

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

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

S.C. SUPREME COURT

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

Appellate Case No.: 2019-001149

Shireen Nicole Simmons.....Appellant,

v.

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

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. The State never explains how the Court of Common Pleas has the jurisdiction to hear criminal matters.

The State takes issue with whether Simmons was denied substantive or procedural due process (Argument I). Shireen Simmons received neither procedural nor substantive due process because the South Carolina Code demands she appeal her criminal conviction to a court that has no jurisdiction. It is axiomatic that a court that has no jurisdiction cannot provide judicial review; Simmons' procedural due process rights are therefore violated. See Blanton v Slathos, 351 S.C. 531, 570 S.E.2d 565 (Ct. App. 2003) ("judicial review" being an element of procedural due process). Further, S.C. Code § 14-25-95, which prevents a court of competent jurisdiction (*i.e.* the Court of General Sessions) from reviewing Simmons' criminal conviction, deprives her of her Federal and State right to liberty. See Turner v. Rogers, 564 U.S. 431 (2011) (freedom from bodily restraint or imprisonment at the core of the liberty protected by the Due Process Clause); Foucha v. Louisiana, 504 U.S. 71, 80 (1992) (same); In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (strict scrutiny for review of legislation that impairs a fundamental right).

According to the State, the requirements of procedural due process were met when Simmons' criminal appeal was heard by the Court of Common Pleas. However, the State never explains how a *civil* court may hear *criminal* matters, especially when the South Carolina Code specifically empowers the Court of General Sessions (not the Court

of Common Pleas) to hear criminal appeals from municipal and magistrate courts.¹ See S.C. Code § 14-5-340; see also S.C. Code § 14-5-410 (allowing presiding judge to open a court of general sessions during a common pleas term).

II. The Orangeburg Municipal Court was a “party” to the appeal.

The State argues that because the Municipal Court was not a party to the action it was not required to pay for the court reporter present at trial (Argument II.A). The Orangeburg County Municipal Court is a department of the City of Orangeburg, which is a political subdivision of the State of South Carolina. See The Hibernian Society v. Thomas, 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984) (municipalities are political subdivisions of the state). Accordingly, the Municipal Court was a party to the appeal and had the responsibility of purchasing the transcript of proceedings, particularly in light of the fact that it was the Municipal Court who initiated the request for a transcript. (Mtn. to

¹ Further complicating matters, the City of Orangeburg’s Municipal Code requires that all municipal court appeals be appealed to the Court of General Sessions, in direct violation of S.C. Code § 14-24-95. Orangeburg, South Carolina, Municipal Code § 3-7 *available at* <https://ecode360.com/35081238> (last visited January 27, 2020).

A quick review of municode.com reveals many other municipalities require appeal to General Sessions. *E.g.* Abbeville, South Carolina, Municipal Code §§ 10-8, 10-9; Beaufort, South Carolina, Municipal Code §§ 1-7008, 1-7009; Cayce, South Carolina, Municipal Code § 14-14; Charleston, South Carolina, Municipal Code §§ 20-22, 20-23; Cheraw, South Carolina, Municipal Code §§ 11-8, 11-9; Clinton, South Carolina, Municipal Code § 46-8; Florence, South Carolina, Municipal Code §§ 6-11, 6-12; Fort Mill, South Carolina, Municipal Code §§ 12-8, 12-9; Fountain Inn, South Carolina, Municipal Code § 12-12; Georgetown, South Carolina, Municipal Code §§ 15-8, 15-9; Hardeeville, South Carolina, Municipal Code § 12-11.

Other municipalities require appeal to Common Pleas, consistent with S.C. Code § 14-25-95. *E.g.* Anderson, South Carolina, Municipal Code §§ 58-9, 58-10; Due West, South Carolina, Municipal Code §§ 10-10, 10-11; Duncan, South Carolina, Municipal Code §§ 18-26, 18-27; Greenville, South Carolina, Municipal Code § 22-19; Greenwood, South Carolina, Municipal Code § 32-10; Greer, South Carolina, Municipal Code §§ 26-7, 26-8; Hanahan, South Carolina, Municipal Code §§ 12-8, 12-9.

Strike Ex. A). The Municipal Court's failure to purchase a transcript is especially prejudicial in light of its arguments on appeal (particularly arguments III.A & III.B), which rely heavily on the transcript's absence.

Further, this argument was preserved. The Municipal Court's failure to pay for the transcript (for the appeal) was an argument that could only be raised on appeal. Simmons' counsel specifically objected to paying for the transcript of trial, but offered to pay for the transcript under protest; this argument was presented to the Circuit Court, which wrongfully held this was a matter for the Municipal Court to decide. (Motion to Strike p. 1, Ex. A; Hrg. Trans. pp. 12-13; 07/02/19 Order p. 1).

III. The State never explains the discrepancy between the Municipal Court's Return and its own records.

The State (Argument II.B) claims Simmons' charge was amended to a violation of S.C. Code § 56-5-970(A)(1) at trial, based on the transcript-less Return. The State never explains or addresses the Municipal Court's own records, which post-date the trial and state Simmons was convicted of a violation of S.C. Code § 56-5-950. (Mtn. to Strike Ex. B).

IV. The State never showed good cause for failing to serve its Return.

The State argues the Municipal Court's failure to serve Simmons with the Return is harmless (Argument II.C). However, it also appears to argue that the South Carolina Rules of Civil Procedure do apply to this appeal. Under the Rules of Civil Procedure, a litigant who fails to serve his answer to a complaint is subject to sanction, including a default judgment in favor of the plaintiff. See Rules 5, 12, & 55, SCRPC. Simmons noted the Municipal Court's failure to serve the Return (effectively a default) and sought relief via a motion to strike the Return, relief typically granted in such an event. See Rule 55,

SCRCPP; Thornton v. SCE&G, 391 S.C. 297, n.6, 705 S.E.2d 475, n.6 (Ct. App. 2011) (courts look beyond labels of motions to discern their actual effect). The record does not reflect any showing of “good cause” that excuses such a default. See Rule 55, SCRCPP; Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009) (elements of “good cause” necessary for setting aside default).

V. The proffered photos show how Simmons was subject to a green light at the time of collision and how she had the right-of-way.

The State (Argument III.A) misunderstands the relevance of the proffered photographs. The photographs Simmons sought to introduce at trial (Mtn. to Strike Ex. C, Exhibit) were intended to prove that her light was subject to longer-than-normal green lights, and that the driver of the vehicle she struck was on notice of this fact. (Mtn. to Strike Ex. C). This fact is relevant whether Simmons was prosecuted for S.C. Code § 56-5-970(A)(1) or S.C. Code § 56-5-950. Further, these photographs were properly admissible in Municipal Court, where “the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice.” Rule 13(a), SCRMC.

CONCLUSION

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

Dated: 2/12/2020



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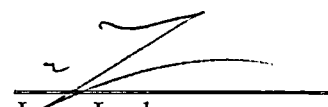
CERTIFICATE OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant 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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