

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

---

Case No. 2012-CP-40-06803

---

The City of Columbia .....Respondent,

v.

William K. Wilson .....Appellant.

---

INITIAL BRIEF OF RESPONDENT

---

David A. Fernandez, Esquire  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
Tel: (803) 737-4242  
Attorney for the Respondent

RECEIVED  
JUL 10 2013  
SC Court of Appeals

## TABLE OF CONTENTS

Table of Authorities .....	i, ii
Statement of Issues on Appeal .....	iii
Statement of the Case .....	1
Facts .....	1, 2
Arguments	
1. APPELLANT DID NOT PRESERVE ANY ERRORS OF LAW FOR APPELLATE REVIEW .....	2
2. APPELLANT WAS ONLY CHARGED AND CONVICTED OF A VIOLATION OF S.C. CODE § 56-5-1520 TOO FAST FOR CONDITIONS, NOT CHANGING LANES .....	3
3. APPELLANT MAKES ONLY FACTUAL ARGUMENTS .....	3, 4
Conclusion .....	5

**TABLE OF AUTHORITIES**

**CASES**

City of Landrum v. Sarratt, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct. App. 2002) .....2

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989).....2

State v. Green, 255 S.C. 548, 180 S.E.2d 179 (1971).....4

Sanders v. Salley, 283 S.C. 458, 322 S.E.2d 829 (Ct. App. 1984).....4

Talley v. South Carolina Higher Education Grants Committee, 289 S.C. 483, 347 S.E.2d 99 (1986) .....3

Rogers v. State, 358 S.C. 266, 269, 594 S.E.2d 278, 279 (Ct. App. 2004) .....2

**STATUTES**

S.C. Code Ann. § 18-3-70 (Supp. 2008).....2

S.C. Code Ann. § 56-5-1520.....1, 2, 3, 5

## **STATEMENT OF ISSUES ON APPEAL**

1. The Appellant did not properly preserve any legal errors of law on appeal.
2. The Appellant was correctly charged for the one charge of “Too Fast for Conditions,” under S.C. Code § 56-5-1520.
3. The Appellant only presented factual arguments on appeal to the lower court, providing nothing for proper appellate review.

## **STATEMENT OF THE CASE**

-On June 22, 2012, Appellant William K. Wilson (hereinafter "Wilson") was charged by City of Columbia police with a violation of § 56-5-1520 of the South Carolina Code of Laws. That statute, entitled "General rules as to maximum speed limits; lower speeds may be required," (commonly referred to as "Too Fast for Conditions") provides in relevant part that "A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care."

On September 20, 2012, Wilson was tried without a jury in the City of Columbia Municipal Court and found guilty. Wilson filed his Notice of Intention to Appeal with the City of Columbia Municipal Court also on September 20, 2012. The appeal was heard by the Circuit Court on February 8, 2013. The Circuit Court affirmed Wilson's conviction from the Municipal Court by Order dated April 24, 2013, finding no error of law. On May 20, 2013, Wilson filed this Notice of Appeal. Wilson served the Notice of Appeal on the City of Columbia on May 24, 2013.

## **FACTS**

On June 22, 2012, City of Columbia police officer Robinson was dispatched to an accident between William K. Wilson and Anthony Logan (hereinafter "Logan") located at the intersection of Hazelwood Drive and Garners Ferry Road, within the City limits of Columbia. Upon arrival, Officer Robinson made contact both individuals and determined that Logan was attempting to make a right turn into a parking lot and that Wilson struck

his vehicle in the rear. *Trial Court Transcript*, p. 1, lines 21-25; p. 2, lines 1-2. Wilson testified at trial that the accident occurred in an area where the lanes widen to three lanes for purposes of dedicated left and right turn lanes, and presented photograph evidence in support of his defense. *Trial Court Transcript*, p. 4, lines 10-25; p. 5, lines 1-14; p. 6, lines 3-4. Officer Robinson rebutted Wilson's claims, by informing the trial court that the accident occurred prior to the area where the lanes widen. *Trial Court Transcript*, p. 5, lines 19-21. The trial court reviewed all the evidence and found Wilson guilty violating S.C. Code § 56-5-1520, travelling Too Fast for Conditions, and sentenced him to pay \$81.88.

## ARGUMENT

### I. APPELLANT DID NOT PRESERVE ANY ERRORS OF LAW FOR APPELLATE REVIEW.

“In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception.” Rogers v. State, 358 S.C. 266, 269, 594 S.E.2d 278, 279 (Ct. App. 2004), citing City of Landrum v. Sarratt, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct. App. 2002). Further, “the circuit court, sitting in its appellate capacity, may not engage in fact finding.” Id., 358 S.C. at 270. On appeal from municipal court “[t]he appeal must be heard by the Court of Common Pleas upon grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court... [a]nd the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial.” S.C. Code Ann. § 18-3-70 (Supp. 2008).

Wilson, in his "Notice of Intent to Appeal" from the Municipal Court to the Circuit Court acknowledges that the facts of the case were agreed upon. *Notice of Intent to Appeal*. The only legal ground preserved by Wilson in his original appeal is the alleged misinterpretation by the trial court of S.C. Code §§ 56-5-2120 and 56-5-1520. *Notice of Intent to Appeal*. However, Wilson did not properly raise this argument at trial or preserve for review. State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) (An issue not raised at trial is waived on appeal); Talley v. South Carolina Higher Education Grants Committee, 289 S.C. 483, 347 S.E.2d 99 (1986) (An issue may not be raised for the first time on appeal). The testimony from both parties and the Court established that the accident occurred in an area prior to any lane widening, thus making Wilson's grounds for appeal moot. *Trial Court Transcript*, p. 6, lines 20-23.

**II. APPELLANT WAS ONLY CHARGED AND CONVICTED OF A VIOLATION OF S.C. CODE § 56-5-1520 TOO FAST FOR CONDITIONS, NOT CHANGING LANES.**

In the Brief of Appellant, Wilson argues under subsection 1 of his brief that he was charged with a violation of § 56-5-1520, but found guilty of a lane change violation. This is incorrect, not supported by the trial court record below, and not preserved for appellate review. The trial court clearly found Wilson guilty the only charge he was cited for: Too Fast for Conditions § 56-5-1520. *Trial Court Transcript*, p. 3, lines 14-17; p. 7, lines 7-10.

**III. APPELLANT MAKES ONLY FACTUAL ARGUMENTS.**

Wilson testified at trial, re-asserted in his grounds for appeal, and argued again at the Circuit Court appeal hearing that he did not strike Logan's vehicle and that there was

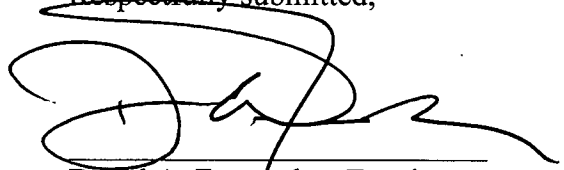
a dedicated lane that was not properly utilized. *Notice of Intent to Appeal; Trial Court Transcript*, p. 4, lines 10-25; p. 5, lines 1-14; *Circuit Court Transcript* (pages to be supplemented once obtained by Appellant). This was refuted by both the citing officer and the trial court in reviewing the pictures submitted by Wilson himself. *Notice of Intent to Appeal; Trial Court Transcript*, p. 5, lines 19-21; p. 6, lines 20-23.

A factual dispute exists from the testimony presented and preserved in the Appellant's grounds for appeal. The trial judge was the fact finder. She determined the credibility of the witness and weighed the evidence in reaching her decision. There exists sufficient factual basis based on Officer Robinson's testimony and photographic evidence to support the trial court's finding and decision. Further, the Circuit Court correctly observed that Wilson's appeal was based solely on a factual dispute. *Order of February 3, 2013*. Generally, the sufficiency of the evidence, the credibility of the witnesses and all questions of fact are exclusively within the province of the trial court and are not subject to review. See Sanders v. Salley, 283 S.C. 458, 322 S.E.2d 829 (Ct. App. 1984); State v. Green, 255 S.C. 548, 180 S.E.2d 179 (1971) (The appellate court does not sit as a trial court to receive evidence. The function of the appellate court is to review the judgments of the lower court for reversible error based on the issues and evidence presented to that court.).

**CONCLUSION**

For the reasons stated above, this Court should affirm the rulings of the lower courts. Wilson did not properly preserve any errors of law for appellate review, was properly charged under S.C. Code § 56-5-1520, and has merely re-argued the facts of his case as was previously presented to the trial and Circuit courts.

Respectfully submitted,



David A. Fernandez, Esquire  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
Tel: (803) 737-4242  
Attorney for Respondent

July 9, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-06803

The City of Columbia, ..... Respondent,

v.

William K. Wilson, ..... Appellant.

DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

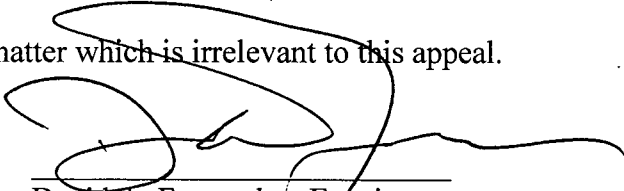
**RECEIVED**  
JUL 10 2013  
**SC Court of Appeals**

Respondent proposes the following to be included in the Record on Appeal in addition to the matters designated by the Petitioner:

1. Section 56-5-1520 of the South Carolina Code of Laws.
2. Notice of Intent to Appeal from Municipal Court to Circuit Court, dated September 20, 2012.
3. Transcript of Circuit Court appeal hearing, dated February 8, 2013 (to be obtained by Appellant).

I hereby certify that this designation contains no matter which is irrelevant to this appeal.

July 9, 2013

  
David A. Fernandez, Esquire  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
Tel: (803) 737-4242  
Attorney for the Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-06803

The City of Columbia.....Respondent,

v.

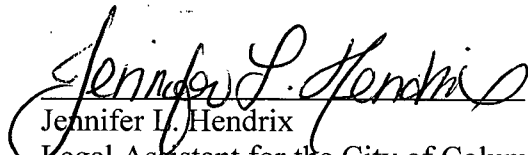
William K. Wilson.....Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the *Initial Brief of Respondent* and *Designation of Matter to be Included in the Record on Appeal* upon the Appellant by United States Mail at the address listed below on this 10<sup>th</sup> day of July, 2013:

William K. Wilson  
7106 Sunview Circle  
Columbia, South Carolina 29209

July 10, 2013  
Columbia, South Carolina

  
Jennifer L. Hendrix  
Legal Assistant for the City of Columbia

**RECEIVED**

JUL 10 2013

**SC Court of Appeals**