling elders requested the Moderator call a meeting for the
30 purpose of considering two motions: (i) approval an independent moderator from
31 the NWGP for the process and trial and (ii) engagement of a court reporter for the
32 trial.
33

34 10/26/20 The MPC Session met to consider the two motions. Both motions failed.
35

36 11/11/2020 The trial commenced at 7:30 pm and concluded at 5:40 am the next day. RE Dudt
37 was found guilty of the two charges in the indictment and censured by indefinite
38 suspension from office. The MPC Session appointed both a Restoration
39 Committee and a Respondents Committee (in case of an appeal). The Session also
40 approved a summary statement of its actions against RE Dudt to be sent to the
41 congregation on November 12, 2020.
42

43 11/12/20 RE Dudt submitted a Notice of Intention to Appeal dated 11/11/2020 with the
44 NWGP Clerk.
45

- 1 11/12/20 MPC Session sent an email to the congregation communicating that RE Dudt had
2 been censured.
- 3
- 4 11/16/20 MPC Session approved a revised statement regarding RE Dudt to send to the
5 congregation.
- 6
- 7 12/07/20 RE Dudt submitted an Appeal with the NWGP Clerk.
- 8
- 9 04/27/20 NWGP Judicial Commission conducted the Appeal Hearing.
- 10
- 11 08/21/20 NWGP approved the Judicial Commission Decision that the MPC Session did not
12 err procedurally or manifest prejudice in its prosecution of RE Dudt.
- 13
- 14 02/11/20 The SJC Panel Hearing was conducted via GoToMeeting. The Panel included TE
15 Coffin, RE Terrell, and TE Waters (chairman). Alternates RE Dowling and TE
16 Kooistra were present. Also present were RE Dudt and RE David who acted as
17 his assistant, and TE Daniel who served as the Respondent’s representative.
- 18

19 **II. STATEMENT OF THE ISSUE**

20

21 At its meeting on November 12, 2020, did the Session of Midway Presbyterian Church err in
22 finding RE Dudt guilty at trial of the two charges in the indictment and thereafter imposing upon
23 RE Dudt the censure of indefinite suspension from office; and at its meeting on August 21, 2021,
24 did Northwest Georgia Presbytery err in approving its Judicial Commission’s decision that the
25 Midway Presbyterian Church Session did not err in its prosecution and censure of RE Dudt?

26

27 **III. JUDGMENT**

28

29 Yes. The decisions of the Session of Midway Presbyterian Church and Northwest Georgia
30 Presbytery are reversed in whole. The SJC renders the decision that should have been rendered,
31 to wit, not guilty. RE Dudt is relieved of his conviction and censure and is restored to the full
32 exercise of his office.

33

34 **IV. REASONING AND OPINION**

35

36 With respect to the guilty verdict, Appellant raises 40 specifications of error on the part of MPC
37 Session and 15 specifications of error on the part of NWGP. Of the specifications of Session
38 error, 14 were sustained (3, 4, 5, 6, 9 in part, 14, 15, 23, 24, 25, 30, 31, 33, 34). Of the
39 specifications of Presbytery error, eight were sustained (1, 3, 4, 5, 7, 13, 14, 15). The
40 specifications of error sustained, taken together, demonstrate clear error on the part of the lower
41 courts with respect to factual findings and matters of discretion and judgment, as well as
42 violations of the Constitution of the PCA, all of which vindicate the Judgment of the SJC in this
43 case. The Session and Presbytery alleged errors will be taken up in turn below.

44

1 In the 1st specification of Session error, Appellant alleges that Session erred in not pursuing a
2 *BCO* 31-2 investigation into his actions, establishing a strong presumption of guilt, and on that
3 basis instituting process.

4 This specification of error is not sustained.

5
6 A Minute Explanatory. *BCO* 32-2 provides that “Process against an offender shall not be
7 commenced unless some person or persons undertake to make out the charge; or unless
8 the court finds it necessary, for the honor of religion, itself to take the step provided for in
9 *BCO* 31-2.” The Session followed the path of the former disjunct.

10
11 In the 2nd specification of Session error, Appellant alleges that Session misrepresented him in the
12 indictment when it charged that RE Dudt had “distributed” the SJC case 2019-03 to the entire
13 congregation.

14
15 This specification of error is not sustained.

16
17 A Minute Explanatory. Providing a link in an email is a commonplace means of
18 document distribution.

19
20 In the 3rd specification of Session error, Appellant alleges that Session erred in failing to
21 demonstrate that the distribution of SJC case 2019-03 to the entire congregation, against the will
22 of the Session, is properly an offense according to *BCO* 29-1.

23
24 This specification of error is sustained.

25
26 A Minute Explanatory. Regardless of the means employed to express its will, Session has
27 no right to make that will a rule requiring obedience from a Session member that is not
28 based upon Scripture. Preliminary Principle 7 declares: “All church power, whether
29 exercised by the body in general, or by representation, is only ministerial and declarative
30 since the Holy Scriptures are the only rule of faith and practice. No church judicatory
31 may make laws to bind the conscience”. The Session had a right to refuse to distribute the
32 SJC decision in question. The Session had no right to forbid RE Dudt from doing so, the
33 5th ordination vow notwithstanding. The promise to be in “subjection to your brethren” is
34 always qualified and limited by “in the Lord.” As the Larger Catechism instructs us, we
35 owe authorities over us “obedience to their *lawful* commands and counsels. . . . (emphasis
36 added, LC 127).” (*BCO* 14-7)

37
38 In the 4th specification of Session error, Appellant alleges that Session erred in finding RE Dudt
39 guilty of the first charge of the indictment, to wit, distributing SJC case 2019-03 to the entire
40 congregation against the express will of the Session, when at trial no evidence of such an express
41 will was forthcoming.

42
43 This specification of error is sustained.

44
45 A Minute Explanatory. “Express” is defined as “Directly and distinctly stated or
46 expressed rather than implied or left to inference: not dubious or ambiguous: definite,

1 clear, explicit, unmistakable.” (*Webster's Third New International Dictionary* (1976)).
2 The ROC did not provide *any evidence* of such an express will. An action by the Session
3 to decline itself to distribute a document does not imply that a Session member is
4 prohibited from such a distribution. In fact, the ROC shows that during the trial,
5 defense’s questioning witnesses on this point was repeated so frequently, with no
6 evidence forthcoming, that the Moderator sought to preempt further pursuit of the matter
7 with witnesses to come: “May we try something on that line of questioning? May we by
8 common consent agree that on that series of questions, there was no explicit mandate to
9 Elder Dudt? Is there any objection? So we will stipulate that there was no explicit
10 mandate to Elder Dudt not to distribute. . . .” Apparently, before he could rule, there was
11 objection voiced; however, the Moderator’s proposal is a clear indication of the state of
12 the evidence-gathering, at least at that late point in the proceedings. Further, the
13 Presbytery Judicial Commission’s written decision plainly grants the point: “In this case,
14 the will of Midway's session, regarding how SJC 2019-03 was to be handled by the
15 leadership of the church, was consistent and recognizable, even if it was not explicit. . . .”
16 The charge in the indictment, however, was that the action was “against *the express* will
17 of the Session.” [emphasis added. Session clearly erred in finding RE Dudt guilty of the
18 first charge of the indictment.

19
20 In the 5th specification of Session error, Appellant alleges that Session erred in finding RE Dudt
21 guilty of the second charge of the indictment, to wit, violating the ninth commandment by
22 including false statements in the July 12 email sent from RE Dudt to the congregation.

23
24 This specification of error is sustained.

25
26 A Minute Explanatory. The ROC does not show evidence for the allegation that there
27 were false statements in the Appellant’s July 12 email. Absent such evidence, the
28 Session’s finding is clearly in error.

29
30 In the 6th specification of Session error, Appellant alleges that Session erred in finding RE Dudt
31 guilty of the second charge of the indictment, to wit, violating the ninth commandment, by the
32 July 12th email as a whole. Appellant alleges that Session, without evidence, found that “The
33 purpose of the Letter (specifically, his use of the SJC decision) was to challenge the competency,
34 credibility, and trustworthiness of the Session. Mr. Dudt did not accurately represent the
35 Session’s process or position. He employed partial truth to bias the congregation against its
36 elders in order to defeat their recommendation at the forthcoming . . . congregational meeting.”

37
38 This specification of error is sustained.

39
40 A Minute Explanatory. Appellant’s purpose in the letter is clearly stated: “I am asking the
41 congregation to support a substitute motion to postpone this meeting until January 2021
42 to allow the congregation reasonable time to prayerfully consider the church's needs, the
43 men's qualifications, the establishment of a pulpit committee, and the subsidence of the
44 global pandemic to allow for a greater congregational participation.” This purpose is
45 misstated in the Session’s indictment: “ in order to defeat their recommendation at the
46 forthcoming . . . congregational meeting.” The Session clearly erred in the judgment

1 made about the content of the email. The ROC does not sustain the claim that Session
2 showed that RE Dudt’s email to the congregation constituted an offense as defined by
3 *BCO* 29-1.
4

5 In the 7th specification of Session error, Appellant alleges that Session erred in finding RE Dudt
6 guilty of the second charge of the indictment, to wit, violating ordination vow 6 when evidence
7 to the contrary, from SJC 2015-11, was prohibited from being introduced at the trial.
8

9 This specification of error is not sustained.

10 A Minute Explanatory. There is no citation in the ROC that sustains this allegation.
11 However, it is of interest to note that the case referred to in the specification shows that
12 the SJC ruled that: “The admonitions given [the accused] as represented in the Indictment
13 could be interpreted as instructing [the accused] not to send any emails regarding church
14 business, not even one composed with temperate language, and with accurate, non-
15 confidential content, and sent to willing recipients. . . . A ban of that scope would be
16 beyond the powers of a Session because that prohibition would have no basis in the
17 general moral regulations of Scripture.” (SJC 2015-11, *Thompson v. S. Florida*, M44GA,
18 p. 539)
19

20 In the 8th specification of Session error, Appellant alleges that Session erred by not investigating
21 the alleged offenses prior to indicting RE Dudt, thus violating *BCO* 31-2.
22

23 This specification of error is not sustained.

24 A Minute Explanatory. See Minute for the 1st specification of Session error.
25
26

27 In the 9th specification of Session error, Appellant alleges that Session erred by not investigating
28 the alleged offenses prior to indicting RE Dudt, thus violating *BCO* 31-2. Further, the
29 specification alleges that the Session erred passing a resolution prohibiting all active officers
30 from publicly disagreeing with the Session. Appellant alleges that this resolution provided a
31 foundation, *ex post facto*, for the accusations against RE Dudt with respect to his July 12th email.
32

33 This specification of error is not sustained, in part, and sustained, in part.
34

35 A Minute Explanatory. As to the first part, concerning *BCO* 31-2, see specification of
36 error 1. As to the second part, it is sustained. The so-called “Talley Resolution” clearly
37 violates *BCO* PP II.7 and WCF 20-2. Such *in thesi* deliverances form no part of the
38 Constitution of the Church and have no binding power. Yet the question of their authority
39 and of their binding power typically at once become a subject of controversy and
40 needlessly divide the Church. A Session cannot authoritatively establish the meaning of
41 the *BCO*, it can only interpret it in light of its history and its sense as received by the
42 Church. No officer can be subject to discipline for disagreeing with, or violating, such a
43 resolution. Further, the Resolution is effectively a bill of attainder, i.e., an act of a
44 legislature declaring a person, or a group of people, guilty of some crime, and punishing
45 them, without a trial, and as such it is invalid. It is instructive to note that a bill of
46 attainder is prohibited in the United States Constitution and that every state constitution

1 also expressly forbids bills of attainder. The *BCO* clearly forbids such a procedure in, for
2 example, 24-7 and Preliminary Principle 8.

3
4 In the 10th specification of Session error, Appellant alleges that Session erred by classifying the
5 alleged offenses as “general” when no heresy or immorality was involved.

6
7 This specification of error is not sustained.

8
9 A Minute Explanatory. Appellant appears to understand the difference between “personal
10 offenses” and “general offenses” (*BCO* 29-3) to be the kind of criminality involved. In
11 fact the difference is concerning the offended: Personal, when one or more particular
12 individuals are the subject; general, when that is not the case.

13
14 In the 11th specification of Session error, Appellant alleges that Session erred by classifying the
15 alleged offenses as “public,” while he alleges that they were only known to a few.

16
17 This specification of error is not sustained.

18
19 A Minute Explanatory. Whatever the degrees of understanding of relative criminality
20 might have been, the email to the congregation makes it categorically “public.”

21
22 In the 12th specification of Session error, Appellant alleges that Session erred by not sending a
23 committee to converse with RE Dudt before instituting process.

24
25 This specification of error is not sustained.

26
27 A Minute Explanatory. The provisions of *BCO* 31-7 make the use of such a committee
28 entirely at the Session’s discretion and the Appellant has provided no evidence that such
29 a committee would have “promote[d] the interests of religion” in this case.

30
31 In the 13th specification of Session error, Appellant alleges that Session erred in not following
32 the principles of Matthew 18.

33
34 This specification of error is not sustained.

35
36 A Minute Explanatory. The ROC shows that the two elders, Keesee and Talley, who
37 initiated the charges, first spoke with RE Dudt privately.

38
39 In the 14th specification of Session error, Appellant alleges that Session erred in assigning
40 malicious motive to RE Dudt in the production and distribution of his July 12th email, contrary to
41 his expressed intent.

42
43 This specification of error is sustained.

44
45 A Minute Explanatory. See Minute for the 6th specification of Session error.

46

1 In the 15th specification of Session error, Appellant alleges that Session erred in failing to follow
2 the procedures of *BCO 32-3*.

3
4 This specification of error is sustained.

5
6 A Minute Explanatory. The minutes of the Special Session Meeting of October 7, 2020,
7 and the dating of the indictment clearly show that the Session conflated the provisions of
8 *BCO 32-3*. However, Appellant did not raise a point of order, as was his right, at that
9 meeting, nor at the Stated Session Meeting of October 19, 2020 when he was called upon
10 to plead with respect to the indictment; and the error did not cause material harm to
11 Appellant's cause.

12
13 In the 16th specification of Session error, Appellant alleges that Session erred in that the
14 indictment did not match the charges made received at the October 7, 2020, Special Session
15 Meeting.

16
17 This specification of error is not sustained.

18
19 A Minute Explanatory. There is no provision in the Rules of Discipline that requires an
20 indictment to include all of the wording included in a charge received. Further, if there
21 was an error, it is the error of the Prosecutor, not the Session. In any case, the error did
22 not cause material harm to Appellant's cause.

23
24 In the 17th specification of Session error, Appellant alleges Session erred by instituting process
25 as if the prosecution was instituted by the court when it was initiated by two elders when they
26 called for the October 7, 2020 Session meeting to indict the RE Duds.

27
28 This specification of error is not sustained.

29
30 A Minute Explanatory. The ROC shows the MPC Session voted to commence process
31 against RE Duds at a duly constituted meeting of the court on October 7, 2020. (187)

32
33 In the 18th specification of Session error, Appellant alleges Session erred by allowing an elder to
34 prosecute the case without first attempting to reconcile and reclaim the offender in violation of
35 *BCO 31-5*.

36
37 This specification of error is not sustained.

38
39 A Minute Explanatory. See Minute for the 13th specification of Session error.

40
41 In the 19th specification of Session error, Appellant alleges that Session erred when several
42 members of the court failed to study the Rules of Discipline in preparation for the trial.

43
44 This specification of error is not sustained.

1 A Minute Explanatory. It is wise for the members of a church court to study the Rules of
2 Discipline, but the ROC does not establish that the Rules were not understood by the
3 court. Additionally, the ROC indicates the moderator summarized the Rules in the
4 Session meeting on October 7, 2020.

5
6 In the **20th** specification of Session error, Appellant alleges that Session erred by not demanding
7 that the members of the pastoral staff attempt the means of reconciliation.

8
9 This specification of error is not sustained.

10 A Minute Explanatory. There is no constitutional requirement that the Session direct the
11 pastoral staff to pursue reconciliation. Also see Minute for the **13th** specification of
12 Session error.

13
14 In the **21st** specification of Session error, Appellant alleges that Session erred because three
15 associate pastors did not recuse themselves since the alleged offenses were directly related to the
16 calling of them to associate pastor and two of them argued in favor of the indictment and
17 conviction of RE Dudd.

18
19 This specification of error is not sustained.

20
21 A Minute Explanatory. The ROC does not indicate the Appellant challenged the right of
22 any member of the court to sit in the trial. (*BCO 32-16*)

23
24 In the **22nd** specification of Session error, Appellant alleges that Session erred by denying RE
25 Dudd's request for an independent moderator.

26
27 This specification of error is not sustained.

28
29 A Minute Explanatory. While it would have been wise to have procured an independent
30 moderator in this case, it was not constitutionally required.

31
32 In the **23rd** specification of Session error, Appellant alleges that Session erred by allowing RE
33 Dudd only one communing member of the congregation to represent him at trial before the
34 Session when *BCO 32-19* states "an accused person, if he desires it, may be represented before
35 the Session by any communing member of the same particular church."

36
37 This specification of error is sustained.

38
39 A Minute Explanatory. The substance of *BCO 32-19* is that professional counsel is not
40 permitted, not that the accused is limited to only one representative.

41
42 In the **24th** specification of Session error, Appellant alleges that Session erred by receiving
43 accusations from witnesses deeply interested in the conviction of the accused (*BCO 31-8*).

44
45 This specification of error is sustained.

1 A Minute Explanatory. The Record indicates there are at least two instances of evidence
2 of accusations being received from individuals who were “deeply interested in any
3 respect to the conviction of the accused.” *BCO* 31-8 does not prohibit accusations from
4 witnesses that are deeply interested in a conviction, but the provision does require the
5 exercise of great caution. There is no evidence in the ROC that any caution, great or
6 otherwise, was exercised by the court with respect to these witnesses. (*BCO* 31-8).
7

8 In the 25th specification of Session error, Appellant alleges that Session erred during the trial by
9 allowing the moderator to relinquish and reassume the chair, which allowed him to examine
10 witnesses.
11

12 This specification of error is sustained.

13 A Minute Explanatory. *Robert’s Rules of Order* states: “The presiding officer who
14 relinquished the chair then may not return to it until the pending main question has been
15 disposed of, since he has shown himself to be a partisan as far as that particular matter is
16 concerned. Indeed, unless a presiding officer is extremely sparing in leaving the chair to
17 take part in debate, he may destroy members’ confidence in the impartiality of his
18 approach to the task of presiding.” *RONR* (12th ed.) 43:29
19

20 In the 26th specification of Session error, Appellant alleges that Session erred when several
21 elders testified that they had been angry with RE Dudt and therefore should have recused
22 themselves to avoid violating *BCO* 27-4 and *BCO* 31-8.
23

24 This specification of error is not sustained.

25
26 A Minute Explanatory. The ROC does not indicate the members of the court exercised
27 their power out of “wrath” (*BCO* 27-4).
28

29 In the 27th specification of Session error, Appellant alleges that Session erred by not allowing
30 members of the congregation to attend the trial when they voted to conduct the proceedings in
31 executive session.
32

33 This specification of error is not sustained.

34
35 A Minute Explanatory. It was constitutionally permissible for the Session to conduct the
36 trial in executive session.
37

38 In the 28th specification of Session error, Appellant alleges that Session erred by conducting the
39 trial in executive session in conflict with the requirement of minute keeping of the procedures
40 stated in *BCO* 32-18.
41

42 This specification of error is not sustained.

43
44 A Minute Explanatory. The ROC indicates that careful records of the procedures,
45 including the trial with transcript, were completed as directed in *BCO* 32-18.
46

1 A 29th specification of Session error, Appellant alleges that Session erred by not allowing RE
2 Dudt's wife to attend the trial.

3
4 This specification of error is not sustained.

5
6 A Minute Explanatory. See Minute for the 27th specification of Session error.

7
8 A 30th specification of Session error, Appellant alleges that Session erred by declining to receive
9 proper evidence (*BCO* 42-3) that could have contradicted the indictment's claims that RE Dudt's
10 actions that "led to a divisive congregational meeting" when lines of questioning to witnesses
11 about the congregational meeting were ruled out of order by the moderator on grounds of
12 relevancy.

13 This specification of error is sustained.

14
15 A Minute Explanatory. The Moderator improperly ruled out of order questions that may
16 have led to testimony that contradicted the indictment's charge of divisiveness. When an
17 objection was raised against the Moderator's ruling, Session upheld the Moderator's
18 ruling.

19
20 A 31st specification of Session error, Appellant alleges that Session erred when the moderator,
21 when questioned during the trial, did not definitely state that the burden of proof rests with the
22 prosecution.

23
24 This specification of error is sustained.

25
26 A Minute Explanatory. The burden of proof is placed on the prosecution. *SJC*
27 1998-08 states: "The fact that the burden of proof is on the prosecution is clear from
28 several procedures in our Book of Church Order. First, the reason why the prosecution
29 argues first at trial, and has the closing remarks, is because the burden of proof is on the
30 prosecution. Second, the accused is not required to testify and the defense need not even
31 present a case. The prosecution, however, must present a case. Third, if an accused
32 person ignores repeated citations to plead, or to appear for trial, that person can be
33 censured for contumacy. He is not, however, censured for the offense on which he was
34 indicted because his guilt on that charge has not yet been proven." (*Beverly Smith v.*
35 *Southwest*, M28GA, pp. 218, 227)

36
37 A 32nd specification of Session error, Appellant alleges that Session's moderator and clerk
38 refused to distribute copies of the trial audio recordings to the accused within four weeks of
39 Appellant's conviction and, therefore, Session erred in violation of *BCO* 32-18.

40
41 This specification of error is not sustained.

42
43 A Minute Explanatory. The ROC does not furnish evidence of such a request having been
44 refused by Session, whether through Session's moderator or through Session's clerk. However, if
45 the ROC had demonstrated this, it would have been a Session error.

1 A 33rd specification of Session error, Appellant alleges that Session erred in violation of *BCO*
2 42-6 when it announced to the congregation the Appellant’s censure approximately an hour and a
3 half after Appellant had filed notice of appeal with the Clerk of Session.

4
5 A 34th specification of Session error, Appellant alleges that the wording of Session’s November
6 12 letter to the congregation, announcing Session’s judgment and Appellant’s censure, violated
7 *BCO* 42-6.

8
9 These two specifications of error are sustained.

10
11 A Minute Explanatory. *BCO* 42-6 reads in part, “Notice of appeal shall have the effect of
12 suspending the judgment of the lower court until the case has been finally decided in the
13 higher court.” Appellant filed notice of appeal, dated November 11, 2020, to Clerk of
14 Presbytery . That notice had the effect of suspending Session’s judgment in the trial of
15 Appellant. Session therefore erred when it communicated to the congregation on
16 November 12 that Appellant had been censured.

17
18 A 35th specification of Session error, Appellant alleges that Session erred in violation of *BCO*
19 42-6 when it prevented Appellant from exercising his official functions without documenting
20 sufficient reasons.

21
22 This specification of error is not sustained.

23
24 A Minute Explanatory. Invoking *BCO* 42-6 and 31-10, Session acted to suspend
25 Appellant from the functions of office, without censure, and offered grounds for its
26 action.

27
28 A 36th specification of Session error, Appellant alleges that Session erred in violation of *BCO*
29 42-6 in prohibiting RE Dudt from “performing non-office related duties.”

30
31 This specification of error is not sustained.

32
33 A Minute Explanatory. The ROC indicates that a member of Session’s Restoration
34 Committee communicated to Appellant that his suspension from office did include
35 activities that the specification characterizes as “non-office related duties.” But the ROC
36 does not indicate that Session acted to prohibit Appellant from performing particular
37 duties not related to his office.

38
39 A 37th specification of Session error, Appellant alleges that Session erred in the “harshness of its
40 censure to suspend RE Dudt from the functions of office for his alleged offense,” and should
41 have, rather, imposed the censure of admonition.

42
43 This specification of error is not sustained.

44
45 A Minute Explanatory. The censure of admonition is to be administered to “an accused,
46 who, upon conviction, satisfies the court as to his repentance and makes such restitution

1 as is appropriate. Such censure concludes the judicial process” (*BCO* 30-1). In the
2 judgment of the Session at the time of the imposition of censure, Appellant had not met
3 the requisite conditions for the censure of admonition and, therefore, the Session was in
4 no position to inflict this censure upon Appellant. This Minute should not be construed as
5 an endorsement of Session’s judgment at the time of the imposition of censure.
6

7 A 38th specification of Session error, Appellant alleges that Session erred in violation of *BCO*
8 42-6 when the Session’s Restoration Committee sent an email to Appellant on November 16,
9 2020 “to begin the process of restoration even though all committee members knew that the
10 notice of appeal, which suspended the judgment, had been filed, thus not respecting RE Dudt’s
11 right of appeal (*BCO* 42-6).”
12

13 This specification of error is not sustained.
14

15 A Minute Explanatory. The email in question was written by a member of the committee
16 “on behalf of the restoration committee.” As such, any alleged error would be of the
17 committee and not of the Session. The ROC does not demonstrate that the contents of the
18 email communicated actions of the Session.
19

20 A 39th specification of Session error, Appellant alleges that Session erred when it allowed a TE
21 “who testified during the trial that he did not privately discuss this matter with RE Dudt due to a
22 perceived conflict of interest” to write, on behalf of the Restoration Committee, to Appellant the
23 email of November 16, 2020.
24

25 This specification of error is not sustained.
26

27 A Minute Explanatory. The ROC does not indicate that Session appointed or expressly
28 permitted this TE to write the email of November 16, 2020.
29

30 A 40th specification of Session error, Appellant alleges that Session erred in violation of *BCO*
31 42-6 when an email sent by a member of the Session’s Restoration Committee communicated to
32 Appellant that his suspension would “persist even in the presence of an appeal [citing *BCO* 36-
33 5]” notwithstanding the judgment of the lower court having been suspended by Appellant’s
34 filing notice of appeal.
35

36 This specification of error is not sustained.
37

38 A Minute Explanatory. The ROC shows that the language in question is that of a member
39 of a committee of Session but does not show that this language is that of the Session.
40

41 A 1st specification of Presbytery error, Appellant alleges that Presbytery erred in violation of
42 *BCO* 42-5 when it allowed testimony taken after the trial to be included in the ROC.
43

44 This specification of error is sustained.
45

1 A Minute Explanatory. The Session does not dispute that such testimony was so added,
2 but argues that this inclusion is permissible under *BCO* 42-5 (“any papers bearing on the
3 case”). But testimony taken after the trial is not a “paper bearing on the case” (*BCO* 42-5;
4 cf. *BCO* 35-13,14) and, as such, should not have been added to the ROC.
5

6 A 2nd specification of Presbytery error, Appellant alleges that Presbytery erred in violation of
7 *BCO* 42-3 (“refusal of reasonable indulgence to a party on trial”) when it declined Appellant’s
8 request to reformat the ROC.
9

10 This specification of error is not sustained.
11

12 A Minute Explanatory. *BCO* 42-3 governs the lower court’s actions in the course of a
13 trial. As such, it does not regulate a higher court’s responsibilities with respect to
14 reformatting the existing transcript of a trial conducted by a lower court.
15

16 A 3rd specification of Presbytery error, Appellant alleges that Presbytery erred in violation of
17 *BCO* 42-4 when it concluded that Appellant had not submitted notice of appeal on November 12,
18 2020 because Appellant’s filing lacked supporting reasons, and that Appellant only properly
19 submitted (that is, with supporting reasons) his appeal on December 7, 2020.
20

21 This specification of error is sustained.
22

23 A Minute Explanatory. *BCO* 42-4 envisions two distinct actions that Presbytery has
24 conflated in its adjudication of this matter. First, “notice of appeal may be given the court
25 before its adjournment.” Second, Appellant has thirty days to submit “written notice of
26 appeal, with supporting reasons” to the clerks of the lower and higher courts.
27

28 A 4th specification of Presbytery error, Appellant alleges that Presbytery erred in its ruling that
29 Session did not violate *BCO* 42-6 when Session announced to the congregation the Appellant’s
30 conviction and censure on November 12.
31

32 This specification of error is sustained.
33

34 A Minute Explanatory. See Minute for the 33rd and 34th specifications of Session error.
35

36 A 5th specification of Presbytery error, Appellant alleges that Presbytery erred in violation of
37 *BCO* 42-8 when it failed to answer each specification of error alleged in Appellant’s appeal.
38

39 This specification of error is sustained.
40

41 A Minute Explanatory. Presbytery declined to address the Appellant’s specifications “in
42 an *ad seriatim* fashion” and adopted “a summative approach,” “rul[ing] against all 40
43 grounds, with only some given a response”. But *BCO* 42-8 requires the higher court “to
44 vote on each specification in this form: Shall this specification of error be sustained?”
45

1 A 6th specification of Presbytery error, Appellant alleges Presbytery erred by concluding that the
2 claim that the MPC Session was prejudiced was “never substantiated.”
3

4 This specification of error is not sustained.
5

6 A 7th specification of Presbytery error, Appellant alleges that Presbytery erred by not overturning
7 RE Dudt’s conviction on the first specification of the indictment. Appellant alleges that he was
8 indicted and convicted for lack of submission to the “express” will of the Session. He further
9 alleges that Presbytery found only that RE Dudt had violated what they took to be the implied
10 will of the Session, and, without warrant, found that supposed implication sufficient to convict.
11

12 This specification of error is sustained.
13

14 A Minute Explanatory. Presbytery’s substituting of implied will for express will is clearly
15 in error. See Minute for the 4th specification of Session error.
16

17 An 8th specification of Presbytery error, Appellant alleges that Presbytery erred by not sustaining
18 the Appellant’s claims that he was denied reasonable indulgences (*BCO* 42-3) that included an
19 independent moderator, a court reporter, the trial not be held in executive session and permitting
20 his wife to attend the trial.
21

22 This specification of error is not sustained.
23

24 A Minute Explanatory. See Minute for the 22nd, 27th, 28th, and 29th specifications of
25 Session error.
26

27 A 9th specification of Presbytery error, Appellant alleges that Presbytery erred in violation of
28 *BCO* 32-18 when it declared in its Written Decision that Appellant had mischaracterized as
29 “hasty” a decision of Session that “in fact ... had been discussed and deliberated upon for several
30 months prior to the called congregational meeting”. Appellant alleges that this declaration (“in
31 fact ... meeting”) “is not one of the Facts of the Case.”
32

33 This specification of error is not sustained.
34

35 A Minute Explanatory. *BCO* 32-18 prevents the higher court from taking into
36 consideration anything “not contained” in the ROC. But Appellant’s allegation reflects a
37 difference between Appellant and Appellee with respect to the interpretation of the
38 contents of the ROC.
39

40 A 10th specification of Presbytery error, Appellant alleges that Presbytery “due to its conflict of
41 interest regarding the inclusion of the SJC decision” acted prejudicially against the Appellant
42 when it devoted “nearly one-third” of its Written Decision to Appellant’s distribution of an SJC
43 Case to the congregation.
44

45 This specification of error is not sustained.
46

1 A Minute Explanatory. Appellant has not demonstrated either that Presbytery had a
2 conflict of interest in this matter or that such alleged conflict of interest accounts for the
3 proportion of the treatment of this matter relative to the length of Presbytery’s Written
4 Decision as a whole.

5
6 An 11th specification of Presbytery error, Appellant alleges that Presbytery erred in concurring
7 with the Session in classifying the alleged offenses as “public,” while he alleges that they were
8 only known to a few.

9
10 This specification of error is not sustained.

11
12 A Minute Explanatory. See Minute for the 11th specification of Session error.

13
14 A 12th specification of Presbytery error, Appellant alleges that Presbytery erred when it accepted
15 the Session’s claim that RE Dudt’s email divided the congregation.

16
17 This specification of error is not sustained.

18
19 A Minute Explanatory. Presbytery, not having found clear error on the part of the Session
20 with respect to this factual claim, exhibited appropriate deference to the lower court’s
21 finding.

22
23 A 13th specification of Presbytery error, Appellant alleges that Presbytery erred by not
24 recognizing that the MPC Session failed to exercise great caution by receiving accusations from
25 witnesses “deeply interested in any respect in the conviction of the accused” (*BCO* 31-8).

26
27 This specification of error is sustained.

28
29 A Minute Explanatory. See Minute for the 24th specification of Session error.

30
31 A 14th specification of Presbytery error, Appellant alleges that Presbytery erred by ruling that
32 charge 1 of the Session’s indictment, citing Acts 15:24-25; Titus 1:6-7, 10, gave adequate
33 Scriptural support for the charge that RE Dudt’s email constituted an offense as defined by *BCO*
34 29-1.

35
36 This specification of error is sustained.

37
38 A Minute Explanatory. See Minute for the 3rd specification of Session error.

39
40 A 15th specification of Presbytery error, Appellant alleges that Presbytery erred by condoning the
41 indictment’s assigned motive to RE Dudt’s July 12, 2020, email to the congregation.

42
43 This specification of error is sustained.

44
45 A Minute Explanatory. See Minute for the 6th specification of Session error.

1 The Panel decision was written by TE David Coffin, RE Bruce Terrell, TE Guy Waters, RE
2 Steve Dowling, and TE Paul Kooistra, and edited and approved by the Panel 3-0-0.” The SJC
3 modified and approved the decision on the following roll call vote:

| | | | |
|----|-----------------------|-------------------------|--------------------------------|
| 4 | Bankson <i>Absent</i> | M. Duncan <i>Absent</i> | Neikirk <i>Concur</i> |
| 5 | Bise <i>Concur</i> | S. Duncan <i>Concur</i> | Nusbaum <i>Concur</i> |
| 6 | Cannata <i>Concur</i> | Ellis <i>Concur</i> | Pickering <i>Not qualified</i> |
| 7 | Carrell <i>Concur</i> | Greco <i>Concur</i> | Ross <i>Concur</i> |
| 8 | | Kooistra <i>Concur</i> | Terrell <i>Concur</i> |
| 9 | Coffin <i>Concur</i> | Lee <i>Concur</i> | Waters <i>Concur</i> |
| 10 | Donahoe <i>Concur</i> | Lucas <i>Concur</i> | White <i>Absent</i> |
| 11 | Dowling <i>Concur</i> | McGowan <i>Concur</i> | Wilson <i>Concur</i> |
| 12 | (19-0-0) | | |