THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

C.A. NO. 2022-CP-23-04923
APPELLATE CASE NO. 2023-001265

The State .....Respondent,

v.

Michael Carl Zieminski .....Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

As in the underlying appellate review, Appellant Michael Carl Zieminski (hereinafter "Appellant" or "Zieminski") asks this Court to overturn a unanimous jury verdict convicting him of three counts of cruelty to animals. Respondent County of Greenville, South Carolina, as a body politic under the laws of the State of South Carolina (hereinafter "Respondent" or "County") asserts that this Court should affirm the jury's decision and the Greenville County Court of Common Pleas' affirmation of Appellant's conviction.

On September 1, 2022, a unanimous Magistrate Court jury convicted Appellant of three counts of cruelty to animals in violation of Section 4-19 of the Greenville County Code of Ordinances. The jury heard testimony and witnessed evidence presented by the officer making the tickets based on the living conditions observed in Appellant's home as well as Appellant's case in opposition. (R. pp. 89-90). The three cats and three dogs in Appellant's home were taken to the Animal Care Facility for examination and treatment commensurate with their health conditions. They continued to receive follow up care and monitoring as part of their rehabilitation process. As a result of the conviction, the court sentenced Appellant to fines or jail time and was given a scheduled time payment. Appellant did not raise constitutional questions at the time of trial nor did he object to the jury charges issued. *Id.*

Appellant then appealed to the Greenville County Court of Common Pleas. After a thorough review of the Magistrate's Return, including a statement from the Magistrate Judge and evidence entered by the parties at trial, briefing and

consideration of oral arguments, the Circuit Court affirmed the Magistrate Court's judgment and Appellant's convictions. Now, Appellant appeals the Court of Common Pleas' affirmation and seeks, *inter alia*, a finding that the code on which he was convicted is unconstitutional. The County requests this Court affirm the jury's decision and the Circuit Court's affirmation of the jury's decision.

In sum, Appellant argued the Circuit Court, and now to this Court, should reverse his conviction based on arguments asserting that:

1. the County ordinance is invalid;

2. the Magistrate Court abused its discretion by admitting certain picture evidence and testimony concerning the dogs that were the subject of his charges and the conditions of his home where he kept the dogs;

3. the Magistrate Court abused its discretion by not requiring the County to present expert veterinarian testimony; and

4. the Magistrate Court abused its discretion by not declaring a mistrial when a dog walked into the courtroom during the trial.

(R. p. 2).

In addition, Appellant adds for the first time on appeal to this Court four additional grounds:

5. the Circuit Court erred in holding Appellant was required to serve the South Carolina Attorney General;

6. Appellant's appeal is thwarted by the lack of a sufficiently complete record;

7. that the lack of a timely, sufficient record caused prejudice; and

8. both the Magistrate and Circuit Court erred in not strictly construing the ordinance at issue pursuant to the Rule of Lenity.

(Appellant's Initial Brief, pp. 1-2).

This Court should affirm the conviction because:

1. the Appellant failed to preserve the issues for appellate review;

2. the ordinance at issue is a valid exercise of the County's police power and is constitutional;

3. the Appellant failed to satisfy his burden to ensure that the Court has an adequate record from which to evaluate the Appellant's arguments;

4. the Appellant abandoned several of the arguments on appeal by citing no law, binding legal authority, nor other law to support his arguments;

5. the Circuit Court admitted evidence that was relevant and its probative value was not substantially outweighed by the potential for prejudicial impact; and

6. the Magistrate's return was adequate, and if not, this Court should remand for the considering court to follow the procedure laid out by S.C. Code Ann. § 18-7-80.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* In criminal appeals from the magistrate court, the circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them. *See City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct.App.2013). "Moreover, [q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *Id.* (alteration by court).

Additionally, it is firmly established law that, ordinarily, an issue must be presented to the trial court or it is not preserved for appellate review. *See State v. Dunbar,* 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Watts,* 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court."). As this Court recognized, this established rule applies in appeals from magistrates court to circuit court. *See State v. Henderson,* 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) ("In criminal appeals from magistrate ... court, the circuit court ... reviews for preserved error raised to it by appropriate [objec]tion." (*citing City of Columbia v. Felder,* 274 S.C. 12, 13, 260 S.E.2d 453, 454 (1979))). An issue not raised to and ruled

upon by the court is not preserved for appeal. *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Finally, an appellate court may decline to address issues remaining when disposition of a prior issue is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

ARGUMENT

I. This Court lacks authority to consider Appellant's challenges to the validity of the County's animal cruelty ordinance as he failed to preserve his arguments for appellate review.

This Court should elect not to consider the Appellant's arguments challenging the constitutionality of the County's animal cruelty ordinance because the Appellant's failure to preserve these issues for appellate review removes this Court's authority to entertain them on appeal. When acting in an appellate capacity, a South Carolina court must refrain from considering issues that were not raised to and ruled upon by the court below:

> [A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. SCDOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). The requirement to preserve issues for appellate review applies equally to criminal cases appealed from a state magistrate court. *See, e.g., State v. Taylor*, 411 S.C. 294, 299, 768 S.E.2d 71, 74 (Ct. App. 2014) ("In criminal appeals from magistrate ... court, the circuit court does not conduct a de novo review, *but instead reviews for preserved error raised to it by appropriate exception*.") (emphasis added). To preserve an issue, the Appellant must both raise the issue to the lower court and obtain a ruling. *E.g.*, *Smith v. NCCI, Inc.*, 369 S.C. 236, 247–48, 631 S.E.2d 268, 274 (Ct. App. 2006) ("When a trial court

does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.").

The Record on Appeal in this matter is devoid of any evidence that the Appellant raised these issues to the magistrate court or obtained a ruling. To the contrary, the Magistrate's Return, filed in compliance with S.C. Code Ann. § 18-7-60, expressly states, "The defendant did not raise the constitutional questions at the time of trial [that] he seeks to use to reverse this case." (R. p. 90). Because the Appellant has failed to establish that he preserved these issues for appellate review, this Court should not consider them and should affirm the Appellant's convictions.

In addition, the ordinances at issue were included in the jury charge without objection. As the requirement for appellate preservation is dispositive, this Court may exercise the discretion to dispose of the remainder of Appellant's appeal resolved by the failure to preserve. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (an appellate court may decline to address issues remaining when disposition of a prior issue is dispositive).[1]

Finally, Appellant's generic one-sentence incorporation by reference of constitutional arguments found in prior briefing submitted to the Circuit Court fails to preserve and present issues to this Court for appellate review. (Appellant's Initial Brief, p. 10). In order for an issue to be properly presented for appeal, the appellant's

[1] Such is the case with Appellant's argument that the Circuit Court erred in addressing notice to the Attorney General. Appellate review of non-dispositional technical service requirement is not necessary for the adjudication of this appeal. (Appellant's Initial Brief, p. 5).

brief must set forth the issue the statement of issues on appeal. *See* Rule 208(b)(1)(B), SCACR; appellant's brief must set forth the issue in the statement of issues on appeal. See Rule 208(b)(1)(B), SCACR; *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001); *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct.App.2001). Even if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court. *S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008); *see Fields v. Fields*, 342 S.C. 182, 191, 536 S.E.2d 684, 689 (Ct.App.2000) (stating "issues not argued in the brief are deemed abandoned and will not be considered on appeal.") (*citing First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)); *see also Glasscock, Inc. v. U.S. Fid. and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct.App.2001) (stating "a one sentence paragraph raised in an appellants brief was insufficient to preserve the argument for review.").

An appellate brief must be divided into as many parts as there are issues to be argued, and an issue is not preserved for appeal if appellant's brief does not conform to these requirements. *See* Rule 208(b)(1)(D), SCACR; *Watson v. Chapman*, 343 S.C. 471, 540 S.E.2d 484 (Ct.App.2000). Further, it is error for the appellate court to consider issues not properly raised to it. *First Sav. Bank*, 314 S.C. 361, 444 S.E.2d 513 (1994) (stating appellant must provide authority and supporting arguments for his issue to be considered raised on appeal); *Tirado v. Tirado*, 339

S.C. 649, 530 S.E.2d 128 (Ct.App.2000) (holding that an issue which is not supported by authority or sufficiently argued is not preserved for appellate review).

Similar to this Court's holdings in *Glasscock* and *M & T Enterprises*, a one sentence line incorporating arguments presented in briefing to another court is insufficient to preserve, much less properly present, unargued issues before this Court for consideration. This Court should likewise refrain from scouring the record and inferring arguments on behalf of Appellant. *See Timpson v. Anderson Cnty. Disabilities & Special Needs Bd., 31 F.4th 238, 250 (4th Cir. 2022) citing United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (*per curiam*) (explaining that "[j]udges are not like pigs, hunting for truffles buried in [the record]"). Therefore, Appellant failed to preserve or present the issue of ordinance constitutionality before this Court.

II. The County's Animal Cruelty Ordinance is valid and enforceable.

Even if the Appellant had preserved his constitutional challenges to the County's ordinance, this Court should affirm the convictions because the County's animal cruelty ordinance is a valid and enforceable ordinance enacted as part of a legitimate exercise of the County's police power. Any evaluation of the validity of a County ordinance begins with the general rule that "an ordinance is a legislative enactment and is presumed to be constitutional." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004). The first question, then, is whether Greenville County had the authority to enact Section 4-19 of its Ordinances.

Section 4-19 provides, *inter alia*:

> (a) Any person who *abuses* an animal, aids another person in abusing an animal, or causes or permits an animal to abuse another animal, *by acting or failing to act*, shall be in violation of this section. Cruelty to an animal includes, but is not limited to, the following:
>
> (1) Failing to provide *adequate humane care*;
>
> * * * * *
>
> (4) Failing to provide adequate shelter, sustenance, space, exercise, bedding, *and sanitary conditions* for the animal;
>
> * * * * *
>
> (c) The owner or person having ownership, charge or custody of an animal cruelly abused, treated or used, etc., as enumerated in this section, who is convicted of any violation of this section of the article, forfeits ownership, charge, or custody of the animal, and at the discretion of the court, the person who is convicted of a violation of this section may be ordered to pay costs incurred to care for the animal and related expenses.

Greenville County Ord. § 4-19 (emphasis added). (R. p. 45). The County's ordinance defines "abuse" to include "an act or negligent harming [of] any animal, including, but not limited to depriving adequate food, water, shelter, ventilation, *care*, space or veterinary care," County Ord. § 4-11 (emphasis added). (R. p. 46). The term "care" is defined as:

> *Care (adequate humane).* Attention to the needs of an animal, including but not limited to, providing adequate water, food, shelter, bedding, *sanitary condition*, ventilation, space, exercise and veterinary medical attention necessary to maintain the health of the animal with regard to its specific age, size, species and breed.

County Ord. § 4-11 (emphasis added). (R. p. 47). Finally, the ordinance defines "unsanitary conditions" as:

> Animal living space, including shelter and exercise area, contaminated by health hazards, irritants, items or conditions that endanger or pose a risk to an animal's health, including but not limited to:
>
> I. Excessive animal waste;
>
> II. Garbage, trash or effluent;
>
> III. Standing water or mud;
>
> IV. Rancid/contaminated food or water;
>
> V. Fumes, foul or noxious odor, air, hazardous chemicals or poisons;
>
> VI. Decaying material;
>
> VII. Uncontrolled parasite or rodent infestation; and
>
> VIII. Areas that contain nails, screws, broken glass, broken boards, pits, poisons, sharp implements or other items that could cause injury, illness or death to an animal.

County Ord. § 4-11 (emphasis added). (R. p. 48).

The South Carolina Constitution and state statutes grant broad authority to counties to enact local ordinances:

> All counties of the State, in addition to the powers conferred to their specific form of government, have *authority to enact regulations, resolutions, and ordinances*, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties *or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them*. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-29-50 (emphasis added); S.C. Const. Art. VIII, § 17 ("The provisions of this Constitution and all laws concerning local government shall be liberally

construed in their favor.").[2] In addition, the South Carolina legislature has expressly delegated its authority to counties to regulate this area of the law:

> The governing body of each county or municipality in this State may enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations.

S.C. Code Ann. § 47-3-20. Greenville County clearly had the authority to enact its animal cruelty ordinance.

The Appellant also contends that the state law has preempted the County ordinance. A review of preemption law, however, quickly dispatches this argument. "To preempt an entire filed, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006). South Carolina recognizes three types of preemption: (1) express preemption, (2) implied field preemption, and (3) implied conflict preemption. *Sandlands C & D, LLC v. Cnty. of Horry*, 394 S.C. 451, 462-469, 716 S.E.2d 280, 285-289 (2011).

"Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area." *Sandlands C & D, LLC,* 394 S.C. at 462, 716 S.E.2d at 286 (*quoting Ports Auth.*, 368 S.C. at 397, 629 S.E.2d at 628). Rather than announce an intent to preempt this field, the state announced the opposite by delegating authority to local governmental bodies to regulate the field. Express preemption is inapplicable to the County's ordinance.

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[2] This delegation of authority to local government is commonly referred to as "Home Rule."

It is equally clear that the state has not impliedly preempted the County from enacting an ordinance in the field of the care and control of dogs. Implied field preemption occurs "when the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." *Sandlands*, 394 S.C. at 465, 716 S.E.2d at 287. Instead of enacting state laws evincing an intent to occupy the field of regulation in this area, the state expressly delegated authority to regulate the care and control of animals, including dogs, to the counties. *See* S.C. Code Ann. § 47-3-20 ("The governing body of each county or municipality in this State may enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations."); *Sandlands*, 394 S.C. at 466, 716 S.E.2d at 288 ("Where the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.").

Finally, the state has not preempted the County under an implied conflict analysis. "Implied conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *Sandlands*, 394 S.C. at 467, 716 S.E.2d at 288. Here, the state's animal cruelty statute sets a baseline for what constitutes prohibited conduct, and the County's animal cruelty ordinance merely supplements the state prohibitions by enlarging the acts that constitute animal cruelty. *Compare* S.C. Code Ann. § 47-1-40 *and* County Ord. §§ 4-19 and 4-

11. *See Denene, Inc. v. City of Charleston*, 352 S.C. 208, 214, 574 S.E.2d 196, 199 (2002) (holding that additional regulation that supplements state law does not conflict with state law). Also, the County's animal cruelty ordinance's inclusion of unsanitary conditions as specie of animal cruelty does not conflict with the state's statute -- enforcement of the County ordinance does not interfere with state law or render compliance with state law impossible. *Sandlands*, 394 S.C. at 467, 716 S.E.2d at 288 ("Implied conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible."). In fact, South Carolina law is silent as to whether subjecting a dog to unsanitary conditions constitutes animal cruelty. *Id.* at 468, 716 S.E.2d at 288 ("Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.").

By enacting its animal cruelty ordinance, Greenville County did what the legislature intended the County to do -- the delegation of this authority to the County upends any preemption argument or argument that the ordinance violates the South Carolina Constitution. Accordingly, this Court should affirm the convictions. These arguments also address the appellant's claim that the ordinance conflicts with state law in violation of Article VIII, § 14 of the South Carolina Constitution.

Next, citing no authority in support, the Appellant makes a naked allegation that the ordinance is unconstitutionally vague. He cites no authority that defines

what standard the Court should use to assess the claim. Instead, he argues by anecdote against the ordinance and cites English playwrights, the Scrivener's subjective perceptions of odors, and various articles discussing the utility and necessity of fecal matter. (Appellant's Initial Brief, pp. 14, 16, 17, 19-21). These arguments and citations appear to be more appropriate for a jury argument than to address in an appellate challenge to the validity of an ordinance.

This approach to the vagueness issue renders it abandoned, and this Court should not address the merits of the issue. *See Palmer v. State*, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue.").

However, the outcome of this appeal should remain the same even if the Court were to consider the argument. A county ordinance "is a legislative enactment and is presumed to be constitutional." *E.g.*, *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504-05, 719 S.E.2d 660, 662-63 (2011).

> Every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. The power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the

> function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations.

Id.

County Ordinance § 4-19 is not unconstitutionally vague. The ordinance, with the definitions in § 4-11, apprises potential defendants of the types of conduct that are prohibited, including a list of representative instances that render the conditions to which an animal is subjected unsanitary. While there is some subjectivity in the ordinance, that is the case with nearly all legislation. Taken as a whole, the County ordinances give adequate notice of what acts constitute animal cruelty in violation of § 4-19. Given the high bar for declaring a county ordinance unconstitutional, this Court should decline to reach the conclusions suggested by the Appellant and affirm the convictions.

III. Magistrate Court did not abuse its discretion in admitting challenged evidence.

The Appellant attacks his convictions by arguing that the magistrate court erred by admitting certain evidence into the record. However, there is no record of the objections the Appellant claims to have made or of the Court's ruling. Because the Appellant has the burden of ensuring that this Court has an adequate record for appellate review, the Court should decline to consider these issues. *See State v. Knighton*, 334 S.C. 125, 136, 512 S.E.2d 117, 123 (Ct. App. 1999), *citing State v. Hutto*, 279 S.C. 131, 303 S.E.2d 90 (1983) ("[A]ppellant has burden of presenting an adequate record which is sufficiently complete to permit this Court to review lower court's actions"). And, as with the other arguments raised in the Appellant's brief, there is no record showing that the Appellant preserved these issues for appellate

review. Additionally, Appellant failed to move for a mistrial or take other action during the hearing to address the alleged errors and lack of Courtroom integrity or decorum. (Appellant's Initial Brief, pp. 5, 11-14).

However, the Court should still affirm if it were to consider the merits of these arguments. The Appellant maintains that it was error for the magistrate court to allow testimony that the house in which the dogs were found was condemned and pictures of a dog found in the house with an open wound. The Court should decline to vacate the conviction on these grounds because the Appellant has failed to show that the judge abused his discretion. A trial judge has "considerable latitude in ruling on the admissibility of evidence," and an appellate court will not disturb the ruling absent an abuse of discretion. *See State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997).

The Appellant claims that introduction of testimony that the house was condemned was prejudicial because condemnation addresses human, not dog, habitability. However, that a house is unfit for human habitation is relevant evidence on its suitability for housing dogs under the animal cruelty ordinance. In addition, the condemnation evidence was part of a host of evidence showing the deplorably unsanitary conditions to which the dogs had been subjected in the Appellant's house. The evidence was clearly probative, and it would not have been an abuse of discretion for a judge to conclude that the potential it may have had, if any, to generate prejudice did not substantially outweigh that probative value. Likewise, the picture of the dog with a leg wound was highly probative. While the

Appellant suggests that it was problematic because of an alleged lack of proof that the unsanitary conditions caused the dog to have that malady, the Appellant disregards its probative value in showing that the Appellant allowed a dog with skin sloughing off its muscle tissue to reside in supremely unsanitary conditions. As with the condemnation evidence, there is nothing in the record that indicates that the judge abused his discretion in admitting this evidence.

IV. The entry of a dog into the trial was not an error supporting a reversal.

As with all the grounds asserted in this appeal, the Appellant has failed to establish that he preserved them for appellate review. However, addressing the merits of his concerns about a dog walking into the courtroom during the trial, the Court should decline to grant the Appellant the relief he seeks. The dog was apparently at the courthouse as part of a Greenville County Sheriff's Office's program dealing with children. Contrary to the Appellant's assertion, the County and its animal control department had nothing to do with the dog's presence. In addition, the dog's emergence in the courtroom was totally unanticipated. By the time the dog calmly walked in front of the jurors and a constable gently grabbed its collar and led the dog back out, there was no time for the judge to do anything to prevent what happened. While unusual, the dog's appearance was not a big disruption, and the presence of the dog alone did not rise to the level of warranting a mistrial (which there is no evidence that one was asked for). This event does not warrant awarding the Appellant a new trial.

Additionally, Appellant failed to move for a mistrial or take other corrective active action to the ameliorate the alleged degradation of courtroom integrity and decorum.

V. The lack of expert testimony did not warrant a directed verdict or JNOV.

Next, the Appellant contends that proof of animal cruelty under the County ordinance required expert testimony. The Court should dismiss this argument because nothing in the ordinance requires expert testimony. While the Appellant dresses this issue up as a fundamental requirement, the Appellant is really referring to the weight of the evidence. As the Magistrate's Return indicates, an experienced animal control officer provided evidence of the conditions and gave context as to its severity based on his experience with animals found in similar conditions.

While the Appellant had the option of calling an expert witness to persuade the jury that allowing the dogs to live in the extreme conditions in the Appellant's house were not a violation of the ordinance, that would have gone to the weight of the evidence.[3] Further, the jury, as the finder of fact, determined that Appellant's living space were insanitary based not only on the officer's interpretation in following what he instructed, but on their own determination of all evidence presented. The jury is free to determine the facts from the evidence presented rather than being bound by an ardent and unyielding statutory standard. Expert

[3] An option he did not avail himself of, likely because no expert veterinarian would have given such an opinion.

testimony is not determinative, binding, nor compulsory in this case on the jury's findings. Expert testimony addresses the weight of evidence and may be accepted or rejected. The jury had adequate evidence upon which to render a verdict.

VI. Reliance upon the Magistrate's Return is not reversable error.

The Appellant also contends that the Court should rely on the Appellant's summary of evidence and assurances that it made objections and obtained rulings because the Return is inadequate. This Court should decline to do so. As argued above, however, it is the Appellant's burden to ensure that the appellate court receives an adequate record on appeal.

In addition, if the Court deems a Magistrate Court's return inadequate, S.C. Code Ann. § 18-7-80 provides the procedure to be followed:

> If the return be defective the appellate court may direct a further or amended return as often as may be necessary and may compel a compliance with its order. And the court shall always be deemed open for this purpose.

S.C. Code Ann. § 18-7-80.

In the end, though, the Appellant received a fair jury trial that ended in convictions for three counts of animal cruelty under the Greenville County ordinance. Nothing raised in the Appellant's brief warrants anything but an affirmance.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent respectfully requests that this Court affirm Order of Circuit Court Judge R. Lawton McIntosh,

which affirmed the September 1, 2022, jury decision convicting Appellant of three counts of cruelty to animals.

Respectfully submitted,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

C.A. NO. 2022-CP-23-04923
APPELLATE CASE NO. 2023-001265

The State .....Respondent,

v.

Michael Carl Zieminski .....Appellant.

RESPONDENT'S CERTIFICATE OF COUNSEL

I, the undersigned attorney with the attorney's office for the Respondent, hereby certify that Respondent's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

/s/Andrew N. Price

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CERTIFICATE OF SERVICE

I, the undersigned attorney with the attorney's office for the Respondent, hereby certify that on September 11, 2024, I served counsel for Appellant with Respondent's Final Respondent's Brief and 211(b), SCACR Certificate of Counsel by emailing copies of the same to the following address registered in the South Carolina Attorney Information System (AIS) along with hardcopy, United States Postage prepaid:

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