

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2017-002354

RECEIVED

AUG 15 2018

SC Court of Appeals

Phillip Andrew Bridges,Appellant,

v.

Simpsonville Police Department,.....Respondent.

INITIAL BRIEF OF RESPONDENT

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381
Attorney for Respondent
Simpsonville Police Department

TABLE OF CONTENTS

TABLE OF AUTHORITIES III

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 1

STATEMENT OF FACTS 3

STANDARD OF REVIEW 4

ARGUMENT..... 4

I. APPELLANT’S APPEAL TO THE CIRCUIT COURT WAS UNTIMELY..... 4

II. APPELLANT’S NOTICE OF APPEAL TO THE CIRCUIT COURT DID NOT RAISE AN ERROR OF LAW OR STATE APPROPRIATE EXCEPTIONS. 5

III. APPELLANT DID NOT FILE A MOTION FOR A NEW TRIAL WITH THE SIMPSONVILLE MUNICIPAL COURT; THEREFORE, ANY ERROR ALLEGING THAT APPELLANT DID NOT GET NOTICE OF HIS TRIAL IS NOT PRESERVED. 6

CONCLUSION..... 7

TABLE OF AUTHORITIES

CASES

City of Aiken v. David Michael Koontz, 368 S.C. 542, 629 S.E.2d 686 (S.C.App. 2006... 4
Ishmell v. South Carolina Highway Department, 264 S.C. 340, 215 S.E.2d 201 (1975)... 7
State v. Adams, 354 S.C. 361, 380; 580 S.E.2d 785 (S.C. App., 2003)..... 6
State v. Brown, 358 S.C. 382,387; 596 S.E.2d 39 (S.C., 2004)..... 7
State v. Jackson, 351 S.E.2d 167, 290 S.C. 435 (S.C., 1986)..... 6
State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (S.C 1999)..... 7

STATUTES

South Carolina Code Ann. § 5-7-60 1
South Carolina Code Ann. §14-25-105 5
South Carolina Code Ann. §14-25-95 1, 4, 5, 8
South Carolina Code Ann. §22-3-990 1

STATEMENT OF ISSUES ON APPEAL

- I. **DID THE COURT OF COMMON PLEAS, SITTING AS AN APPELLATE COURT ON AN APPEAL FROM THE SIMPSONVILLE MUNICIPAL COURT, ERR IN DISMISSING THE APPEAL BECAUSE IT WAS UNTIMELY?**
- II. **SHOULD APPELLANT'S APPEAL HAVE BEEN DISMISSED BECAUSE APPELLANT FAILED TO SET FORTH THE GROUNDS FOR APPEAL AS REQUIRED BY SOUTH CAROLINA CODE ANNOTATED §14-25-95?**
- III. **DID APPELLANT PRESERVE FOR APPELLATE REVIEW ERROR CONCERNING AN ALLEGED LACK OF NOTICE OF TRIAL BY FAILING TO FILE A MOTION FOR A NEW TRIAL?**

STATEMENT OF THE CASE

Appellant pled guilty to criminal domestic violence on May 20, 2005 and paid a fine of \$525.00.

Twelve years later, Appellant filed a notice of intent to appeal (dated June 12, 2017) on August 8, 2017¹ (Notice of Appeal, P. 1). Appellant did not file a motion for a new trial in the Municipal Court challenging his conviction for criminal domestic violence pursuant to South Carolina Code Ann. §22-3-990. Appellant's first challenge concerning his conviction was the Notice of Appeal filed with the Circuit Court.

The Notice of Intent to Appeal is dated June 12, 2017 (Notice of Appeal, P. 3); however, it was not filed until July 21, 2018 (Notice of Appeal, P. 4)

¹ Appellant filed a notice of appeal with Greenville County presumably prior to July 5, 2017. By letter dated July 5, 2017 the Clerk of Court for Greenville County notified Appellant of his obligation to file the appeal with the Simpsonville Municipal Court. (Notice of Appeal, P. 3) There is no record of an appeal filing with Greenville County prior to July 21, 2018. The Return filed by the Simpsonville Municipal Clerk of Court is dated July 31, 2018. (Notice of Appeal, P. 2)

The Notice of Intent to Appeal stated: “I, Phillip Andrew Bridges, Appellant, hereby give my Notice of Appeal after receiving Disposition Sheet dated 6-2-2017, for the first time for decision of guilty plea, trial date 5/20/2005 for offense date 6/27/2004 for C.D.V. first offense. From Simpsonville Municipal Court. Brief will follow: **‘SLED Report shows different trial date 7-29-2004’**” (Bold in original)

Appended to a July 5, 2018 letter from the Greenville County Clerk of Court to Appellant was a note from Appellant that stated: “The copy of the notice of appeal was forwarded to the Municipal Court in June 2017; however, where the initial submittal of appellate review was sought with your office, he did not forward the disposition sheet(s) which are enclosed herein what [*sic*] he is appealing.” (Notice of Appeal, P. 3)

The Simpsonville Municipal Court provided a return dated July 31, 2017 (Notice of Appeal, P. 2). The return indicated that the trial judge was deceased, and the audio recording was no longer in existence.

On September 1, 2017, Appellant filed an amended notice of intent to appeal. (Amended Notice of Appeal, P. 1)² It was identical to the first notice of intent to appeal except for the following: “**Grounds: Forfeiture cannot reflect as conviction on rap sheet.**” (Bold in original.)

² The notice of appeal and the certificate of service is dated June 12, 2017, the same date stated on the notice of intent to appeal. The envelope attached to the amended notice shows a mailing date of August 29, 2017. (Amended Notice of Appeal, P. 4) The Appellant’s certificate of service is false.

Respondent filed a Memorandum of Law in opposition to Appellant's appeal on October 30, 2017 and Exhibits on October 31, 2017 (via e-filing). Appellant did not file a brief as he stated in his notices of intent to appeal.³

A hearing was conducted before the Honorable Edward W. Miller, Circuit Court Judge, in Greenville County on November 1, 2017. By Order dated November 3, 2017, Appellant's appeal was dismissed as untimely. (Order, P. 1)

This appeal followed.

STATEMENT OF FACTS

According to the computer records that remain on file in the Simpsonville Municipal Court (referred to as "disposition sheets"), Appellant pled guilty to criminal domestic violence on May 20, 2005. He paid a fine of \$525.00. (Notice of Appeal, P. 6) Appellant did not appeal this conviction.

Appellant did not state any grounds for his appeal. Appellant terms his conviction as a "guilty plea." (Notice of Appeal, P. 1) His notice of appeal claimed that a "brief will follow" and that the SLED report showed a different trial date.

In Appellant's amended notice of appeal filed in September 2017, he says that the ground for the appeal was: "Forfeiture cannot reflect as conviction on rap sheet." (Amended Notice of Appeal, P. 1)

Prior to the November 1, 2017 hearing before the Circuit Court, Respondent was unable to determine the basis for Appellant's appeal. Therefore, in response to the appeal,

³ At the least, no brief was served on Respondent's counsel and none was filed with Greenville County Court of Common Pleas.

Respondent contended that Appellant had ten days to file his notice of appeal, but more than twelve years had elapsed making the appeal untimely. The Simpsonville Municipal Court return and the certified disposition sheets filed by Appellant in connection with his appeal establish that Appellant pled guilty to criminal domestic violence and paid the fine in 2005.

STANDARD OF REVIEW

“In criminal appeals from municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception. [Citations omitted.] The appellate court reviewing the criminal appeal from the circuit court may review for errors of law only. [Citations omitted.] In criminal cases, the court of appeals sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” *City of Aiken v. David Michael Koontz*, 368 S.C. 542, 629 S.E.2d 686, 688 (S.C. App. 2006)

ARGUMENT

I. Appellant’s appeal to the Circuit Court was untimely.

South Carolina Code Ann. § 14-25-95 provides: “Notice of intention to appeal... must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is considered waived.” Appellant appeared before the Simpsonville Municipal Court on May 20, 2005 and pled guilty to the offense of criminal domestic violence, first offense. He was sentenced to pay a fine of \$525.00 and he paid the fine. (Notice of Appeal, P. 9)

Appellant's Notice of Intent to Appeal was dated June 12, 2017, more than 12 years after he pled guilty. (Notice of Appeal, P. 1) Therefore, Appellant's appeal is untimely, and Appellant should be deemed to have waived any right to appeal.

Appellant has not demonstrated nor argued that the municipal court nor the Circuit Court's finding that Appellant appeared before the Simpsonville Municipal Court and pled guilty on May 20, 2005, was clearly erroneous. The record the Circuit Court used for this finding is the record that was certified as true and accurate by the Simpsonville Municipal Court Clerk.

II. Appellant's Notice of Appeal to the Circuit Court did not raise an error of law or state appropriate exceptions.

South Carolina Code Ann. §14-25-95 provides in part that the Appellant's notice of intention to appeal must set "forth the grounds for appeal" and be served on the Municipal Court Judge who then prepares a return as required by South Carolina Code Ann. §14-25-105.

Respondent contends as an additional sustaining ground that Appellant did not raise an error of law for the Circuit Court's review nor did Appellant state an appropriate exception. The Notice of Appeal states: "SLED report shows different trial date 7-29-2004." (Notice of Appeal, P. 1)

If the ground for the appeal is that SLED has the wrong trial date in its system, that is not a basis for an appeal from Appellant's conviction in municipal court. It certainly does not allege an error of law by the trial judge.

In his amended notice of appeal, the sole ground stated that a forfeiture cannot reflect as a conviction on a rap sheet. The Simpsonville Municipal Court has no authority over SLED or the information stated on a "rap sheet." There is no allegation that the court

committed an error of law either by the Simpsonville Municipal Court or by the Court of Common Pleas.

III. Appellant did not file a motion for a new trial with the Simpsonville Municipal Court; therefore, any error alleging that Appellant did not get notice of his trial is not preserved.

Respondent has been forced to speculate on the legal basis for this appeal. Appellant cites *State v. Jackson*, 351 S.E.2d 167, 290 S.C. 435 (S.C., 1986) in his brief. (Initial Brief of Appellant, P. 1) *Jackson* involved a trial in the defendant's absence. Jackson moved for a new trial six months after his trial. On appeal, Jackson claimed that the record did not "not support a finding that he knowingly and intelligently waived his right to be present." *Id.*

If Appellant contends on appeal that he did not get notice of his trial, Appellant did not file a motion for a new trial in the Municipal Court to raise the issue once he allegedly learned of his conviction. Therefore, the issue was not preserved for review on appeal. *State v. Adams*, 354 S.C. 361, 380; 580 S.E.2d 785 (S.C. App., 2003)

Appellant, in his Designation of Matter to be included in the Record on Appeal lists "Notice of Ishmell proceeding."⁴ There is no record of this having been filed with the Circuit Court in the underlying appeal and it is not a part of the return filed by the Simpsonville Municipal Court. "This Court has held that it is error for the Court of Appeals to consider facts not included in the magistrate's return." *State v. Brown*, 358 S.C. 382, 387; 596 S.E.2d 39 (S.C., 2004). "We find it was error for the Court of Appeals to rely on the

⁴ *Ishmell v. South Carolina Highway Department*, 264 S.C. 340, 215 S.E.2d 201 (1975). On the basis of *Ishmell*, magistrate's and municipal courts have "recalled" tickets that were adjudicated in error. Appellant has not served a copy of an *Ishmell* order nor does the Return reference an *Ishmell* order.

recitation of facts contained in an appellate order instead of restricting itself to the facts contained in the magistrate's return." *State v. Osborne*, 335 S.C. 172, 176 n. 6, 516 S.E.2d 201, 203 n 6 (S.C 1999)

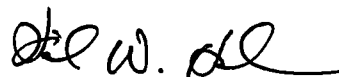
If there were an *Ishmell* order from the Simpsonville Municipal Court, that order had nothing to do with the conviction at issue here since an *Ishmell* order would have resulted in a new trial.

CONCLUSION

For all of the above reasons, Respondent contends that the Circuit Court, sitting as an appellate court did not err in dismissing Appellant's appeal as untimely. Respondent has alleged as further sustaining grounds that Appellant's Notice of Appeal does not comply with South Carolina Code Ann. §14-25-95, nor did Appellant preserve any issue of lack of notice for trial for appellate review.

Respectfully submitted,

August 13, 2017
Greenville, South Carolina



David W. Holmes
SC Bar #2577

HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel. 864-271-2381

Attorney for Respondent
City of Simpsonville Police Department

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED

AUG 15 2018

SC Court of Appeals

Appellate Case No.: 2017-002354

Phillip Andrew Bridges,Respondent,

v.

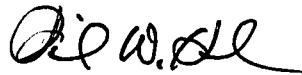
Simpsonville Police Department,Appellant.

CERTIFICATE OF SERVICE

I certify that a copy of the Respondent's initial Brief and Respondent's Designation of Matter to be Included in the Record on Appeal were served on Appellant by placing a copy of same in the United States Mail, with proper postage affixed thereto and addressed as follows:

Phillip Andrew Bridges #347312
217 Brentwood Circle
Greenville, SC 29605

August 13, 2017
Greenville, South Carolina



David W. Holmes
HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel. 864-271-2381
Attorney for Respondent
City of Simpsonville Police Department

**HOLMES LAW FIRM
712 NORTH MAIN STREET
GREENVILLE, SOUTH CAROLINA 29609**

DAVID W. HOLMES
Writer's email: davidholmes@holmes-law.com

Tel. 864.271.2381
Fax. 864.751.9484

August 13, 2018

RECEIVED

AUG 15 2018

SC Court of Appeals

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

**RE: Phillip Andrew Bridges v. Simpsonville Police Department
Appellate Case #2017-002354**

Dear Ms. Kitchings:

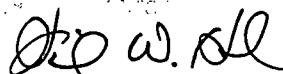
Please find enclosed Respondent's Initial Brief, Designation of Matter to be Included on Appeal and Certificate of Service of same on Appellant for filing with your office.

Please let me know if you have any questions regarding this correspondence.

Thank you for your attention in this matter.

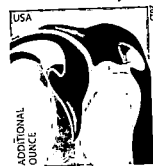
Sincerely,

HOLMES LAW FIRM


David W. Holmes

DWH/me
cc: Phillip Andrew Bridges
Attachments (as noted)

HOLMES LAW FIRM
712 N. Main St.
Greenville, SC 29609



Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED

AUG 15 2018

SC Court of Appeals

