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**May 22 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
Debra R. McCaslin, Circuit Court Judge

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Appellate Case No. 2024-000168

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Johnathan M. Daniels,

Appellant,

v.

City of Cayce,

Respondent.

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**INITIAL BRIEF OF RESPONDENT**

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**COUNTER-STATEMENT OF ISSUES ON APPEAL**

- I. DID THE CIRCUIT COURT CORRECTLY RULE THAT THE MUNICIPAL COURT'S ORDERS ON PRE-TRIAL MOTIONS WERE NOT IMMEDIATELY APPEALABLE AS A "SENTENCE OR JUDGMENT" UNDER S.C. CODE SECTION 14-25-95?**
  
- II. DID THE CIRCUIT COURT CORRECTLY RULE THAT APPELLANT'S APPEAL FROM MUNICIPAL COURT TO CIRCUIT COURT IN JULY 2023, FOLLOWING REMITTITUR TO MUNICIPAL COURT FROM THE COURT OF APPEALS IN MARCH 2023, WAS UNTIMELY UNDER S.C. CODE SECTION 14-25-95?**

## STATEMENT OF THE CASE

In July 2021, Johnathan Daniels (hereinafter, “Appellant”) was ticketed by a City of Cayce police officer for no driver's license in violation of S.C. Code Ann. § 56-1-20 and no vehicle registration in violation of S.C. Code Ann. § 56-3-110. On October 19, 2021, City Judge Shannon Bobertz heard and denied Appellant’s written pre-trial Motion to Quash. On November 7, 2022, City Judge Bryan Jeffries heard and denied Appellant’s written pre-trial Motion to Dismiss, and heard and granted the City’s oral motion in limine to limit evidence and argument before the jury on the legal issues related to Appellant’s defense of burden on religious expression. (Municipal Court Transcript and Municipal Court Return by City).

On November 16, 2022, Appellant filed with the South Carolina Supreme Court a Notice of Appeal from the two verbal Orders by Judge Jeffries. (Notice of Appeal filed November 16, 2022). By its Order dated November 18, 2022, the Supreme Court transferred the appeal (Appellate Case 2022-001598) to the Court of Appeals pursuant to Rule 204(a), SCACR. (Order of Supreme Court dated November 18, 2022). The Court of Appeals, by Order filed on November 29, 2022, dismissed the appeal for lack of jurisdiction. (Order of Court of Appeals filed November 29, 2022). The Court of Appeals, by further Order filed on January 24, 2023, denied Appellant’s petition for rehearing. (Order of Court of Appeals filed January 24, 2023). A Remittitur to the Cayce Municipal Court was issued by the Court of Appeals on March 10, 2023, with an indicated copy to Appellant. (Remittitur dated March 10, 2023).

Appellant filed his Notice of Criminal Appeal in the Lexington County Court of Common Pleas on July 27, 2023. (Notice of Criminal Appeal, filed July 27, 2023). Appellant served the Notice of Appeal on the City Prosecutor and City Judge on July 28, 2023. (Affidavit of Service, filed August 4, 2023). The Notice of Criminal Appeal filed in circuit court included challenges to

the 2021 and 2022 Municipal Court rulings that were the subject of the appeal in the Court of Appeals for which the Remittitur was issued in March 2023. (Notice of Criminal Appeal, pp. 1-2, 5-10 and 11-13).

Both parties to the circuit court action subsequently filed documents related to the record on appeal. The City filed a Motion to Dismiss the appeal on August 28, 2023. (Motion to Dismiss). A hearing before the Honorable Debra R. McCaslin, Circuit Court Judge, was held on November 28, 2023, at which the circuit court heard argument by Appellant and by the attorney for the City on the appeal and on the Motion to Dismiss. (Transcript of Circuit Court hearing). The circuit court filed an Order Dismissing Appeal on December 29, 2023. (Order of circuit court filed December 29, 2023). Appellant subsequently filed this appeal with the Court.

### **STANDARD OF REVIEW**

The standard of review in this Court in criminal cases is limited to correction of errors of law. State v. Green, 436 S.C. 492, 493, 872 S.E.2d 869, 869-870 (Ct. App. 2022). State v. Hall, 437 S.C. 107, 117, 876 S.E.2d 328, 333 (Ct. App. 2022).

### **ARGUMENT**

**I. THE CIRCUIT COURT CORRECTLY RULED THAT THE MUNICIPAL COURT ORDERS ON PRE-TRIAL MOTIONS WERE NOT IMMEDIATELY APPEALABLE AS A “SENTENCE OR JUDGMENT” UNDER S.C. CODE SECTION 14-25-95.**

As the first of its two dispositive grounds for dismissal, the circuit court determined that Appellant’s action was not properly an appeal “from the sentence or judgment of the municipal court” as required by S.C. Code Ann. § 14-25-95 (“Appeals to Court of Common Pleas; procedures and time limits”). (Circuit Court Order p.1). Section 14-25-95 provides in pertinent part, that:

Any party shall have the right to appeal from the sentence or judgment of the municipal court to the Court of Common Pleas of the county in which the trial is held. Notice of intention to appeal, setting forth the grounds for appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after the sentence is passed or judgment entered, or the appeal is considered waived.

The circuit court concluded that Appellant's action concerned three pre-trial interlocutory motions consisting of the denial of Appellant's motion to "quash," denial of Appellant's motion to dismiss, and the grant of the City's motion in limine, all made while the case was (and is) pending in municipal court and before trial, conviction, or sentencing. (Circuit Court Order p.1). Additionally, the motions are not final in nature and can be renewed (or overturned in the case of the motion in limine) prior to or at the eventual trial.

Appellant's argument in brief and throughout the record assumes, without legal authority, that the "burden on religious expression" provision (S.C. Code Ann. § 1-32-50) of the South Carolina Religious Freedom Act ("SCRFA") (S.C. Code Ann. § 1-32-10 et seq.) somehow operates as a pre-emptive bar to continued prosecution of his traffic charges. However, § 1-32-50 ("If a person's exercise of religion has been burdened in violation of this chapter, the person may assert the violation as a claim or defense in a judicial proceeding...") provides only that the asserted "burden on religious expression" is "a claim or defense" and does not provide, for example, for immunity from prosecution.

The distinction between immunity from prosecution and a mere defense to prosecution is illustrated in the discussion of immunity arising under the Protection of Persons and Property Act (S.C. Code Ann. §§ 16-11-40 et seq.) (known informally as the "Stand Your Ground Law") in State v. Sims, 423 S.C. 397, 401, 814 S.E.2d 632, 633-634 (Ct. App. 2018):

Sims is right that the Act is more than a defense to a criminal charge; a defendant who proves his use of deadly force was justified by the

Act is immune from prosecution. S.C. Code Ann. § 16-11-450(A); State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011)) (“[W]e find that, by using the words ‘immune from prosecution,’ the legislature intended to create a true immunity, and not simply an affirmative defense...Immunity under the Act is therefore a bar to prosecution...”).

Nevertheless, despite the significance of immunity, even the pre-trial denial of a request for immunity under the Protection of Persons and Property Act is not immediately appealable. State v. McCarty, 437 S.C. 355, 369, 878 S.E.2d 902, 910 (2022); State v. Isaac, 405 S.C. 177, 182, 747 S.E.2d 677, 679 (2013).

The City urges that the circuit court’s non-appealability ground for dismissal is a correct interpretation and application of § 14-25-95. The language of § 14-25-95 limiting appeals to those from a “sentence or judgment” of the municipal court is clear and explicit and contains no exceptions on its face. Additionally, the “sentence or judgment” language describing when an appeal may be taken to circuit court is in accord with the State case law that a criminal defendant, generally, may not appeal until sentence is imposed. State v. Isaac, 405 S.C. 177, 183, 747 S.E.2d 677, 680 (2013). State v. Isaac not only states this general law but also illustrates it with multiple examples of its application. Id.

**II. THE CIRCUIT COURT CORRECTLY RULED THAT APPELLANT’S APPEAL FROM MUNICIPAL COURT TO CIRCUIT COURT IN JULY 2023, FOLLOWING REMITTITUR TO MUNICIPAL COURT FROM THE COURT OF APPEALS IN MARCH 2023, WAS UNTIMELY UNDER S.C. CODE SECTION 14-25-95.**

The second sentence of S.C. Code § 14-25-95 (“Appeals to Court of Common Pleas; procedures and time limits”) sets out the time deadline for appeal from municipal court to circuit court. The Code section requires service of a notice of intention to appeal on the municipal court

judge or municipal court clerk “within ten days after the sentence is passed or judgment entered...”  
The untimeliness of Appellant’s attempted appeal in this case is clear.

The Court of Appeals issued its Remittitur to the Cayce Municipal Court on March 10, 2023, under Appellate Case No. 2022-001598. (Remittitur Order). Appellant filed his Notice of Criminal Appeal in the Lexington County Court of Common Pleas on July 27, 2023. (Notice of Criminal Appeal, filed July 27, 2023). Appellant served the Notice of Appeal on the City Prosecutor and City Judge on July 28, 2023. (Affidavit of Service, filed August 4, 2023).

The Notice of Criminal Appeal filed in circuit court included challenges to the 2021 and 2022 Municipal Court rulings that were the subject of the appeal in the Court of Appeals for which the Remittitur was issued in March 2023. (Notice of Criminal Appeal, pp. 1-2, 5-10 and 11-13). The Notice of Criminal Appeal was served on the City more than 21 months after the 2021 motion ruling in the Municipal Court, more than nine months after the 2022 motion rulings in the Municipal Court, and more than four months after the Remittitur.

The circuit court correctly determined that the clear and plain untimeliness of the appeal (even if considered as an appropriate appeal involving “sentence or judgment”) undercut the circuit court’s jurisdiction to hear the appeal. “The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Department of Transportation, 361 S.C. 9, 14-15, 602 S.E.2d 772,775 (2004).

**CONCLUSION**

For the reasons stated and apparent from the record, the City urges that this Court affirm the judgment of the circuit court that dismissed Appellant's appeal to the circuit court.

Respectfully submitted,

May 22, 2024

s/ Danny C. Crowe  
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