

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas**

**Edgar Dickson, Jr.
Circuit Court Judge**

Appellate Case No.: 2019-001149

Shireen Nicole Simmons.....Appellant,

v.

The State of South Carolina.....Respondent.

INITIAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

- I. Does S.C. Code § 14-25-95 violate the due process clauses of the United States and South Carolina Constitutions (U.S. Const. Amts. 5 & 14; S.C. Const. Art. I Sec. 3) by requiring a criminal defendant to appeal to the Court of Common Pleas (which has no jurisdiction over criminal matters), instead of the Court of General Sessions?
- II. Did the Circuit Court err in affirming the verdict of the Municipal Court, despite the fact that the Municipal Court's Return was never served, did not include a transcript of the proceedings, and contained material errors?
- III. Did the Circuit Court err in affirming the verdict of the Municipal Court, despite the fact that the Municipal Court excluded exculpatory photographs and refused a continuance to find counsel?
- IV. Does the cumulative effect of the errors set forth in this appeal demand reversal?

STATEMENT OF THE CASE

On March 26, 2017 Simmons received a citation for violation of S.C. Code § 56-5-950 ("Obedience to and required traffic-control devices"), allegedly for running a red light at the intersection of Magnolia Street and Calhoun Drive in Orangeburg, South Carolina. (Complaint). Simmons duly requested a jury trial, and the case was tried by a jury in Orangeburg City Municipal Court on October 10, 2017. (Complaint).

At the beginning of trial, Simmons requested a continuance to retain counsel; this motion was denied.¹ (Mtn. to Strike Ex. C). At trial, Simmons attempted to introduce photographs of the accident scene on her phone. (Hrg. Tr. pp. 10-11; Mtn. to Strike Ex. C). The city attorney objected to the entry of these photographs, and they were excluded.

¹ The Municipal Court disputes this assertion. (Return p. 1; Hrg. Tr. p. 10).

(Hrg. Tr. pp. 10-11). The jury found Simmons guilty. (Return). The Municipal Court's Return states she was found guilty of a violation of S.C. Code § 56-5-970(A)(1) (failure to yield right-of-way) after an amendment at trial, but Municipal Court records show her guilty of a violation S.C. Code § 56-5-950 (failing to stop at a red light), with a fine of \$155.00. (Return; Mtn. to Strike p. 2, Ex. B; Hrg. Tr. pp. 8, 14). Simmons retained counsel, and through counsel she filed a timely motion for new trial on October 19, 2017. (Mtn. to Strike p. 2, Ex. C). The Municipal Court denied Simmons' Motion for New Trial on November 2, 2017. (Complaint p. 2).

Simmons timely appealed to the Circuit Court on November 13, 2017, paying the \$155.00 fine, as required under S.C. Code § 14-25-95. (Complaint). The Clerk of Court's records reflect that the Municipal Court filed a Return on December 11, 2017, but this Return was never served on Simmons. (Return; Mtn to Strike p. 1). After discovering that the Municipal Court had failed to serve her with its Return (and other material errors in the Return) Simmons moved to strike the Return on February 15, 2018. (Motion to Strike). This motion (and all of Simmons's other arguments on appeal) was heard on June 1, 2018, before Judge Edgar Dickson, and the Circuit Court took the motion under advisement. (06/01/18 transcript). While the motion was under advisement, the appeal appeared on the docket for a hearing before Judge Perry Buckner. Because the appeal had been fully argued at the motion to strike hearing, Judge Buckner did not hold a hearing and left the final disposition of the appeal to Judge Dickson. Judge Dickson issued his order on June 17, 2019; Simmons timely filed a motion to alter or amend that order on June 27, 2019. (06/17/19 Order; Motion to Alter or Amend). Judge Dickson denied the motion to

alter or amend by order dated July 2, 2019. (07/02/19 Order). Simmons timely filed her notice of appeal on July 11, 2019.

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. The appellate court reviewing the criminal appeal from the circuit court may review for errors of law only. 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. Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) (citations omitted). A finding of fact is “clearly erroneous” when it is “...supported by the evidence and not clearly wrong or controlled by error of law.” City of Chester v. Addison, 277 S.C. 179, 284 S.E.2d 579 (1981).

This standard of “clearly erroneous” differs from another formulation of this court (used in the agency context):

A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.

Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E.2d 357 (1996). The Rodney standard is the standard cited by former Chief Justice Jean Toal in her treatise on appellate law. Jean Toal, *et al.* Appellate Practice in South Carolina 225-26 (3rd ed. 2016). Both the Chester and Rodney standards differ from the “clearly erroneous” standard articulated by the United States Supreme Court:

A finding is “clearly erroneous” when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948). Simmons would ask this Court for a guidance on the correct formulation of the “clearly erroneous” standard in South Carolina.

ARGUMENT

I. Section 14-25-95 of the South Carolina Code violates Due Process by requiring a litigant to appeal to a court that lacks jurisdiction.

The South Carolina Code mandates that an appellant from a criminal conviction in municipal (or magistrate’s) court appeal to the Court of Common Pleas. S.C. Code § 14-25-95 (Municipal Court); S.C. Code § 18-3-10 (Magistrate’s Court).² The Court of Common Pleas has jurisdiction over civil matters – it is the Court of General Sessions that has jurisdiction over criminal matters. See Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994) (Court of Common Pleas handles civil matters, while Court of General Sessions handles criminal matters); Bruce Littlejohn, Littlejohn’s South Carolina Judicial History 1930-2004 at 34 (2005) (“Circuit courts have always been divided into two facets of judicial work – the court of general sessions having unlimited jurisdiction in criminal matters and the court of common pleas having general jurisdiction in all civil matters.”).

Regardless of whether this case is an alleged violation of S.C. Code § 56-5-950 or 56-5-970(A)(1)(1) (see Argument II.B), Simmons stands accused of a crime. The State has admitted this is a criminal matter. (Hrg. Tr. p. 7). The Court of Common Pleas has no jurisdiction to hear criminal matters; therefore, S.C. Code § 14-25-95 commands

² In 1994, the legislature changed references to “General Sessions” to “Common Pleas” in both magistrate and municipal court appeals. 1994 S.C. Act. No. 520. Simmons has been unable to find any explanation for this change.

Simmons to appeal to a court without jurisdiction.³ (Hrg. Tr. pp. 5-7). Simmons has no ability to effectively appeal from the Municipal Court. As she has lost the ability to appeal her conviction, Simmons has been denied due process of law, and her conviction should be declared void and S.C. Code §§ 14-25-95 and 18-3-10 should be declared unconstitutional. See U.S. Const. Amts. 5 & 14; S.C. Const. Art. I Sec. 3.

II. The Municipal Court made reversible errors in its response to the appeal.

S.C. Code § 14-25-105 governs the return of the Municipal Court in an appeal to the Circuit Court:

In the event of an appeal, the municipal judge shall make a return to the Court of Common Pleas, and the appeal must be heard by the presiding judge upon the return. The return of the municipal judge shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment. When the testimony has been taken by a reporter as provided herein, the return shall include the reporter's transcript of the testimony. The return must be filed with the Clerk of the Court of Common Pleas of the county in which the trial was held and the cause must be placed on the motion calendar for the Court of Common Pleas. There shall be no trial de novo on any appeal from a municipal court.

The Municipal Court did not comply with the letter and spirit of this statute in the following particulars:

A. The Municipal Court did not order a transcript.

The Return contains no transcript of the proceedings, even though a court reporter was present at the trial.⁴ See S.C. Code § 14-25-105. The Clerk of Municipal Court

³ At hearing, the State even appears to concede that this is a criminal matter that is not subject to civil jurisdiction. When Simmons's attorney complained that he was never served with the Return, Orangeburg's city attorney stated: "There is no requirement that the Return be served. They cite a civil procedural rule [Rule 5, SCRCPP] which does not apply to the criminal proceedings." (Hrg. Tr. p. 9).

⁴ At the June 1, 2018 motion to strike hearing, Orangeburg's city attorney argued that no court reporter was present at Simmons's trial. (Hrg. Tr. pp. 9, 14).

requested that Simmons pay for a transcript of proceedings. (Motion to Strike p. 1, Ex. A; 06/01/18 Hrg. Tr. pp. 8-9). This was improper; South Carolina law provides:

Any party shall have the right to have the testimony given at a jury trial in any municipal court taken stenographically or mechanically by a reporter; provided, that nothing herein shall operate to prevent any such party from mechanically recording the proceedings himself. **The requesting party shall pay the charges of such reporter for taking and transcribing if such testimony is recorded by a municipal court reporter.**

S.C. Code § 14-25-195 (emphasis added). The municipal court appeal statute mandates that the court include the transcript (and thus, request it) as part of its return. S.C. Code 14-25-105. Though not required to pay for the transcript, Simmons agreed to under protest in order to facilitate this appeal; the Municipal Court Clerk did not deposit the check and returned it. (Mtn. to Strike p. 1, Ex. A; Hrg. Tr. pp. 8-9, 12-13). The transcript was the Municipal Court's responsibility and its failure to request and include it is reversible error.⁵

B. The Municipal Court's Return does not match court records.

The Municipal Court denied Simmons' Motion for New Trial on November 2, 2017 on the basis that she did not yield the right-of-way to the other driver, who was turning left. (Complaint p. 2). This decision was reversible error, as Simmons' citation was for a violation of S.C. Code § 56-5-950 (failing to stop at a red light) (Mtn. Strike Ex B), and S.C. Code §§ 56-5-2310 & 56-5-2320 dictate that Simmons, not the other driver, had the right-of-way in this intersection. The Circuit Court found that Simmons's charge

⁵ The Circuit Court compounds this error by holding "The Magistrate Court filed a return with the clerk of court regarding the Plaintiff's Magistrate Court Criminal conviction which included all necessary testimonies." (07/02/19 Order pp. 2-3). This holding plainly contradicts S.C. Code § 14-25-105's requirement of a transcript. Further, the Circuit Court held that this error in the appeal was not preserved, when it was set forth plainly in Simmons's motion to strike and is an error of law. (07/02/19 Order pp. 1-2; Mtn. to Strike p. 1).

was amended at trial to a violation of 56-5-970A(1) (failure to yield right-of-way) but the Orangeburg Municipal Court lists her offence as under section 56-5-950 (Mtn. Strike Ex B). Nothing in the record reconciles this discrepancy, which is properly preserved and reversible error.

C. The Municipal Court failed to serve Simmons with its Return.

The Municipal Court never mailed the Return to Simmons's counsel, in violation of Rule 5, SCRCR. (Motion to Strike; Hrg. Tr. p. 9). Simmons' counsel was not aware of the existence of the Return until a serendipitous visit to the on-line public index for Orangeburg County. At hearing, the Orangeburg's city attorney conceded that the Return was never served, but argued that Rule 5, SCRCR, did not apply in a criminal appeal. (Hrg. Tr. p. 9). However, this was an action in the Court of Common Pleas, which utilizes the South Carolina Rules of Civil Procedure; even if the South Carolina Rules of Appellate Procedure were applicable, they also mandate service of submissions on the other parties. See Rule 262(b), SCACR. Finally, as a matter of due process and fairness the appellant of a municipal court conviction is entitled to review the opposing side's arguments before hearing. The Municipal Court's failure to serve its Return is reversible error.

III. The Municipal Court's errors of law at trial demand reversal.

Two errors in the trial of this matter also demand reversal and remand for a new trial:

A. The Municipal Court erroneously excluded exculpatory evidence.

Simmons was not allowed to introduce photographs of the intersection at issue in this case. (Return p. 2; Hrg. Tr. pp. 10-11; 06/17/19 Order p. 2). If these photographs

(See Exhibit A to 10/19/2017 Motion for New Trial) had been admitted into evidence, Simmons would have been able to prove:

- (1) her light was green while she crossed the intersection in question;
- (2) the driver of the vehicle turning left she struck was warned that oncoming traffic was subject to long green lights; and
- (3) the driver turning left failed to yield the right-of-way.

See S.C. Code §§ 56-5-2310 & 56-5-2320. These photos were on Simmons' mobile phone, and she attempted to show these photos to the jury during trial. (Hrg. Tr. pp 10-11; 10/19/2017 Mtn for New Trial). The Circuit Court found that a photo (not produced with the Return, so its contents are unknown) admitted into evidence "showed the complete intersection and location of all the traffic control devices." (06/17/19 Order p. 2; Return p. 2). However, there is no evidence that the jury was made aware of the *text* of the bright yellow sign that the driver turning left would have seen, which stated: "ONCOMING TRAFFIC MAY HAVE EXTENDED GREEN". (Mtn. to Strike Ex. C).

B. The Municipal Court prejudicially denied Simmons's request for a continuance.

Simmons was not given adequate notice of this trial, leaving her unable to retain counsel and to subpoena a key witness. (Mtn. to Strike, Ex C). When Simmons asked for a continuance of the trial, this motion for a continuance was denied, which was also an abuse of discretion. (Mtn. to Strike, Ex C). While the Municipal Court denies that Simmons requested a continuance (Return p. 1; Hrg. Tr. p. 10), the Municipal Court did not order the transcript, as it was required to, to confirm this fact.

IV. In the alternative, the multiple errors present in the trial and appeal of this matter mandate its reversal under the doctrine of cumulative error.

While Simmons believes the errors identified above are reversible, should this Court find them to be harmless then their aggregate effect nonetheless mandates reversal. Under the doctrine of cumulative error, “the aggregation of errors may produce a cumulative effect of prejudice, where individually, the prejudice is insufficient to justify reversal.” State v. Freeman, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995). Additionally:

...the court must be alert to avoid even harmless, erroneous rulings that when considered together may undermine the fairness of the factfinding process. Consistent commission of erroneous rulings may well deprive an aggrieved litigant of due process unless the cumulative effect of the errors does not affect the outcome of trial.


Tennant v. Marion Health Care Foundation, 459 S.E.2d 374, n.28 (W.Va. 1995).

“Pursuant to the cumulative error doctrine, the cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error.” United States v. Basham, 561 F.3d 302, 330 (4th Cir. 2009) (internal quotations omitted). Even if this Court finds the errors identified in this case harmless, their aggregate effect was to deprive Simmons of a fair trial and appeal.

CONCLUSION

The Circuit Court should be reversed and S.C. Code §§ 14-25-95 and 18-3-10 should be declared unconstitutional.

Dated: 10/09/19


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CERTIFICATE OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter by depositing a copy of it in the United States Mail, postage prepaid, on the date below to the following persons:

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