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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2026-000790
Lower Court Case No. 2025CP4604727

Yehonatan Kapach,..... Appellant,
v.
The State,..... Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the conviction, entered in Appellant's absence upon the officer's affirmative answer to a single leading question, must be reversed because no evidence established the elements of S.C. Code Ann. § 56-5-1538(G).
- II. Whether Appellant was denied the interpreter required by S.C. Code Ann. § 17-1-50 and by due process, where his limited proficiency in English was stated in his written filings and on the record, and no waiver was found.
- III. Whether the Court of Common Pleas erred in affirming without ruling on Appellant's pending Motion to Compel Disclosure and without addressing the grounds of his appeal.

STATEMENT OF THE CASE

This is a criminal appeal from a conviction in summary court. On September 15, 2025, Appellant was issued Uniform Traffic Ticket No. 20252351259324, charging the misdemeanor of endangering emergency services personnel under S.C. Code Ann. § 56-5-1538. Trial was set for October 16, 2025, at 9:00 a.m., in the York/Bethesda Magistrate Court.

Appellant did not appear. On October 16, 2025, the Magistrate Court tried the case in his absence without a jury, heard the testimony of the officer, found Appellant guilty, and imposed a total of \$1,062.50. (Order Denying Defendant's Motion to Reopen Case, Dec. 1, 2025; Tr. p. 5, ll. 13–21.)

On November 23, 2025, Appellant moved to vacate the judgment and for a new hearing, and requested a Hebrew interpreter. The Magistrate Court denied the motion by order dated December 1, 2025.

Appellant appealed to the Court of Common Pleas by notice of appeal and memorandum filed December 8, 2025. Among his grounds, he asserted that a conviction entered in his absence on the officer's testimony alone did not satisfy due process, and he again requested an interpreter. On January 24, 2026, he moved to stay enforcement, and on March 3, 2026, he filed a Motion to Compel Disclosure and Preservation of Evidence.

The Court of Common Pleas, the Honorable Daniel Dewitt Hall presiding, heard the appeal on March 3, 2026, from 2:10 p.m. to 2:18 p.m. No interpreter was present. (Tr. p. 1.) By Form 4 Order filed March 6, 2026, the court affirmed the judgment of the Magistrate Court. The Order states no reasons. No ruling was entered on the Motion to Compel.

Appellant served and filed his notice of appeal to this Court, which was docketed on March 27, 2026. The amount involved is \$1,062.50. Appellant's payment of the fine does not waive his right of appeal. S.C. Code Ann. § 18-3-30(B).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827 (2001). An issue of statutory interpretation is a question of law. *City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53 (2011). The Court of Common Pleas hears an appeal from the magistrate upon the grounds of exceptions made and upon the papers, without the examination of witnesses, and may confirm the sentence, reverse or modify it, or grant a new trial. S.C. Code Ann. § 18-3-70. Each issue presented here is a question of law.

STATEMENT OF FACTS

A. The trial in Appellant's absence

The Magistrate Court's order records that it "tried the defendant in his absence on October 16, 2025" and "heard the officer's sworn testimony for this case on October 16, 2025 at approximately 11:26 am." (Order of Dec. 1, 2025.) The recording of that trial, part of the Magistrate Court's return under S.C. Code Ann. § 18-3-40, reflects the following exchange concerning Appellant's case in its entirety:

THE COURT: 2025-235-1259-324. State versus . . . Yehonatan Kapach?

The defendant's been charged with Endangering Emergency Services Personnel.

THE OFFICER: Kapach. Endangering Emergency Service Personnel.

THE COURT: Which is also the move over law, right?

THE OFFICER: Yes.

THE COURT: So the defendant failed to move over?

THE OFFICER: Yes.

THE COURT: Based on testimony, court finds the defendant guilty.
\$1,062.50.

No other testimony or evidence was received. Nothing was said about the roadway, the number of lanes, the traffic, the position of any vehicle, whether an emergency vehicle was stationary and displaying flashing lights, the speed of Appellant's vehicle, or whether a lane change was feasible or safe.

B. Appellant's limited English

Appellant's native language is Hebrew. He requested a Hebrew interpreter in his Motion to Vacate of November 23, 2025, and again in his Notice of Appeal and Memorandum of December 8, 2025. No interpreter was provided at the hearing of March 3, 2026. At that hearing Appellant told the court, "I have a small problem with the language" (Tr. p. 4, l. 3); "I'm sorry. I'm limited with the language" (Tr. p. 5, ll. 6–7); and, after the State's argument, "she speaks so fast, I'm not sure that I understand everything" (Tr. p. 6, ll. 19–20). When the court questioned him, he answered, "I'm not sure," and "What do you say? I'm trying to understand." (Tr. p. 7, ll. 12–15.) The court made no inquiry into his comprehension and made no finding that he had waived an interpreter.

C. The pending Motion to Compel Disclosure

Appellant filed his Motion to Compel Disclosure and Preservation of Evidence on March 3, 2026. At the outset of the hearing that day, the court noted that the clerk had informed it that Appellant had "just filed some type of motion downstairs," and asked Appellant to state what it was. (Tr. p. 3, ll. 12–25.) Appellant told the court, "I asked for all the documents, all the proof against me, and they didn't even reply for my emails and for my motions and whatever it is." (Tr. p.

5, ll. 4–6.) The court took the appeal under advisement (Tr. p. 8, ll. 11–13) and three days later affirmed by Form 4 Order. It never ruled on the motion.

ARGUMENT

I. The conviction must be reversed because no evidence established the elements of S.C. Code Ann. § 56-5-1538(G).

The Due Process Clause of the Fourteenth Amendment 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. *In re Winship*, 397 U.S. 358, 364 (1970). It also requires notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313–14 (1950). A trial held in the defendant’s absence does not relieve the State of its burden; it makes the record of the State’s proof all the more important, because nothing else is before the court.

Section 56-5-1538(G) defines the offense. A driver approaching “a stationary authorized emergency vehicle that is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights, or amber or yellow warning lights” must “proceed with due caution, significantly reduce the speed of the vehicle,” and either “yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle,” where the highway has at least four lanes with at least two in the same direction and a lane change can be made safely, S.C. Code Ann. § 56-5-1538(G)(1), or “maintain a safe speed for road conditions, if changing lanes is impossible or unsafe,” S.C. Code Ann. § 56-5-1538(G)(2). The duty to change lanes is therefore conditional, and a driver who cannot safely change lanes commits no offense by remaining in his lane at a safe speed.

The State proved none of these elements. The officer was never asked what occurred. He confirmed the name of the charge, and he answered “Yes” when asked whether the defendant “failed to move over.” That answer was a legal conclusion given in response to a leading question. It did not establish that an emergency vehicle was stationary and displaying the flashing lights the statute describes; that the highway had the configuration to which subsection (G)(1) applies; that a

lane change was feasible and safe; or that Appellant failed to proceed with due caution and at a safe speed. Because the record contains no evidence of the elements of the offense, the conviction cannot stand, and the Court of Common Pleas erred as a matter of law in affirming it.

II. Appellant was denied the interpreter required by S.C. Code Ann. § 17-1-50 and by due process.

Section 17-1-50 provides that when a party in a criminal proceeding does not understand or speak English well enough to comprehend the proceedings, the court must appoint a certified or otherwise qualified interpreter, whose fees are paid from the general fund of the State. S.C. Code Ann. § 17-1-50. The statute permits waiver only upon a finding, made on the record, that the waiver was requested by the person concerned, was made knowingly, voluntarily, and intelligently, and is in the best interest of justice. *Id.*

Appellant asked for a Hebrew interpreter in writing in his motion to vacate and again in his notice of appeal and memorandum. At the hearing he told the court three times that he had difficulty with the language and could not be sure he understood what was being said. (Tr. p. 4, l. 3; p. 5, ll. 6–7; p. 6, ll. 19–20.) No interpreter was appointed. No inquiry was made into his comprehension. No waiver was requested by Appellant, and no finding of waiver was made. A hearing at which the defendant cannot follow the argument against him is not a meaningful opportunity to be heard. See *Mullane*, 339 U.S. at 313–14. The failure to appoint an interpreter violated § 17-1-50 and deprived Appellant of due process.

III. The Court of Common Pleas erred in affirming without ruling on the pending Motion to Compel Disclosure and without addressing the grounds of the appeal.

The Court of Common Pleas hears an appeal from the magistrate upon the grounds of exceptions made. S.C. Code Ann. § 18-3-70. Appellant’s grounds included the due process objection to a conviction entered in his absence on the officer’s testimony alone, and his request for an interpreter. The court addressed none of them. Its Form 4 Order states no reasons.

The court also left undecided Appellant's Motion to Compel Disclosure and Preservation of Evidence, although it was aware the motion had been filed that day (Tr. p. 3, ll. 12–25) and Appellant told it that he had asked for all of the evidence against him without response (Tr. p. 5, ll. 4–6). The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Appellant does not ask this Court to determine what the requested evidence would have shown. He submits only that a court reviewing a conviction cannot properly affirm it while a pending motion by the defendant to obtain the evidence underlying the charge remains undecided, and without addressing the grounds of appeal presented to it.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Order of the Court of Common Pleas filed March 6, 2026, and reverse the conviction entered on October 16, 2025. In the alternative, Appellant requests that the Court reverse and remand for a new trial at which a qualified Hebrew interpreter is appointed in accordance with S.C. Code Ann. § 17-1-50; or, in the further alternative, remand to the Court of Common Pleas with instructions to rule on Appellant's Motion to Compel Disclosure and to address the grounds of his appeal.

Respectfully submitted,



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