

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CRIMINAL CASE on
APPEAL

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS RECEIVED CASE NO. 06-CP-46-2068

Joe Richard **GRIFFIN, Jr.**, 2007 OCT 30 AM 9:10 The City of **ROCK HILL**,
Plaintiff(s)/Appellant(s) Defendant(s)/Respondent(s)

DAVID HAMILTON
C.C.C.P. & GS

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

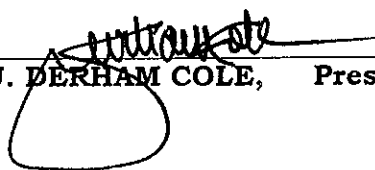
☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other

☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j) SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☒ Statement of Judgment by the Court:

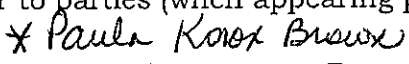
The decision of the municipal court is **reversed** in part and **affirmed** in part.

Dated at **Spartanburg**, South Carolina, this **25th** day of **October**, 2007.


J. DERHAM COLE, Presiding Judge

This judgment was entered on the **30th** day of **October**, 2007, and a copy mailed first class this **30th** day of **October**, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

James W. Boyd, Esq.
1544 Ebenezer Road
Rock Hill, South Carolina 29732
ATTORNEY(S) FOR THE APPELLANT(S)


Christopher Barton, Esq.
219 Hampton Street
Rock Hill, South Carolina 29730
ATTORNEY(S) FOR THE RESPONDENT(S)


David Hamilton, Clerk of the Circuit Court

THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas for York County

FILED-RECEIVED

2007 OCT 30 AM 9:10

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Joe Richard Griffin, Jr., Appellant,

-vs-

The City of Rock Hill Respondent.

2006-CP-46-2068

APPEAL FROM THE MUNICIPAL COURT OF THE CITY OF ROCK HILL

Peter J. Lenzi, Judge

AFFIRMED IN PART AND REVERSED IN PART

This matter was before this Court on appeal from convictions and sentences of the municipal court, after a bench trial, for Driving Under Suspension, First Offense (UTT 26713DQ); Operating an Uninsured Motor Vehicle, First Offense (UTT 26714DQ); and Disorderly Conduct (UTT 26715DQ).

Salient Facts

The uncontroverted evidence reveals that on April 14, 2006 the appellant was involved in a motor vehicle accident after pulling into the path of another vehicle within the city limits of Rock Hill. After the collision, the appellant left the scene of the accident, followed by the occupants of the other vehicle, driving his vehicle to and stopping at a residence in the city having the address of 959 Eastwood Drive. The occupants of the other vehicle, notified law enforcement of the event, wrote down the vehicle license tag number of the appellant's vehicle, and waited at the residence for law enforcement to arrive. Before law enforcement arrived at the residence the



appellant removed the vehicle license tag from the vehicle he was driving in the accident and put it inside the residence. Also, before law enforcement arrived at the residence, the appellant loudly threatened, more than once, to "kick the ass" of the other driver. Eventually a Rock Hill city police officer arrived at the residence to investigate the incident. Pursuant to his investigation, he determined that the appellant lived at the residence; that the vehicle involved in the accident was registered to him; his privilege to operate a motor vehicle was currently suspended; he could provide no proof of insurance coverage; and his policy of insurance on the vehicle had lapsed and been cancelled.

Introduced, without objection, was a document reflecting registration of the appellant's vehicle; the appellant's certified driving record dated 5/22/06, reflecting his convictions for offenses involving the operation of a motor vehicle and his current and prior suspensions; four separate certified copies of documents titled "Official Notice", relating to potential or actual suspension of appellant's driving privilege, pursuant to *S.C. Code Ann. Sections 56-5-2950* (dated 1/13/04), *56-9-351* (dated 4/21/04), *56-5-2990* (dated 9/16/04); and a certified copy of an "Official Order of Suspension" pursuant to *S.C. Code Ann. Section 56-9-610* (dated 12/28/04 having an effective date of 1/12/05). Each of the documents was on South Carolina Department of Motor Vehicles letterhead, contained the appellant's name and address of 959 Eastwood Drive, Rock Hill, South Carolina, and each were certified to be true and correct copies of the original document on file with the department.

At the close of the evidence appellant moved for a directed verdict of acquittal as to each of the charges based upon the insufficiency of the evidence. The appellant specifically asserts, as to the charge of driving under suspension, a failure of proof that the appellant was provided the required notice pursuant to *S. C. Code Ann. Section 56-1-350* and *360*; as to the charge of operating an uninsured motor vehicle, a failure of proof that the defendant had not paid the uninsured fee required by *S. C. Code Ann. Section 56-10-510*; and as to the charge of disorderly conduct, a lack of evidence that the appellant "offered violence to another".

Standard of Review

In an appeal from a conviction and sentence of the municipal court "there shall be no trial *de novo* ... but instead reviews for preserved errors raised to it by

012

appropriate exception.” S. C. Code Ann. Section 14-25-105. State v. Henderson, 347 SC 455 (Ct.App. 2001)

It is a fundamental principle of law that a contemporaneous objection is required to preserve an error for appellate review. Only those grounds for relief argued to and ruled upon by the trial court are preserved for appellate review. An issue not properly preserved cannot be raised for the first time on appeal. State v. Black, 319 SC 515 (Ct.App. 1995)

Law and Analysis

I. Driving Under Suspension Conviction

S. C. Code Ann. Section 56-1-460 provides that it shall be unlawful for any person to drive a motor vehicle on any public highway in this State when his privilege to drive is suspended. By definition, the suspension of a person’s driving privilege in this State requires formal action of the Department of Motor Vehicles. S. C. Code Ann. Section 56-1-10 (14). S. C. Code Ann. Section 56-1-350 provides that “in all cases of cancellation, suspension, or revocation of driver’s licenses, the Department of Motor Vehicles shall notify the licensee ... that his license has been canceled, suspended, or revoked ...” S.C. Code Ann. Section 56-1-360 provides that “when notice is required ... the notice must be given by the Department of Motor Vehicles by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the driver’s license records ...” and further that “a certificate by the director ... that the notice has been sent ... is presumptive proof that the requirements as to notice of suspension have been met ...”

Under the law of this State there are three essential elements which must be established before a person may be found guilty of driving under suspension. It must be proven that; (1) the defendant’s privilege to drive was suspended by the Department of Motor Vehicles, (2) that the department sent notice of the suspension to the defendant at his address as shown in the driver’s license records, and (3) the defendant drove a motor vehicle on a public highway of this State during the period of his suspension.

There is abundant evidence contained in the record in this case that, the appellant’s privilege to operate a motor vehicle in this State was indefinitely suspended

by formal action of the department prior to April 14, 2006 and that he was driving a motor vehicle on a public highway of this State on April 14, 2006 while the suspension period was still in effect. There is no evidence in the record of this case tending to prove that the department notified the defendant of his suspension status "by depositing the notice in the United States mail with postage prepaid ..." nor is there a certification by the director that such notice had been sent.

Based upon the prosecution's failure to present evidence establishing a material element of the offense, the municipal court erred in not granting the appellant's motion for a directed verdict of acquittal, based upon the insufficiency of the evidence.

The conviction and sentence of the municipal court for driving under suspension, first offense, should be and are therefore **REVERSED**.

The municipal court is directed to enter a verdict of not guilty as to the charge of driving under suspension, first offense, on UTT 26713DQ.

II. Operating Uninsured Motor Vehicle Conviction

South Carolina is a compulsory insurance state for the owners of motor vehicles which are subject to registration. *S. C. Code Ann. Section 56-10-10*. *S. C. Code Ann. Section 56-10-220* provides that every owner of a vehicle at the time of its registration must declare that the vehicle is an "insured motor vehicle" and that it will remain insured during the term of the registration. *S. C. Code Ann. Section 56-10-225* provides that the owner of a registered motor vehicle "must maintain in the motor vehicle at all times proof that the motor vehicle is an insured vehicle in conformity with the laws of this State and Section 56-10-510" and maintain proof of financial responsibility to be displayed on the demand of a police officer. South Carolina residents that otherwise qualify and pay the required fee may be exempt from this requirement and drive uninsured. *S. C. Code Ann. Section 56-10-510*. Persons who have been convicted of driving under the influence cannot elect exemption by payment of the required uninsured fee and may not drive uninsured in this State. *S. C. Code Ann. Section 56-10-535*. *S. C. Code Ann. Section 56-10-520* provides that any person who owns an uninsured motor vehicle ... licensed in the State or subject to registration in the State who operates ... that motor vehicle without first having paid ... the uninsured motor vehicle fee required by Section 56-10-510 ... is guilty of a

10-4

misdemeanor” and further provides that “a person who is the operator of an uninsured vehicle and not the titled owner, who knows that the required fee has not been paid ... is guilty of a misdemeanor ...”

A person may be found guilty of a violation of this section upon proof that (1) he was the owner of an uninsured motor vehicle licensed in or subject to registration in the State and (2) he operated or permitted the operation of that vehicle without first paying the required uninsured motor vehicle fee, or that (1) he was not the titled owner but was the operator of an uninsured motor vehicle and (2) he knew that the motor vehicle was uninsured and that the required uninsured motor vehicle fee had not been paid.

There is ample evidence reasonably establishing that on April 14, 2006 the appellant's privilege to operate a motor vehicle was under an indefinite suspension, as the result of his failure to comply with the State's financial responsibility requirements. The evidence reasonably establishes that the indefinite suspension resulted from an “at fault” accident and conviction for violation of *S. C. Code Ann. Section 56-5-2930*. The evidence further reasonably establishes that the appellant was operating a motor vehicle on April 14, 2006 which was uninsured and that the appellant was aware that the vehicle was uninsured.

Because the defendant was not qualified under the law to drive uninsured, pursuant to *S. C. Code Sections 56-10-510* and *56-10-535*, his assignment of error to the municipal court's refusal to direct a verdict of acquittal, based upon the prosecution's failure to prove that the “defendant had not paid the uninsured fee as required by Section 56-10-510”, is without merit.

The conviction and sentence of the municipal court for operating an uninsured motor vehicle, first offense, should be and are therefore **AFFIRMED**.

III. Disorderly Conduct Conviction

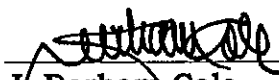
Rock Hill City Ordinance *Article V Section 20-131* provides that “it shall be unlawful for any person to engage in; (1) riotous, tumultuous, violent or obstreperous conduct of any kind; (2) fighting; (3) offering violence to another; or (4) disorderly public intoxication; in any public place, or sufficiently near to any such place ... as to disturb or annoy any other person.

103-5

There is abundant evidence in the record which reasonably establishes that the appellant conducted himself in an "obstreperous" manner and offered "violence to another" in a public place, or sufficiently near a public place, contrary to the prohibitions contained in the ordinance. Because there is sufficient evidence tending to establish a violation of the city ordinance, the appellant's assignment of error to the municipal court's failure to grant a directed verdict of acquittal, based upon an insufficiency of the evidence, is without merit.

The conviction and sentence of the municipal court for disorderly conduct should be and are therefore **AFFIRMED**.

It Is So Ordered.



J. Derham Cole, Presiding Judge
The Sixteenth Judicial Circuit Court

October 25, 2007
Spartanburg, South Carolina

#6