

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APR 01 2019

S.C. SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

Case No. 2018-CP-13-00621

Appellant Case No. 2019-000147

Glenn Odom, ..... Respondent,

v.

Town of McBee Election Commission and  
Shilon Green, .....Appellants.

REPLY BRIEF OF APPELLANTS

**SWEENEY, WINGATE & BARROW, P.A.**

**BOWERS LAW OFFICE, LLC**

Martin S. Driggers, Jr. (S.C. Bar No. 13668)  
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29211  
T: (803) 256-2233  
F: (803) 256-9177  
[msd@swblaw.com](mailto:msd@swblaw.com)  
[rem@swblaw.com](mailto:rem@swblaw.com)

Karl S. Bowers, Jr.  
S.C. Bar No. 0016141  
P.O. Box 50549  
Columbia, SC 29520  
Telephone: (803) 753-1099  
Fax: (803) 250-2985  
[butch@butchbowers.com](mailto:butch@butchbowers.com)

**ATTORNEYS FOR TOWN OF MCBEE  
MUNICIPAL ELECTION COMMISSION**

**ATTORNEY FOR SHILON  
GREEN**

April 1, 2019

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Arguments

I. **Appellants did preserve their first and third arguments.**  
..... 1

II. **Odom did not preserve the issue that the MEC had ignored S.C. Code Ann. § 7-13-830 by requesting he “be awarded the votes and declared the winner,” and the MEC understood that the Notice of Contest was being filed under S.C. Code Ann. § 5-15-130 from the very beginning.**  
..... 2

III. **There is no evidence the MEC failed to consider the provisional ballots or that Odom filed his Notice of Contest before the votes were certified.**  
..... 5

IV. **If there were no irregularities or illegalities and the result of the election were not doubtful, then Odom’s contest should have been dismissed by the MEC, and he should have lost the election.**  
..... 7

Conclusion ..... 8

**TABLE OF AUTHORITIES**

**CASES**

*Taylor v. Town of Atl. Beach Election Comm'n*, 363 S.C. 8 (2005) ..... 3, 8  
*Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 W.E.2d 77 (2004)) .....1  
*Butler v. Town of Edgefield*, 328 S.C. 238 (1997) ..... 9

**STATUTES**

S.C. Code Ann. § 5-15-130.....2, 3, 4, 5  
S.C. Code Ann. § 7-13-810..... 2, 3  
S.C. Code Ann. § 7-13-830..... 3

**RULES OF CIVIL PROCEDURE**

S.C. R. Civ. P. 6(a) ..... 4

## ARGUMENT

### **I. Appellants' First and Third Issues were Preserved.**

In Respondent's Final Brief, Respondent argued that Appellants' first and third issues were not preserved because these arguments had not been raised to the Circuit Court. (Br. of Resp. p. 7). These issues were preserved for appeal.

#### **A. Appellants did argue that the Circuit Court could not just declare Odom to the winner of the election regardless of the vote outcome.**

Appellants' first argument in Brief of Appellants was that the Circuit Court erred in ordering the MEC to declare Odom the winner of the election regardless of the vote count. "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 23, 602 W.E.2d 77, 779-780 (2004) [citations omitted].

Appellants did raise the argument of whether the circuit court could unilaterally declare Odom the winner of the election without counting the votes. In Appellant Shilon Green's ("Green") Memorandum in Opposition to Odom's Motion to Reconsider, Green specifically argued that the case law did not support Odom's position that he could be declared the winner of the vote without the counting of the votes. Appellants point the Court to the following excerpt of Green's Memorandum:

In *Stephens*, it is true that on appeal, the Court reversed the MEC's decision to order a new election. However, it is important to note that the Court did not declare an election winner as Odom errantly suggests. Rather, the Court simply reinstated the original election result that was initially protested by Green, and the net result of that decision was Stephens won the election based on the certified election results, not due to an order of the Court installing him as the winner.

(R. p. 44-45).

Appellants, therefore, clearly argued that the circuit court could not simply declare Odom the winner of the election, as it did in the Order on Motion to Reconsider, but that the winner could only be determined by certified election results. (R., p. 45). This is consistent with Appellants assertion in their first argument that the circuit court could not declare Odom the winner of the election regardless of the vote count.

Because Appellants argued in Green's Memorandum in Opposition to Odom's Motion to Reconsider that the circuit court could not declare the winner of an election, but had to rely on the certified election results, the issue of whether the circuit court erred in ordering the MEC do declare Odom the winner of the election regardless of the vote count has been preserved.

**B. Appellants Did Argue that S.C. Code Ann. § 7-13-810 does not create a another way to contest municipal elections.**

Odom's argument that Appellants failed to preserve their third argument is incorrect. The entire crux of Appellants' arguments from the very beginning of this case is that the only mechanism by which a municipal election can be appealed is under S.C. Code Ann. § 5-15-130. (See R., pp. 16, 39, 45, 146, 151, 152, 156). For Respondent to now argue that Appellants' failed to raise this argument to the circuit court denies the totality of the Record on Appeal. Because Appellants clearly argued the only mechanism by which a municipal election can be protested is under S.C. Code Ann. § 5-15-130, the issue that S.C. Code Ann. § 7-13-810 does not create another way to contest municipal elections has been preserved.

**II. Odom did not preserve the issue that the MEC had ignored S.C. Code Ann. § 7-13-830 by requesting he "be awarded the votes and declared the winner," and the MEC understood that the Notice of Contest was being filed under S.C. Code Ann. § 5-15-130 from the very beginning.**

In Brief of Respondent, Odom argues that he did preserve the issue that he was requesting to protest the election under S.C. Code Ann. § 7-13-810 because at the hearing on Odom’s contest, his counsel argued that “he should be awarded those votes and declared the winner.” (Br. of Resp. p. 10). This is insufficient to preserve an issue in which Odom claimed that the MEC did not comply with S.C. Code Ann. § 7-13-810.

“A notice of contest filed pursuant to Section 5–15–130 should briefly state facts or a combination of facts sufficient to apprise the election commission and winning candidate of the reason for the challenge.” *Taylor v. Town of Atl. Beach Election Comm’n*, 363 S.C. 8, 17, 609 S.E.2d 500, 504 (2005). “The circuit court, sitting in an appellate capacity, may not consider issues which were not raised to the election commission.” *Id.* To be preserved for review, issues in an election contest must be raised in the contest letter. *Id.* at 18, 609 S.E.2d at 505 (“These issues are not preserved for appellate review. Appellants failed to raise either issue in their notice of contest letters.”) [emphasis added].

For an issue to be preserved for the circuit court to review, it must first have been raised to the MEC. From the time he submitted his notice of contest until the Hearing on Odom’s Appeal on October 17, 2018, Odom never once argued to the MEC that he was protesting the election under S.C. Code Ann. § 7-13-830. It should be pointed out that Odom has been involved in election contests in three of the last three elections in the Town of McBee. In every prior instance, the contest was filed, considered, argued, and determined under S.C. Code Ann. § 5-15-130. Yet, now, Odom argues the MEC should have deduced that he was challenging this under S.C. Code Ann. § 7-13-810 and 830 because he asked the MEC to award him the votes and declare him the winner. The plain simple fact is the MEC never was informed that this was a protest under S.C. Code Ann. § 7-13-810 and 830 until the October 17, 2018 Hearing on Odom’s Appeal.

Odom argues in Footnote 4 that “The MEC must not have interpreted the letter as solely falling within § 5-15-130 because that statute requires that within forty eight hours after the filing of such notice, the Municipal Election Commission shall, after due notice to the parties concerned, conduct a hearing on the contest . . . Mr. Odom filed his letter on September 6, 2018 and the MEC did not conduct its hearing until September 25, 2018, well past the mandatory forty-eight hour deadline. (Br. of Resp., p. 9-10, Fn. 4). This argument is based on an incorrect understanding of the events leading up to the election.

First, the MEC did start the hearing within 48 hours of the filing of the notice of contest, and only continued it to September 25, 2018 at the request of the attorneys for Green and Odom. Odom filed his notice of contest on September 6, 2018, a Thursday, after he and his former attorney, Billy Spencer, attended a meeting on September 6, 2018 at which the MEC considered and decided on provisional and absentee ballots, and declared the election results. Forty-eight hours after Thursday, September 6, 2018 fell on Saturday, September 8, 2018. The Hearing on Odom’s Notice of Contest began on September 10, 2018 pursuant to South Carolina Rules of Civil Procedure Rule 6(a), and was continued until September 25, 2018 at the request of the parties. The hearing on the Notice of Contest was concluded on September 25, 2018. (R. pp. 49-50).

Because the Notice of Contest Hearing was started within forty-eight hours of the filing of the Notice of Contest, continued at the request of Odom and Green’s attorneys, Odom cannot now argue that the MEC misunderstood the code provision under which it was hearing the

contest because the hearing was not concluded within forty-eight hours of the filing of his Notice of Contest.<sup>1</sup>

Secondly, the MEC clearly understood that the hearing was being conducted under S.C. Code Ann. § 5-15-130. In its Notice of McBee Election Protest Hearing, the MEC wrote “Pursuant to S.C. Code of Laws, 5-15-130, Petitioner Glenn C. Odom has filed a written Notice of Contest on September 6, 2018 protesting the results of the September 4, 2018 McBee Town Council Election.” This notice was e-mailed to counsel for Odom, Green, and posted in the Town of McBee town hall. Odom, therefore, knew from the very beginning that the MEC understood his Notice of Contest to be filed under S.C. Code Ann. § 5-15-130, and it is disingenuous for him to now argue the MEC must have believed the Notice of Contest was being filed under another code section because it held the hearing at a time he requested.

**III. There is no evidence that the MEC failed to consider the provisional ballots, or that Odom filed a notice of contest before the certification of the election results.**

In Odom’s Brief of Respondent, Odom argued that there is “no evidence in the record as to whether the MEC considered the four challenged votes in this appeal prior to declaring the election results.” This is incorrect.

Odom first learned that seventeen ballots were challenged or provisional on the night of the election. (R. p. 111). Odom and his attorney were present at the meeting on Thursday, September 6, 2018 at 11:30 a.m., when the MEC considered the provisional ballots and declared election

---

<sup>1</sup> It should be further noted that later in Brief of Respondent, Odom appears to argue that failing to conduct a hearing within forty-eight hours of the receipt of the Notice of Contest means that the hearing must have been conducted under some other code provision. This argument is directly contradicted by established precedent. *Cole v. Town of Atlantic Beach Election Com’n*, 393 S.C. 264, 274, 712 S.E.2d 440, 446 (2011) (holding “insubstantial deviations from [S.C. Code Ann. §5-15-130] would not ordinarily require this Court to nullify a protest hearing decision.”).

results. (R. p. 66). Odom, therefore, knew that ballots had been challenged on the night of the election. He presented documents to the MEC before the Thursday, September 6, 2018 certification to indicate that some of the provisional ballots should be counted. Each provisional ballot could have been and was considered and decided upon by the MEC at the September 6, 2018 meeting, at which Odom was present. Now, because there is not a transcription of the meeting, Odom not only denies that he had right to present evidence at the September 6, 2018 meeting, but denies that the meeting took place altogether. Based on Odom's logic, the September 4, 2018 election also never happened either because there is no document in the record that shows that an election was held outside of the collective memory of everyone involved.

Odom has not pointed to any evidence that he did not have the opportunity to contest the challenged and provisional ballots at the September 6, 2018 meeting at which the provisional ballots were considered and decided upon. There is no evidence either before the MEC or the circuit court that the provisional ballots had not been considered upon and ruled upon before the Hearing on the Notice of Contest. Odom never testified he was denied the right to present evidence as to the challenged ballots nor did any of the four voters whose provisional ballots were not counted. No witness was called that attended the September 6, 2018 meeting and testified that they were not allowed to present evidence they were a qualified voter in the Town of McBee. In fact, no such questions were even asked. The reason is that, until now, Odom was not challenging that he never had the opportunity to challenge these votes at the hearing, but was only arguing that these votes should have been counted before the election was certified. As such, there is no evidence to support Odom's argument or the circuit court's decision.

In Odom's Brief of Respondent, Odom also argues that "Mr. Odom did dispute the challenged votes before the MEC declared the election results, but the MEC failed to timely address

it and rule on it.” (Br. of Resp. p. 13). Odom then points to no evidence in the record demonstrating that this occurred. This is because it did not happen. Before the September 6, 2018 meeting at which the seventeen challenged and provisional ballots were considered and ruled on Odom still could have won the election outright. It would make no sense to contest an election you won.

Indeed, what Odom is suggesting is that he knew seventeen ballots were challenged and provisional on the night of the election. (R. p. 111). In Brief of Respondent, he claims he went out and immediately filed a notice of contest before these seventeen ballots had been counted and before he even had lost the election. (Br. of Resp. p. 13). Then, he admits to being present at a meeting on Thursday, September 6, 2018, at which those seventeen ballots were considered and, after which, he was losing by one vote with six votes that were not counted that should have been. (R. p. 111-112).

With these facts, one must wonder whether Odom has the ability to see into the future as, in his Notice of Contest, he apparently predicted the exact number of the seventeen challenged and provisional ballots that would not be considered in the Thursday, September 6, 2018 meeting, and also appears to have predicted the MEC accepting the provisional ballots of Mr. Mendoza and Mr. Dewitt.

One must further wonder why Odom did not bring these voters or any documents proving their residency to the Thursday, September 6, 2018 meeting as he apparently knew they were legal voters in the Town of McBee and that their votes were not going to be counted. He knew that there was a meeting on September 6, 2018 to certify the election results as he admits to being present. (R. p. 111-112). He claims to have known that these votes were not going to be counted as he claims he filed a notice of contest the previous day. Yet there is no evidence he did anything to prove these

votes should have been counted at the September 6, 2018 meeting, despite the fact that he apparently knew, in advance, these votes would change the outcome of the election. If anything, this argument further supports Appellants' position that Odom and the voters had the opportunity to present evidence they were properly registered voters before the election results were certified as Odom knew their votes were not going to be counted, had filed a notice of contest before the election was certified, and there is no evidence in the record he did anything to prove that the voters were properly registered in the Town of McBee at the September 6, 2018 meeting.

**IV. If there were no irregularities or illegalities and the result of the election were not doubtful, then Odom's contest should have been dismissed by the MEC, and he should have lost the election.**

In his Brief of Respondent, Odom takes the unprecedented position of claiming that his Notice of Contest did not contain any allegations of irregularities or illegalities, and the results of the election were not doubtful (Br. of Resp. p. 15-18). If this were the case, then Odom never should have filed the Notice of Contest. He should have accepted the original results of the election. Odom certainly never argued to the MEC that he did not believe there were illegalities or irregularities in the election. In fact, he claimed in his Notice of Contest that "these contested votes will affect the outcome and results of the election." (R. p. 166). In essence, Odom is arguing he made a mistake when he failed to accept the original results of the election, which he lost, as no irregularities or illegalities occurred and because the results of the election were not doubtful.

This argument makes no sense and should be rejected on its face as the law is clear that an irregularity or illegality is required in order to maintain an election contest in South Carolina. See *Taylor v. Town of Atlantic Beach Election Com'n*, 363 S.C. 8, 16, 609 S.E. 2d 500, 504 (2005) (noting one of the two prerequisites in an election contest are "the contest notice must allege

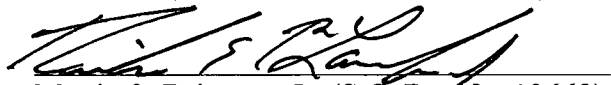
irregularities or illegalities . . . .”) (quoting *Butler v. Town of Edgefield*, 328 S.C. 238, 246, 493 S.e.2d 838, 842 (1997).

Alternatively, the Court could simply decide to accept Odom’s appellate declaration that his Notice of Contest did not contain any allegations of irregularities or illegalities and that the results of the election were not doubtful. Under these circumstances, the Court would have no choice but to treat Odom’s assertion as an admission against interest of a party and declare the MEC’s original certification of the election results was correct.

**CONCLUSION**

For the reasons stated above, this Court should reverse the ruling of the circuit court and uphold the Town of McBee Municipal Election Commission’s ordering a new election.

**SWEENEY, WINGATE & BARROW, P.A.**



Martin S. Driggers, Jr. (S.C. Bar No. 13668)  
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29211  
T: (803) 256-2233  
F: (803) 256-9177  
[msd@swblaw.com](mailto:msd@swblaw.com)  
[rem@swblaw.com](mailto:rem@swblaw.com)

**ATTORNEYS FOR TOWN OF MCBEE  
MUNICIPAL ELECTION COMMISSION**

**BOWERS LAW OFFICE, LLC**



Karl S. Bowers, Jr.  
S.C. Bar No. 0016141  
P.O. Box 50549  
Columbia, SC 29520  
Telephone: (803) 753-1099  
Fax: (803) 250-2985  
[butch@butchbowers.com](mailto:butch@butchbowers.com)

**ATTORNEY FOR SHILON  
GREEN**

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

RECEIVED

APR 01 2019

S.C. SUPREME COURT

Case No. 2018-CP-13-00621

Glenn Odom, ..... Respondent,

v.

Town of McBee Election Commission and  
Shilon Green, ..... Appellants.

PROOF OF SERVICE

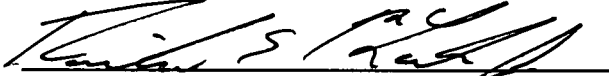
I certify that I have served Reply Brief of Appellants by delivering a copy of each by electronic transmission on April 1, 2019 addressed to their attorney of record, listed as follows:

John E. Parker, Esquire  
Peters, Murdaugh, Parker, Eltroth & Detrick, PA  
PO Box 457  
Hampton, SC 29924  
Attorney for Respondent

Kathleen Chewning Barnes, Esquire  
Post Office Box 897  
602 2nd Street East  
Hampton, SC 29924

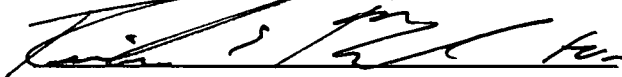
*(Signature Page Following)*

**SWEENEY, WINGATE & BARROW, P.A.**



Martin S. Driggers, Jr. (S.C. Bar No. 13668)  
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29211  
T: (803) 256-2233  
F: (803) 256-9177  
[msd@swblaw.com](mailto:msd@swblaw.com)  
[rem@swblaw.com](mailto:rem@swblaw.com)

**ATTORNEYS FOR TOWN OF MCBEE  
MUNICIPAL ELECTION COMMISSION  
BOWERS LAW OFFICE, LLC**



Karl S. Bowers, Jr.  
S.C. Bar No. 0016141  
P.O. Box 50549  
Columbia, South Carolina 29250  
Telephone: (803) 753-1099  
Telecopier: (803) 250-3985  
E-Mail: [butch@butchbowers.com](mailto:butch@butchbowers.com)  
**ATTORNEY FOR SHILON GREEN**