APPEAL FROM COMMON PLEAS REGARDING A CONVICTION IN MUNICIPAL COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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SC Court of Appeals

Case No. 2018-1291

City of Columbia.....Appellant,

v.

Shasha Rawlinson ..... Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court, sitting in its appellate capacity, err in dismissing Respondent's charges with prejudice when the trial transcript could not be produced for appellate review?

STATEMENT OF THE CASE/FACTS

This is an appeal from the circuit court's order vacating Rawlinson's (hereinafter "Respondent") municipal court convictions and dismissing Respondent's charges with prejudice. R. pp. 2-7. On June 23, 2016, Officer M. Parker with the Columbia Police Department charged Respondent with Giving False Information to Law Enforcement (ticket no. 4102P0384691) and Shoplifting (ticket no. 4102P0384690). R. p.12. On July 14, 2016, Respondent requested a jury trial. Respondent was tried in the City of Columbia Municipal Court before a jury on March 16, 2017 and found guilty on both charges. R. p. 13. The trial court sentenced Respondent to thirty days in jail on each charge and ordered the sentences to run concurrently and to be served on the weekends.

On March 23, 2017, Respondent filed an appeal to the Richland County Court of Common Pleas, and alleged the municipal court committed errors of law and abused its discretion by denying Respondent's pretrial motions to dismiss, suppress evidence, as well as denying a motion for continuance based on alleged and unfounded discovery violations. R. pp. 9-11. On February 26, 2018, the municipal court filed its return as required by S.C. Code Ann. §14-25-105 (Supp. 2008). R. pp. 12-14. However, due to a spontaneous and unidentified failure in the court's audio recording system at the time of Respondent's trial – a failure that was not discovered until after Respondent filed her appeal – there was no audio recording available from the trial. R. p. 14; pg. 24, line 22-

p. 6, line 6. Therefore, the municipal court reporter was unable to provide a trial transcript as part of the court's return.

The circuit court, sitting in its appellate capacity (hereinafter "appellate court"), heard oral arguments on April 13, 2018. R. pp. 22-32. At the hearing, Appellant City consented to a remand and new trial based on the trial court's inability to produce a transcript of the trial. R. p. 25, lines 8-10. However, Respondent continued to argue her charges should be dismissed with prejudice based solely on the bare allegations contained in Respondent's Notice of Appeal. R. pp. 12-30. Essentially, Respondent asked the appellate court to conduct a de novo review of the issues on appeal – in clear contravention of the mandates of S.C.Code Ann. §14-25-105 (Supp. 2008) (requiring municipal court appeals to be heard upon the return with no trial de novo). Id.

Without a transcript or any record of the proceeding below and based solely on the arguments made by Respondent at the April 13, 2018 hearing, the appellate court granted Respondent's appeal. R. pp. 2-8. The appellate court held the trial court "committed an error and abused its discretion" when it failed to dismiss the cases against Respondent due to alleged discovery violations. R. p. 4. The appellate court vacated Respondent's convictions and dismissed the charges against her with prejudice. Id.

On July 11, 2018, the City of Columbia (hereinafter "Appellant") served notice of appeal to Respondent. R. pp. 15-16. On July 17, 2018, Appellant filed clocked copies of the Notice of Appeal with the Richland County Clerk of Court and the South Carolina Court of Appeals. Id.

STANDARD OF REVIEW

In criminal appeals from municipal court, the circuit court reviews for preserved error raised by appropriate exceptions. *Rogers v. State*, 358 S.C. 266, 269, 594 S.E.2d 278, 279 (Ct.App. 2004), citing *City of Landrum v. Sarratt*, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct.App. 2002). Further, "the circuit court, sitting in its appellate capacity, may not engage in fact finding." *Id.*, 358 S.C. at 270. In addition, "[t]here **shall be no trial de novo on any appeal** from a municipal court. S.C.Code Ann. §14-25-105 (Supp. 2008) (emphasis added).

ARGUMENT

I. THE CIRCUIT COURT, SITTING IN ITS APPELLATE CAPACITY, ERRED WHEN IT DISMISSED RESPONDENT'S CHARGES WITH PREJUDICE SIMPLY BECAUSE THE TRIAL TRANSCRIPT COULD NOT BE PRODUCED FOR APPELLATE REVIEW.

On appeal from municipal court, the appellate court does not conduct a de novo review. S.C. Code Ann §14-25-105. Its sole job is to review the record for preserved errors of law. A proper appellate review requires the appellate court to "undertake a thorough and meaningful review of … the entire record on appeal." *Carey v. Snee Farm Cmty. Found.*, 388 S.C. 229, 231, 694 S.E.2d 244, 245 (Ct. App. 2010). Moreover, a reviewing court has the authority to remand a case when the record on appeal does not allow for meaningful review based on a missing or incomplete transcript. *State v. Ladson*, 373 S.C. 320, 324–27, 644 S.E.2d 271, 273–75 (Ct. App. 2007); *see also, e.g., Koon v. State,* 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing when transcript is incomplete), *overruled on other grounds by State v. Gentry,* 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); *and*

Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed). *Id.* A new trial is the appropriate remedy if "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" *Id* at 325–26, 644 S.E.2d 271, 274 (Ct. App. 2007) (citing *In re D.W.,* 171 N.C.App. 496, 615 S.E.2d 90, 94 (2005)). To obtain a new trial, the defendant must show the lack of transcript prejudiced his ability to perfect an appeal. *United States v. Huggins*, 191 F.3d 532, 537 (4th Cir. 1999).

Based on the lack of a transcript in this case, there were two possible remedies available to the appellate court: (1) to remand for a reconstructed record; or (2) to remand for a new trial. See *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 656, 726 S.E.2d 9, 12 (Ct. App. 2012) ("Where portions of stenographic notes are lost prior to transcription, it is appropriate for the [trial court] to accept affidavits of counsel and the court reporter to determine what transpired."); *Id.* ("[T]he reconstructed record must allow for meaningful appellate review."); *Id.* at 656-57, 726 S.E.2d at 12 ("A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." (quoting *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007))); *Id.* ("[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." (quoting *Smith v. State*, 433 A.2d 1143, 1148 (Md. 1981))); *Id.* at 325, 644 S.E.2d at 273 ("[B]efore a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a specific appellate claim that this court would be unable

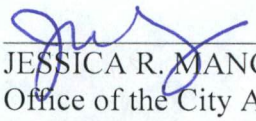
to review effectively using the reconstructed record." (alteration in original) (quoting *Harris v. Comm'r of Corr.*, 671 A.2d 359, 363 (Conn. App. Ct. 1996))).

In this case, the City concedes there is simply no way for Respondent to receive the meaningful appellate review to which she is entitled. R. p. 25, lines 3-10. After Respondent filed her notice of appeal, the municipal court discovered the audio recording equipment suffered an unknown failure on the day of Respondent's trial. Without the audio recording, the municipal court reporter was unable to provide a transcript. R. p. 12. Because of the time lapse between the trial and the point in time when the audio recording failure was discovered, as well as the necessary protections of the Respondent's important constitutional rights, the City also acknowledges the Respondent meets the prejudice requirement articulated in *Huggins* and its progeny and is therefore entitled to a new trial. The appellate court erred in issuing a four-page order containing factual background, analysis, and conclusions of law based solely on the arguments made by Respondent at the appeal hearing. R. pp. 2-8. Additionally, the appellate court erred in holding the remedy in a case where the trial transcript cannot be produced due to a mechanical failure of the audio recording system is a dismissal of the charges with prejudice. R. p. 4. South Carolina jurisprudence and statutory law require Respondent's cases be remanded to the municipal court for a new trial.

CONCLUSION

For the reasons stated, the Appellant respectfully requests that this Court reverse the previous appellate court and remand Respondent's cases to the municipal court for a new trial.

Respectfully submitted,



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