

**IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA**

Appellate Case No.: _____

Appeal from the Court of Common Pleas, Sixteenth Judicial Circuit

York County, South Carolina

Circuit Court Case No.: 2025CP4604727

Magistrate Citation No.: 20252351259324

State of South Carolina,

Respondent,

v.

Yehonatan Kapach,

Appellant.

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MAR 27 2026

SC Court of Appeals

**APPELLANT'S AMENDED EMERGENCY SUPPLEMENTAL FILING
MOTION TO TAKE JUDICIAL NOTICE OF POST-FILING DEVELOPMENTS,
QUANTIFIED PATTERN OF INSTITUTIONAL OBSTRUCTION,
AND REQUEST FOR EXPEDITED CONSIDERATION, VACATUR,
AND DISMISSAL WITH PREJUDICE**

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Date: March 25, 2026

EXECUTIVE SUMMARY

This case presents three independent structural constitutional errors, each of which requires reversal without any showing of prejudice: (1) denial of a court interpreter, (2) complete absence of any meaningful record of the appeal hearing, and (3) denial of any meaningful opportunity to be heard.

This is not a close case. Appellant, a Hebrew-speaking immigrant with limited English proficiency, was convicted *in absentia* in a 22-second proceeding without evidence, denied an interpreter despite four written requests, denied every piece of evidence in his case, affirmatively misled by court staff that he could not appeal, and then subjected to a one-sentence affirmance signed by a judge who did not preside over the hearing. He was ultimately forced to pay \$1,062.50 under threat of indefinite driver's license suspension.

As a matter of law, this conviction cannot stand. A court proceeding conducted without language access is fundamentally unfair. A court proceeding for which no record exists cannot be meaningfully reviewed. A conviction supported by no evidence is void. And where structural error is compounded by complete evidentiary suppression, false guidance from court personnel, and a quantified pattern of obstruction across multiple institutions, dismissal with prejudice—not merely remand—is the proper remedy.

Appellant respectfully requests that this Court dismiss the charge with prejudice. In the alternative, Appellant requests vacatur of the Form 4 Order and the underlying conviction, and remand for a full hearing before a different judge, with a qualified Hebrew interpreter and full access to all evidence.

I. STANDARDS OF REVIEW

This appeal presents multiple questions of law and procedure. Appellant identifies the standard applicable to each claim.

A. Due Process Violations

Whether proceedings satisfied constitutional due process is reviewed *de novo*. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hamdi v. Rumsfeld*, 542 U.S. 507, 528 (2004). Where a conviction is entered without evidence and without a meaningful opportunity to be heard, the resulting judgment is void *ab initio*.

B. Denial of Interpreter / Structural Error

The denial of a court interpreter to a defendant who cannot meaningfully understand the proceedings is structural error, requiring automatic reversal without a showing of prejudice. *United States ex rel. Negron v. New York*, 434 F.2d 386, 389–90 (2d Cir. 1970); *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991); *Sullivan v. Louisiana*, 508 U.S. 275 (1993). Structural errors defy harmless-error analysis.

C. Sufficiency of the Evidence

Whether evidence was sufficient to sustain a conviction is reviewed *de novo*, with the question being whether any rational trier of fact could find each essential element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). Where no statutory element was proved, the conviction must be vacated.

D. Failure to Rule on Pending Motions

A trial court's failure to rule on properly filed pending motions is reviewed for abuse of discretion. Where a court affirms a conviction while ignoring a pending motion to compel production of all evidence, such failure constitutes an abuse of discretion as a matter of law.

E. Absence of Record

Where no usable record exists, meaningful appellate review is impossible. Any ambiguity arising from the absence of a record must be resolved in favor of the appellant. See *State v. Dunbar*, 356 S.C. 138, 142 (2003). The inability of an appellate court to review what occurred below is itself reversible error.

F. Cumulative Error

Even where individual errors might be analyzed separately, their cumulative effect may render the proceedings fundamentally unfair and require reversal. The cumulative-error doctrine applies with special force where the combined effect of constitutional, procedural, and evidentiary failures destroys the reliability of the proceeding.

II. QUANTIFIED PATTERN OF INSTITUTIONAL OBSTRUCTION

After filing his initial brief, Appellant compiled the full record of communications in this case. The resulting data is set forth in Exhibit J-1 and reveals a pattern that is not accidental, isolated, or bureaucratic in nature. It is systemic.

Institution	Sent	Denied/Ignored	No Reply	Adequate	Rate
Magistrate Court	6	5	1	0	0%
Common Pleas	8	5	1	2	25%
SCHP (Police)	4	0	4	0	0%
York County FOIA	3	0	1	1	33%
DMV	2	1	1	0	0%
DOJ Complaint	1	0	0	0	Pending
TOTAL	24	11	8	3	12.5%

Only 3 out of 24 communications received an adequate response. Law enforcement disclosed zero evidence. Courts ignored every interpreter request. Requests for recordings were refused or met with assertions that no recording exists. Pending motions were left unresolved. As a matter of law, when a litigant is denied meaningful response to 87.5% of his formal attempts to defend himself, the process cannot be called constitutionally adequate. See *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970).

This quantified pattern matters because it confirms that the constitutional defects in this case were not accidental one-offs. They were repeated, institutional, and cumulative.

III. THREE STRUCTURAL ERRORS REQUIRE AUTOMATIC REVERSAL

A. Structural Error One: Denial of Interpreter

Appellant filed four separate written requests for a Hebrew interpreter in four separate filings. Those requests were in the court file. No interpreter was provided.

At the March 3, 2026 hearing, Appellant told the presiding judge that he did not understand what the prosecutor was saying and that he needed an interpreter. The court proceeded anyway.

Under settled law, that is structural error. *Negron* recognized that trying a defendant who cannot understand the proceedings violates “the most rudimentary demands of due process.” 434 F.2d at 389. *Mosquera* likewise held that denial of an interpreter renders proceedings fundamentally unfair. Because this is a structural defect, no prejudice analysis is required. *Sullivan*, 508 U.S. at 281–82; *Fulminante*, 499 U.S. at 309.

The violation is even clearer here because Appellant repeatedly notified the court in writing. The court’s *post hoc* assertion that a “special form” was required cannot save the proceeding. The duty to provide language access rests with the court, not with a pro se LEP litigant forced to guess at internal administrative procedures.

This denial also independently violates Title VI of the Civil Rights Act of 1964, Executive Order 13166, and S.C. Code Ann. § 17-1-50.

B. Structural Error Two: Complete Absence of Any Meaningful Record

Appellant repeatedly sought the recording or transcript of the March 3, 2026 hearing. He was told the Court of Common Pleas “does not record voice-wise.” No transcript has been provided. No court reporter record has been produced. No independent record exists.

Without a record, this Court cannot determine:

1. What the prosecutor argued;
2. What Appellant said;
3. Whether Appellant requested an interpreter orally;
4. Whether the judge made any oral rulings;
5. Whether the hearing was conducted lawfully at all.

That absence is not minor. It is fatal. Appellate review without a record is impossible. The appellate court cannot defer to proceedings it cannot verify. See *Dunbar*, 356 S.C. at 142. Where the lower court provides no record, all resulting uncertainty must be resolved in favor of the appellant.

A one-sentence Form 4 order cannot substitute for a record. It merely compounds the problem.

C. Structural Error Three: No Meaningful Opportunity to Be Heard

The right to be heard is the core of due process. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). A hearing at which a litigant cannot understand the language used against him is not a hearing in any meaningful sense.

Here, Appellant was physically present but functionally excluded. He was unable to understand the prosecutor's argument. The judge ignored his protest. A court officer allegedly prevented him from using his phone, which was his only translation aid. No interpreter was supplied. No pause was taken. No telephonic interpreter was considered. No continuance was granted.

That is not harmless error. That is a structural denial of participation.

IV. THE CONVICTION IS VOID FOR INSUFFICIENT EVIDENCE

Standard of Review: *De novo*.

South Carolina's Move Over statute, S.C. Code § 56-5-1538, requires proof of multiple elements, including the presence of an authorized emergency vehicle with visual signals and the defendant's failure to change lanes or slow down when safe.

The entire evidentiary record from the Magistrate Court consists of:

Judge: "So the defendant failed to move over?"

Trooper: "Yes."

Judge: "Based on testimony, court finds the defendant guilty. \$1,062.50."

That is not evidence. It is a conclusion embedded in a leading question. No facts were offered to establish: whether emergency lights were activated, where the vehicle was located, traffic conditions, lane availability, safety of lane change, or any surrounding circumstances.

Element by element, the State proved nothing.

Under *Jackson*, no rational trier of fact could find guilt beyond a reasonable doubt. This is not a case of thin evidence; it is a case of *no* evidence. The conviction is therefore void. See also *Peralta v. Heights Medical Center*, 485 U.S. 80 (1988); *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004).

V. FOUR JUDGES, ZERO DUE PROCESS

A. Judge Stover — Trial in Absentia Without Due Process

The Magistrate Court proceeding occurred more than two hours after the scheduled court time. No effort was made to contact Appellant, verify the reason for his absence, or ensure notice sufficient to satisfy *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Instead, the court processed the matter as if default alone justified conviction.

B. Judge Dover — Denial of Motion to Vacate Without Hearing

Appellant filed a Motion to Vacate supported by detailed explanations of excusable neglect, including illness, Jewish holy days, self-employment pressures, and immediate good-faith corrective action once notice was received. The motion was denied without hearing, without findings, and without any meaningful analysis. Court staff also incorrectly told Appellant he could not appeal. Had he relied on that false advice, his appellate rights would have been extinguished.

C. Judge Dunbar — Hearing Without Language Access

Judge Dunbar presided over the March 3, 2026 hearing. Four interpreter requests were already on file. Appellant orally stated during the hearing that he could not understand the prosecutor. Judge Dunbar proceeded without acknowledgment, without interpreter, and without accommodation. This is structural error in its purest form.

D. Judge Hall — Rubber-Stamp Order by Absent Judge

Three days later, Judge Hall signed the Form 4 order. He did not preside over the hearing. No record exists. Two motions remained pending: the Emergency Motion to Stay and the Motion to Compel Disclosure. Neither was ruled on. Yet Judge Hall purported to affirm after “careful consideration.”

On what record? On what factual basis? On what legal analysis?

A conclusory seventeen-word affirmance signed by a judge who was not present, without findings and without a record, is the essence of arbitrary adjudication.

VI. SYSTEMATIC SUPPRESSION OF ALL EVIDENCE

Standard of Review: *De novo*.

After six months and repeated requests, Appellant has received zero evidence: no dashcam, no bodycam, no incident report, no CAD logs, no witness statements, no transcript, no hearing recording.

SCHP ignored four FOIA-related requests. The oldest remained pending for over 100 days. A spoliation warning was sent on March 16, 2026. It too was ignored.

This is not simply a FOIA problem. It is a due process problem. The State cannot obtain and preserve a conviction while withholding every item of evidence the defendant might use to challenge it. *Brady v. Maryland*, 373 U.S. 83 (1963), reflects the broader constitutional principle that a defendant must have meaningful access to evidence necessary for defense.

This Court should therefore:

1. draw an adverse inference that the withheld evidence is unfavorable to the State;
2. order immediate production; and
3. where production is impossible because evidence has been destroyed or withheld in bad faith, dismiss the charge with prejudice.

The suppression here is not incidental. It is part of the same cumulative pattern of institutional obstruction reflected throughout the record.

VII. THE JUDGMENT IS VOID FOR WANT OF JURISDICTION

A judgment entered without due process is void, not merely erroneous. *Peralta*, 485 U.S. at 86.

Here, the Magistrate Court lacked effective authority to enter a valid judgment because:

1. notice was constitutionally inadequate in practical effect;
2. no evidence was presented;
3. no interpreter was provided despite mandatory requests and statutory entitlement; and
4. the proceeding lasted 22 seconds—far too little time for any genuine adjudication.

A proceeding that is merely labeled a “trial” does not become a trial by form alone. Substance matters. This one lacked the constitutional minimum.

VIII. LATE NOTICE OF THE FORM 4 ORDER

The Form 4 Order was entered on March 6, 2026. Appellant did not receive notice until approximately March 17, 2026. Under Rule 77(d), SCRCP, the clerk must mail orders to pro se parties.

That did not happen in a timely fashion.

This failure further prejudiced Appellant's right to seek timely review and fits the same pattern seen elsewhere: requests ignored, procedures withheld, and notice delayed until rights are endangered.

IX. CUMULATIVE ERROR, FUNDAMENTAL UNFAIRNESS, AND DISMISSAL WITH PREJUDICE

Even if any one error alone did not require reversal—which it does—the cumulative effect independently requires reversal.

This case combines: no evidence, no interpreter, no meaningful participation, no hearing record, no ruling on pending motions, false information from court staff, nonproduction of evidence, delayed notice of order, and coercive pressure to pay under threat of license suspension.

Taken together, these failures rendered the proceedings fundamentally unfair. This is not a situation where a clean remand can easily cure the damage. Evidence may have been destroyed. The original proceedings are unverifiable. The State's institutions repeatedly failed in the same direction at every stage.

Where structural error is compounded by bad-faith obstruction and complete evidentiary suppression, dismissal with prejudice is the proper remedy.

X. RELIEF REQUESTED

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Dismiss the charge with prejudice due to cumulative and egregious due process violations, structural constitutional error, systematic suppression of evidence, and government misconduct that render a fair retrial impossible;
2. In the alternative, vacate the Form 4 Order dated March 6, 2026, and vacate the underlying Magistrate Court conviction;

3. In the alternative, remand for a full hearing on the merits before a different judge, with a qualified Hebrew interpreter and full evidence disclosure;
4. Order expedited consideration due to ongoing deprivation of rights and the continuing risk of evidence destruction;
5. Order SCHP Troop 4 to produce all withheld evidence within fourteen (14) days, or certify under oath what has been destroyed and when;
6. Draw an adverse inference that any withheld or destroyed evidence would have been favorable to Appellant;
7. Order the refund of \$1,062.50 paid under protest and duress;
8. Direct the Court of Common Pleas to produce a transcript of the March 3, 2026 hearing, or explain in writing why no such transcript or record exists;
9. Refer this matter to appropriate authorities for investigation of the systematic denial of language access and record access in York County proceedings; and
10. Grant such further relief and sanctions as this Court deems just and proper.

XI. CONCLUSION

The numbers tell the story: 24 communications sent, 11 denied or ignored, 8 without reply, 3 adequate responses. Four judges. Zero interpreters. Zero evidence disclosed. One conviction based on a single word, affirmed in a single sentence, by a judge who was not present, in a proceeding for which no record exists.

This is not ordinary error. It is systemic breakdown.

As a matter of law, the denial of interpreter, the absence of any record, and the denial of meaningful participation each require reversal independently. The absence of evidence independently requires vacatur. The cumulative effect requires more: dismissal with prejudice.

This Court is the first tribunal positioned to see the full pattern. Appellant respectfully asks it to apply the law, restore the Constitution to this case, and end a process that never should have produced a conviction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Appellant's Amended Emergency Supplemental Filing was served on this date by FedEx Standard Overnight and by email to:

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16th Circuit Solicitor's Office
206 South Main Street
York, SC 29745

Donna Foster, Associate Deputy Clerk

York County Clerk of Court
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York, SC 29745

South Carolina Highway Patrol — Troop 4

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Yehonatan Kapach

Date: March 25, 2026

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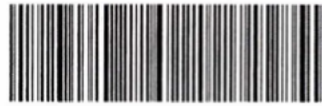


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