

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maité Murphy, Circuit Court Judge

Magistrate Court Uniform Traffic Ticket No. 4102P0310884
Intermediate Appellate Case No. 2016-CP-18-0490
Appellate Case No. 2016-001116

THE STATE, ...RESPONDENT

v.

FLOYD RILEY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, South Carolina 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court properly affirmed Appellant's magistrate court conviction for speeding where the fundamental requirements of due process were provided to him at trial.
2. Whether the circuit court properly affirmed Appellant's magistrate court conviction for speeding where the six person jury issued a unanimous guilty verdict.
3. Whether circuit court properly affirmed Appellant's magistrate court conviction for speeding where Appellant was allowed to cross-examine the State's witnesses during trial.

STATEMENT OF THE CASE

On December 12, 2015, Floyd Riley (Appellant) was arrested for speeding for going 80 miles per hour (mph) in a 55 mph zone. (Uniform Traffic Ticket No. 4102P0310884) (R.p.1). The arresting officer requested a bail amount of four hundred and forty-five dollars (\$445). On March 4, 2016, Appellant's case was called for trial before the Honorable Jackie G. Jenkins, Dorchester County Magistrate Judge, and a jury. Appellant was present and proceeded to trial which ended with the six person jury returning a unanimous guilty verdict. (Verdict Form for 4102P0310884 dated March 4, 2016)(R.p.4). Appellant was sentenced to pay a fine of four hundred and forty-five dollars (\$445). On March 11, 2016, Appellant timely appealed his conviction to the Dorchester County Court of Common Pleas, alleging errors by the trial court. On March 24, 2016, pursuant to Section 18-3-40 of the South Carolina Code, Judge Jenkins filed a "Transmittal of Traffic Appeal" wherein she made findings of fact and conclusions of law. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3).

On April 19, 2016, an appellate hearing was convened at the Dorchester County Courthouse before the Honorable Maité Murphy. Appellant appeared *pro se* and the State was represented by former Assistant Solicitor Kyle Leo Ward of the First Judicial Circuit Solicitor's Office. In a "Form 4" Order dated May 3, 2016, and filed May 13, 2016, the circuit court affirmed Appellant's magistrate court conviction. (Order of Judge Murphy dated May 3, 2016)(R.p.11).

Appellant filed a notice of intent to appeal the circuit court's order and has now submitted a Brief of Appellant to this Court challenging both the circuit court's ruling and the underlying conviction. On October 18, 2016, the State filed a motion to dismiss the appeal for

failure to correct deficiency on grounds that Appellant failed to timely file and serve his designation of matter; however, by order filed December 8, 2016, that motion was denied. This Brief of Respondent now follows.

STATEMENT OF FACTS

On December 12, 2015, Appellant was driving 80 miles per hour in a 55 mph zone. As a result, he was arrested for speeding. (Uniform Traffic Ticket No. 4102P0310884)(R.p.1). On March 4, 2016, Appellant's case was called for trial before the Honorable Jackie G. Jenkins, Dorchester County Magistrate Judge, and a jury. Appellant was present and proceeded to trial which ended with the six person jury returning a unanimous guilty verdict for speeding. Judge Jenkins sentenced Appellant to pay a fine of four hundred and forty-five dollars (\$445).

On March 24, 2016, pursuant to Section 18-3-40 of the South Carolina Code, Judge Jenkins filed a "Transmittal of Traffic Appeal" wherein she made findings of fact and conclusions of law. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3). In that Transmittal, Judge Jenkins specifically found as follows:

Following Summary Court procedures, proper measures were taken to secure a qualified jurors via Voir Dire. A jury strike was done, jurors were sworn in and a foreman appointed. Preliminary instructions were given the jurors to ensure their understanding of the judicial process. The State and the Defendant were sworn in and allowed to proceed according to Summary Court procedures. The State presented its case first choosing to present testimony and evidence to the jury only. The Defendant followed, initially cross-examining the State. **Each party was allowed the opportunity to present relevant testimony and evidence.** After each party had presented their case, including the closing statements, the judge gave the jury the law that applied to the charge against the defendant. They were given the PRESUMPTION OF INNOCENCE LAW : "It is not required that the State proves guilt beyond all possible doubt. A reasonable doubt is a doubt that would make a reasonable person hesitate to act." The jury was also given the "Form of Verdict Information". After which, they

were sent to the jury room for careful deliberation; asked to knock on the door when they had reached a verdict. **Following the jury's deliberation, they returned with a guilty verdict** read by the foreman (Attached). The jurors were each pooled [sic].

After dismissing the jury, the court finds [sic] the defendant \$445. (Point reduction is associated with the Department of Motor Vehicle not the court).

(Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3) (emphasis added).

On April 19, 2016, an appellate hearing was convened at the Dorchester County Courthouse before the Honorable Maité Murphy. Appellant appeared *pro se* and the State was represented by former Assistant Solicitor Kyle Leo Ward of the First Judicial Circuit Solicitor's Office. At the hearing, Appellant claimed he had "quite a few arguments" to make and that the magistrate "was running her courtroom like a television show." (R.p.14, lines 5-7). He first complained that the officer stood on the floor and testified instead of taking the witness stand. Appellant then claimed he was not allowed to question the officer and was not allowed to introduce evidence he thought would help his case. Finally, he questioned whether the jury had in fact rendered a guilty verdict at the end of deliberations. (R.p.14, lines 7-18).

After reviewing a document handed up by Appellant which the court described as "a letter from the DMV notifying [Appellant] of the points on [his] license," Judge Murphy asked Appellant to specify exactly what he believed the trial judge did wrong, as a matter of law. She noted she had the magistrate's written return and a recording of the trial proceedings for review. (R.p.14, line 20-p.4, line 8). Appellant repeated his claims that he had not been allowed to question his accuser and that the trial court refused to accept evidence he wanted to submit during trial. (R.p.15, lines 12-16). Judge Murphy told Appellant that a defendant is not allowed

to enter anything into evidence he wants, and that evidence would have to be properly admitted through the Rules of Evidence and Rules of Procedure. (R.p.15, line 17-p.16, line 16).

In response to Appellant's claims, the solicitor noted the trial court is given wide discretion in regard to admitting evidence and said there "could have been a multitude of reasons the evidence did not come in." He argued that without more of a showing by Appellant, there was no error of law. The solicitor further argued the jury verdict form demonstrates there was a unanimous jury verdict and that since there was no error of law, the appeal should be dismissed. (R.p.16, line 19-p.17, line 8). Judge Murphy said she would take time to review the record and listen to the audio recoring from trial, and would then advise the parties of her decision. (R.p.17, lines 9-12). In a "Form 4" Order dated May 3, 2016, and filed May 13, 2016, the circuit court affirmed Appellant's magistrate court conviction for speeding. (Order of Judge Murphy dated May 3, 2016)(R.p.11).

ARGUMENT

I.

The circuit court properly affirmed Appellant's magistrate court conviction for speeding where the fundamental requirements of due process were provided to him at trial.

Although his first argument is hard to understand, it appears Appellant contends that the trial court violated his right to due process by sending his "ticket information" to the DMV prior to his having his appeal heard by the circuit court. He argues the circuit court erred by not recognizing this due process violation "even after submitting of proof to the court below that such violation occurred." (Brief of Appellant, p.6-p.7). The State disagrees and submits Appellant's argument is entirely without merit. Appellant was afforded due process and the circuit court properly affirmed Appellant's magistrate court conviction for speeding.

Standard of Review

In a criminal appeal from a magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews the case for preserved errors raised to it by appropriate exception. *State v. Williams*, 417 S.C. 209, 218, 789 S.E.2d 582, 587 (Ct. App. 2016); *State v. Hoyle*, 397 S.C. 622, 625, 725 S.E.2d 720, 721-22 (Ct. App. 2012); *State v. Johnson*, 396 S.C. 182, 186, 720 S.E.2d 516, 518 (Ct. App. 2011). An abuse of discretion occurs when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support. *Id.* The circuit court "may either confirm the sentence appealed from, reverse or modify it, or grant a new trial." S.C. Code Ann. § 18-3-70 (Supp. 2012). The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007); *Hoyle*, 397 S.C. at 625, 725 S.E.2d at 722; *Johnson*, 396 S.C. at 186, 720 S.E.2d at 518.

Law / Analysis

Initially, the State submits Appellant's due process argument should be deemed abandoned on appeal because it is conclusory. *See State v. Howard*, 384 S.C. 212, 217-218, 682 S.E.2d 42, 45 (2009) (finding "[a]n issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority"); *State v. Hill*, 394 S.C. 280, 297, 715 S.E.2d 368, 377-78 (Ct. App. 2011) (finding an issue is deemed abandoned on appeal where appellate counsel made a "two sentence conclusory argument with citation to only *Brady* and no analysis whatsoever as to why or how *Brady* applies"). Here, Appellant lists one case in his table of authorities; however, his due process argument does not include a citation to that case or any other supporting authority. As a result, it is conclusory and should be deemed abandoned. In any event, the argument is without merit.

The fundamental requirements of procedural due process include fair notice and proper standards for adjudication, such as an opportunity to be heard in a meaningful way and judicial review. *State v. Green*, 397 S.C. 268, 279, 724 S.E.2d 664, 669 (2012); *Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991); *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009). Due process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands. *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). Thus, procedural due process contemplates a fair hearing before a legally constituted impartial tribunal. *Id.*

Here, Appellant was charged with speeding via a traffic ticket which gave him fair notice of the charge he was facing. (Uniform Traffic Ticket No. 4102P0310884)(R.p.1). He then exercised his right to a jury trial, which provided him with the opportunity to be heard in a

meaningful way, the opportunity to present evidence, the opportunity to confront and cross-examine witnesses, and judicial review. In her transmittal to the circuit court, the magistrate judge specifically made findings of fact that during the trial Appellant was allowed: (1) to cross-examine the witnesses for the State, (2) to present relevant testimony and evidence, and (3) to make a closing argument. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3). The circuit court was bound, and likewise this Court is bound, by the factual findings in the magistrate's return. *See State v. Brown*, 358 S.C. 382, 388; 596 S.E.2d 39, 41 (2004) (noting that in a criminal appeal from magistrate's court, where a fact is clearly stated in the magistrate's return the Court of Appeals was bound by this factual determination). Nothing in the record before this Court contradicts these factual findings or shows they were without evidentiary support; therefore, they must direct this Court's substantive analysis on appeal. The findings of fact conclusively demonstrate that Appellant received procedural due process. Consequently, the trial judge did not abuse her discretion. The fundamental requirements of due process were met and the circuit court properly affirmed Appellant's conviction.

II.

The circuit court properly affirmed Appellant's magistrate court conviction for speeding where the six person jury issued a unanimous guilty verdict.

Appellant argues the trial court erred in failing to ensure the jury's decision was unanimous by asking each individual juror if they had reached a guilty verdict. Initially, the State submits that as with his due process argument, Appellant's "unanimous jury" argument should be deemed abandoned on appeal because it is merely conclusory. *Howard*, 384 S.C. at 217-218, 682 S.E.2d at 45. Furthermore, the argument is without merit.

In her transmittal to the circuit court, the magistrate judge specifically made findings of fact that the jury returned to the courtroom with a guilty verdict which was read by the foreman, and that the individual jurors were subsequently polled. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3). The circuit court was bound, and likewise this Court is bound, by the factual findings in the magistrate's return. *Brown*, 358 S.C. at 388, 596 S.E.2d at 41. Nothing in the record before this Court contradicts these factual findings or shows they were without evidentiary support; therefore, they must direct this Court's substantive analysis on appeal. The findings of fact conclusively demonstrate that the six person jury issued a unanimous verdict of guilt. Consequently, the trial judge did not abuse her discretion and the circuit court properly affirmed Appellant's conviction.

III.

The circuit court properly affirmed Appellant's magistrate court conviction for speeding where Appellant was allowed to cross-examine the State's witnesses during trial.

Appellant argues the trial court erred in not allowing him to properly question the officer doing the jury trial which prevented him from defending himself before the jury. As with his first two arguments, the State submits Appellant's "cross-examination" argument should be deemed abandoned on appeal because it is merely conclusory. *Howard*, 384 S.C. at 217-218, 682 S.E.2d at 45. Also, the argument is without merit.

In her transmittal to the circuit court, the magistrate judge specifically made findings of fact that Appellant was allowed to cross-examine the witnesses for the State and was allowed an opportunity to present relevant testimony and evidence. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court)(R.p.2-3). The circuit court was bound, and likewise this Court is bound, by the factual findings in the magistrate's return. *Brown*, 358 S.C. at 388, 596 S.E.2d at 41. Nothing in the record before this Court contradicts these factual findings or shows they were without evidentiary support; therefore, they must direct this Court's substantive analysis on appeal. The findings of fact conclusively demonstrate that Appellant was allowed to properly question and cross-examine witnesses for the State. Consequently, the trial judge did not abuse her discretion and the circuit court properly affirmed Appellant's conviction.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the circuit court's decision and Appellant's underlying conviction both be affirmed.

Respectfully submitted,

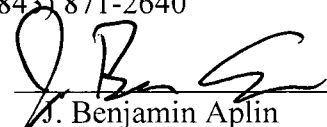
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BY:


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S.C. Bar No. 8729

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

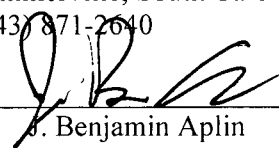
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