

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2015-CP-28-0183
Appellate Case No. 2016-002179

RECEIVED

MAR 28 2017

SC Court of Appeals

Kershaw County Respondent,

v.

James Teal.Appellant.

INITIAL BRIEF OF RESPONDENT

DuBOSE-ROBINSON, PC
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Does Appellant's appeal raise issues not ruled upon by the lower court that granted Respondent's motion to dismiss appellant's original appeal to the lower court such that this appeal must be dismissed?

II. Does Appellant's initial brief contain conclusory statements that are unsupported by authority such that the issues raised, if considered to be properly before this Court, should be considered abandoned and the appeal must be dismissed?

STATEMENT OF THE CASE

On November 8, 2013, Appellant James Teal was charged with three (3) violations of Kershaw County Animals Ordinance No. 124.2008. A jury trial was held on February 17, 2015, in the Kershaw County Magistrate's Court. A jury found Appellant guilty on all the charges.

Appellant filed a Notice of Appeal of the guilty verdict in the Court of Common Pleas for the Fifth Judicial Circuit on February 25, 2015. Kershaw County Magistrate Judge William D. Corbett filed his Return on March 9, 2015. Respondent filed a Notice of Motion and Motion to Dismiss Appeal on March 11, 2015, on the grounds that Appellant failed to serve counsel for Respondent with notice and grounds of his appeal within the applicable time limits as required by South Carolina Code Ann. § 18-3-10. Appellant filed a Reply to the Motion on March 23, 2015.

Judge Jocelyn Newman held a hearing on Respondent's Motion to Dismiss the Appeal on October 14, 2016. Judge Newman granted Respondent's Motion to Dismiss and issued a Form 4 Order ending the case. Appellant did not file a Motion to Reconsider the Order Granting Respondent's Motion to Dismiss Appeal pursuant to Rule 59(e), SCRCPP. This appeal followed.

FACTS

The pertinent facts to this case are laid out in the Statement of the Case.

ARGUMENT

I. The instant appeal raises issues not ruled upon by the lower court that granted Respondent's motion to dismiss Appellant's original appeal to the lower court such that this appeal must be dismissed.

Respondent's Motion to Dismiss the Appeal was based on the grounds that Appellant failed to serve counsel for Respondent with notice and grounds of his appeal within the applicable time limits as required by South Carolina Code Ann. § 18-3-10. The Order granting

Respondent's Motion to Dismiss Appeal was entered on a Form 4 and simply stated, "Motion to Dismiss Granted." However, Appellant's stated issues on appeal include omission of an allegedly necessary jury charge, "undocumented evidence" being allowed at trial, and attacks on the credibility of a witness with alleged "memory loss." Appellant's brief lacks any mention of or reference to the adequacy of service of his Notice of Appeal of the guilty verdict and the instant appeal must therefore be dismissed.

"In matters of appeal, so far as it appears, all that this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised in the lower Court and passed upon by that Court." *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187, 189 (1939). "In order to be preserved for appellate review, an issue must have been raised to and ruled upon by the trial court." *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 148, 644 S.E.2d 705, 708 (2007).

Appellant's stated issues on appeal are as follows:

A dismissed case brought forth as evidence at the start of trial. The presiding judge did not charge the jury with an over ruling or of sustaining Appalants objection of reletivity. A memory lapse by the Constable, initiating the charges. The Constable allowed to enter undocumented evidence, that was at his office, after his memory returned. [sic].

None of Appellant's own stated issues on appeal were raised to or ruled on by the lower court when it granted Respondent's Motion to Dismiss Appeal. As such, Appellant's issues on appeal are not preserved for appellate review and this appeal should be dismissed in its entirety.

Hubbard, supra; Aiken, supra.

Moreover, Appellant failed to file a Motion pursuant to Rule 59(e), SCRPC, to alter or amend the underlying judgment. Such a motion would have been the proper vehicle for raising Appellant's objections to evidentiary rulings and jury charges in the underlying trial. Because

Appellant failed to file any such motion, he is precluded from raising such issues for the first time on appeal. See *Grant v. S.C. Coastal Council*, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (“Grant failed to move under Rule 59(e), SCRCPP, to alter or amend the judgment. Having failed to avail himself of his initial remedy, Grant will not now be heard to complain that the Order is inaccurate or prejudicial.”)

II. Appellant’s initial brief contains conclusory statements that are unsupported by authority such that the issues raised, if considered to be properly before this Court, should be considered abandoned and the appeal must be dismissed.

Should this Court decide Appellant’s issues on appeal are preserved for review the appeal should nevertheless be dismissed as Appellant’s brief contains only conclusory statements that are not substantiated by any authority. “A bald assertion, without supporting argument, does not preserve an issue for appeal.” *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001), *holding modified by Matter of Chapman*, No. 2014-001181, 2017 WL 606506 (S.C. Feb. 15, 2017). “Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.” *Hunt v. Forestry Com’m*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004). Appellant’s unsupported allegations of “undocumented evidence,” memory lapse of a witness and omission of a necessary jury charge should be deemed abandoned and not be considered in this appeal.

CONCLUSION

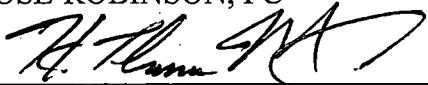
This appeal derives from the lower court’s Order granting Respondent’s Motion to Dismiss Appellant’s appeal of the underlying jury verdict due to Appellant’s failure to effectuate service of the notice and grounds of appeal on Respondent. Appellant failed to file a Motion under Rule 59(e), SCRCPP, to alter or amend the underlying judgment and now attempts to raise other evidentiary issues for the first time on appeal. As more thoroughly discussed above, these

issues were not raised to or ruled upon by the lower court that granted Respondent's Motion to Dismiss Appeal. As such, the present appeal must be dismissed in its entirety. *Grant, supra.* Even assuming that Appellant's issues on appeal are preserved for review the issues must still be dismissed as they are not supported by authority and are deemed abandoned. *In re McCracken, supra; Hunt, supra.*

For the foregoing reasons, Respondent respectfully requests that this Court dismiss this appeal in its entirety and for such other relief as the Court deems appropriate.

Respectfully Submitted,

DuBOSE-ROBINSON, PC

BY: 
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ATTORNEYS FOR RESPONDENT

Filed March 28 2017

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Kershaw County Respondent,

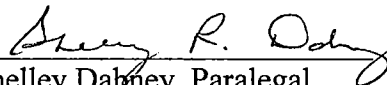
v.

James Teal Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served Appellant with a copy of the Initial Brief of Respondent by mailing copies of the same by United States Postal Service with first class postage prepaid to the following address:

Mr. James Teal
2832 Tee Pee Trail
Elgin, SC 29045


Shelley Dabney, Paralegal

Camden, South Carolina
March 28, 2017

DuBose-Robinson, PC

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REPLY TO: Mailing Address
PO Drawer 39
Camden, SC 29021

March 28, 2017

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: *Kershaw County vs. James Teal*
Case No. 2015-CP-28-00183

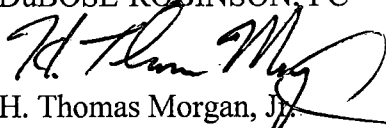
Dear Ms. Kitchings:

Please find enclosed herewith for filing the original and one (1) copy of the Initial Final Brief of Respondent in the above-referenced case. Also enclosed is a Proof of Service upon Appellant. Please return the filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

DuBOSE-ROBINSON, PC


H. Thomas Morgan, Jr.

HTM/dlf
Enclosures

cc: James Teal

DuBose-Robinson, PC

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SC Court of Appeals

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