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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case Tracking No. 2022-000687

Benjamin Paul Hannon, Appellant,

vs.

The State, Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly declined to consider evidence outside of the Return presented by the Magistrate. (Appellant's Issue II).

II. The circuit court correctly found the Magistrate court did not abuse its discretion in denying Appellant access to court for refusing to wear a mask or other protective covering. (Appellant's Issue I).

III. The circuit court did not err in finding Appellant's waived his right to a jury trial and the Magistrate properly proceeded in a bench trial. (Appellant's Issue III).

STATEMENT OF THE CASE

Appellant was arrested June 13, 2020 and charged with driving without a license, operating a vehicle without registration or license, speeding ten miles per hour or less, and a seatbelt violation. (Uniform Traffic Tickets; R.___). The first three charges were brought in Magistrate's court. His trial was originally scheduled for July 20, 2020. Appellant requested a continuance and time to retain an attorney. His trial was rescheduled for August 20, 2021.

Appellant appeared for trial *pro se*. He was denied access by security for failing to wear a protective mask. Judge Robert Howell met Appellant in the lobby to explain the situation. After discussion and Appellant's refusal to wear a mask, Appellant left the courthouse. His trial proceeded in his absence as a bench trial. He was found guilty and issued a fine with no jail time. (Magistrate's Return; R.___).

A notice of the conviction was sent to Appellant's residence postmarked September 3, 2021. Appellant's counsel served and filed a Notice of Appeal to the circuit court on September 13, 2021. The circuit court found he could not consider any evidence outside the Magistrate's Return. He also affirmed the Magistrate's determination that Appellant was properly excluded from the courtroom, properly tried in his absence, and properly waived his right to a jury trial. (Order filed January 26, 2022; R.___). The circuit court denied Appellant's motion for reconsideration. (Order Denying Motion to Reconsider; R.___).

ARGUMENT

I. The circuit court properly declined to consider evidence outside of the Return presented by the Magistrate. (Appellant's Issue II).

Appellant contends the circuit court erred in refusing to consider a recording in Appellant's possession which he claimed contradicted what the Magistrate detailed in the Return. The circuit court did not have authority to consider any matter outside the Return of the Magistrate, take testimony, or consider new evidence. As a result, the circuit court properly declined to consider the recording presented by Appellant.

Appeal from Magistrate's court is controlled by statute. "Every person convicted before a Magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county." S.C. Code Ann. § 18-3-10 (Supp. 2020). Within ten days, the Magistrate was required to file his Return. S.C. Code Ann. § 18-3-40(Supp. 2020); see also, S.C. Code Ann. § 18-7-60 (Supp. 2020). As the circuit court noted, he was limited in what could be considered on appeal: "The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court." S.C. Code Ann. § 18-3-70 (Supp. 2020). As a result, the appellate court has no authority to take any additional evidence or testimony on any issue, even ones related to the underlying claims on appeal.

It has long been the rule in South Carolina "[w]here there is a disagreement as to what the record on appeal should contain, the duty and responsibility of settling the question rests upon the trial judge." China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968); State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) ("South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal."). In State v. Richardson, 98 S.C. 147, 82 S.E.

353 (1914), the Supreme Court considered a case in which the circuit court was asked to consider affidavits that contradicted the Return provided by the Magistrate. The affidavits were "brought to his attention" and the Magistrate ultimately ruled they were not considered. Because the affidavits were not considered by the Magistrate and were not part of the Return issued by the Magistrate for consideration by the circuit court, the Supreme Court ruled: "the affidavits constituted no part of the proceedings upon which the appeal was to be heard, and that there was no error on the part of the presiding judge in refusing to consider them." Id. As a result, only the Magistrate in this case could settle the record and determine the appropriate facts upon which the circuit court could base its opinion. As the circuit court concluded, it was without authority to consider the recording since it was never presented to the Magistrate and was not included in the Magistrate's Return.

In the instant case, Appellant had several remedies which were not explored. First, he could have filed a motion for new trial with the Magistrate to seek to have the Magistrate consider his recording and the propriety of its rulings on his waiver of a new trial and unwillingness to wear any protection. Alternatively, he could have asked the circuit court to remand the case to the Magistrate for appropriate consideration of the recording and a determination of whether there was any error in the Magistrate's Return. In any event, only the Magistrate had authority to consider the recording and make amendments to the Return he filed in this case. See e.g., State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001)("In criminal appeals from Magistrate . . . court, the circuit court does not conduct a *de novo* review . . . ."). Accordingly, the circuit court did not err in refusing to consider the recording in making its ruling. See China, 251 S.C. at 334, 162 S.E.2d at 278 ("The issues on appeal must therefore be determined on the basis of the record as settled by the trial court.").

II. The circuit court correctly found the Magistrate court did not abuse its discretion in denying Appellant access to court for refusing to wear a mask or other protective covering. (Appellant's Issue I).

Appellant maintains the circuit court erred in finding the Magistrate did not abuse his discretion when he would not allow Appellant into the courtroom because Appellant refused to wear a protective mask. He asserts alternatives should have been explored and offered to Appellant. The Magistrate offered proper alternatives, Appellant did not present a medical basis for any special considerations, and he refused to comply with the requirements for entry in the courtroom during Covid.

In July 2020, the South Carolina Supreme Court issued RE: Required Use of Protective Masks in County and Municipal Courthouses: Order of the Supreme Court dated July 30, 2020.[1] The Order provided: "IT IS ORDERED all persons employed in, **conducting business in**, or otherwise visiting or present for any reason in county and municipal courthouses statewide are **required to wear a protective mask or other facial covering** while inside the courthouse" (emphasis added) with limited exceptions not applicable in this case. As a result of the Order, anyone refusing to comply would not be allowed admittance to the courtroom. Significantly, Appellant's response to being denied access and asked to wear protective covering was not to either assert a medical exemption or seek a continuance but was instead to reply: "that Order only applies to you, not to me." (Return p.1; R.____). Based on the clear language of the Order it applies to anyone "conducting business" or even "visiting or present for any reason." As a result, the Order is clearly applicable to Appellant.

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[1] Located at https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-07-30-01 (last accessed February 1, 2023).

The Magistrate noted he offered Appellant the option of wearing a face shield. Instead of taking the option or again providing a medical basis for why the option was insufficient, Appellant responded: "I don't have to wear shit." (Return p.1; R.___). As a result the Magistrate properly offered an alternative arrangement for Appellant and, when he refused, the Magistrate correctly denied his access to the courtroom under the Supreme Court's Order.[2]

Additionally, Appellant never presented the Magistrate with any medical justification. While Appellant maintained he had a justification on appeal, no evidence was given to the Magistrate. Specifically, the Magistrate's Return provides: "The Appellant at no time ever said, implied, or produced any claim to a medical condition he may have had (This Court would agree that if he had produced any medical documentation this Court would have had to made accommodations pursuant to the ADA or continue this case)." (Return p.1; R.___). As discussed in Issue I above, Appellant never sought to correct the Magistrate's Return or provide any additional information which would contradict the Magistrate's findings. Accordingly, the evidence in the record indicates Appellant never established a legitimate medical basis for excusing his compliance with the Supreme Court's Order, so the Magistrate properly excluded him from the courtroom and the circuit court properly affirmed the Magistrate's decision.

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[2] Appellant primarily contends the Return by the magistrate does not accurately reflect what was said or offered prior to Appellant's exclusion from the courtroom. As discussed in Issue I, his recording or any contradictions to the Return cannot be properly considered by the circuit court or this Court. See S.C. Code Ann. § 18-3-70 (Supp. 2020)("The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court."); China, 251 S.C. at 334, 162 S.E.2d at 278 ("The issues on appeal must therefore be determined on the basis of the record as settled by the trial court."). Further, it is questionable whether the issue can be raised on appeal. In criminal appeals from magistrate court, the circuit court may not conduct a trial de novo, but instead reviews for preserved error raised by appropriate exception. State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001).

III. The circuit court did not err in finding Appellant's waived his right to a jury trial and the Magistrate properly proceeded in a bench trial. (Appellant's Issue III).

Appellant contends the trial court erred in finding he knowingly and voluntarily waived his right to a jury trial. Appellant was informed if found guilty on the charges he would receive a fine. After, he stated: "Well, if I'm not going to jail I don't need no damn jury trial." Appellant then walked out the front door of the building even after having been told his trial would proceed without him. (Return p.2; R.___). The Magistrate properly concluded the statement and subsequent conduct by Appellant was a valid waiver of his right to a jury trial.[3]

At the July 20 hearing that was continued, Appellant requested a jury trial. As a result, the Magistrate was prepared for a jury trial when the hearing was rescheduled for August 20, 2021. (Return p.1; R.___). The only issue is whether Appellant waived his right to a jury trial.

The United States Constitution provides that "the Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." U.S. Const. art. 3, § 2. In South Carolina, the Constitution provides: "The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury . . . ." S.C. Const. art. I, § 14. However, the right to trial by jury may be waived like other constitutional rights.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right." King v. James, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010) (citing Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009)). It is clear from the Return Appellant knew he had a

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[3] It is questionable whether the issue is even properly preserved for review on appeal since any error was never brought to the magistrate's attention. A circuit court has only appellate jurisdiction over a judgment from magistrate court. State v. Adler, 278 S.C. 66, 67, 292 S.E .2d 185, 186 (1982). In criminal appeals from magistrate court, the circuit court may not conduct a trial de novo, but instead reviews for preserved error raised by appropriate exception. State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001).

right to a jury trial as he had previously asserted his right prior to the continuance of his trial in 2020. Additionally, Appellant knew his trial was going forward that day, even in his absence. See Osbey v. State, 425 S.C. 615, 620, 825 S.E.2d 48, 50 (2019) ("Waiver requires a party to have known of a right and known that right was being abandoned.") (citation omitted).

The Magistrate informed Appellant his case would proceed and indicated he would be found guilty, and the Magistrate would impose only a fine without jail time. Appellant specifically clarified the fact he was "not going to jail." When the Magistrate indicated he would not be going to jail, Appellant provided a clear, unambiguous, unequivocal response: "Well if I'm not going to jail[,] I don't need no damn jury trial." The Magistrate certainly could take this plain and explicit statement as a knowing and voluntary waiver of Appellant's right to a jury trial. In even further support that the Magistrate properly considered the statement a waiver, Appellant accompanied his statement by the unmistakable action of walking out the front door.[4] Accordingly, the circuit court did not err in upholding the Magistrate's determination that Appellant waived his right to a jury trial.

[4] Waiver can generally be established one of three ways: 1) by affirmative, verbal request; 2) by conduct; and 3) through forfeiture. See, e.g., State v. Roberson, 382 S.C. 185, 187, 675 S.E.2d 732, 733 (2009). Appellant's action of walking out of the front door after being told his trial was going to proceed and he stated he did not need a jury trial seems to be waiver by conduct in addition to being a waiver by affirmative, verbal request.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Appeal from Cherokee County
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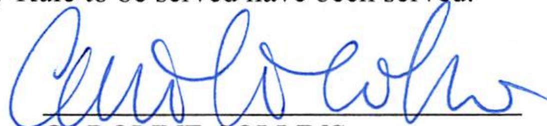
PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to Appellant's counsel of record, Christopher Michael Bain, at the email address provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 7th day of February, 2023.



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From: Caroline Collins
Sent: Tuesday, February 7, 2023 4:58 PM
To: bain@winter-rhoden.com
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Subject: Benjamin Paul Hannon v. The State (2022-000687)
Attachments: HANNON Benjamin - Initial Brief of Respondent and Designation of Matter - 2022-000687 (03214654xD2C78).PDF

Good Afternoon Mr. Bain,

Attached please find the Initial Brief of Respondent and Designation of Matter in Benjamin Paul Hannon v. The State (2022-000687). This brief will be submitted to the South Carolina Court of Appeals via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you!

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