THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Case No. 2015-CP-46-03179

JOHN C. HAYES, III, Circuit Court Judge

Appellate Case No. 2016-002488

City of Rock Hill, Respondent,

v.

Triando M. Stroud, Appellant.

INITIAL BRIEF OF RESPONDENT

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VI. Did the trial court commit reversible error in the instruction given to the jury?

STATEMENT OF THE CASE

Shortly after 1:00 am on March 9, 2015 officers with the City of Rock Hill Police Department responded to a call for service at 2743 Round Hill Court Rock Hill, South Carolina. Following an investigation, Appellant was charged with Criminal Domestic Violence 1st offense and two counts of Assault and Battery 3rd degree by arrest warrants issued by a Municipal Recorder with the City of Rock Hill Municipal Court on March 11, 2015. Following his arrest on the three charges on March 13, 2015 a Public Defender was appointed to represent the Appellant. The case proceeded to a jury trial on October 8, 2015 and the Appellant was found guilty on all three charges. Appellant was sentenced to thirty (30) days or a fine of $500 on each charge. On October 16, 2015 Appellant (pro se) filed an uncaptioned document which stated the grounds for the appeal with the City of Rock Hill Municipal Court. On October 19, 2015 the Public Defender filed a Notice of Appeal with the City of Rock Hill Municipal Court. On

October 19, 2015 Appellant himself (pro se) filed another Notice of Appeal. The trial court's Return to Appeal was filed on York County Clerk of Court on March 15, 2016.

Appellant's appeal was heard by the Honorable John C. Hayes, III, on November 7, 2016. By Form 4 order dated November 7, 2016 and filed November 8, 2016, Judge Hayes dismissed the appeal.

On December 12, 2106, Appellant filed a Notice of Appeal from the rulings of the circuit court.

STATEMENT OF FACTS

On March 9, 2016 shortly after 1:00 am Officers Matthew Beach and Chris Price with the City of Rock Hill Police Department responded to a call for service at 2743 Round Hill Court in the City of Rock Hill, South Carolina. Officer spoke with Shaquita Frazier who was crying and angry that Appellant had struck her, her sister and her mother. Officer Beach learned that Appellant had left the scene prior to the officers' arrival in a white Audi. Officer Beach testified that Ms. Frazier was obviously upset , shaking, distraught, drawn face, very agitated. Obviously something had just happened. I tried to calm her [Ms. Frazier] down, get her to breath. (ROA, __) Officer Beach went on to testify that an altercation had occurred between Ms. Frazier and the Appellant, following a dispute regarding the exchange of their children.

The victim, Shaquita Frazier testified that the Appellant is the father of her two children and that he suddenly brought them from Concord, North Carolina to her home in Rock Hill at about 1:00 in the morning. Ms. Frazier testified that during the dispute about the child exchange that Appellant pulled her mother to the floor and then jerked her outside by her hair. Once outside "he came after me and I ended up on the ground with him kicking and hitting me. My

sister ran down from upstairs and [the] Appellant pushed my sister's face against the wall. He said he was going to get a gun and kill all of them." (ROA, __)

Alvania Frazier the sister of Shaquita Frazier testified that she lived with her sister and was asleep upstairs when she heard noise. "I came downstairs. Appellant had mom by the neck saying something in her ear. He pushed me. I go get [the] phone. My sister is in the street. Appellant was hitting her. I ran to help. He pushed me again. I call[ed] 911. I already had a broken hand so I could not fight." (ROA, __)

Patricia Brown testified that she was the mother of both Alvania and Shaquita and was visiting from California. Patricia Brown testified that "When Shaquita asked [Appellant] why he was dropping off the kids so late, I jumped off the sofa and got between them. He [Appellant] elbow pinned me against the door and slammed me to the floor. Shaquita went to him and he pulled her braid and out into the yard. I'm on the floor in shock and asleep (sic). Alvania ran down stairs. He [Appellant] at the door, swung at and hit her and chipped the wall paint on the wall. Shaquita was in a fetal position. I said 'stop hitting her'. He [Appellant] shoved me again. He's wallering (sic) on her. (ROA, __)

The City then presented video from the officer's patrol vehicle which was redated by consent. Following the presentation of the video the City rested.

The Public Defender presented the defense case. The Defendant and two witnesses testified regarding their account of the incident.

Appellant testified that he was the father of the children and he was dropping them off at their mom's because she refused to meet him. Appellant testified that he did push Patricia Brown but that she overreacted. Appellant testified that he pushed Shaquita after she struck him and that he was defending himself.

Nakeisha Barnette testified that she and her son were in the car when the Appellant returned his children to Shaquita Frazier. Ms. Barnette testified that Shaquita and her mother attacked Appellant and that Appellant shoved Patricia Brown but that he did not assault anyone.

Jackobe McCall testified that he was the seventeen years old and the son of Ms. Walker. He testified that Shaquita and Appellant were talking. He laid down in the car and heard a loud pop. "They started fighting" and he got out of the car. Mr. McCall stated the everyone was rushing him [Appellant] and that the Apellant was backing away from the house. Mr. McCall also testified that he picked up Shaquita Frazier after she fell.

The defense rested their case and each side made closing arguments. The court charged the jury and the case was submitted to the jury to deliberate. At some point in time during the deliberations the jury notified the court that it had a question. The question was "Is the relationship the only difference between Assault and CDV? The court replied basically yes and recharged both the Assault and Battery and the CDV statutes. The jury resumed their deliberations and found the Appellant guilty on all charges (Criminal Domestic Violence 1st offense and two counts of Assault and Battery 3rd degree).

ARGUMENT

I. APPELLANT FAILED TO FILE A TIMELY NOTICE OF APPEAL FROM THE ORDER OF THE CIRCUIT COURT

A. Standard of Review

"In a criminal appeal from a municipal court, a circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception. S.C. Code Ann. § 14-25-105 (Supp. 2012). In criminal appeals from a municipal court, a circuit court is bound by the municipal court's findings of fact if there is any evidence in the record which reasonably supports them. The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. Moreover, questions of statutory interpretation are questions of law, which are subject to de novo review and which the appellate court is free to decide without any deference to the court below." City of Greer v. Humble, 402 S.C. 609, 611, 742 S.E.2d 15, 16 (Ct. App. 2013)

South Carolina Code of Laws Section 14-25-105 provides in part that "[t]here shall be no trial de novo on any appeal from a municipal court." S.C. Code Ann. § 14-25-105 (2017). "In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception." State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691 (Ct. App. 2001).

In this matter, Appellant's appeal was heard by the Honorable John C. Hayes, III, on November 7, 2016. By Form 4 order dated November 7, 2016 and filed November 8, 2016, Judge Hayes dismissed the appeal.

On December 12, 2016, Appellant filed a Notice of Appeal from the rulings of the circuit court. Appellant states in his notice of appeal that the judgment "was received on the 7th day of November, 2016" and the notice is dated December 9, 2016. The copy of the certified letter filed

with the Clerk of Court for the South Carolina Court of Appeals indicates that the certified letter containing the notice of appeal that was mailed to the Respondent was postmarked December 12, 2016. Appellant did not serve proof of his notice of appeal on Respondent until December 29, 2016. The service of the notice of appeal was not timely and the fact that the notice of appeal was sent by mail cannot expand the time for proper service. "Rule 6(e), SCRCP, does not provide an additional five days to file a notice of intent to appeal." Witzig v. Witzig, 325 S.C. 363, 479 S.E.2d 297, 299 (Ct. App. 1996).

South Carolina Appellate Court Rule 203(b)(1) provides that in appeals from the Court of Common Pleas that "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203, SCACR.

"Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal. The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to `rescue' the delinquent party by extending or ignoring the deadline for service of the notice." USAA Property & Casualty Insurance Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (internal citations omitted).

The Appellant failed to serve his notice of appeal on the Respondent in compliance with the time restrictions of Rule 203, SCACR and as such this matter should be dismissed for lack of jurisdiction. "Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985).

II. APPELLANT FAILED PRESERVE ANY GROUNDS TO APPEAL DUE TO APPELLANT'S FAILURE TO FILE A RULE 59 MOTION TO RECONSIDER THE RULING OF THE CIRCUIT COURT & FAILING TO ARGUE THEM BEFORE THE CIRCUIT COURT

Appellant's appeal was heard by the Honorable John C. Hayes, III, on November 7, 2016. A Form 4 order dismissing the appeal was issued by Judge Hayes on November 7, 2016 and filed with the York County Clerk of Court on November 8, 2016.

"When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue." Smith v. NCCI, Inc., 631 S.E.2d 268, 274, 369 S.C. 236 (Ct. App. 2006).

Appellant failed to make any substantive argument before Judge Hayes that would form a basis to overturn his convictions. (ROA, __) Appellant's argument to the circuit court consisted of his recounting and relating to the circuit court the factual matters of the case and requesting the circuit court substitute Appellant's view of the facts in lieu of the jury's. (ROA, __) Appellant never argued how South Carolina Code of Laws Section 16-25-70 forms a basis for dismissal of his charges, how the failure to disqualify a juror prejudiced his case or how the trial court's jury charge and answer to the jury question was not proper before Judge Hayes. Assuming that Appellant did make a substantive argument before the circuit court sitting as an appellate court, he cannot present that issue for the first time to the Court of Appeals that was not raised and directly ruled on by the circuit court.

"The circuit court has the authority to hear motions to alter or amend the judgment when it sits in an appellate capacity, and these motions are required in order to preserve issues for further review by the Court of Appeals or the Supreme Court in cases where the circuit court fails to address an issue raised by a party." City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879, 880 (2007).

Appellant failed to present any substantive legal issue on appeal to the circuit court. Assuming that he did, Appellant failed to preserve any issues in this matter when he failed to file a Rule 59(e) motion to obtain a ruling from the circuit court. His appeal to this Court raises issues never presented to and ruled upon by the circuit court. The issues Appellant raises now are not preserved for further review by the Court of Appeals as this Court cannot determine error regarding an issue not addressed by the circuit court. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the circuit court to be preserved for appellate review." Sullivan v. Brown (In re Estate of Kay), 418 S.C. 400, 421, 792 S.E.2d 907, 918 (Ct. App. 2016).

III. APPELLANT FAILED PRESERVE ANY GROUNDS TO APPEAL BY MAKING SHORT CONCLUSORY STATEMENTS IN HIS BRIEF

Appellant's arguments in his brief consist of three assignments of error. Each assignment of error is argued in a one sentence paragraph. The entire argument is a half of one page. None of the assignments of error were ever argued before or ruled on by the circuit court. Each paragraph is nothing more than the piecing together of disjointed fragments of information.

Appellant's assignment of error number one (dismissal based on South Carolina Code of Laws section 16-25-70) was never addressed by either the municipal court in the municipal court's return or before the circuit court on appeal. Appellant makes no argument how 16-25-70 applies to his case.

Appellant's assignment of error number two (failure to disqualify a juror) was never addressed by either the municipal court in the municipal court's return or before the circuit court on appeal. Appellant's fails to argue how his case was prejudiced by the failure to disqualify the juror by the trial court.

Appellant's assignment of error number three (court's jury instruction was not narrowly tailored) was never argued before the circuit court.

"South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review. An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court. In Brown v. Theos, 526 S.E.2d 232, 338 S.C. 305 (Ct.App.1999) we held that a one sentence paragraph raised in an appellant's brief was insufficient to preserve the issue for appeal." Glasscock, Inc. v. US Fidelity & Guar., 348 S.C. 76, 81, 557 S.E.2d 689 (Ct. App. 2001) (internal citations omitted).

Appellant has failed to preserve any issue for appeal by making any substantive argument on appeal to either initially the circuit court (sitting as an appellate court) or this Court. Appellant provides no analysis on any of the three assignments of error contained in his brief. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." Robert Palmer v. State of South Carolina, Horry County and David Weaver, Op. No. 5641 (S.C.Ct.App. filed April 17, 2019) (Shearouse Adv.Sh. No. 16 at 8, 14).

B. The Law of the Case Doctrine

Appellant filed three notices of appeal with the municipal court in this matter. The first notice of appeal was filed with the municipal court by the Appellant (Pro Se) on his own behalf on October 16, 2015. As to the first notice of appeal the municipal court return states "Defendant has stated no legal claims upon which relief can be granted." (ROA, __)

The second notice of appeal was filed with the municipal court by the Public Defender on behalf of the Appellant on October 19, 2015. The second notice of appeal posits two allegations of error. The first allegation of error was the failure to dismiss the charges based on South Carolina Code of Laws section 16-25-70. The second allegation of error was the failure to narrowly tailor the court's response to the jury question. As to first alleged error in the second notice of appeal the municipal court return states "the defendant has stated no legal claims upon which relief can be granted." (ROA, __)

The third notice of appeal was filed with the municipal court by the Appellant (Pro Se) on his own behalf on October 19, 2015. As to the third notice of appeal the municipal court return states "the defendant has stated no legal claims upon which relief can be granted." (ROA, __)

Appellant never made any request to either the municipal court or the circuit court to request the municipal court to address the issues raised in his three notices of appeal that the municipal declined to address in the court's return to the appeal. Nor did Appellant make any objection to the return filed by the municipal court that the return failed to adequately address his allegations of errors contained in the three appeals Appellant filed.

"Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. C.J.S. Appeal & Error § 991 (2008); see also Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); In re Morrison, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal)." Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151, 153 (S.C. 2009).

The law of the case doctrine also applies to intermediate appeals. In City of Columbia v. Ervin, 330 S.C. 516, 500 S.E.2d 485 (1998) the South Carolina Supreme Court found that the Court of Appeals should not have addressed an issue where during the appeal from a municipal court DUI conviction the Appellant did not raise the issue to the circuit court. "An issue not raised by exception to an intermediate appellate court cannot be raised for the first time in the [Court of Appeals]." Id. at 520. See also, Steele v. Self Serve, Inc., 335 S.C. 323, 516 S.E.2d 674 (Ct. App. 1999) where the Court of Appeals declined to address the appellant's argument regarding the computation of the average weekly wage. "We do not address this argument because [Appellant] did not make this argument to the circuit court. An issue not raised in an intermediate appeal cannot be considered in a subsequent appeal." Id. at 328.

The law of the case doctrine applies in this matter as Appellant has failed to preserve any issue on appeal. Appellant never objected to the municipal court return finding that several issues of alleged error failed to state legal claims upon which relief could be granted. Moreover, Appellant never argued or raised any issues now raised in this Court in his argument before the circuit court. (ROA, __) This Court should decline to address Appellant's arguments that were not raised or ruled on by the municipal court. This Court should decline to address Appellant's arguments that were rejected by the municipal court in the return to the appeal. Likewise, this Court should decline to address Appellant's arguments that were not raised or ruled on by the circuit court.

IV. THE TRIAL COURT PROPERLY DECLINED TO DISMISS THE CHARGE OF CRIMINAL DOMESTIC VIOLENCE BASED ON AN ALLEGED VIOLATION OF S.C. CODE OF LAW SECTION 16-26-70 BY THE ARRESTING OFFICER

South Carolina Code of Laws section 16-25-70 provides that "[i]f a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence." S.C. Code of Laws § 16-25-70 (D) (2015).

Appellant argued before the municipal court that the arresting officer had failed to comply with subsection D of 16-25-70 and that his charge of criminal domestic violence should be dismissed. However, 16-25-70 (D) does not provide any ground for relief. Also, 16-25-70 (D) only applies when a law enforcement officer receives conflicting information from two or more household members. In this case the Appellant had left the scene before the city officers arrived at the victim's residence. The reports received by the officers at the scene were consistent that Appellant had assaulted all three individuals at the residence, including the mother of his children which resulted to one charge for criminal domestic violence and two charges of assault and battery. (ROA, __). No conflicting reports where ever received in this case and the Appellant never spoke with any law enforcement officers at the time of the incident. Also, the arrest of the Appellant in this matter was based on three arrest warrants issued by a neutral and detached city recorder as such Appellant cannot rely on 16-25-70 for a remedy.

Assuming a violation of 16-25-70 (D) existed this would not support dismissal of the domestic violence charge absent a statutory provision providing for dismissal as a remedy. The

South Carolina legislature provided in 16-25-70 (G) "[w]hen two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties. ." S.C. Code of Laws § 16-25-70 (G) (2015). The legislature provided a remedy where two parties are charged with a domestic violence offense, however, they choose not to provide any remedy for a violation where only one party is charged, nor did they provide a remedy for a violation of 16-25-70 (D). South Carolina courts have "held on a number of occasions that violations of procedure go to the weight, rather than the admissibility of evidence. Moreover, exclusion [of evidence] is typically reserved for constitutional violations. Exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the defendant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedures." State v Odom, 382, S.C. 144, 152, 676 S.E.2d 124, 128 (2009) (internal citations omitted).

V. THE TRIAL COURT PROPERLY CHARGED THE JURY ON CRIMINAL DOMESTIC VIOLENCE AND ASSUALT AND BATTERY IN RESPONSE TO A QUESTION BY THE JURY

During jury deliberations a question arose regarding the difference between assault and battery and domestic violence and the jury notified the court that it had a question. The question was "Is the relationship the only difference between Assault and CDV?" The court replied basically yes and recharged both simple assault and battery and domestic violence. The jury resumed their deliberations and found the Appellant guilty on all charges (Criminal Domestic Violence 1st offense and two counts of Assault and Battery 3rd degree).

Appellant argues that the trial court did not narrowly tailor the response to the jury's question. Appellant alleges that the trial court erred by "responding affirmatively to the jury

question of whether assault and battery in the third degree proscribed essentially the same conduct as assault and battery in the first degree other than the relationship between the defendant and victim." This argument makes no sense in this case. The issue of assault and battery in the first degree was never presented to the court or the jury in this matter. The municipal court replied to the jury's question by recharging both simple assault and battery and criminal domestic violence. The court properly answered the jury's question to define what the difference was between the charges of assault and battery and domestic violence.

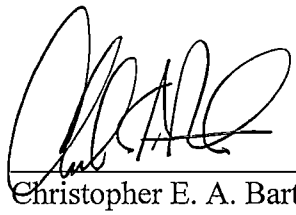
"Generally, the trial judge is required to charge only the current and correct law of South Carolina." State v. Adkins, 353 S.C. 312, 317, 577 S.E.2d 460 (Ct. App. 2003). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Id. at 318. "A jury charge which is substantially correct and covers the law does not require reversal. To warrant reversal, a trial judge's refusal to give a requested charge must be both erroneous and prejudicial to the defendant." Id. at 319.

Appellant did not object or provide any proposed jury charges in his case under Rule 20(b) of the South Carolina Rules of Criminal Procedure in response to the jury's question. "Failure to object in accordance with this rule shall constitute a waiver of objection." Rule 20(b), SCRCrimP. The failure to request an instruction when the trial court gives counsel the opportunity to call attention to any omission in the charge constitutes a waiver of any right to complain on appeal of the alleged error. State v. Steadman, 257 S.C. 528, 186 S.E.2d 712 (1972). Appellant makes no clear argument as to what was objectionable about the trial courts response to the jury question. Appellant did not provide the trial court with any proposed alternative instruction and fails to argue or demonstrate how the trial court's response to the jury's question prejudiced him.

CONCLUSION

For all the foregoing reasons, the Respondent respectfully submits that the decision of the circuit court sustaining Appellant's conviction should be affirmed.

Respectfully submitted,



April 26, 2019

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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JOHN C. HAYES, III, Circuit Court Judge

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City of Rock Hill, Respondent,

v.

Triando M. Stroud, Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Respondent's Initial Brief and Designation of Matter has been served upon the Appellant by mailing a copy via regular U.S. Mail to him on the 26th day of April, 2019, to Triando M. Stroud 912 Pebble Road, Rock Hill, SC 29730.

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ROCK HILL
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April 26, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RE: City of Rock Hill, Respondent v. Triando M. Stroud, Appellant
Case No. 2016-002488

Dear Ms. Kitchings:

Enclosed please find the Initial Brief, Designation of Matter and Certificate of Service in the above-referenced case

Truly yours,

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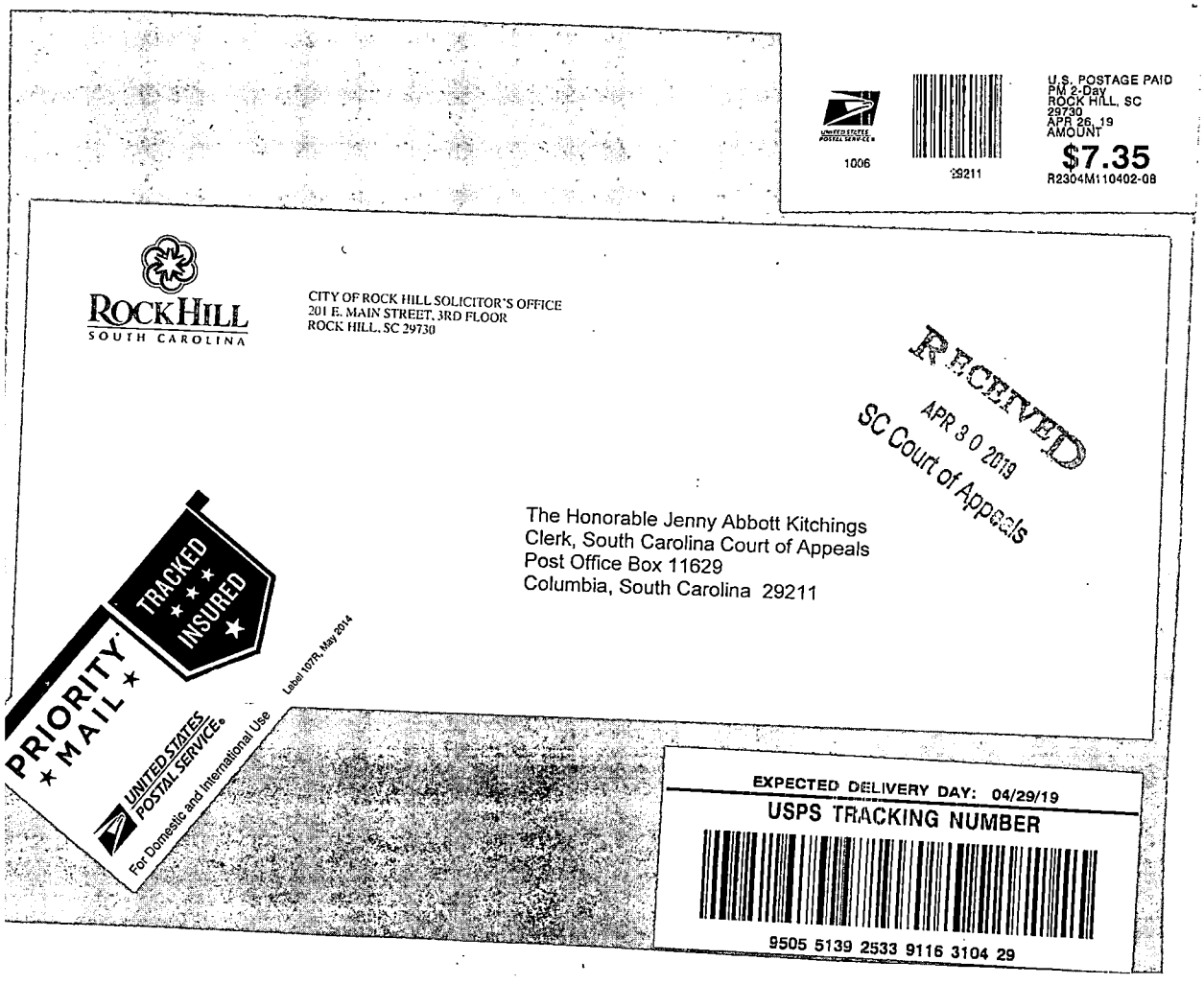

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