

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr.

Appellate Case No. 2025-002565

James Steven Patton,

Appellant,

v.

State of South Carolina,

Respondent.

INITIAL BRIEF OF APPELLANT

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Jun 30 2026

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR BY NOT PROVIDING SPECIFIC RULINGS FOR EACH ISSUE RAISED BY APPELLANT TO ADEQUATELY PRESERVE THOSE ISSUES FOR APPELLATE REVIEW?
2. DID THE CIRCUIT COURT ERR BY NOT REMANDING THE CASE TO THE MAGISTRATE COURT FOR RECONSTRUCTION OF THE RECORD WHEN THE ONLY PORTION OF THE TRIAL NOT RECORDED IS THE ONLY ISSUE RAISED ON APPEAL AND DISPUTED BASED ON THE MAGISTRATE'S RETURN?
3. DID THE CIRCUIT COURT ERR IN AFFIRMING THE MAGISTRATE JUDGE'S RULING TO DENY APPELLANT'S MOTION FOR A DIRECTED VERDICT WHERE RESPONDENT FAILED TO PRESENT COMPETENT EVIDENCE THAT APPELLANT ENTERED HIS NEIGHBOR'S PROPERTY AFTER WARNING ON SEPTEMBER 28?

STATEMENT OF THE CASE

On September 28, 2024, the York County Sheriff's Office arrested Appellant James Patton for entering premises after warning or refusing to leave on request in violation of Section 16-11-620 of the South Carolina Code of Laws. (R. * 20243090139397). The Honorable Douglas W. Sexton of the Bethel/Kings Mountain Magistrate Court subsequently issued an Order changing venue to the Catawba-Ebenezer Court due to a potential conflict of interest.¹ (R. *).

On June 30, 2025, Appellant proceeded to trial before the Honorable Jennifer Colton ("Magistrate Judge") and a jury. Leland Greeley represented Appellant, and Gary Apfel represented the State. (Trial Tr. p. 1 – 185). The jury found Appellant guilty as charged, and the Trial Court sentenced him to thirty (30) days imprisonment.

On July 3, 2025, Appellant filed a Notice of Intent to Appeal in the York County Court of Common Pleas. (2025-CP-46-02620). (R.*). The Magistrate Judge filed a Return and accompanying exhibits on July 22, 2025. (R.*). In response, Appellant filed a motion to grant relief, or in the alternative, direct court to provide recording of trial on July 30, 2025. (R.*).

On December 16, 2025, the parties appeared before the Honorable G.D. Morgan ("Circuit Court") on appeal to review the Magistrate Judge's rulings. (Appeal Tr. 1 – 58). The Circuit Court issued an Order denying the appeal on December 19, 2025. (R.*). Appellant then filed a motion to stay sentence the same day. (R.*).

On December 22, 2025, Appellant filed a motion to alter or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (R.*). The Circuit Court issued an Order denying

¹ On September 30, 2024, the alleged victim's, Dustin Selzer and Kera Selzer, filed a Complaint and Motion for Restraining Order against Appellant James Patton in York County Magistrate Court. (2024-OR-46-10500025). Magistrate Judge Sexton issued a Restraining Order against Appellant on November 5, 2024. (Appellate Case No. 2025-000705).

the motion to alter or amend and granting the motion to stay sentence on December 23, 2025. (R.*). Appellant then filed a Notice of Appeal before this Court on December 29, 2025. (R.*).

This appeal follows.

STATEMENT OF THE FACTS

Background

On September 28, 2024, the York County Sheriff's Office arrested Appellant for entering premises after warning or refusing to leave on request in violation of Section 16-11-620 of the South Carolina Code of Laws. (R. *). This matter involves a property rights dispute along the Lake Wylie shoreline between Appellant and his neighbors (the "Selzers"). Appellant argued that he was on property owned by Duke Energy designated for public land use, and that the Selzers did not have the authority to trespass him from walking to a public area known as "the point". In short, Appellant argued that he did not enter the Selzers' property on September 28. Respondent argued that Duke Energy gave the Selzers the authority to trespass individuals from specific structures built on the shoreline, and that Appellant trespassed on their property after warning. A related issue involved whether a fence built by the Selzers that violated Duke Energy regulations impeded Appellant's ability to walk on public land.

Magistrate Court Trial

On June 30, 2025, Appellant proceeded to trial before the Magistrate Judge and a jury. (Trial Tr. pp. 1 – 185). Deputy Shane Boyson and Kara Selzer testified in the State's case-in-chief. (Trial Tr. pp. 43 – 90; pp. 91 – 111). The following exhibits were presented and admitted into evidence by the Respondent: State Exhibit numbers (1) Overview pictures of the Selzers' property, (2) Duke Energy Lake Permit Application/Approval Letter for Dock, (3) a DVD containing two video recordings of the Appellant and the Selzers' property, (4) a picture of sandy beach, retaining

wall depicting Appellant standing on the retaining wall taking video, (5) Duke Energy lake shoreline guidelines, and (7) a redacted body-worn camera video recording. (Trial Tr. pp. 44, 48, 50, 52, 55, 63, and 128).²

Appellant called a surveyor, William Hipp, to testify as an expert witness in his defense. (Trial Tr. pp. 113 – 135). The following exhibits were presented and admitted into evidence by Appellant: Defense Exhibit numbers (1) Picture of Selzers fence going into Lake Wylie, (2) Picture of Selzers fence going into Lake Wylie, and (3) Survey plat of the property. (Trial Tr. pp. 81 and 128).

Shane Boyson

Deputy Shane Boyson of the York County Sheriff's Office testified that he responded to a suspicious person call at the Selzer's residence on September 28, 2024. (Trial Tr. p. 45, lines 12-17). Deputy Boyson testified that another officer informed Appellant of the trespass notice for the Selzers' property on September 22. (Trial Tr. p. 45). Deputy Boyson further testified that he reviewed a video recording of Appellant walking on the rip/rap (large stones used for shoreline stabilization) in front of the Selzers' property. (Trial Tr. p. 54).

Deputy Boyson stated that the Selzers possessed a lake use permit for their existing dock, rip/rap, and wood seawall. (Trial Tr. pp. 56 – 57). Notably, the Trial Court *sustained* Trial Counsel's objections to the Respondent's questions about whether the Duke Energy directly or through its Shoreline Management Guidelines³ gave the Selzers the authority to trespass others

² The parties stipulated to the following exhibits: State numbers 1 – 5. (Trial Tr. pp. 44, 51, 63, 64, and 69).

³ The Duke Energy Shoreline Management Guidelines establish the rules and regulations for how property owners and the general public can interact with the lake and the surrounding land owned by Duke Energy.

from structures if they have a lake use permit. (Trial Tr. p. 66, line 21 – p. 67, line 22).

On cross-examination, Deputy Boyson acknowledged that the York County GIS maps show that the rip/rap and beach are owned by Duke Energy. (Trial Tr. pp. 78 – 79). Deputy Boyson claimed he did not recall seeing the Selzers' fence that went into the water. (Trial Tr. p. 81). Notably, Deputy Boyson testified, We as a sheriff's office don't - - we don't determine property lines . . . We don't investigate property lines." (Trial Tr. p. 85, lines 15-20).

Kara Selzer

Kara Selzer testified that she and her husband purchased the property in June 2024 and moved in around late August that year. (Trial Tr. p. 91, lines 18-20). Mrs. Selzer also testified that she told Appellant to stay off her property on September 8 prior to the trespass notice on September 22. (Trial Tr. p. 93). Notably, Mrs. Selzer testified that she did *not* know the date of the video recording she had of Appellant walking on the seawall. (Trial Tr. p. 94, lines 6-12).

Mrs. Selzer acknowledged that Duke shoreline property management had met with them around September 11 about their fence needing to be removed because a complaint had been filed. (Trial Tr. p. 98). Mrs. Selzer also testified about other incidents not related to the arrest on September 28. Regarding the incident on September 28, Mrs. Selzer claimed she felt panicked and threatened when she saw Appellant staring at her house and taking pictures of her and her children because her husband was not home. (Trial Tr. p. 100, lines 1-14).

On cross-examination, Mrs. Selzer admitted that Appellant had submitted a complaint to Duke Energy about their fence because it violated regulations by extending into the water, which led to a Duke Shoreline property manager coming out on September 11. (Trial Tr. p. 101, line 16 – p. 102, line 12). Mrs. Selzer also conceded that Duke Energy prevents homeowners from restricting public use of the shoreline. (Trial Tr. p. 103).

The State then rested its case-in-chief.

William Hipp

Appellant called William Hipp, a professional land surveyor licensed since 1996. (Trial Tr. pp. 113 – 114). After the Magistrate Judge qualified Mr. Hipp as an expert in real property surveying, Mr. Hipp testified that he did a survey on the Selzer property in April 8, 2025, and that the seawall, rip/rap, and sandy beach were all located beyond their deeded property owned by Duke Energy. (Trial Tr. pp. 127 – 128). Mr. Hipp also testified that the fence went past the Selzer property into the water. (Trial Tr. pp. 129 – 130).

On cross-examination, Mr. Hipp agreed that business owners have the legal right to trespass individuals from property they manage. (Trial Tr. pp. 134 – 135).

Motion for Directed Verdict

After the Respondent rested its case, the Magistrate Judge stated, “Let’s be at ease for about 10 minutes and then we’ll - - take up the motion.” (Trial Tr. p. 112, line 25 – p. 113, line 2). The Magistrate Judge did *not* audio record Appellant’s motion for directed verdict, Respondent’s reply, or the Court’s ruling on that motion. When the Magistrate Judge restarts the audio recording following the recess, the transcript begins with Appellant calling William Hipp as his first witness. (Trial Tr. p. 113).

Notice of Intent to Appeal

On July 3, 2025, Appellant filed a Notice of Intent to Appeal and raised the following issues:

- (1) The Court erred by not granting Defendant’s Motion for a Directed Verdict following the presentation of the State’s case for there was no evidence presented as to the alleged victims’ having a property interest on the real property where Defendant walked.

- (2) The Court erred by not granting the Defendant's Renewed Motion for Directed Verdict following the presentation of the Defendant's case based on the same ground as (1) above.

(R.*).

Magistrate's Return

On July 22, 2025, the Magistrate Judge filed its Return identifying the witnesses, exhibits, summarizing the testimony, and findings of the court. (R.*). The Return included copies of the exhibits admitted during the hearing. (R.*). The Magistrate Judge also addressed Appellant's motion for a directed verdict:

At the close of the Respondent's case, Appellant moved for a directed verdict.

Appellant argued that the Respondent failed to offer evidence that the Defendant's owned the property and that absent that evidence to the contrary, the property reverted to Duke Energy's ownership and thus was public land use property.

Appellant contends that no one from Duke Energy testified that the property was transferred to the Selzers when they purchased the land in 2024 from Waller.

Furthermore, the Respondent failed to enter a deed of transfer from Duke Energy directly to the Selzers, thus that the State failed to offer any proof that the property was the Selzers and not Duke Energy's.

The Appellant argued that State's 2, the approval letter to renovate the dock, was an approval letter which merely includes the original 2017 documentation that [] maintenance of the seawall, riprap, and existing beach that granted the original owner Waller.

In essence, the failure to prove evidence of a deed of transfer of the retaining wall, rip/rap, and dock to the Selzers meant that ownership of the property reverted to Duke Energy when Waller sold the property to the Selzer; and therefore, it was public land use property.

(R*).

Notably, the Magistrate provided the following in denying Appellant's motion for a

directed verdict:

Although the court sustained the hearsay objection and precluded Ms. Selzer from stating Duke Energy specifically told her that she and her husband owned the property, she testified that *she did own the seawall, rip/rap and dock and that the Selzers were responsible to maintain these structures*. The court found Ms. Selzer's sworn testimony of the purchase, maintenance, and ownership of the property by her and her husband is evidence of ownership, thus the court denied the motion for directed verdict.

(R.*) (emphasis in original). The Return also noted the Magistrate Judge's denial of Appellant's renewed motion for directed verdict. (R.*).

Motion to Grant Relief, or in the Alternative, Direct Court to Provide Recording of Trial

On July 30, 2025, Appellant filed a motion to grant relief, or in the alternative, direct court to provide recording of trial. Appellant argued, "The Return is devoid of any testimony presented at trial, nor did the Court file the recorded proceedings of the matter with the Court. As such, the Return of the Magistrate is wholly insufficient for the Appeal to be heard by the Court of Common Pleas." (R.*).

Order Granting Disclosure of Audio Recording

On July 31, 2025, the Honorable William A. McKinnon issued an Order granting the request to produce the audio recording of the trial and denied any further relief. (R.*).

Appeal in Circuit Court

On December 16, 2025, the parties appeared before the Circuit Court to address the issues raised on appeal. (Appeal Tr. p. 1 – 15). Dayne Phillips represented Appellant, and Gary Apfel represented the Respondent. Appellant presented testimony from Trial Counsel, Leland Greeley, regarding the motion for a directed verdict and a flash drive admitted as Court's Exhibit number

1.⁴ (Appeal Tr. p. 5, line 4 – p. 6, line 23). The flash drive contained the transcript and audio recording of the trial, Notice of Intent to Appeal, Magistrate’s Return, and exhibits.

First, Appellant argued that there was an insufficient record on the motion for a directed verdict for meaningful appellate review and moved to remand for reconstruction of the record. (Appeal Tr. p. 7 – 12; p. 17 – 30). Appellant explained that the motion for directed verdict was the *sole issue* raised in the Notice of Intent to Appeal and is the *only missing* portion of the audio recording submitted by the Magistrate Judge. Appellant further argued that Trial Counsel presented a different argument than what is provided in the Magistrate’s Return. (Appeal Tr. p. 25, lines 9-12).

Appellant also maintained that the Magistrate’s Return did not accurately reflect the testimony and arguments presented at the trial. (Appeal Tr. p. 21). Appellant also called Trial Counsel to testify about the argument he raised on the motion for a directed verdict before the Magistrate Judge:

[T]his was the primary issue of the case from the beginning as we saw it, was that the State was going to have to prove that the property, the place where [Appellant] went was the property of his next door neighbor. And that they would have to put up competent evidence that he had actually gone on to a piece of land in which they had a property interest and in which they could eject him through trespass on that. And the issue for directed verdict was that had not been presented by the State in a competent way.

Especially given the fact that after we made the directed verdict motion and after the Court denied our motion for a directed verdict and I renewed that motion at the end of our case.

We also put into evidence during the State’s case, we had a surveyor who came, who had gone out and done a survey of this property and was able to testify as to where the neighbor’s property ended and where Duke’s property began and we put those into

⁴ The transcript incorrectly lists Respondent’s Counsel, Gary Apfel, instead of Appellate Counsel, as the party moving to admit the flash drive into evidence.

evidence, those pictures. [Appellant] had not gone on to the property of the neighbors pursuant to ...that survey.

(Appeal Tr. p. 28, line 20 – p. 29, line 15; p. 30, lines 1-21).

Second, Appellant argued that the Magistrate Judge erred in not recusing herself from the proceeding after disclosing that she had previously been a defendant in a civil trespass lawsuit involving a property dispute at Lake Wylie. Appellant acknowledged that there was an issue with error preservation.

Third, Appellant argued that the Magistrate Court erred in finding that Respondent presented competent evidence tending to provide the charged offense on September 28. Appellant argued, “This issue all boil[s] down goes to whether appellant is on public access property ow[n]ed by Duke Energy versus the Selzers property.” (Appeal Tr. p. 18, line 16-18).

In response, Respondent maintained that Judge McKinnon had previously denied the motion to remand because of the Form 4 Order instructing the Magistrate Judge to produce the audio recording of the trial. Respondent also claimed that the Magistrate’s Return is sufficient for meaningful appellate review, and that the Magistrate properly denied the motion for directed verdict based on the evidence presented at trial and the Magistrate’s Return.

Respondent further argued that Duke Energy’s lake use permit authorized the Selzer’s “to prevent others from trespassing on the structures they have built”. (Appeal. Tr. p. 43). In other words, Respondent conceded that the Selzer’s did not own the land where Appellant was standing but argued they had a right to trespass him from that property.

In response, Appellant explained that Duke Energy’s lake use permit also noted the Selzer’s did not have the authority “to impede anyone from the pursuit of the lawful public recreational enjoyment of the FERC project lands and waters.” (Appeal Tr. p. 46, lines 10-12). Appellant reiterated, “There is no competent evidence that says [Appellant] is on the structures on

September 28th . . . the evidence on September 28th was not that [Appellant] is on a structure.” (Appeal Tr. 46, lines 13-18).

Appellant also emphasized that the Respondent had merged facts from a *prior* incidents and *not* for the charged offense on September 28. Appellant highlighted, “Both times that the [R]espondent tried to present those arguments through Miss Selzer those arguments were [objected to] and sustained by the lower court.” (Appeal Tr. p. 47, lines 18-20).

The Circuit Court took the matter under advisement. (Appeal Tr. p. 57).

Circuit Court Order Affirming Conviction and Sentence

On December 19, 2025, the Circuit Court issued a Form 4 Order affirming the conviction and sentence. (R.*). Specifically, the Circuit Court found, “Based on a review of the file, pleadings, submissions of the parties, and oral argument, the Court finds no error.” (R.*).

Motion to Alter or Amend

On December 22, 2025, Appellant filed a motion to alter or amend the Order affirming Appellant’s conviction and sentence. (R*). Appellant argued that (1) the Circuit Court erred in not providing specific rulings for each issue raised by Appellant to preserve those issues for appellate review, (2) the Magistrate Court erred by not granting Appellant’s motion for directed verdict because the State failed to present competent evidence tending to prove the charged offense, and (3) the Magistrate Court erred by not recusing herself based on her acknowledgment that someone had sued her for trespass related to an incident on Lake Wylie resulting in an issue where the judge’s impartiality might be reasonably questioned, or by not providing a sufficient ruling as to why the judge should disqualify herself where the judge’s impartiality might be reasonably questioned. (R.*).

Order Denying Motion to Alter or Amend

On December 23, 2025, the Circuit Court issued another Form 4 Order denying the motion to alter or amend. (R.*). Specifically, the Circuit Court found, “Appellant has not shown a basis to alter or amend the decision and respectfully denies the motion.” (R.*). The Circuit Court also found that “a hearing will not be necessary to render a decision.” (R.*)

Notice of Appeal

On December 29, 2025, Appellant filed a Notice of Appeal before this Court with the relevant attachments.

ARGUMENT

1. THE CIRCUIT COURT ERRED BY NOT PROVIDING SPECIFIC RULINGS FOR EACH ISSUE RAISED BY APPELLANT TO ADEQUATELY PRESERVE THOSE ISSUES FOR APPELLATE REVIEW.

Law

In *Marlar v. State*, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007), our Supreme Court held that when a PCR court fails to make specific findings as to an issue, a Rule 59(e) motion is necessary to preserve the issue for appeal. *See generally Fishburne v. State*, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) (finding "[t]he PCR court's general denial of all claims not specifically addressed in the PCR court's order 'does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.'" (quoting *Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016))); *Id.* at 517, 832 S.E.2d at 590 (remanding the matter "to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order").

Discussion

In this case, the Circuit Court issued a Form 4 Order affirming the conviction and sentence but failed to provide specific rulings for each issue raised by Appellant. (R.*). Specifically, the Circuit Court held, "Based on a review of the file, pleadings, submissions of the parties, and oral argument, the Court finds no error." (R.*).

In response, Appellant filed a motion to alter or amend the Order affirming Appellant's conviction and sentence on December 22, 2025. *See* Rule 59(e), SCRPC. (R*). Relevant to this appeal, Appellant argued: (1) the Circuit Court erred in not providing specific rulings for each issue raised by Appellant to preserve those issues for appellate review, and (2) the Magistrate Court

erred by not granting Appellant's motion for directed verdict because the State failed to present competent evidence tending to prove the charged offense. (R.*).

On December 23, 2025, the Circuit Court issued *another* Form 4 Order denying the motion to alter or amend judgment. (R.*). Specifically, the Circuit Court erroneously found, "Appellant has not shown a basis to alter or amend the decision and respectfully denies the motion." (R.*). The Circuit Court also improperly found that "a hearing will not be necessary to render a decision." (R.*)

Same as in *Marlar v. State*, the Circuit Court failed to make specific findings regarding the issues raised during the proceeding. 375 S.C. at 410, 653 S.E.2d at 267. Appellant then filed a Rule 59(e) motion to preserve those issues for appellate review because the general denial of all claims not specifically addressed in the Court's Order does not constitute a sufficient ruling on the issues raised during the hearing. *See generally Fishburne*, 427 S.C. at 512, 832 S.E.2d at 587. The Circuit Court must provide specific findings of fact and conclusions of law. *Id.*

This Court should remand the matter to the Circuit Court for the issuance of a supplemental Order setting forth findings of fact and conclusions of law on the grounds not addressed in the original order. *See generally Id.*, 427 at 517, 832 S.E.2d at 590. Therefore, the Circuit Court erred by not providing specific rulings for each issue raised by appellant to adequately preserve those issues for appellate review.

2. THE CIRCUIT COURT ERRED BY NOT REMANDING THE CASE TO THE MAGISTRATE COURT FOR RECONSTRUCTION OF THE RECORD WHEN THE ONLY PORTION OF THE TRIAL NOT RECORDED IS THE ONLY ISSUE RAISED ON APPEAL AND DISPUTED BASED ON THE MAGISTRATE’S RETURN.

Law

South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal. In *China v. Parrott*, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968), our Supreme Court held that where a portion of the court reporter's notes were lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record. *See also Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); *Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed).

However, the reconstructed record must allow for meaningful appellate review. *State v. Ladson*, 373 S.C. 320, 321, 644 S.E.2d 271, 271 (Ct. App. 2007). "A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." *Id.* at 325, 644 S.E.2d at 274 (citations and internal quotation marks omitted).

Discussion

Here, after the Respondent rested its case-in-chief, the Magistrate Judge stated, “Let’s be at ease for about 10 minutes and then we’ll - - take up the motion.” (Trial Tr. p. 112, line 25 – p. 113, line 2). However, the Magistrate Judge did *not* audio record Appellant’s motion for directed verdict, Respondent’s reply, or the Court’s ruling on that motion. When the Magistrate Judge

restarted the audio recording following the recess, the transcript begins with Appellant calling William Hipp as his first witness. (Trial Tr. p. 113).

Appellant subsequently raised the following issues in his Notice of Intent to Appeal:

- (1) The [Magistrate] Court erred by not granting Defendant's Motion for a Directed Verdict following the presentation of the State's case for there was no evidence presented as to the alleged victims' having a property interest on the real property where Defendant walked.
- (2) The [Magistrate] Court erred by not granting the Defendant's Renewed Motion for Directed Verdict following the presentation of the Defendant's case based on the same ground as (1) above.

(R.*).

Although the Magistrate Judge addressed Appellant's motion for a directed verdict in the Return, Appellant filed a motion to grant relief, or in the alternative, direct court to provide recording of trial. Appellant argued, "The Return is devoid of any testimony presented at trial, nor did the Court file the recorded proceedings of the matter with the Court. As such, the Return of the Magistrate is wholly insufficient for the Appeal to be heard by the Court of Common Pleas."

(R.*). Judge McKinnon subsequently Ordered the Magistrate Judge to produce the audio recording of the trial. (R.*).

On appeal, Appellant appeared before the Circuit Court and argued that there was an insufficient record on the motion for a directed verdict for meaningful appellate review and moved to remand for reconstruction of the record. (Appeal Tr. p. 7 – 12; p. 17 – 30). Appellant explained that the motion for directed verdict was the *sole issue* raised in the Notice of Intent to Appeal and is the *only missing* portion of the audio recording submitted by the Magistrate Judge. Appellant further argued that Trial Counsel presented a different argument than what is provided in the Magistrate's Return. (Appeal Tr. p. 25, lines 9-12).

Appellant also maintained that the Magistrate's Return did not accurately reflect the testimony and arguments presented at the trial and called Trial Counsel to testify about the argument he raised on the motion for a directed verdict before the Magistrate Judge. (Appeal Tr. p. 21; p. 28, line 20 – p. 29, line 15; p. 30, lines 1-21).

The Circuit Court should have remanded this case to have the record reconstructed to allow for meaningful appellate review. *See Whitehead*, 352 S.C. at 221, 574 S.E.2d at 203 (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed). Therefore, the Circuit Court erred by not remanding the case to the Magistrate Court for reconstruction of the record when the only portion of the trial not recorded is the only issue raised on appeal and disputed based on the Magistrate's Return. *See Ladson*, 373 S.C. at 321, 644 S.E.2d at 271.

3. THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE JUDGE’S RULING TO DENY APPELLANT’S MOTION FOR A DIRECTED VERDICT WHERE RESPONDENT FAILED TO PRESENT COMPETENT EVIDENCE THAT APPELLANT ENTERED HIS NEIGHBOR’S PROPERTY AFTER WARNING ON SEPTEMBER 28.

Standard of Review

“While the Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law... .” *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984), *aff'd as modified on other grounds*, 288 S.C. 398, 343 S.E.2d 27 (1985); S.C. Code § 18-7-170 (stating the standard of review to be applied by the circuit court when reviewing a magistrate's judgment). This court may reverse the circuit court if it was influenced by an error of law. *Id.*

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in the light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find the trial court properly submitted a case to the jury [finder of fact] if any direct evidence or any substantial circumstantial evidence reasonably tended to prove the guilt of the accused. *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648; *see State v. Walker*, 349 S.C. 49, 562 S.E.2d 313 (2002).

Law

Rule 19 of the South Carolina Rules of Criminal Procedure provides, in relevant part:

On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the

indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

Rule 19, SCRCrimP.

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "[T]he trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt." *Id.* at 142, 708 S.E.2d at 778.

"Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013). "[W]hen the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial [court] is concerned with the existence or non-existence of evidence, not with its weight." *State v. Pearson*, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016).

When considering a directed verdict motion, the trial court must view the evidence in the light most favorable to the State and submit the case to the jury if any substantial evidence "reasonably tends to prove the guilt of the accused" or if any substantial evidence exists "from which his guilt may be fairly and logically deduced." *State v. Bennett*, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955)). "[T]he court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness." *Id.* at 237, 781 S.E.2d at 354 (emphasis omitted). "Accordingly, in ruling on a directed verdict motion whe[n]

the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id.* See generally *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

Section 16-11-620 of the South Carolina Code of Laws provides:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

S.C. Code § 16-11-620 ("Entering premises after warning or refusing to leave on request; jurisdiction and enforcement.").

Discussion

In this case, the Magistrate Judge denied Appellant's motion for a directed verdict where Respondent failed to present competent evidence that Appellant entered his neighbor's property after warning *on September 28*. Rule 19, SCRCrimP. The Trial Court *sustained* Trial Counsel's objections to the Respondent's questions about whether the Duke Energy directly or through its Shoreline Management Guidelines gave the Selzers the authority to trespass others from structures if they have a lake use permit. (Trial Tr. p. 66, line 21 – p. 67, line 22).

On cross-examination, Deputy Boyson acknowledged that the York County GIS maps show that the rip/rap and beach are owned by Duke Energy. (Trial Tr. pp. 78 – 79). Deputy Boyson claimed he did not recall seeing the Selzers’ fence that went into the water. (Trial Tr. p. 81). Notably, Deputy Boyson also admitted, “We as a sheriff’s office don’t - - we don’t determine property lines . . . We don’t investigate property lines.” (Trial Tr. p. 85, lines 15-20).

Although Deputy Boyson testified that he reviewed a video recording of Appellant walking on the rip/rap in front of the Selzers’ property, Mrs. Selzer testified that she did not know the date of that video of Appellant walking on the seawall and admitted that their fence violated Duke Energy regulations by going into the water. (Trial Tr. p. 94, lines 6-12; p. 98). Notably, Respondent’s conflated Mrs. Selzer’s testimony about prior incidents not related to the arrest on September 28 to support its argument to deny the motion for a directed verdict.

On cross-examination, Mrs. Selzer admitted that Appellant had submitted a complaint to Duke Energy about their fence because it violated regulations by extending into the water, which led to a Duke Shoreline property manager coming out on September 11. (Trial Tr. p. 101, line 16 – p. 102, line 12). Mrs. Selzer also conceded that Duke Energy prevents homeowners from restricting public use of the shoreline. (Trial Tr. p. 103).

Appellant also presented expert testimony and Respondent conceded that the seawall, rip/rap, and sandy beach were all located beyond their deeded property owned by Duke Energy. (Trial Tr. pp. 127 – 128). Respondent failed to provide competent evidence that the Selzers had the authority to trespass Appellant on Duke Energy’s *public land use* property and failed to prove Appellant entered the Selzer property on September 28. Therefore, the Circuit Court erred in affirming the Magistrate Judge’s ruling to deny Appellant’s motion for a directed verdict where

Respondent failed to present competent evidence that Appellant entered his neighbor's property after warning on September 28. *See Bennett*, 415 S.C. at 236-37, 781 S.E.2d at 354.

CONCLUSION

Based on the foregoing reasons, Appellant James S. Patton respectfully requests that this Court remand the case to the Magistrate Court for reconstruction of the record and to remand this case to the Circuit Court for the issuance of a supplemental order setting forth findings of fact and conclusions of law. However, if the Court denies the above requests for relief, respectfully requests that this Court reverse his conviction and sentence and issue an Order of Acquittal.

Respectfully submitted,

s/ Dayne Phillips

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June 30, 2026

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr.

Appellate Case No. 2025-002565

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Jun 30 2026

SC Court of Appeals

James Steven Patton,

Appellant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal has been served upon **Mark Farthing, Esquire**, at the SC Attorney General's Office, Post Office Box 11549, Columbia, SC 29211, on **June 30, 2026**.

s/ Dayne Phillips

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SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2026.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.