ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Angela R. Taylor, Family Court Judge
Appellate Case No. 2012-213481

IN THE INTEREST OF STEPHEN W.,
A JUVENILE UNDER THE AGE OF SEVENTEEN,

Appellant.

FINAL BRIEF OF RESPONDENT

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The family court judge did not violate Appellant's constitutional rights by denying Appellant's request for a jury trial during his juvenile delinquency hearing because Appellant was not entitled to a jury trial during the hearing pursuant to either the South Carolina Constitution or the United States Constitution.

STATEMENT OF THE CASE

On August 29, 2012, Appellant Stephen W., a juvenile under the age of seventeen, was detained after he was observed hiding three bags of marijuana behind vinyl siding at an apartment complex. In September of 2012, a verified juvenile petition was filed in the Richland County family court alleging Appellant was a delinquent child for simple possession of marijuana. On November 13, 2012, an adjudicatory hearing was conducted in the Richland County family court with the Honorable Angela R. Taylor, family court judge, presiding. At the conclusion of the hearing, the family court judge adjudicated Appellant to be a juvenile delinquent for simple possession of marijuana. The family court judge then ordered Appellant to spend six consecutive weekends at the Department of Juvenile Justice, to complete an alternative educational program, to comply with all of his mother's rules and regulations, and to continue with his prior placement on probation for a period of time not to exceed his eighteenth birthday or until he obtained a G.E.D. Subsequently, Appellant timely filed a notice of appeal.

STATEMENT OF FACTS

On the afternoon of August 29, 2012, Officer R.G. Arnold of the Columbia Police Department was patrolling around an apartment complex when he saw several people, including sixteen-year-old Appellant Stephen W., loitering outside of one of the buildings in the apartment complex. (R. p. 10-11; p. 18; p. 25; p. 46). In response, Officer Arnold called for a marked police vehicle to respond to the area and continued to watch the individuals outside of the building. (R. p. 11). Shortly thereafter, Sergeant C.B. Williams, the supervisor of the Columbia Police Department's drug suppression team, drove towards Appellant's location in a marked police vehicle. (R. pp. 18-19; p. 21; p. 46). Upon seeing the officer approaching his location, Appellant began behaving in a nervous manner, quickly walked up the stairs towards an apartment, removed something from his pocket, and concealed it behind the building's vinyl siding. (R. pp. 11-13). Officer Arnold then relayed that information to Sergeant Williams, and Sergeant Williams made contact with Appellant before searching the vinyl siding. (R. pp. 11-12; p. 17; pp. 21-22). During his search, Sergeant Williams discovered three plastic bags containing 2.64 grams of a green leafy substance later determined to be marijuana hidden behind the vinyl siding. (R. p. 22; p. 34). Sergeant Williams then secured the marijuana and handcuffed Appellant before later releasing him to his mother. (R. p. 25).

Subsequently, Sergeant Williams filed a juvenile petition in the Richland County family court alleging Appellant was a delinquent child for simple possession of marijuana. (R. p. 3; p. 46). Based on the filing of the petition, an adjudicatory hearing was conducted in the Richland County family court with the Honorable Angela R. Taylor, family court judge, presiding. (R. p. 3). At the outset of the hearing, defense counsel moved for a jury trial. (R. p. 4; pp. 47). In support of the motion, defense

counsel argued that the juvenile justice code in South Carolina repeatedly referred to juvenile charges as offenses while the South Carolina Constitution granted the right to a jury trial to any person charged with an offense. (R. pp. 4-5; pp. 48-51). Defense counsel further argued that a prior United States Supreme Court decision finding that juveniles were not constitutionally entitled to jury trials during juvenile delinquency hearings did not constitute binding precedent and that Appellant was entitled to a jury trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution. (R. p. 5; pp. 51-55). In response, the solicitor noted that juveniles are not entitled to jury trials during juvenile delinquency hearings under South Carolina law. (R. pp. 5-6). Following the arguments of counsel, Judge Taylor asked defense counsel if she believed juvenile proceedings were of the same nature as criminal trials. (R. p. 6). Defense counsel responded that she believed that a juvenile adjudication hearing was of the same nature as a criminal prosecution while conceding that juvenile adjudications are not considered to convictions and juveniles who are adjudicated delinquent are not considered to be subjected to punishment. (R. pp. 6-7). Thereafter, the family court judge determined that the juvenile adjudication process in South Carolina was not of the same nature as a criminal prosecution in a court of general sessions while specifically noting that the juvenile adjudication process was focused on rehabilitation and the best interests of the child. (R. pp. 8-9). For that reason, the family court judge denied Appellant's motion for a jury trial. (R. p. 9).

Following the family court judge's ruling, Officer Arnold testified about seeing Appellant conceal the marijuana behind the vinyl siding, and Sergeant Williams testified about his discovery of the bags of marijuana. (R. pp. 11-13; pp. 22-23). Additionally, Paul Mead, a marijuana analyst for the Columbia Police Department and expert in

marijuana analysis, confirmed that the substance found hidden behind the vinyl siding was marijuana. (R. p. 30; p. 32; p. 34). Thereafter, Appellant testified in his own defense and denied possessing or concealing the marijuana. (R. p. 39).

Subsequently, at the conclusion of the adjudicatory hearing, the family court judge adjudicated Appellant to be a juvenile delinquent for simple possession of marijuana based on the evidence and testimony presented during the hearing. (R. p. 40). The family court judge then ordered Appellant to spend six consecutive weekends at the Department of Juvenile Justice, to complete an alternative educational program, to comply with all of his mother's rules and regulations, and to continue with his prior placement on probation for a period of time not to exceed his eighteenth birthday or until he obtained a G.E.D. (R. pp. 42-43; pp. 58-60).

ARGUMENT

The family court judge did not violate Appellant's constitutional rights by denying Appellant's request for a jury trial during his juvenile delinquency hearing because Appellant was not entitled to a jury trial during the hearing pursuant to either the South Carolina Constitution or the United States Constitution.

Appellant contends the family court judge erred in denying his motion to have a jury determine if he was a juvenile delinquent for simple possession of marijuana. In support of that contention, Appellant maintains that the South Carolina statutory provisions denying him a jury trial are unconstitutional pursuant to both the South Carolina Constitution and the United States Constitution. To the contrary, Appellant did not have a constitutional right to a jury trial during his juvenile delinquency hearing pursuant to either the state or federal constitutions, and South Carolina's juvenile adjudication process is not unconstitutional merely because it does not provide for jury trials in juvenile delinquency cases. Critically, neither the state nor federal constitutional guarantees of the right to a jury trial are applicable to juvenile adjudicatory hearings because such hearings were not in existence at the time of the adoption of the South Carolina Constitution and are not of a like nature to criminal trials. Accordingly, because Appellant was not entitled to a jury trial during his juvenile delinquency hearing, the family court judge properly denied Appellant's motion seeking a jury trial. The family court judge's adjudication of delinquency and order should be affirmed.

STANDARD OF REVIEW

In reviewing a challenge to the constitutionality of a statute, an appellate court has a "very limited" scope of review. State v. Harrison, 402 S.C. 288, 292, 741 S.E.2d 727, 729 (2013). All statutes are presumed to be constitutional and, if possible, will be construed in such a way to render them valid. State v. Neuman, 384 S.C. 395, 402, 683

S.E.2d 268, 271 (2009); see Powell v. Hargrove, 136 S.C. 345, 350, 134 S.E. 380, 382 (1926) ("[An appellate court] must sustain the validity of the legislative enactment, if it is possible to do so by any reasonable construction of the Constitution, even though the Court might differ with the Legislature as to the propriety of the legislation."). "Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation." Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331, 333-334 (1997); see State v. Peake, 345 S.C. 72, 80, 545 S.E.2d 840, 844 (Ct. App. 2001) ("It is axiomatic that legislation must be construed so as to be constitutional."). Importantly, a statute "will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt[,]" and the party challenging the validity of the statute has the burden of proving that it is unconstitutional. In re Care and Treatment of Lasure, 379 S.C. 144, 147, 666 S.E.2d 228, 229 (2008); see State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) ("Appellants have the burden of proving the statute unconstitutional."); State v. Ross, 185 S.C. 472, 477, 194 S.E. 439, 441 (1937) ("A Court should not declare a statute unconstitutional unless its invalidity is manifest beyond a reasonable doubt, and the burden to show its unconstitutionality rests upon the one making the attack. It does not require citation of authorities to sustain this proposition, for our Court has so often announced this principle, in cases which it has been called upon to decide the question of the constitutionality of certain statutes, that this principle has become axiomatic.").

ANALYSIS

Pursuant to the United States Constitution, the accused in all criminal prosecutions have a right "to a speedy and public trial, by an impartial jury[,]" and that

right is guaranteed to individuals accused of crimes in state courts through the Fourteenth Amendment. U.S. Const. amend. VI; see U.S. Const. art. III, § 2 ("The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury[.]"); U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); see also Duncan v. Louisiana, 391 U.S. 145, 149 (1968) ("[T]he Fourteenth Amendment guarantees a right of jury trial in all criminal cases which – were they to be tried in a federal court – would come within the Sixth Amendment's guarantee."). Likewise, pursuant to the South Carolina Constitution, the right to a jury trial "shall be preserved inviolate" and shall be enjoyed by "[a]ny person charged with an offense[.]" S.C. Const. art. I, § 14.

However, "[t]he right of trial by jury, guaranteed by [the South Carolina] Constitution, is only applicable to those cases in which a jury trial was required at the time of the adoption of the Constitution." McGlohon v. Harlan, 254 S.C. 207, 215, 174 S.E.2d 753, 757 (1970); see Mims Amusement Co. v. South Carolina Law Enforcement Div., 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) ("The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868."); Richards v. City of Columbia, 227 S.C. 538, 554, 88 S.E.2d 683, 691 (1955) ("Th[e] guaranty [of a jury trial] is applicable only to cases in which jury trial was required at the time of the adoption of the constitution."); State v. Gibbes, 109 S.C. 135, 139-140, 95 S.E. 346, 347 (1918) ("[T]he [South Carolina] Constitution provides that the right of trial by jury shall be preserved inviolate. A similar guaranty will be found in every Constitution adopted by the people of this State. But

such provisions have been uniformly held by this Court and others to mean that the right shall be preserved only in those cases in which the parties were entitled to it under the law or practice existing at the time of the adoption of the Constitution." (citation omitted)); City Council of Anderson v. O'Donnell, 29 S.C. 355, 367, 7 S.E. 523, 528 (1888) ("[T]he well settled doctrine, in this State at least, as well as many other States, is that these general constitutional provisions securing the right of trial by jury are to be read in light of the law existing at the adoption of the constitution. They were not designed to *extend* the right of trial by jury, but simply to *secure* that right as it then existed." (italics in original)); Frazee v. Bratton, 26 S.C. 348, 351, 2 S.E. 125, 126-127 (1887) ("No doubt that the right of trial by jury was preserved by the constitution; that is, wherever the right existed at the adoption of the constitution it still remains, that instrument providing, in terms, that the right of trial by jury shall remain inviolate. This provision of the constitution, however, does not inhibit legislation as to cases where the right of trial by jury did not exist at its adoption, nor as to analogous cases; on the contrary, proceedings without jury existing before the adoption of the constitution, serve to authorize analogous proceedings by the legislature subsequently." (citations omitted)). In determining whether the state constitutional guarantee to a jury trial is applicable to a particular proceeding, the pertinent inquiry involves determining whether a party to the proceeding would have had the right to demand a jury trial under the existing law or prevailing practice at the time of the adoption of South Carolina's first constitution. Gibbes, 109 S.C. at 140, 95 S.C. at 348. Notably, "[t]he right to a jury trial encompasses forms of actions that have arisen since the adoption of the Constitution in those cases where the later actions are of like nature to actions which were triable at common law at the time of the adoption of the Constitution." Mims, 366 S.C. at 149, 621 S.E.2d at 348.

Under the common law in existence at the time of the passage of the South Carolina Constitution, a juvenile offender accused of a crime was criminally prosecuted in the same manner as an adult and tried by a jury after the juvenile was formally indicted for a criminal offense. See In re Gault, 387 U.S. 1, 16 (1967) ("At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders."); see also State v. Coleman, 54 S.C. 162, 162, 31 S.E. 866, 866 (1899) (affirming a juvenile defendant's criminal conviction for the indicted offense of carnal knowledge of an unmarried woman under fourteen years of age that resulted from a jury trial in the court of general sessions); State v. Toney, 15 S.C. 409, 414 (1881) (affirming a juvenile defendant's criminal conviction for the indicted offense of malicious trespass that resulted from a jury trial). At that time, the manner in which adult offenders and juvenile offenders were distinguished under the common law was that a child was conclusively presumed to be incapable of committing a crime if under the age of seven, was presumed to be incapable of committing a crime if between the ages of seven and fourteen with that presumption subject to challenge, and was presumed to be capable of committing a crime if over the age of fourteen with that presumption subject to challenge. Dodd v. Spartanburg Ry., Gas & Elec. Co., 95 S.C. 9, 15, 78 S.E. 525, 528 (1913).

However, as early as 1917, an alternate procedure for dealing with juvenile offenders began to take shape in South Carolina when the legislature granted judges of certain statutorily-specified courts the authority to conduct summary proceedings in cases involving juveniles, adjudicate juvenile offenders as delinquent, commit juvenile offenders to institutions when necessary, and transfer jurisdiction over the cases of juvenile offenders who committed serious offenses to the court of general sessions if such

an action was determined to be necessary in a particular case.[1] See Act No. 73, 1917 S.C. Acts & Joint Resolutions (granting authority to the Recorder's Court in cities with populations between 20,000 and 50,000 inhabitants to summon a child to court upon the filing of a petition indicating that the child violated a law and authorizing the court to investigate the allegations in the petition, commit the child to an institution where necessary, and try the child or transfer the child's case to the court of general sessions only if the child was determined to be incorrigibly criminal or was accused of a crime that was determined to demand punishment rather than rehabilitation); see also Act No. 148, 1923 S.C. Acts & Joint Resolutions (granting exclusive original jurisdiction over any case involving a child under eighteen years old to the probate court in counties with populations between 90,000 and 100,000 residents and authorizing probate court judges to act as children's court judges, hear juvenile delinquency cases in a summary manner, adjudicate juveniles delinquent, commit a child to an institution or place a child on probation, and transfer juvenile felony cases to the circuit court where such a step was determined to be necessary); see, e.g., S.C. Code Ann. § 255 (1932) (providing that probate courts in counties having a population between 85,000 and 100,000 residents have exclusive original jurisdiction over any cases involving a child under sixteen years old and authorizing probate court judges acting as judges of children's court to conduct summary hearings, adjudicate juvenile offenders delinquent, and exercise discretion to transfer cases of juvenile felony offenders that are fourteen years of age or older to circuit court). The procedure for dealing with juvenile offenders continued to evolve with the creation of a statewide family court system in South Carolina, and the modern procedure

[1] Prior to the creation of a court system for dealing with juvenile offenders in South Carolina, the first juvenile court system in the United States was created in Illinois in 1899. Gault, 387 U.S. at 14.

for dealing with juvenile offenders was codified with the enactment of the South Carolina Children's Code. See Act No. 361, 2008 S.C. Acts & Joint Resolutions (reorganizing and restructuring the South Carolina's Children's Code); Act No. 71, 1981 S.C. Acts & Joint Resolutions (enacting the South Carolina Children's Code, outlining the juvenile transfer process, and identifying the procedure for adjudicating juvenile offenders as delinquents through non-jury delinquency proceedings); Act No. 1195, 1968 S.C. Acts & Joint Resolutions (establishing a uniform family court system throughout South Carolina, granting family courts exclusive original jurisdiction over cases involving children, and authorizing family court judges to adjudicate juvenile offenders as delinquents through non-jury delinquency proceedings).

The primary purpose behind the creation and implementation of the juvenile adjudication process was "to exempt an infant from the stigma of a criminal conviction and its attendant detrimental consequences." In re Skinner, 272 S.C. 135, 137, 249 S.E.2d 746, 746 (1978); see In re Doe, 318 S.C. 527, 532, 458 S.E.2d 556, 559 (Ct. App. 1995) ("[T]he primary purpose of the juvenile court system is to insulate the minor from criminal prosecution."). As a matter of public policy, the juvenile adjudication process was designed to be beneficial to juvenile offenders with the best interests of those juveniles being the paramount consideration and was not intended to be punitive in effect. S.C. Code. Ann. § 63-1-20 (2010); see State v. Pittman, 373 S.C. 527, 552, 647 S.E.2d 144, 157 (2007) (recognizing the family court has parens patriae status); Harris v. Harris, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992) ("South Carolina, as parens patriae, protects and safeguards the welfare of its children. Family Court is vested with the exclusive jurisdiction to ensure that, in all matters concerning a child, the best interest of the child is the paramount consideration."); see also State v. Cagle, 111 S.C. 548, 552, 96

S.E. 291, 292 (1918) ("The State is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare. Such statutes are beneficial and remedial, and entitled to favorable and liberal construction; and it is not a valid objection to them that, within reasonable limits, they may deprive children of their liberty or their parents of their custody and the rights usually incident to it. The welfare of the child is superior to the rights of its parents. We have no doubt of the general power of the state, as parens patriæ, to make and enforce reasonable laws looking to the education, welfare, and protection of its youth." (citations omitted)).

Pursuant to the modern juvenile adjudication process, a wide variety of individuals can institute delinquency proceedings against a juvenile, including an arresting officer, a person injured by the juvenile's actions, or the juvenile's parents. S.C. Code Ann. § 63-19-1020 (2010). Once a case involving a juvenile has been initiated, a family court judge then conducts an investigation into the matter and can hold an adjudicatory hearing without a jury outside of the presence of the public, can adjudicate the juvenile as a delinquent or dismiss the matter, and can employ a wide variety of rehabilitative measures based on the circumstances of the juvenile's particular case, including the imposition of probation, supervision, restitution, fines, mentoring, treatment, or commitment not to exceed the juvenile's twenty-first birthday. S.C. Code Ann. § 63-19-1410 (2010); see Rule 9(a), SCRFC ("All hearings in the family courts shall be conducted by the court without a jury. Hearings shall be conducted in a judicial atmosphere, with the judge wearing a black judicial robe."). Critically though, the adjudication of a juvenile as a delinquent is **not** a conviction, does **not** "operate to impose civil disabilities ordinarily resulting from a conviction," and does **not** "disqualify the

child in a future civil service application or appointment." S.C. Code Ann. § 63-19-1410(C) (2010). In fact, pursuant to the South Carolina Children's Code, juveniles cannot be charged with crimes or convicted of any offense except where permitted by the provisions of the juvenile transfer statute. Id.

In the case sub judice, the family court judge correctly denied Appellant's motion seeking to have a jury determine if he was a juvenile delinquent for carrying a knife on school property. In arguing he was entitled to a jury trial, Appellant contends that the plain language of the South Carolina Constitution guaranteeing a jury trial to any person "charged with an offense" is applicable to juvenile delinquency hearings because juveniles are allegedly charged with offenses in such proceedings. Appellant further contends that he was entitled to a jury trial during the adjudicatory hearing pursuant to the Sixth and Fourteenth Amendment of the United States Constitution regardless of the fact that the United States Supreme Court earlier determined that juveniles were not entitled to jury trials during such proceedings. Contrary to Appellant's contentions, the South Carolina juvenile adjudication process does not violate the South Carolina Constitution or the United States Constitution.

Regarding Appellant's rights pursuant to the state constitution, the right to a jury trial guaranteed by the South Carolina Constitution does not extend to juvenile adjudicatory proceedings because that right is only applicable to cases in which the right to a jury trial was granted at the time of the adoption of South Carolina's first constitution. See McGlohon, 254 S.C. at 215, 174 S.E.2d at 757 ("The right of trial by jury, guaranteed by [the South Carolina] Constitution, is only applicable to those cases in which a jury trial was required at the time of the adoption of the Constitution."). At the time of the adoption of South Carolina's first constitution, the juvenile adjudication

process did **not** exist, and, instead, juvenile offenders were indicted, criminally prosecuted, and convicted after jury trials in the same manner as adults. Therefore, juvenile offenders at the time of the adoption of the first state constitution did not have a right to jury trials in juvenile delinquency hearings because they had no right to the adjudicatory hearings themselves. However, the General Assembly in South Carolina subsequently created and put into place the modern juvenile adjudication process to deal with juvenile offenders in a manner separate and distinct from the traditional criminal justice system in order to prevent juvenile offenders from suffering the detrimental consequences of the traditional system. See Skinner, 272 S.C. at 137, 249 S.E.2d at 747 ("[T]he concept of the legislature in designing the juvenile court system was to insulate the minor child from criminal prosecution except in certain instances[.]"); see also McGlohon, 254 S.C. at 216, 174 S.E.2d at 757 ("The Legislature may create new rights and organize new tribunals to adjudicate such new rights without a jury."). Pursuant to the modern juvenile adjudication process, juvenile offenders are **not** charged with criminal offenses, are **not** criminally prosecuted, are **not** subject to criminal convictions unless their cases are transferred to a court of general sessions, and are **not** sentenced to the penalties that could be imposed upon conviction for a criminal offense in a court of general sessions. See S.C. Code Ann. § 63-19-1410(C) (2010) ("No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulted from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63-19-1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment."); see also Skinner, 272 S.C. at 137, 249 S.E.2d at 747 ("[W]hen a child is adjudicated a delinquent by the Family Court because

of his misconduct, he had not been convicted of a criminal offense and may be punished only as prescribed by the Family Court Act.").

Due to the key distinctions between the modern juvenile adjudication process and the traditional criminal justice system, the South Carolina juvenile adjudication process in family court is not of a like nature to the prosecution of a criminal case in a court of general sessions and is far different from the manner in which juvenile offenders were dealt with and prosecuted at the time of the adoption of the state constitution. See Mims, 366 S.C. at 149, 621 S.E.2d at 348 ("The right to a jury trial encompasses forms of actions that have arisen since the adoption of the Constitution in those cases where the later actions are of like nature to actions which were triable at common law at the time of the adoption of the Constitution."). As a result, the South Carolina Constitution's guarantee of the right to a jury trial is inapplicable to the juvenile adjudication process since delinquency proceedings neither existed at the time of the adoption of the constitution nor are comparable to a procedure that did exist at that time.[2] See O'Donnell, 29 S.C. at 367, 7 S.E. at 528 ("[General constitutional provisions securing the right to a jury trial] were not designed to *extend* the right of trial by jury, but simply **to *secure* that right as it then existed**." (italics in original and emphasis added)); cf. Gray v. Monroe County Dep't of Pub. Welfare, 529 N.E.2d 860, 861 (Ind. Ct. App. 1988) ("The constitutional right to trial by jury in all civil cases has been construed to apply only to actions triable by jury at common law. No special judicial system for juveniles existed at common law. Therefore, Art. 1, § 20 [of the Indiana Constitution] does not

[2] Notably, if a juvenile's case is transferred to a court of general sessions and the juvenile is prosecuted in the same manner as an adult as was done with juvenile offenders at the time of the adoption of the South Carolina Constitution, the juvenile is fully entitled to a jury trial. See Rule 14(c), SCRCrimP ("In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved.").

give a party a right to a jury in proceedings in juvenile court." (citations omitted)). Accordingly, the family court judge did not violate Appellant's constitutional rights pursuant to the South Carolina Constitution by denying Appellant's motion for a jury trial in his juvenile delinquency hearing.

In addition to not being entitled to a jury trial pursuant to the South Carolina Constitution, Appellant was likewise not entitled to a jury trial during his juvenile delinquency hearing pursuant to the United States Constitution. Critically, in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), six justices of the United States Supreme Court determined that juveniles were not entitled to jury trials in state juvenile delinquency proceedings pursuant to the federal constitution. See id. at 547 ("If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation."); id. at 554 (Brennan, J., concurring) (finding that the constitutional right to a jury trial does not extend to juvenile delinquency proceedings so long as some other aspect of the juvenile adjudication process adequately protects the interests that jury trials are intended to serve); id. at 557 (Harlan, J., concurring) (indicating juveniles would likely be entitled to jury trials in juvenile delinquency proceedings **if** those proceedings became criminal trials in practice and concurring in the judgment of the Court on the basis that he did not believe criminal trials were required of the states pursuant to the federal constitution). Because a majority of the United States Supreme Court agreed in the judgment that juveniles in family court are not constitutionally entitled to jury trials pursuant to the federal constitution, their interpretation of the United States Constitution is binding on courts in South Carolina. See State v. Waitus, 224 S.C. 12, 19, 77 S.E.2d 256, 259 (1953) (recognizing that

decisions of the United States Supreme Court construing the United States Constitution are binding on South Carolina appellate courts in cases addressing questions involving the United States Constitution); see also State v. George, 119 S.C. 120, 122, 111 S.E. 880, 880 (1921) ("State Courts are not bound to follow the Federal decisions, **except in cases involving a Federal question**[.]" (emphasis added)). Accordingly, the family court judge properly declined to hold that Appellant was entitled to a jury trial pursuant to the United States Constitution. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing that state courts cannot interpret an amendment of the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court); see, e.g., Oregon v. Hass, 420 U.S. 714, 719 (1975) ("[A] State is free as far as a matter of its own law to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards. But, of course, a State may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them." (citations omitted)).

In arguing to the contrary, Appellant contends that a juvenile delinquency adjudication in South Carolina is the same as a criminal prosecution. However, the juvenile adjudication process in South Carolina remains far different from the traditional criminal justice system.[3] Importantly, unlike the goals of the traditional criminal justice

[3] In further support of his argument that the juvenile adjudication process in South Carolina is unconstitutional, Appellant cites to the decision of the Kansas Supreme Court in In re L.M., 286 Kan. 460, 186 P.3d 164 (Kan. 2008). In that case, the Kansas Supreme Court considered whether it was unconstitutional to deny juvenile offenders jury trials pursuant to Kansas' procedure for addressing cases of juvenile delinquency in light of significant changes that were enacted to Kansas statutory juvenile adjudication procedure. Id. at 461, 186 P.3d at 165. Under Kansas' former juvenile adjudication procedure, the primary focus was on rehabilitation and Kansas' parental role in providing guidance, control, and discipline to juveniles. Id. at 466, 186 P.3d at 168. However, the legislature in Kansas amended the procedure and shifted the focus to protecting the public, holding juveniles accountable for their behavior, and making juveniles into more productive and responsible members of society. Id. The

system, the primary focus of the juvenile adjudication process in South Carolina is the rehabilitation and treatment of juvenile offenders and the protection of juvenile offenders from criminal prosecution. See Skinner, 272 S.C. at 137, 249 S.E.2d at 747 ("[T]he concept of the legislature in designing the juvenile court system was to insulate the minor child from criminal prosecution except in certain instances[.]"). In fact, the legislature specifically mandated that juveniles are not to be punished in juvenile delinquency cases. See S.C. Code Ann. § 63-19-1410(A)(3) (2010) ("Probation **must not be ordered or administered as punishment** but as a measure for the protection, guidance, and well-being of the child and the child's family." (emphasis added)). Additionally, further distinguishing juvenile delinquency hearings from criminal trials, juveniles cannot be charged fees for juvenile delinquency proceedings, juveniles adjudicated to be delinquent are neither convicted of crimes nor subject to criminal penalties, juveniles' adjudication records are not made publicly available, and juvenile adjudications cannot subsequently

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Kansas legislature further changed the procedure to be more consistent with the procedure for dealing with adult offenders by emulating the adult sentencing guidelines and model, requiring juveniles to admit guilt when pleading to allegations, referring to commitment as incarceration, referring to the locations for committing juveniles as correctional facilities, and removing some of the protective provisions of the juvenile system. Id. at 467-468, 186 P.3d at 168-169. After considering the changes, the Kansas Supreme Court concluded that those changes "eroded the benevolent parens partriae character that distinguished [the juvenile justice system] from the adult criminal system" and determined that the juvenile justice system was now patterned after the adult criminal system. Id. at 469, 186 P.3d at 170. Based on that determination, the Kansas Supreme Court held that the United States Supreme Court's decision in McKeiver and earlier precedent of the Kansas Supreme Court were no longer binding and concluded that "juveniles have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments." L.M., 286 Kan. at 469-470, 186 P.3d at 170. However, unlike in Kansas, the juvenile adjudication process in South Carolina has remained primarily concerned with the rehabilitation and treatment of juvenile offenders and the best interests of those juveniles. See S.C. Code Ann. § 63-1-20 (2010) (outlining the policy in South Carolina regarding juveniles, indicating the most important strategy in the state is to concentrate on the prevention of children's problems, and containing no statement suggestion the purpose of the Children's Code is to punish or deter juvenile offenders); see also Harris, 307 S.C. at 353, 415 S.E.2d at 393 ("South Carolina, as parens patriae, protects and safeguards the welfare of its children. Family Court is vested with the exclusive jurisdiction to ensure that, in all matters concerning a child, the best interest of the child is the paramount consideration."). Notably, Appellant has not identified any legislative changes in South Carolina consistent with the changes held by the Kansas Supreme Court to have rendered the juvenile justice system in that state unconstitutional. Because South Carolina's family court system is far different from the system in Kansas that is focused on holding juvenile offenders responsible for their actions, the Kansas Supreme Court's decision in L.M. is not instructive or helpful in Appellant's case.

be used to enhance the sentence of a repeat offender. See S.C. Code Ann. § 63-3-370 (2010) ("In delinquency and neglect actions no court fee may be charged against and no witness fee is allowed to a party to a petition."); S.C. Code Ann. § 63-19-1410(C) (2010) ("No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63-19-1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment."); S.C. Code Ann. § 63-19-2010 (2010) ("The records of the court are confidential and open to inspection only by court order to persons having a legitimate interest in the records and to the extent necessary to respond to that legitimate interest."); see also State v. Ellis, 345 S.C. 175, 179-180, 547 S.E.2d 490, 492 (2001) (holding that juvenile adjudications cannot be used for sentencing enhancement purposes pursuant to recidivist offender statute). Furthermore, family court judges conducting delinquency hearings are vested with the discretion to employ a wide variety of rehabilitative measures in regard to a juvenile delinquent beyond the imposition of probation or commitment. See S.C. Code Ann. § 63-19-1410 (2010) (authorizing the family court judge to impose treatment and counseling, order the juvenile to participate in a community mentoring program, impose supervision or fines, or order restitution in addition to authorizing the family court judge to impose probation or commitment upon a juvenile offender). Accordingly, based on the numerous fundamental differences between the systems, the juvenile adjudication process in South Carolina is not of the same nature as the traditional criminal justice system and, as a result, is not unconstitutional pursuant to the United States Constitution.[4]

[4] In arguing that the juvenile adjudication process is of the same nature as the criminal prosecution of an

See McKeiver, 403 U.S. at 553 (White, J., concurring) ("For me there remains differences of substance between criminal and juvenile courts. They are quite enough for me to hold that a jury is not required in the latter. Of course, there are strong arguments that juries are desirable when dealing with the young, and States are free to use juries if they choose. They are also free if they extend criminal court safeguards to juvenile court adjudications, frankly to embrace condemnation, punishment, and deterrence as permissible and desirable attributes of the juvenile justice system. But the Due Process Clause neither compels nor invites them to do so.").

In conclusion, Appellant received everything he was entitled to receive pursuant to the South Carolina Constitution and the United States Constitution even though his juvenile delinquency case was not decided by a jury. See Kent v. United States, 383 U.S. 541, 562 (1962) (holding that juvenile adjudicatory proceedings are not held to conform to all of the requirements of a criminal trial but instructing that the proceedings must "measure up to the essentials of due process and fair treatment"); see also McKeiver, 403 U.S. at 543 ("[O]ne cannot say that in our legal system the jury is a necessary component of accurate factfinding."); Duncan, 391 U.S. at 150, n. 14 ("A criminal process which was fair and equitable but used no juries is easy to imagine."). Significantly, Appellant and other juveniles in South Carolina are not entitled to jury trials during juvenile delinquency proceedings because the juvenile adjudication process in South Carolina did not exist at the time of the adoption of the South Carolina Constitution and is not similar

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adult, Appellant noted in his motion seeking a jury trial that a juvenile offender could potentially be required to register as sex offender as a collateral consequence of a juvenile adjudication. (R. p. 53). However, the sex offender registration requirement is a legitimate non-punitive civil obligation. See In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (recognizing that sex offender registration is a non-punitive civil obligation). As a result, the fact that a juvenile might potentially have to register as a sex offender does not convert the juvenile adjudication process into a punitive criminal prosecution.

in nature to the criminal prosecution of adults in courts of general sessions.[5] For the foregoing reasons, South Carolina's juvenile adjudication process is not unconstitutional, and the family court judge committed no error in denying Appellant's motion for a jury trial during his juvenile delinquency hearing. See Lasure, 379 S.C. at 147, 666 S.E.2d at 229 ("A statute is presumed constitutional and will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt."). The family court judge's adjudication of delinquency and order should be affirmed.

[5] Notably, the majority of courts in the United States that have considered the issue have determined that juveniles are not entitled to jury trials during juvenile delinquency proceedings. See In re Scott K., 24 Cal. 3d 395, 402, 595 P.2d 105, 108 (Cal. 1979) ("In juvenile court proceedings, rights may not be asserted if they might disrupt unique features of the proceedings; for example, jury trial is not required."); In re L.C., 273 Ga. 886, 888, 548 S.E.2d 335, 337 (Ga. 2001) ("Although OCGA § 15-11-63 has some punitive aspects, one of its primary functions is the treatment and rehabilitation of the child and an adjudication under it is not a criminal conviction. For these reasons, we conclude that an order of restrictive custody under § 15-11-63 is not sufficiently like a criminal adjudication to invoke a constitutional right to a trial by jury."); A.S. v. State, 929 N.E.2d 881, 892 (Ind. Ct. App. 2010) (holding that juveniles were not entitled to jury trials during juvenile delinquency hearings pursuant to the Indiana Constitution because those hearing were equitable in nature); Dryden v. Commonwealth, 435 S.W.2d 457, 461 (Ky. 1968) ("[W]e hold that a jury trial is not a constitutionally guaranteed right in a juvenile proceeding. . . . Our opinion is that a jury trial has no place in a juvenile proceeding."); State ex rel. D.J., 817 So. 2d 26, 34 (La. 2002) ("[W]e follow the rulings from the United States Supreme Court, this Court, and the vast majority of other jurisdictions on this issue, and hold that a trial by jury in a juvenile proceeding is not constitutionally required under the applicable due process standard in juvenile proceedings."); State v. Ali, 806 N.W.2d 45, 53 (Minn. 2011) (holding that there is no constitutional right to a jury trial in juvenile court proceedings because such proceedings are not criminal prosecutions); In re Fisher, 468 S.W.2d 198, 202 (Mo. 1971) (holding that juveniles are not entitled to jury trials in delinquency cases pursuant to either the United States Constitution or the Missouri Constitution); In re D., 27 N.Y.2d 90, 94, 261 N.E.2d 627, 630 (N.Y. 1970) (concluding that jury trials in cases involving juvenile delinquents are "neither constitutionally required nor desirable"); In re J.V., 134 Ohio St. 3d 1, 5, 979 N.E.2d 1203, 1208 (Ohio 2012) (recognizing that juveniles do not enjoy a right to jury trials pursuant to the United States Constitution or the Ohio Constitution); In re J.F., 714 A.2d 467, 473 (Pa. Super. Ct. 1998) ("In view of the stated purposes of the amended Act, that the adjudication proceeding remains an informal protective proceeding, that the amendments to the Act do not undermine the goal of supervision, care and rehabilitation of juvenile offenders and that the dispositional alternatives available to the court remain rehabilitative and are not punitive in nature, we conclude that due process does not require that a juvenile be afforded the right to a jury trial at a juvenile adjudication proceeding."); In re Richard A., 946 A.2d 204, 212 (R.I. 2008) ("[T]his Court has determined that under the Rhode Island Constitution a juvenile who has been found to be a delinquent is not entitled, as a matter of constitutional right, to a jury trial."); State v. Chavez, 163 Wash. 2d 262, 272, 180 P.3d 1250, 1254 (Wash. 2008) (holding that even juveniles charged with serious violent offenses in juvenile court are not constitutionally entitled to jury trials due to the differences between the adult court system and juvenile court system).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the adjudication and order of the family court be affirmed.

Respectfully submitted,

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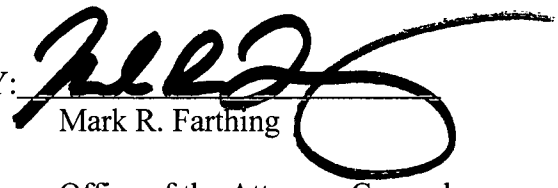
BY: 
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November 12, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Angela R. Taylor, Family Court Judge
Appellate Case No. 2012-213481

IN THE INTEREST OF STEPHEN W.,
A JUVENILE UNDER THE AGE OF SEVENTEEN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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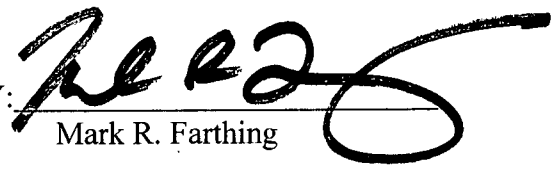
BY: 
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I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 12th day of November, 2013.

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