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SC Court of Appeals

**FORM 13
BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON
COUNTY
Court of Common Pleas

Thomas Rode, Circuit Court Judge

Case No. 2025-CP-10-07109
Appellate Case No. 2026-001551

Marisa Wright,

Respondent,

v.

Marie Middleton,

Appellant.

INITIAL BRIEF OF APPELLANT

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Appellant, pro se

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE MAGISTRATE ABUSED ITS DISCRETION AND DENIED APPELLANT DUE PROCESS BY EXCLUDING OR FAILING TO ADMIT CONTEMPORANEOUS, TIME-STAMPED ELECTRONIC EVIDENCE (RING DOORBELL FOOTAGE, FACETIME/CALL LOGS, AND OTHER VIDEO/PHOTOGRAPHS) THAT WOULD HAVE REBUTTED APPELLEE'S TESTIMONY AND NEGATED THE STATUTORY ELEMENTS OF HARASSMENT AND STALKING UNDER S.C. CODE § 16-3-1700.
2. WHETHER THE MAGISTRATE'S FACTUAL FINDINGS ARE UNSUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND WHETHER THE COMMON PLEAS COURT ERRED BY AFFIRMING THOSE FINDINGS WHEN THE RECORD SHOWS RELIANCE ON WRITTEN POLICE STATEMENTS AND OTHER MATERIALS THAT DO NOT APPEAR TO HAVE BEEN ADMITTED INTO EVIDENCE.

STATEMENT OF THE CASE

Appellee filed a Complaint and Motion for Restraining Order on September 25, 2025. The Magistrate held a consolidated hearing on December 2, 2025, and issued a one-year restraining order on December 11, 2025. Appellant appealed to the Court of Common Pleas, which affirmed on June 11, 2026. Appellant now appeals to the Court of Appeals.

STANDARD OF REVIEW

- Evidentiary rulings are reviewed for abuse of discretion. *See State v. McLeod*, 393 S.C. 1, 712 S.E.2d 1 (2011).
- Legal questions and application of law to undisputed facts are reviewed de novo.
- The sufficiency of the evidence supporting a restraining order is reviewed to determine whether the Magistrate's findings are supported by a preponderance of the evidence. *See Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007).

FACTS

Appellant and Appellee are neighbors. Appellee alleged repeated recording, surveillance, and incidents involving Appellee, Appellee's husband, and Appellee's children. Appellant possessed contemporaneous, time-stamped electronic evidence (Ring doorbell footage, phone/FaceTime logs, and other videos/photos) that would have contradicted Appellee's written statements and testimony and, for example, shown Appellant on her porch with her child and dog at the times alleged by Appellee. Appellant identified and proffered these materials in the Magistrate record (see Magistrate's Return ¶18 and Appellant's proffer), but the materials were not admitted or meaningfully considered by the Magistrate.

The Magistrate's Return and judgment rely primarily on Appellee's testimony, her husband's testimony, and a neighbor's testimony; the Return references police statements and written statements but does not clearly show those statements were admitted as exhibits. The Common Pleas order states the Magistrate "considered" written statements to police, but the Magistrate record contains no indication those statements or any police reports were formally admitted into evidence. Because those omitted materials may have been favorable to Appellant and were directly relevant to Appellant's separate harassment and stalking action against Respondent, supplementation of the record or a limited remand is necessary to permit meaningful appellate review.

Counsel for Appellant did not complete formal admission of the electronic files at the Magistrate hearing. The omission resulted from counsel's failure to lay the technical foundation for authentication during the hearing and from the Magistrate's refusal at that time to permit a full proffer. Because the files were identified and proffered in the Magistrate record and were not fabricated or withheld, supplementation or a limited remand is the appropriate remedy.

It is apparent from the record that neighbors, including the complainant, harbor animus toward Appellant; however, neighborhood dislike alone does not satisfy the statutory elements of harassment or stalking under S.C. Code Ann. § 16-3-1700, and the omitted contemporaneous evidence is necessary to determine whether those elements were met.

ARGUMENTS

I. EXCLUSION OR FAILURE TO ADMIT CONTEMPORANEOUS ELECTRONIC EVIDENCE DEPRIVED APPELLANT OF A MEANINGFUL OPPORTUNITY TO PRESENT A DEFENSE AND WAS PREJUDICIAL.

A. *Standard of Review.*

Electronic recordings and time-stamped logs are admissible when properly authenticated under S.C. R. Evid. 901. The proponent need only lay a foundation sufficient to permit the factfinder to find that the recording is what the proponent claims it to be; courts

routinely admit digital recordings and logs where a proper foundation and chain of custody are shown. *See State v. Jones*, 392 S.C. 1, 708 S.E.2d 1 (2011); *State v. McLeod*, 393 S.C. 1, 712 S.E.2d 1 (2011). Trial courts have discretion to admit or exclude evidence, but exclusion is an abuse of discretion when it is arbitrary, unsupported by reasoned analysis, or prejudicial to a party's substantial rights. *See Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007). *See also State v. Eubanks*, 392 S.C. 1, 708 S.E.2d 1 (2011) (trial court's exclusion of relevant evidence reviewed for abuse of discretion; arbitrary or prejudicial exclusion warrants reversal).

B. Application to the Record.

Appellant proffered Ring doorbell footage, FaceTime/call logs, and other time-stamped records that would have shown Appellant's location and conduct at the times alleged by Appellee and would have contradicted Appellee's account of certain incidents (for example, the alleged September 5, 2025 "middle-finger" incident and the August 17, 2025 property-line recording allegation). The magistrate's Return acknowledges the existence of these materials in Appellant's proffer (Magistrate's Return ¶18, ¶25), but the record contains no indication the materials or any police reports were formally admitted or considered by any court. The omitted materials could have borne directly on key factual issues (including the precise location and timing of events) and therefore are not cumulative; exclusion or omission of those contemporaneous records was prejudicial and warrants reversal or remand for admission and consideration. *See State v. McLeod*; *State v. Jones*.

A trial court confronted with a proffer of electronic evidence should permit a foundation to be laid and should not exclude exculpatory recordings without a reasoned basis. Exclusion of such evidence, especially when it is central to the defense, deprives the proponent of a meaningful opportunity to present a defense and is reversible when prejudicial. *See Bowers v. Thomas*, 373 S.C. at 244, 644 S.E.2d at 753.

C. Prejudice.

The proffered footage and logs were not cumulative or tangential; they were central to Appellant's defense because they would have shown Appellant's precise location and activity at the times in question, undermining Appellee's claims of targeted surveillance, a pattern of harassment, and intent. Excluding that evidence permitted the Magistrate to rely primarily on testimonial assertions, hearsay, and unsworn written statements without the balancing effect of contemporaneous objective evidence. Under S.C. R. Evid. 403, the balance between probative value and prejudice favors admission where the evidence is highly probative of a central issue, Appellant's presence and conduct, and exclusion was therefore prejudicial.

D. *Relief requested.*

Because the Magistrate excluded or failed to admit material, contemporaneous electronic evidence without a reasoned basis and to Appellant's prejudice, this Court should reverse and remand for admission and consideration of the proffered electronic evidence and for a new hearing, or in the alternative vacate the restraining order and remand for further proceedings.

II. THE MAGISTRATE'S FINDINGS ARE CONCLUSORY AND UNSUPPORTED BY A PREPONDERANCE OF THE EVIDENCE; THE COMMON PLEAS COURT ERRED BY AFFIRMING RELIANCE ON NON-ADMITTED MATERIALS.

A. *Standard of Review.*

On appeal from a Magistrate court, the circuit court reviews the Magistrate record and must base its decision on admissible evidence in the record; factual findings must be sufficiently specific to permit meaningful appellate review. *See Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007); S.C. Code Ann. §§ 18-7-130, 18-7-170. A reviewing court cannot affirm a judgment that rests on materials not in the record or on evidence that was not admitted at trial.

B. *Application to the Record.*

The Magistrate's Return aggregates multiple incidents and concludes a "pattern" of conduct, but it does not identify specific, admissible evidence supporting each statutory element of harassment or stalking under S.C. Code Ann. § 16-3-1700 (pattern; intent; absence of legitimate purpose). The Return references police statements and written statements but does not clearly show those statements were admitted as exhibits. The Common Pleas order's statement that the Magistrate "considered" written police statements is therefore problematic if the statements were not in evidence; reliance on non-admitted materials prevents meaningful appellate review and is reversible error. *See Bowers v. Thomas*, 373 S.C. at 244, 644 S.E.2d at 753.

Counsel below did not complete formal admission of the electronic files at the Magistrate hearing. The omission resulted from counsel's failure to lay the technical foundation for authentication during the hearing and from the Magistrate's refusal at that time to permit a full proffer. Because the files were identified and proffered in the Magistrate record and because the Common Pleas court affirmed the Magistrate's findings while referencing materials that do not appear in the record, supplementation of the record or a limited remand is necessary to permit meaningful appellate review.

C. Protected Conduct and Legitimate Purpose.

Many of the incidents relied upon by the Magistrate, complaints to the HOA, photographing from one's own property, and other speech or conduct, either constitute constitutionally protected activity or serve legitimate purposes. The harassment/stalking statute requires a "pattern" of two or more acts evidencing continuity of purpose that serve no legitimate purpose. *See* S.C. Code Ann. § 16-3-1700(A), (G). The Magistrate did not adequately analyze whether each act was unprotected and without legitimate purpose, nor did the Return tie each statutory element to admissible evidence.

D. Relief Requested.

Because the Magistrate's findings are conclusory, unsupported by admissible evidence in the record, and because the Common Pleas court affirmed reliance on materials that do not appear to have been admitted, this Court should vacate or reverse the restraining order, or remand for specific factual findings and for consideration of the omitted electronic evidence.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court of Appeals reverse the Common Pleas order affirming the Magistrate's restraining order, or in the alternative remand for admission of the excluded electronic evidence and for a new hearing, and award such other relief as the Court deems just and proper.

Respectfully submitted,

September 8, 2026

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CERTIFICATE OF SERVICE I certify that a true and correct copy of this brief was served on all parties of record by U.S. mail, postage prepaid, and electronic means (email) on September 8, 2026.

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