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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge

Appellate Case No. 2023-001598

Karen Oliver.....Appellant,

v.

Charleston County Housing and Redevelopment Authority.....Respondent.

BRIEF OF RESPONDENT
CHARLESTON COUNTY HOUSING AND REDEVELOPMENT AUTHORITY

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY APPLY THE SOUTH CAROLINA RULES OF EVIDENCE TO THE MAGISTRATE'S RULING REGARDING THE ADMISSIBILITY OF EVIDENCE AT THE MAGISTRATE LEVEL?

- II. WERE THE APPELLANT'S RIGHTS TO DUE PROCESS VIOLATED UNDER SOUTH CAROLINA LAW AND THE CONSTITUTION?

STATEMENT OF THE CASE

The Charleston County Housing Redevelopment and Authority's ("CCHRA") most recent Residential Dwelling Lease Agreement ("Lease") governing this matter was signed on April 11, 2019 by Karen Oliver ("Oliver" or "Ms. Oliver") for 1945 Ghana Street. Ret. of Mag.; R. p. 32-45. On August 11, 2022 CCHRA filed for an application of ejectment regarding Appellant. Ret. of Mag.; R. p. 01. The reasons for the application were for failure or refusal to pay rent when due and terms of the Lease were violated. *Id.* Specifically, the application identifies that Ms. Oliver continuously failed to pay rent. Ret. of Mag.; R. p. 25. Under Section 2 of the Lease, Appellant and CCHRA agreed to a rental amount of \$238.00 per month based upon a flat rent of \$1,477.00. Ret. of Mag.; R. p. 32-33. Section 2(A) states that "rent is due and payable in advance without notice on the first day of each month and is delinquent after the fifth day of each month. Ret. of Mag.; R. p. 33. The Lease acknowledges that "management shall not terminate or refuse to renew this lease other than for serious or repeated violations of material terms of the lease." Ret. of Mag.; R. p. 39 (Lease 12(A)). This includes, "failure to make payments due under this lease or to fulfill obligations of resident set forth in this lease or for other good cause." *Id.* Based upon the Application for Ejectment, a rule to show cause hearing was scheduled in the lower matter on September 7, 2022. Ret. of Mag.; R. p. 01.

Prior to Ms. Oliver's case reaching Magistrate's Court, CCHRA held an informal hearing at the request of Ms. Oliver based upon a decision by the property manager to evict Ms. Oliver for violations of her Lease. Ret. of Mag.; R. p. 47. Based upon the results of the informal hearing, CCHRA's Ms. Stephanie Gladden filed an Application for Ejectment on August 9, 2022 with the Magistrate's Court. Ret. of Mag.; R. p. 28. Ms. Gladden submitted the form for "Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act. Ret. of Mag.; R. p. 29-

30. The Magistrate's Court sent out a Summons to Ms. Oliver on August 26, 2022 for a Bench trial to occur on September 7, 2022. Ret. of Mag.; R. p. 46.

On September 8, 2022, the Magistrate entered an order of eviction based upon the evidence presented at the Ejectment proceeding. Ret. of Mag.; R. p. 3. The same day, the Appellant filed her appeal with the Circuit Court. See Ret. of Mag.; R. p. 16. The appeal stopped the writ of ejectment and stayed the lower court case. The Appellant filed an appeal with the Circuit Court on the grounds the judge refused to listen or view a recording of an interview with CCHRA's chairman, Mr. Sandino Moses. Ret. of Mag.; R. p. 16. The court below denied use of the video on the grounds that it was not relevant. Plaintiff contends that the video evidence should have been allowed and that the Magistrate Court did not indicate "how videos are to be presented." Ret. of Mag.; R. p. 16.

As noted in the Magistrate's Return of October 13, 2022, a bench trial was held in reference to the Application for Ejectment filed by CCHRA. Ret. of Mag.; R. p. 1. CCHRA appeared at the hearing and presented seven Exhibits regarding the eviction process including:

May 26, 2022 informal Hearing Notice;
June 8, 2022 Informal Hearing Notice;
July 5, 2022 Hearing Determination;
May 1, 2019-April 30, 2020 Residential Dwelling Lease;
May 1, 2022 Annual Reexamination;
September 7, 2022 Tenant History; and
September 7, 2022 Statement Balance Due of \$11,120.00.

Ret. of Mag.; R. p. 1. The Notice of the hearing gave the Appellant Form SCCA733B providing the instructions for eviction hearings including "it is the parties' responsibility to bring any witnesses or other evidence they want the court to consider." Ret. of Mag.; R. p. 1. The Appellant testified she had suffered loss of enjoyment of the premises and she was unable to sign a new lease because the property was below industry standard and she was not provided a breakdown of the

rent under the reexamination process. Ret. of Mag.; R. p. 3. Appellant admitted she had “not paid any amount of the rent that was due.” *Id.*

Based upon the documents, the Magistrate ruled from the Bench. Ret. of Mag; R. p. 3. The Magistrate stated the Appellant’s defenses were raised, but no evidence was provided to validate that CCHRA failed to provide one or more essential service. *Id.* Based upon those findings, the Magistrate entered an Order for Eviction. Ret. of Mag.; R. p. 3.

On September 8, 2022, Ms. Oliver appealed the Eviction, staying the eviction proceedings. Ret. of Mag.; R. p. 14. The matter was heard by the Honorable Bentley Price on May 31, 2023 in Charleston County, Circuit Court. Prior to the appeal, CCHRA filed a motion to dismiss the appeal with a memorandum in support. Judge Price found that Judge Waring did not abuse her discretion and denied Ms. Oliver’s Appeal. Ret. of Mag.; R. p. 59. On August 7, 2023, the Circuit Court issued an Order pursuant to South Carolina Rule of Civil Procedure 77 that the appeal from Magistrate’s Court was denied, affirming the matter below. R. p. 134. On September 22, 2023, Ms. Oliver filed a Notice of Intent to Appeal. R. p. 135. On February 2, 2024, the Court of Appeals notified Ms. Oliver that the transcript was overdue. R. p. 136-137. On February 9, 2024 Ms. Oliver informed the Court of Appeals of her intent to file the transcript from Circuit Court. R. p. 138-139. On March 1, 2024 Ms. Oliver E-mailed to the Court of Appeals, the Transcript from the May 31, 2023 hearing. R. p. 145. On March 6, 2024, Ms. Oliver filed her Designation of the Matter for the Appellant. R. p. 140-144. On March 13, 2024, The Court of Appeals informed Ms. Oliver that her designation of the matter had not been properly completed in accordance with SCACR 209(c). R. p. 146.

STATEMENT OF FACTS

Evidence was presented at the Magistrate's Court that Ms. Oliver was a tenant of 1945 Ghana Street, Johns Island, South Carolina 29455. Ret. of Mag.; R. p. 32. Ms. Oliver signed a lease with CCHRA on April 11, 2019 along with three dependents, Ret. of Mag.; R. p. 45. The Lease established that Rent "is due and payable in advance without notice on the 1st day of each month and is delinquent after the 5th day of the month." Ret. of Mag.; R. p. 33. In addition to the payment obligations, Ms. Oliver was required to "furnish accurate and complete information to Management as to household composition, income, net family assets, employment and allowance and reduction for use by Management to determine whether Resident is paying the appropriate amount of rent." Ret. of Mag.; R. p. 34. The Lease required Ms. Oliver to report, "any and all changes in family composition and family income ...in writing within 10 days of the damages. Ret. of Mag.; R. p. 34-35.

The Lease identifies "management shall not terminate or refuse to renew this lease other than for serious or repeated violations of material terms of the lease." Ret. of Mag.; R. p. 39. This includes, "failure to make payments due under this lease or to fulfill obligations of resident set forth in this lease or for other good cause." *Id.* The Magistrate's Return identifies the eviction packet was served on Ms. Oliver which instructs tenants on eviction hearings, including a notice stating, "it is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones." Ret. of Mag.; R. p. 1.

At the hearing, CCHRA presented evidence it informed Ms. Oliver of its intent to evict her for nonpayment of rent and refusal to recertify, both requirements under the Lease. At the time of the hearing, Ms. Oliver's was delinquent by \$11,120.00 for non-payment of rent. Ret. of Mag.; R.

p. 57. Ms. Oliver presented her own evidence to the court, which was not objected to by CCHRA. Ms. Oliver also presented evidence outlining photographs showing the conditions of her home she alleged were below industry standards. Ret. of Mag.; R. p. 2. Ms. Oliver also presented unobjected evidence regarding her absence from the informal hearing process. Ret. of Mag.; R. p. 2. Ms. Oliver attempted to introduce video evidence to the court, to which CCHRA objected to its admissibility. Ret. of Mag.; R. p. 2. The Magistrate's Court sustained CCHRA's objection as to the video evidence. *Id.* The Magistrate's Return states that Ms. Oliver "proffered a recording on her laptop as an exhibit. Parties were allowed to confer regarding this recording outside the presence of the magistrate." *Id.* CCHRA objected to the contents of the proffered video based upon relevance. *Id.*

Ms. Oliver represented to the Magistrate that the video she proffered was made in 2021 of then CCHRA Board Chairman, Mr. Sandino Moses, regarding COVID restrictions and not evicting tenants during the pandemic. *Id.* Ms. Oliver based her position of admissibility that the statements made by Mr. Moses were an offer to which she accepted. *Id.* CCHRA maintained its objections to relevancy to which the Magistrate sustained. *Id.*

The Magistrate reviewed the evidence and made a ruling from the bench. Ret. of Mag.; R. p. 3. Despite the tenant's applicable defenses of the landlord's alleged failures to provide one or more essential services and habitability, the defenses were not supported by the evidence presented. Ret. of Mag.; R. p. 3. The Magistrate entered an order for the eviction of the Tenant/Appellant. *Id.* On September 21, 2022, a hearing was held on a Bond to Stay Execution. *Id.* Since the Tenant raised issues as to Fair Market Value, the parties were questioned regarding the amount owed. Both parties agreed that the tenant's portion of the prior rental agreement

(\$583.00 of \$1477.00) and entered a Bond to Stay in the amount of \$583.00 to be paid on the first of each month. Ret. of Mag.; R. p. 3.

Oliver appealed the order for eviction to the Circuit Court. Judge Bentley Price heard the appeal on May 31, 2023 and issued an Order on August 7, 2023. Judge Price heard from the Appellant on May 31, 2023 and found “the appellant discussed issues of admissibility of evidence which is the sole discretion of the Magistrate Judge absent abuse of discretion.” Cir. Ct. Order.; R. p. 132. Oliver appealed the Circuit Court’s Order on October 25, 2023.

STANDARD OF REVIEW

The Court “reviews Rule 403 ruling pursuant to an abuse of discretion standard and gives great deference to the trial court.” *Lee v. Bunch*, 373 S.C. 654, 658, 647 S.E.2d 197, 199 (2007). “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* The Magistrate Court did not abuse its discretion from excluding evidence that was not relevant under the South Carolina Rules of Evidence, and the Circuit Court’s ruling which did not disturb the Magistrate’s ruling was not in error. Therefore, this Court should affirm the Circuit Court’s denial of the Appellant’s appeal grounds.

In reviewing the Circuit Court’s adjudication of an appeal of an ejectment proceeding in magistrate’s court, findings of fact are to be upheld if there is any supporting evidence. *McNair v. United Energy Distrib.*, 390 S.C. 44, 49, 699 S.E.2d 723, 726 (Ct. App. 2010). In such cases, “the Court of Appeals still retains *de novo* review of whether the facts show the circuit court’s affirmance was controlled or affected by errors of law.” *Bowers v. Thomas*, 373 S.C. 240, 245,

644 S.E.2d 751, 753 (Ct. App. 2007) citing *Hadfield v. Gilchrist*, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000). The South Carolina Supreme Court, in *Stanford v. Cudd*, held that where testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, this court will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. 93. S.C. 367, 370, 76 S.E. 986, 987 (1913); see also *Bowers*, 373 S.C. at 245, 644 S.E.2d at 753. There were no errors of law made by the Magistrate for the Circuit Court Orders, and therefore this Court should affirm the Circuit Court Orders.

ARGUMENT

I. THE MAGISTRATE PROPERLY EXCLUDED EVIDENCE PROVIDED BY THE DEFENDANT/APPELLANT AS NOT REVELANT

A. APPELLANT'S PROFFERED VIDEO EVIDENCE WAS PROPERLY EXCLUDED UNDER THE RELEVANCE STANDARD

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. S.C.R.E. Rule 401. Evidence which is not relevant is not admissible. S.C.R.E. Rule 402. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. S.C.R.E. Rule 403. Our courts have defined unfair prejudice as "an undue tendency to suggest a decision on an improper basis." *Johnson v. Horry Cnty. Solid Waste Auth.*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010). The law in South Carolina closely follows the Federal Rule where relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149

(1991). Trial judges have properly limited the defendant's presentation of certain evidence to guard against confusion of the jury by the injection of collateral issues. See *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532.

Evidence is "relevant" when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." S.C.R.E. Rule 401, *see also State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991)("Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears"). The test for relevancy is not stringent, and its standard is not difficult to vault. *See State v. Sweat*, 362 S.C. 117, 127, 606 S.E.2d 508, 513 (Ct. App. 2004)("Evidence is admissible if 'logically relevant' to establish a material fact or element of a crime; it need not be necessary to the State's case in order to be admitted.").

"A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *Id.* The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case. *State v. Brooks*, 341 S.C. 57, 62, 533 S.E.2d 325, 327 (2000). Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one. *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991). A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reserved only in exceptional circumstances. *State v. Hamilton*, 344 S.C. 344, 357, 543 S.E.2d 586, 593 (Ct. App. 2001). Photographs may be allowed if they corroborate testimony but not if they are calculated to arouse the sympathy or prejudice of

the jury and should be excluded if they are not necessary to substantiate material facts or conditions. *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). “Demonstrative evidence includes items such as a photograph, chart, diagram, or video animation that explains or summarizes other evidence and testimony. Such evidence has secondary relevance to the issues at hand; it is not directly relevant, but must rely on other material testimony for relevance. *Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000).

In *State v. Collins*, the Supreme Court ruled the trial court did not abuse its wide scope of discretion in admitting the pre-autopsy photographs since it was highly probative, corroborative, and material in establishing the elements of the offenses charged. 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)(where the probative value outweighed its potential prejudice). In *Watts v. Chastain*, a video was relevant because it provided information as to the position of the vehicles, timing of the collisions at issue, roadway conditions and whether motorists had their lights on despite not showing the collision. 438 S.C. 597, 608-09, 886 S.E.2d 398, 404 (Ct. App. 2022). The standard is not simply whether the evidence is prejudicial, rather, the standard under Rule 403, S.C.R.E. is whether there is danger of unfair prejudice that substantially outweighs the probative value of the evidence. *State v. Collins*, 409 S.C. at 536, 763 S.E.2d at 28.

Appellant intended to introduce an online video of former CCHRA Board Chairman, Mr. Sandino Moses, conducting an interview with Mr. Quintin Washington. Appellant intended to use the entire video as a reference to CCHRA’s policies on evictions during the COVID-19 pandemic. Appellant contends the entire recording was made in 2021 of Mr. Sandino, a speech he made under COVID Restrictions regarding CCHRA’s publicized position of not evicting people during the pandemic. Ret. of Mag.; R. p. 2. Appellant claims the video was an offer that CCHRA was not going to evict any tenants during COVID, and that Appellant “accepted the offer.” Ret. of Mag.;

R. p. 2. At the time of the eviction proceeding, CCHRA objected to the relevancy of the video, and such objections were sustained. *Id.* The thirty-six-minute video was excluded.

Appellant contends “the judge refused to listen to or view a recording of an interview with the Chairman of the board for CCHRA making a declaration concerning evictions.” Ret. of Mag.; R. p. 16. “The judge allowed the Plaintiff to review a snippet of the video and made her decision to exclude it from evidence without being informed of its content and relevancy.” *Id.* Appellant admits “Plaintiff indicated that she was not aware of the video,” and also claims “it should not matter whether or not the Plaintiff had previous knowledge of the video.” *Id.* Appellant claims “instructions for Eviction Hearings as provided by the Magistrate Court does not indicate how videos are to be presented.” *Id.* Appellant’s statements are misleading as the “Instruction for Evictions Hearings” state:

3. Parties may come to court and speak for themselves, or they may have a lawyer represent them. If you want a lawyer, you should get one right away.

...

6. It is the parties’ responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones.

7. The Court will not telephone a witness to take testimony.

8. The Court cannot reschedule a case because a witness is not present unless the witness is under subpoena.

9. The Court will issue subpoenas to any witnesses if you advise the Court at least 10 days before trial of the name, address, and phone number of the witness. If you wish to subpoena a witness in your county, you will have to mail or deliver a fee of \$8.00 to the magistrate’s court for preparing and serving a subpoena. The party requesting the subpoena is required to pay the subpoenaed witness fee of \$25.00 plus mileage for each day’s attendance.

Ret. of Mag.; R. p. 27. The instructions outline the protocol for not only bringing evidence but the process for obtaining witnesses.

At all times prior to the hearing, Appellant had access to a video she claims is pertinent to a contractual agreement between her and CCHRA. Appellant received a copy of the written instructions for evidence prior to the eviction proceeding. Appellant intended to offer a video into evidence, which was excluded based upon relevancy grounds. Appellant was aware of the requirement to conform to the eviction proceeding rules by issuing a subpoena to any witness she wished to question at the hearing. The Appellant failed to follow the protocols of the magistrate court, and instead sought to introduce an interview of the Board Chairman in place of testimony. Appellant intended to introduce the entire interview as an offer for her to resume her tenancy at a CCHRA property without payment of rent. The video was properly excluded, since the introduction of the video is highly prejudicial where its probative value is significantly outweighed by its prejudice.

Not only did Appellant fail to demonstrate the video was relevant to the issue of non-payment of rent, Appellant was unable to overcome the prejudicial nature of the video since the declarant was unavailable to corroborate the video. The Record on appeal demonstrates that CCHRA filed its application for ejection for the tenant's failure to pay rent, which included a failure to recertify in accordance with the rules and obligations of the Lease. Tenants of Public Housing Authorities are required to supply any information requested by the Authority for use in a regularly scheduled or interim reexamination. *See* PIH 2018-08 (“Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System”) para. 13. In addition, the Appellant intended to submit an interview from 2021, but the eviction proceedings were commenced in 2022. *Ret. of Mag.; R. p. 1. Housing and Urban Development (HUD) does not authorize any Public Housing Authority amnesty or debt forgiveness programs. PIH 2018-08, para. 16.*

B. APPELLEANT’S VIDEO EVIDENCE WAS NOT ONLY IRRELEVANT BUT IMPERMISSIBLE HEARSAY EVIDENCE

The Magistrate correctly excluded irrelevant video evidence from the proceeding below. Not only was the evidence not relevant to the case, the video was an out of court statement, the Appellant attempted to use for the truth of the matter asserted. Hearsay is a statement that is (1) oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion. S.C.R.E. Rule 801(a). A declarant is a person who makes a statement. S.C.R.E. Rule 801(b). Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” S.C.R.E. Rule 801(c). A statement will not be hearsay if “the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant’s testimony, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant. S.C.R.E. Rule 801(d)(1).

Mr. Moses was not present at the eviction hearing to testify as to the video evidence Appellant intended to introduce as evidence. The Declarant was not available to testify, therefore the statements contained in the video were out of court statements. Certainly, videos have been allowed for other purposes, as evidenced in *Hawkins v. Pathology Associates of Greenville, P.A.*, where a video to show a close familial bond between the decedent, her husband, and children was admitted. 330 S.C. 92, 498 S.E.2d 395 (Ct. App. 1998). Here, Appellant is attempting to use video evidence containing out of court statements alleging CCHRA Board Chairman, Mr. Sandino Moses, offered a unilateral contract not to evict the Appellant. Not only was Mr. Moses not present for the eviction proceeding, but use of the out of court statements should be precluded where Appellant is offering them for the truth of the matter asserted.

Appellant received the Eviction Proceeding Rules and opted not to call any witnesses prior to her hearing, including Mr. Moses. Since Appellant intends to offer Ms. Moses' statements made during an interview as the truth of the matter asserted, which is accepting an offer by CCHRA not to pay rent, the statements must be excluded as they are out of court statements. In addition, the statements are misconstrued where the Board Chairman does not have the authority to offer such rental relief, a contradiction of HUD requirements for payment of rent.

II. APPELLANT'S RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS WAS NOT VIOLATED

A. DUE PROCESS UNDER SOUTH CAROLINA LAW

Article V Section 4A of the South Carolina Constitution grants authority to determine a defendant's due process rights and whether they have been violated by procedural methods employed during a trial. *State v. Beaty*, 2018 S.C. LEXIS 48 at 23-24 (2018). "Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather it is a flexible concept that calls for such procedural protections as the situation demands." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). Procedural due process contemplates a fair trial. *Id.* Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1 § 22. Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *First Fed. Sav. & Loan Ass'n of Walterboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974). Due process requires (1) adequate notice;

(2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007).

The *In re Bilton*, court agreed with the holding that “due process ‘requires any hearsay basis evidence to meet minimum requirements of reliability and relevance’ before the evidence can be admitted in a civil commitment proceeding. 432 S.C. 157, 164, 851 S.E.2d 442, 445 (Ct. App. 2020) citing *State v. Floyd Y.*, 22 N.Y.3d 95, 979, N.Y.S.2d 240, 2 N.E.3d 204, 209 (N.Y. 2013) quoting *People v. Goldstein*, 6 N.Y.3d 119, 843 N.E.2d 727, 731, 810 N.Y.S.2d 100 (N.Y. 2005). This court has held a tenant’s due process rights have not been violated. See *Gaylord v. Gainey*, 2024 S.C. App. Unpub. LEXIS 64 at *1 (Feb. 21, 2024). In *Gaylord*, the appellant argued the circuit court erred by affirming the magistrate’s order for eviction since the magistrate violated her right to due process, violated federal law by holding a hearing, and erred by allowing a hearing based on a retaliatory eviction. *Id.* The Court of Appeals found Gaylord’s due process rights were not violated since Gaylord had notice of the hearing, was represented by counsel, and her attorney had the right to call witnesses, cross-examine witnesses, and present evidence. *Id.* See *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001)(“The Court of Appeals will presume an affirmance by a Circuit Court of a magistrate’s judgment was made upon the merits when testimony is sufficient to sustain the magistrate’s judgment and there are no facts showing the affirmance was influenced by an error of law.”).

In *Gaylord*, the court found they were not properly before the court since there was no evidence Gaylord raised the issues before the magistrate court and the circuit court. 2024 S.C. App. Unpub. LEXIS 64 at *2; See *State v. Bailey*, 368 S.C. 39, 43-44, 626 S.E.2d 898, 900 (Ct. App. 2006)(holding in an appeal from magistrate’s court to circuit court, where an issue was never

brought to the attention of the circuit court, it was not appropriate for this court to review the issue); *City of Columbia v. Ervin*, 330 S.C. 516, 519-20, 500 S.E.2d 483, 485 (1998)(holding the Court of Appeals should not have addressed the merits of an issue on appeal because the issue was not raised to the circuit court as the intermediate appellate court and therefore could not be raised for the first time in our Supreme Court of Court of Appeals).

In the present case, Appellant has not identified procedural or substantive due process issues at the magistrate level. See Ret. of Mag.; R. p. 3. On appeal to the Circuit Court, the Appellant did raise issues of “due process” claims stating that “total disregard for the defendant’s right to an equitable due process,” and “the case should have been scheduled for another time to allow proper execution of due process.” Ret. of Mag.; R. p. 16-17. Based upon the representations of the Appellant, she is not arguing that CCHRA violated her due process rights under the South Carolina Constitution, rather she is protesting the judicial process. Even if the appellant’s arguments can be morphed into an argument for a violation of procedural or substantive due process, CCHRA followed protocol regarding evictions, the eviction proceedings in accordance with South Carolina Landlord Tenant Law, and the Code of Federal Regulations. The Code provides the requirements not only of a Public Housing Authority’s (PHA) lease requirement, but the terms of the lease, and the requirements for determining rent, and termination procedures for program participants.

Appellant’s rights were not violated regarding any vested interest in a procedural due process or substantive due process analysis. CCHRA complied with procedures in place by both state and federal authorities. CCHRA issued a letter terminating the Appellant’s tenancy pursuant to violations of her lease terms. Specifically, Appellant failed to make rental payments under her lease as required under paragraph 2(A). Ret. of Mag.; R. p. 33. In addition, Appellant was to fulfill

her obligations for “redetermination of rent” where Appellant was required to “furnish accurate and complete information to Management as to household composition, income, net family assets, employment and allowance and deduction for use by Management to determine whether Resident is paying the appropriate amount of rent.” Ret. of Mag.; R. p. 34. The Lease provides that management may terminate the lease for serious or repeated violation of material terms such as “failure to make payments due under this lease or to fulfill obligation of resident set forth in this lease.” Ret. of Mag.; R. p. 39. Specifically, the lease allows for termination for “failing to provide timely and accurate statements of income, assets, expenses and family composition at ...annual rent re-certifications.” *Id.* The record reflects Appellant was not paying rent and owed a balance of \$11,120.00 at the time of the eviction proceeding. Ret. of Mag.; R. p. 57.

CCHRA brought eviction proceedings within its rights under South Carolina Landlord Tenant laws for failure to pay rent and abide by terms of the lease. CCHRA is permitted to pursue an eviction when material terms of the lease were violated by the Appellant. “South Carolina eviction procedure is constitutionally adequate...Landlord-tenant law is traditionally the province of the states. State judges are bound as are we by the due process clause of the fourteenth amendment.” *Joy v. Daniels*, 479 F.2d 1236, 1243 (4th Cir. 1973). CCHRA followed the protocol and satisfied all requirements from a due process and substantive due process perspective discussed in further detail in Section B.

B. DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS

The Fourteenth Amendment states, “No State shall ...deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV. The due process clause encompasses two distinct forms of protection: (i) procedural due process, which requires a state to employ fair procedures when depriving a person of a protected interest; and (ii) substantive due

process, which guarantees that a state cannot deprive a person of a protected interest for a certain reason. See *City of Sacramento v. Lewis*, 523 U.S. 833, 845-46, 118 S. Ct. 1708 (1998).

Procedural and substantive due process claims require different showings. Under procedural due process, “protection of property is a safeguard of the security interests that a person has already acquired in specific benefits.” *Bd. of Regents of State Colls v. Roth*, 408 U.S. 564, 576, 92 S. Ct. 2701 (1972). “It is a guarantee of fair procedures, typically notice and an opportunity to be heard.” *Mora v. City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008). In contrast, substantive due process “is a far narrower concept than procedural; it is an absolute check on certain government actions notwithstanding the fairness of the procedures used to implement them.” *Roth*, 408 U.S. at 576. “Under either form of protection, however, a person must have a protected interest in either life, liberty, or property.” *Chavez-Rodriguez v. City of Santa Fe*, 2008 U.S. Dist. LEXIS 108741 (D.N.M. Oct. 9, 2008).

A person receiving section 8 benefits has an interest in continued receipt of those benefits that is safeguarded by procedural due process. *Nozzi v. Housing Authority*, (9th Cir. 2015) 806 F.3d 1178, 1192. To terminate section 8 housing assistance, due process requires, among other things, timely and adequate notice of the reasons for the proposed termination and written decision following a pretermination hearing stating the reasons for the determination and the evidence on which the decision maker relied. *McCall v. Montgomery Hous. Auth.*, 809 F.Supp.2d 1314, 1324 (M.D. Ala. 2011).

HUD provides regulations by which tenants or participants receiving public housing are governed. In the regulations, HUD provides an option for participants to choose how their rent is calculated. 24 C.F.R. § 960.253. For any year in which a participating family is paying the income-based rent, the PHA must, “conduct a full examination of family income and composition,

following the provisions of Section 960.257. 24 C.F.R. § 960.253 (f)(2)(i). For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after the consultation with the family and upon verification of the information. 24 C.F.R. § 960.257(a)(1). The regulations require a family to supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination. 24 C.F.R. § 960.259(a)(2).

HUD also provides PHA's with requirements for leases, grievances, and termination of leases. HUD requires PHA's that each tenant of a dwelling to identify the name of the PHA and tenant, the unit rented, the term of the lease, and the composition of the household. See 24 C.F.R. § 966.4(a)(1)(i)-(vi). The PHA may terminate the tenancy in accordance with paragraph 1. 24 C.F.R. § 966.4(a)(2)(iv). The lease also must state the procedures to be followed by the PHA and by the tenant to terminate the tenancy. 24 C.F.R. § 966.4(l)(1). The PHA may terminate the tenancy for serious or repeated violations of material terms of the lease, including failure to make payments, and failure to fulfill household obligations. 24 C.F.R. § 966.4(l)(2)(i)(A)-(B). The lease termination notice shall state the specific grounds and inform the tenant of the right to request a grievance hearing. 24 C.F.R. § 966.4(3)(ii). A PHA may evict the tenant from the unit by "bringing court action." 24 C.F.R. § 966.4(4)(i).

CCHRA followed the required provisions of the Code in order to begin eviction proceedings against the Appellant, by including the relevant information in her lease agreement, providing her notice of her lease termination, a right to contest that determination at an informal hearing, and provided a determination letter from the hearing prior to moving for actual eviction.

1. PROCEDURAL DUE PROCESS

Procedural due process requirements are not technical; no particular form of procedure is necessary. *Sloan v. South Carolina Board of Physical Therapy Examiners*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006). “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* quoting *Wilson*, 352 S.C. at 452, 574 S.E.2d at 733. The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *S.C. Dept. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses. *S.C. Dep’t of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 734 (2002). Due process generally requires the decision-maker to state the reasons for his determination and indicate the evidence upon which he relied, but the decision need not amount to a full opinion or even formal findings of fact and conclusions of law. *McCall*, 809 F.Supp.2d at 1324. “Procedural due process is a right to be meaningfully heard.” *In re Det. of Johnson*, 179 Wn. App. 579, 587-88, 322 P.3d 22, 26 (Ct. App. 2014).

In *Moore v. Moore*, the court referenced that a finding of property and liberty interests of a respondent to a petition for order of protection are implicated and protection of procedural due process was appropriate. 376 S.C 467, 473, 657 S.E.2d 743, 746 (2008) citing *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 230 (Mo. 1982). The Court found providing respondent with notice of a petition prior to the hearing and an opportunity to be heard complied with the requisite procedural due process guarantees. *Moore*, 376 S.C. at 476-77, 657 S.E.2d at 747. A tenant receiving notice of the grounds for termination of her lease and having the opportunity to argue her case in a formal hearing before a neutral decision maker complied with procedural due process requirements.

Kitsap County Consol. Hous. Auth. v. Henry-Livingston, 196 Wn. App. 688, 706, 385 P.3d 188, 196 (Ct. App. 2016). Due process has been found where a PHA gave notice to the tenant, offering ways for the tenant to cure the nonpayment of rent, and offering ability to reply, examine documents and/or request a grievance procedure. See *Major v. Hous. Auth. of Greenville*, 2012 U.S. Dist. LEXIS 138406 at *15-16 (D.S.C. 2012).

Just as the Code requires, CCHRA provided the Appellant with the requisite information in her original Lease in 2020 regarding the requirement to pay rent. Ret. of Mag.; R. p. 38. In addition, the Lease provided Appellant with knowledge of how rent would be calculated as well as the need for recertification and the process for determining rent for each twelve-month lease term. Ret. of Mag.; R. p. 34-35. The lease provisions restate the requirements of 24 C.F.R. § 960.259(a)(2), alerting Appellant of the requirements to provide accurate information for the recertification process. Not only must the Appellant comply with the provisions of the Code, CCHRA must gather information for the purposes of determining rent on an annual basis. See 24 C.F.R. § 960.257(a)(1).

When CCHRA did not obtain information from the Appellant as required under her lease, they provided her with notice and reasons for the termination of rent on May 10, 2022. Ret. Of Mag.; p. 112. The reasons for termination were failure to pay rent. *Id.* The appellant requested an informal hearing to appeal the property manager's decision to evict her from 1945 Ghana Street. Ret. Of Mag.; p. 51. On May 26, 2022, CCHRA provided the Appellant with a notice of informal hearing for June 7, 2022. Ret. of Mag.; p. 47. The informal hearing notice was provided with "Public Housing Grievance Procedure" outlining the hearing specifics. Ret. Of Mag.; p. 52-53. The Appellant was unable to attend the first hearing on June 7, 2022 which was via Zoom. A second informal hearing notice was sent by request of the Appellant on June 8, 2022 for June 23,

2022 at the Joseph Floyd Manor. Ret. Of Mag.; p. 51. Ms. Ginean Mazyck, the hearing officer, sent her decision from the informal hearing on July 5, 2022. Ret. of Mag.; R. p.75. The decision states, “Ms. Oliver did not attend the informal hearing. Failure to attend 2nd rescheduled hearing results in favor of CCHRA Public Housing Department.” *Id.* At the time, the balance of unpaid rent was \$6,616.00. The hearing decision provided Appellant with additional notice for the time CCHRA would file for eviction of August 1, 2022. *Id.*

On August 9, 2022, CCHRA filed for an application for ejectment for the Appellant in magistrate’s court. Ret. of Mag. 28. The Appellant was served with a rule to vacate or show cause on August 16, 2022. Ret. of Mag.; R p. 22. On September 7, 2023 a hearing in magistrate’s court with the Honorable Laura C. Waring presiding was held conducting findings of fact and conclusions of law. Ret. of Mag.; R. p. 1-3. The Magistrate noted, “while Tenant/Appellant raised applicable defenses of Landlord/Respondent’s failure to provide one or more essential services and habitability, these defenses were not borne out by the evidence. Therefore, on September 7, 2022, the Magistrate entered an order of eviction.” Ret. of Mag. R; p. 3. The Appellant appealed to the Circuit Court on September 8, 2022.

CCHRA afforded the Appellant adequate due process throughout the duration of her tenancy by providing her written notice for reasons of the termination of her lease, which were stated within the Lease. Non-payment of rent is a violation of the Appellant’s Lease under Paragraph 12(A)(1). Ret. of Mag.; R. p. 39. After providing notice of Appellant’s Lease violation, CCHRA accommodated the Appellant on two occasions when she requested a grievance hearing and had to reschedule. Appellant was unable or chose not to attend either hearing. Based upon a lack of attendance, CCHRA informed Appellant of the time it would move for eviction, which did not occur until August of 2022. The Appellant attended the rule to show cause hearing, presented

witness testimony, and introduced six of seven exhibits to make a statement for her case. See Ret. of Mag.; R. p. 2-3. Appellant complains the Magistrate failed to follow the rules regarding a video that was excluded.

Magistrate Rule 13 provides “Trials should be conducted in an informal manner, and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice.” S.C. Mag. R. Civ. P. 13(a). Video evidence may be challenged under the South Carolina Rules of Civil Procedure under multiple rules, including relevance under Rule 401, exclusion of relevant evidence of Rule 403, and hearsay under Rules 802-804.

The Appellant challenges the due process of the magistrate court for excluding her video evidence, but allowing seven other exhibits. The video appellant sought to introduce contained out of court statements, which appellant sought to introduce for the truth of the matter asserted. Under Magistrate Rule 13(e), “the court shall have the power to issue subpoenas to compel the attendance of witnesses.” At no time did the Appellant ask to question Ms. Sandino Moses regarding any statement he may have made in a press interview.

At each stage of the eviction proceeding, the Appellant was notified of the upcoming proceedings, was provided with information of how each proceeding was conducted, and was afforded additional time and dates for informal hearings. Even after the notices, the Appellant failed to appear at the hearing. The Appellant was given a fair trial at the magistrate’s level where evidence was presented in the form of testimony and exhibits, and conclusions of law were conducted. Reviewing the record, the Appellant was afforded procedural due process by both CCHRA and the Magistrate’s Court. ‘

2. SUBSTANTIVE DUE PROCESS

Substantive due process is a far narrower concept than procedural; it is an absolute check on certain governmental actions notwithstanding the fairness of the procedures used to implement them. *Love v. Peppersack*, 47 F.3d 120, 122 (4th Cir. 1995). In order to state a substantive due process claim, a plaintiff must demonstrate: (1) that she had property or a property interest; (2) that the state deprived her of this property or property interest; (3) that the state's action falls so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency." *Southern Blasting Serv.'s, Inc. v. Wilkes County, NC*, 288 F.3d 584, 594 (4th Cir. 2002). Substantive due process protections "run only to state action so arbitrary and irrational, so unjustified by any circumstance or governmental interest, as to be literally incapable of avoidance by and pre-deprivation procedural protections or of adequate rectification by any post deprivation state remedies. *Id. citing Rucker v. Harford County*, 946 F.2d 278, 281 (4th Cir. 1991). The protections of due process include the government's exercise of power without any reasonable justification in the service of a legitimate governmental objective. *Nance v. City of Albermarle*, 520 F. Supp. 758, 793 (M.D.N.C. 2021).

As noted above, public housing program participants have a constitutionally protected interest. The substantive component of the due process clause is violated by executive action only when it can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense. *Nance*, 520 F.Supp. at 793 citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845, 118 S. Ct. 1708, 140 L. Ed. 1043 (1998). The constitutional concept of conscience shocking duplicates no traditional category of common-law fault, but rather points clearly away from liability, or clearly toward it, only at the ends of the tort law's spectrum of culpability." *Lewis*, 523 U.S. at 848. To challenge a regulation, the challenger "must show that there is no rational relation between

the regulation and a legitimate governmental objective.” *Diaz v. United States Postal Services*, 853 F.2d 5, 10 (1st Cir. 1988).

Courts have found numerous government action not arbitrary. In *General Textile Printing & Processing*, the court could not connect a plaintiff being deprived of substantive due process for a utility’s rates not being strictly cost-based. *General Textile Printing & Processing Corp. v. City of Rocky Mount*, 908 F. Supp. 1295, 1304 (E.D.N.C. 1995)(plaintiff alleged rates were arbitrary). The Tampa Housing Authority did not violate a tenant’s substantive due process for applying the One Strike Policy across the board to all tenants for actions of their household members since it was rationally related to the prevention of drug-related crime. *Burton v. Tampa Hous. Auth.* 171 F. Supp. 2d 1314, 1318 (M.D. Fla. 2000). Similarly, the court could not find a tenant’s claims for substantive due process were of merit where the tenant failed to name an additional resident on the lease and the housing authority presented sufficient evidence to establish its claim for eviction. *Lowery v. Hous. Auth.*, 826 N.E.2d 685, 689-90 (Ct. App. Ind. 2005).

Housing authorities have not violated substantive due process for following the requirements of their leases and applying them to all residents just as in *Burton* and *Lowery*. The intention of a lease and the upholding of its terms and conditions are rationally related to the purpose of entering into contract between landlord and tenant. In other words, housing authorities have been granted deference when applying the principles of breach of contract or lease violations as a means to seek eviction.

In the present case, the same is true. The Appellant is arguing substantive due process, or that CCHRA acted in an arbitrary nature by moving for her eviction. CCHRA’s reasons for eviction are clearly stated within its notice to the Appellant for lease violations. In addition, CCHRA afforded the Appellant two different times to challenge or review the eviction at an

informal grievance hearing. Despite these offerings, the Appellant refused to attend or participate in procedural due process components she was afforded. Instead, the Appellant attempted to include irrelevant evidence at her eviction proceeding as a means to overcome CCHRA's reasons for eviction.

The Magistrate court properly applied the factual information before the court, including the Appellant's possible defenses for failure to provide essential services and habitability. Ret. of Mag.; R. p. 3. The Magistrate allowed seven exhibits into evidence, excluding a video deemed not relevant. The exclusion of the video was not based on an arbitrary position of the magistrate, instead, the Magistrate:

allowed [the Parties] to confer regarding this recording outside of the presence of the magistrate. The material was voluminous and not reduced to a thumb drive. Objection was made by Landlord/Respondent that the contents were irrelevant. Tenant/Appellant represented that the entire recording was made in 2021 of Moses Sandino, a speech that he had made under COVID Restrictions regarding CCHRA's publicized position of not evicting people during the pandemic. Tenant/Appellant's proffer was based upon CCHRA's purported offer and her acceptance of that offer that no one was going to be evicted. Tenant proffered shorter excerpts of the same recording as well as prototypes of HUD rental agreements. Landlord/Respondent's objections to relevancy were sustained.

Ret. of Mag.; R. p. 2. South Carolina's position on a trial judge's ability to enter or exclude evidence is clear. A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances. *State v. Hamilton*, 344 S.C. 344, 357, 543 S.E.2d 586 (Ct. App. 2001). On appeal to the Circuit Court, The Honorable Bentley Price found "the appellant discussed issues of admissibility of evidence which is in the sole discretion of the Magistrate Judge absent abuse of discretion." Form 4 Dated Aug. 7, 2023; R. p. 132-33.

Based upon the record on appeal, CCHRA, the Magistrate Court, and the Circuit Court afforded the appellant proper substantive due process. CCHRA acted based upon its lease violations which are rationally related to contract and landlord/tenant laws of this State. The Magistrate Court acted within the bounds of its authority by properly evaluating the probative value and nature of evidence presented for an eviction proceeding. The Circuit Court deferred to the Magistrate's Court where no abuse of discretion was shown by the Appellant. The Appellant has not shown to this Court, that Appellant's substantive due process rights were violated by any arbitrary actions of CCHRA, the Magistrate's Court, or the Circuit Court.

C. NONE OF APPELLANT'S STATEMENTS OF ISSUES ON APPEAL IS A VIOLATION OF DUE PROCESS, RULES OF PROCEDURE, OR RULES OF EVIDENCE.

Appellant argues on appeal that (1) the Circuit Court violated her due process rights; (2) The Appellate hearing from Magistrate to Circuit Court was improper; (3) Magistrate Hearing due process; (4) Magistrate Hearing procedure; (5) Magistrate Hearing due process and South Carolina Rules of Evidence; (6) Evidence at Magistrate's Hearing and Factual Allegations of the Appellant's Lease; (7) Violations of South Carolina Rules of Civil Procedure for Appeals. As expressed above, Appellant's due process rights were not violated. Procedurally, the Appellant was afforded the necessary and proper steps of the grievance hearing and judicial process. This brief will address each of Appellant's individual reasons below in Parts II(C)(1)-(7).

1. THE CIRCUIT COURT PROVIDED NOTICE OF APPELLANT'S APPEAL AND NOTICE OF RESPONDENT'S MOTION AND MEMORANDUM IN OPPOSITION.

The Appellant claims the Circuit Court "denied the Appellant's right to have the appeal heard which resulted in prejudice to the defendant." App. Brief 11. Appellant argues "Respondent's attorneys are in violation of filing an illegal/prohibited motion," and the Circuit

court, “committed a legal error by not allowing the motion to dismiss the appeal be presented and defended against.” App. Brief 12. Appellant’s arguments assert her Constitutional Rights for due process were violated. App. Brief 11. Appellant’s Constitutional Rights to due process were not violated, as the court afforded her due process under the provisions of the law.

Appellant filed her appeal with the Circuit court on September 8, 2022. Ret. of Mag.; R. p. 15-17. The Magistrate’s Return was filed on October 13, 2022. Ret. of Mag.; R. p. 1. Counsel for CCHRA filed a notice of appearance with the Circuit Court on January 5, 2023 and a motion and memorandum in support to dismiss her appeal on March 16, 2023. On April 26, 2023, the Court notified the parties of the hearing for the appeal and motion. Both were originally set for separate days, one being May 30, 2023 and one being May 31, 2023. The court realized its error and consolidated the hearing date as one for May 31, 2023.

The Parties appeared before the Honorable Bentley Price on May 31, 2023. See Transcript p. 1. At the start of the hearing, the Court addressed the Parties stating, “all right. I have read the return. All right. Whose appeal is this?” Transcript p. 3:2-4. The Appellant responded by stating “I made the appeal after the magistrate made her decision, and they because of a motion because he wants to dismiss my appeal.” Transcript 3:5-8. The appellant contends that “Judge Price refus[ed] to allow the Respondent to present their matter before the court for the Appellant to defend but the judge turned it into an appeal hearing.” App. Brief 12. Appellant claims that the motion to dismiss should have bene heard instead of her appeal, and since it was not her due process rights were violated. *Id.*

South Carolina statutes provide the requirements for filing an appeal from magistrate’s court to Circuit Court. See S.C. Code Ann. § 18-3-10 et seq. Once an appeal is filed from the magistrate’s court, the “clerk, upon receipt of the case, shall place it upon the motion calendar of

the court of common pleas.” S.C. Code Ann. § 18-3-60. Once heard, the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without examination of witnesses in that court.” S.C. Code Ann. § 18-3-70. The Court “may either confirm the sentence appealed from, reverse, or modify it, or grant a new trial, as to the court may seem meet and conformable to law.” *Id.* An application to the court for an order shall be by motion, shall be made in writing and state with particularity the grounds, and set forth the relief sought. S.C.R.Civ.P. Rule 7(b)(1). The Circuit Court provided a notice and Motion of the appeal which was to be heard on May 31, 2023 at 9:30 AM. CCHRA filed a motion and memorandum of law in support of a motion to dismiss or deny the appeal pursuant to the applicable rules of civil procedure.

Prior to the hearing date of May 31, 2023, Appellant received adequate notice in order to prepare for and argue reasons for her appeal some of which were discussed within her oral argument, where she emphasized the excluded video was of importance and the Magistrate Judge would not allow the video. See Transcript 3:24-4:25. The Magistrate considered the probative value of the evidence, and sustained the objections to the video by CCHRA. See Ret. of Mag.; R. p. 2.

The Appellant’s due process rights were not violated by the Circuit Court, where she was notified of her motion or appeal, given a time, place, and made aware of her presence needed.

2. JUDGE PRICE DID NOT VIOALTE APPELLANT’S RIGHTS TO HEAR CCHRA’S MOTION TO DISMISS APPEAL.

As noted in Section II(C)(1), Appellant’s procedural due process was not violated by the Circuit Court. The same is true in light of the Respondent’s motion to dismiss Appellant’s appeal from magistrate’s court. The filing was in response to the Appellant’s motion to appeal, which appeared first on the court calendar. Appellant appealed the Magistrate’s decision on September

8, 2022. Ret. of Mag.; R. p. 14. Once the Magistrate filed a Return, CCHRA's counsel filed an appearance and motion and memorandum in opposition to appeal on March 16, 2023. On April 26, 2023, the court notified the parties that a motions/appeal hearing would transpire on May 31, 2023. At the hearing, Ms. Oliver informed the court CCHRA filed a motion to dismiss. Transcript 3:5-8. Her statements to the court correctly identified CCHRA's intention to dismiss the appeal. CCHRA informed the court that our motion was in opposition to the Appellant's appeal. Transcript 3:9-14. The court agreed that the motion before the court was her appeal, which complies with S.C. Code Ann. § 18-3-60.

The Appellant commenced with her reasons her appeal should be granted, which were based upon the introduction of evidence at the magistrate level. See Transcript 3:24-6:17. Appellant argues "the right to defend was upended by the judge's refusal to allow the motioning party to speak any further." App. Brief 13. Appellant contends since the motion to dismiss her appeal did not have to be argued, she was not afforded due process. However, there was no need to argue for a dismissal when the judge found the following:

You're getting into the factual meat of the matter, which I'm not to consider. My only job is to consider any matters of law. The matters of law that you have brought up is the admissibility of evidence pertaining to the video and to any photos or any other evidentiary issues that you have with the trial court down below, but any admissibility of evidence is left to the sole discretion of the trial court, and I, therefore, find that she did not abuse her discretion, and I will deny the appeal.

Transcript: 9:13-22. The judge's rationale mirrored the sentiment stated within CCHRA's memorandum in law in support of denying the motion; therefore, there was no reason to discuss in length anything already concluded by the court. The Appellant had an opportunity to advocate for her appeal, and did so; therefore, her due process rights were not violated.

3. CCHRA FOLLOWS THE CODE OF FEDERAL REGULATIONS AND DID NOT HINDER APPELLANTS RIGHTS UNDER THE CODE.

CCHRA indicated in part II the Code of Federal Regulations that governs the terms of a lease, amount of rent to be paid, and remedies for violations thereof and actions taken in such instances. The PHA may terminate the tenancy for serious or repeated violations of material terms of the lease, including failure to make payments, and failure to fulfill household obligations. 24 C.F.R. § 966.4(1)(2)(i)(A)-(B). The lease termination notice shall state the specific grounds and inform the tenant of the right to request a grievance hearing. 24 C.F.R. § 966.4(3)(ii). A PHA may evict the tenant from the unit by “bringing court action.” 24 C.F.R. § 966.4(4)(i).

The Appellant also mentions that CCHRA violated her right to due process under the Code. App. Brief at 16. The Appellant correctly states the PHA grievance procedure shall be applicable to all grievances defined as any dispute which tenant may have with respect to PHA action or failure to act in accordance with the Lease between the tenant and PHA where due process determination means a determination by HUD that law of the jurisdiction requires the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process. 24 C.F.R. § 966.51(2)(i). Due process in terms of the Code means the termination of tenancy requires: 1) adequate notice to the tenant of the grounds for terminating the tenancy and for eviction; 2) right to be represented by counsel; 3) opportunity for the tenant to refute the evidence presented including right to confront witnesses and cross-examine witnesses and present any affirmative legal defense; and 4) a decision on the merits. 24 C.F.R. § 966.53(c)

Appellant focuses on 24 C.F.R. § 966.4(m), stating she did not receive all documents prior to the grievance hearing. However, the Record shows CCHRA initially notified Appellant of an informal hearing by Zoom for June 7, 2022. Ret. of Mag.; R. p. 47. The grievance hearing was provided by Appellant’s request. The Appellant could not attend the first hearing date, and

requested a new date, and CCHRA complied with the request, issuing a second date for June 23, 2022. Ret. of Mag.; R p. 51. The notice provided the Appellant should notify the PHA if she was unable to attend the hearing. *Id.* The Hearing Notice was accompanied by the procedures for such a hearing. See Ret. of Mag.; R pp. 52-53.

Of note, the Record reflects the Appellant requested an informal hearing as required under the Code. The Record shows the correspondence granting a hearing was on or about April 25, 2022. See Ret. of Mag.; R. p. 59. The Code states a hearing must be scheduled promptly but does not provide a timeline. See 24 C.F.R. §966.56(a). Appellant contended in several letters CCHRA did not provide a hearing. See Ret. of Mag.; R. p. 59. However, CCHRA provided two different dates for a hearing in order to meet the informal hearing guidelines in the Code. The Record reflects the Appellant sought to discuss her eviction with CCHRA Board Members and executive staff and not her area managers, issuing the notices.

CCHRA held the grievance hearing date for June 23, 2022, and Appellant did not dispute or request for a new date. Ret. of Mag.; R. p. 75. The Hearing Determination letter states “Ms. Oliver did not attend the informal hearing. Failure to attend second rescheduled hearing results in favor of CCHRA.” *Id.* CCHRA proceeded with eviction procedures before a tribunal as required under the Code and South Carolina Law. The Appellant was informed of her right to a grievance hearing, and was provided at least two dates to appear and discuss her case at an informal hearing. In addition, the procedures for the hearing were provided to the Appellant in accordance with the requirements of the Code.

4. THE MAGISTRATE FOLLOWED THE MAGISTRATE RULES OF COURT.

The Appellant contends the Magistrate did not follow the Magistrate’s rules by refusing to allow her to present evidence at the hearing. See App. Brief p. 21. Citing Magistrate Rule 13,

Appellant argues the nature of the rule was not followed during the eviction proceeding. Magistrate Rule 13 says “Trials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice.” S.C. R. Mag. P. Rule 13(a). “In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure all claims and defenses are fully presented.” *Id.*

The Record reflects the Magistrate properly conducted the eviction proceeding in front of the Parties on September 7, 2022 where both parties were not represented by counsel. The Magistrate noted “it is the parties’ responsibility to bring any witnesses or other evidence they want to Court to consider because the Court does not accept written witness statements.” Ret. of Mag.; R. p. 1. The Magistrate entered and reviewed seven exhibits from the plaintiff, CCHRA, and six of seven exhibits from the defendant/appellant. The Magistrate Court within its discretion, and pursuant to the applicable South Carolina Rules of Evidence, properly excluded an out of court statement based upon relevance grounds and objections made by CCHRA. See Ret. of Mag.; R. p. 2.

Appellant argues she was not allowed to question witnesses. App. Brief at 21. However, since both parties were unrepresented by counsel, doing so would be contrary to Magistrate Rule 13 where the court may make the factual findings by questioning witnesses. The Return indicates Judge Laura Waring investigated the facts presented and did so in accordance with the Rules where she specified the Defendant/Appellant raised applicable defenses, yet the defenses were not borne out by the evidence. Ret. of Mag.; R. p. 3.

5. THE MAGISTRATE DID NOT VIOLATE THE APPELLANT’S RIGHT TO DUE PROCESS BY EXCLUDING THE VIDEO

As noted in Section II(C)(4) above, the Magistrate Court did comply with Magistrate Rule 13 where the South Carolina Rules of Evidence apply but they are relaxed in the interest of justice. In addition, Magistrate Rule 13 requires “all testimony to be given under oath or affirmation.” See S.C. Mag. R, Civ. P. Rule 13. In addition, the Rule states “the court shall have the power to issue subpoenas to compel the attendance of witnesses.” S.C. Mag. R. Civ. P. Rule 13(e). The court “may issue a subpoena, signed but otherwise blank, to a party requesting it, who shall complete it before service.”

Appellant’s primary issue with the video evidence appears to be that the magistrate did not review the contents of the video to have an idea of whether or not to sustain CCHRA’s objection to relevance. The Magistrate’s Return reflects the Magistrate understood the contents of the video and the intentions for introducing the video evidence:

Tenant/Appellant proffered a recording on her laptop as an exhibit. Parties were allowed to confer regarding this recording outside of the presence of the magistrate. The material was voluminous and not reduced to a thumb drive. Objection was made by Landlord/Respondent that the contents were irrelevant. Tenant/Appellant represented that the entire recording was made in 2021 of Moses Sandino, a speech that he had made under COVID Restrictions regarding the CCHRA’s publicized position of not evicting people during the pandemic. Tenant/Appellant’s proffer was based upon CCHRA’s purported offer and her acceptance of that offer that no one was going to be evicted. Tenant proffered shorter excerpts of the same recording as well as prototypes of HUD rental agreements. Landlord/Respondent’s objections to relevancy were sustained.

Ret. of Mag.; R. p. 2. The Return shows the Magistrate understood the contents and purpose of appellant’s intent to introduce the video. The Appellant intended to introduce the video evidence for the truth of the matter she asserted – that Mr. Moses offered her a contract.

Not only did the Appellant lack the foundational requirements to introduce the video evidence, the Appellant failed to inform the court of needed witnesses for the time of trial. Prior to the Rule to Vacate or Show Cause, the Court issued a list of instructions for eviction hearings

to the Appellant. Ret. of Mag.; R. p. 24. The instructions informed both parties “it is the parties’ responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written statements, even notarized ones.” *Id.* para. 6.

The Appellant never informed the court or CCHRA she would require the testimony of any witness at the hearing other than her own. The Magistrate considered the out of court statements in addition to CCHRA’s relevance objections. The Magistrate excluded the evidence in favor of the relevance objections after considering the purpose of introducing the evidence and in light of the weight of the evidence at the hearing. Ret. of Mag.; R p. 2.

Even if the video evidence were used in this case, CCHRA would have been able to introduce evidence regarding HUD’s requirements of PHAs which states: “if the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new payment agreement, the PHA must terminate the family’s tenancy or assistance, or both.” Notice PIH 2018-18 October 26, 2018 para. 16. “HUD does not authorize any PHA-sponsored amnesty or debt forgiveness programs.” *Id.* CCHRA agrees with the magistrate’s exclusion of the video under the South Carolina Rules of Evidence, Rules 401 and 403 and acted within the confounds of Magistrate Rule 13.

6. APPELLANT’S CLAIMS REGARDING AMOUNT OF RENT WERE NOT AT ISSUE BELOW

Appellant contends that the amount of rent she is charged is unconscionable. See App. Brief at 27. Appellant is raising the issue of the amount of her rent for the first time on the appellate level. The Appellant admitted at the Magistrate level that she paid no amount of money towards due rent. See Ret. of Mag.; R p. 3. Upon review of all of the evidence, the Magistrate was unable to determine whether the Appellant’s nonpayment of any rent money was borne out through the evidence. *Id.* On appeal, the Appellant intends to offer additional evidence which was not

contemplated at the Magistrate level or the Circuit Court level. Therefore, CCHRA respectfully requests the Court of Appeals disregard Appellant's new arguments regarding the amount of rent applicable to the Appellant's Lease.

7. APPELLANT'S ARGUMENT REGARDING CCHRA'S MOTION AND MEMORANDUM IN OPPOSITION OF APPEAL IS UNFOUNDED.

Appellant contends that CCHRA's Memorandum in opposition to her appeal from Magistrate's court misstates the Magistrate's ruling based upon the Magistrate's Return. Stated more clearly, the Magistrate found "While Tenant/Appellant raised the applicable defenses of the Landlord/Respondent's failure to provide one or more essential services and habitability, these defenses were not borne out by the evidence." Ret of Mag.; R. p. 3. CCHRA utilized the term "validate" the defenses in its memorandum. CCHRA is not disputing that Appellant introduced evidence at the bench trial. CCHRA agrees with the Magistrate, that evidence presented did not reveal that CCHRA failed to provide one or more essential service.

CCHRA filed its Motion and Memorandum in accordance with the South Carolina Rules of Civil Procedure. Specifically, Rule 7 discusses the types of motions and other papers. S.C.R.C.P. Rule 7(b). In the rule, "an applicant to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief sought." *Id.*

Appellant contends CCHRA moved the court to prevent it from appealing. However, the transcript represents an entirely different recitation of the facts on appeal. CCHRA did not prevent the Appellant from appealing her case, which she established on September 8, 2022. Ret. of Mag.; R. p. 16-17. Furthermore, CCHRA's filings did nothing to hinder the Appellant from preparing and arguing her appeal at the Circuit Court. Appellant contends CCHRA should have been able to argue its motion to dismiss her appeal and that in its absence the case has continued and hindered

her due process. See App. Brief at 32. CCHRA informed the court of the Appellant's right to be heard based upon her motion for an Appeal, which was filed on September 8, 2022.

Nothing in the Lease documentation prevented the Appellant from conducting this appeal, and the actions of CCHRA have not hindered the Appellant's rights to due process under the Fourteenth or Fifth Amendment. Appellant contends her appeal is more than about the video and includes "the magistrate denying the then Defendant the right to call the present staff for questioning as witnesses in violation of SCRCF 13." App. Brief 33. The Magistrate reiterated the instructions provided to both parties at the eviction proceeding stating where she reminded the parties, "it is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones." Ret. of Mag.; R. p. 1. The Appellant called herself as a witness. Ret. of Mag.; R. p. 2. The Appellant testified during the hearing. Ret. of Mag.; R. p. 2. "The Tenant/Appellant did not present any other witnesses or documents." Ret. of Mag.; R. p. 3.

The Appellant insists her rights to due process under the Fourteenth and Fifth Amendments were infringed by the eviction process that is required by the Code of Federal Regulations. CCHRA carried out the eviction process by following the guidelines provided in the Code, by incorporating the grievance hearing process, by terminating tenancy with a serious lease violation, and by providing the requisite notices to the Appellant.

Judge Waring correctly held the Appellant violated her lease terms, and failed to prove her applicable defenses with her own testimony and exhibits. The exhibits provided by CCHRA and the Appellant, when considered collectively, show the Appellant was in violation of her Lease Agreement with CCHRA, which incorporates requirements by HUD and the Code. Judge Waring correctly excluded a video of former Commissioner Sandino Moses purportedly exclaiming that

CCHRA would not be evicting tenants during COVID as not only was Mr. Moses not named as a witness prior to the hearing, the video's prejudicial nature exceeded its probative value. Judge Waring correctly excluded the video as not relevant to the proceeding below.

Judge Price at the Circuit level also ruled correctly by not overturning Judge Waring's discretion regarding evidence at the magistrate level. Magistrate Rule 13 is broad and employs a relaxed method of introduction of evidence at the magistrate level.

Appellant did not allege violations of due process at the Magistrate Hearing, and thus are new arguments on appeal. However, the Appellant's arguments that her due process rights were violated under South Carolina's State Constitution, and the United States Constitution, fail. The Appellant was afforded avenues created by the Code of Federal Regulations to ensure the fair and equitable treatment of tenants during an eviction proceeding. The Code requires PHAs to incorporate the reasons for evictions in its leases pursuant to the terms in the Code. In addition, the Code requires PHAs to employ an avenue of recourse to be heard for tenants placed on notice of eviction. CCHRA employed the grievance hearing process, which Appellant refused or failed to cooperate in attending. Once she failed to cooperate, CCHRA continued with the eviction proceedings as allowed under the South Carolina Landlord Tenant Act.

The Parties engaged in a meaningful eviction proceeding in which thirteen exhibits were entered and testimony was gathered from two witnesses. The Magistrate's court considered the evidence and decided that even though it was possible applicable defenses were present, they were not conclusive with the evidence presented by the Appellant. The Magistrate correctly ruled for an eviction of the Appellant for serious and continued lease violations, an action that CCHRA was required to bring for the Appellant's continued failures under the HUD guidelines.

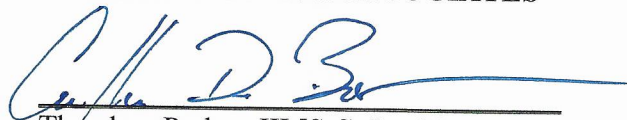
CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

Respectfully Submitted,

PARKER NELSON & ASSOCIATES

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Charleston, South Carolina
April 5th, 2024