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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000711

WILLIAM LEE CARPENTER.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

PETITIONER’S REPLY BRIEF

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ARGUMENT

Petitioner disagrees with Respondent's claim that Petitioner has procedurally defaulted claims because they were "never raised" in his Petition for Rehearing. Respondent's Brief, p. 2. Respectfully, Respondent's position does not comport with SCAR, Rule 221 nor the relevant caselaw. Rule 221(a) states, in pertinent part: A petition for rehearing shall... state with particularity the points supposed to have been overlooked or misapprehended by the court." Petitioner cannot locate any criminal case law indicating that issues not explicitly re-argued in a petition for rehearing are thereby defaulted, and Respondent offers none. In fact, the caselaw that does exist suggests that petitions for rehearing should not be used to simply rehash arguments that were rejected below. *See Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("The purpose of a petition for rehearing is not to present points which the lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of a petition for rehearing to have the case tried in the appellate court a second time," *quoting Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)) *See also* Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999).

Counsel, instead of re-arguing issues that were already considered by the lower court and rejected, chose to call the Court of Appeals' attention to its failure to consider the prejudicial effect of both the internet searches and the disturbing photograph of a woman covered in feces collectively. In its opinion, it did not do so. Counsel also brought to the court's attention its failure to address Petitioner's

argument that the State had other means to educate the jury about coprophilia than by shocking the jury with an obscene photograph that lacked relevance to the main issue in the case. Counsel also brought to the Court of Appeals' attention that the solicitor in this case did not heed the admonition given by this Court in *State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010) that solicitors should refrain from "pushing the envelope on admissibility in order to gain a victory." In short, counsel sought to call the court's attention to points she believes were overlooked or misapprehended by the court. She did not seek to re-argue the entire case. Indeed, Respondent's proposed procedural default rule would result in a tremendous waste of the Court of Appeals' resources since more fulsome petitions which simply reargue lost points will be needlessly time and labor consuming and fail to advance any legitimate judicial interest.

Respectfully, counsel did not attempt to raise any new issues in the petition for rehearing (which of course would have been considered properly defaulted). The issues in this case were fairly presented to the Court of Appeals and it issued its opinion rejecting them. Counsel's petition for rehearing then argued the court overlooked and misapprehended points relevant to its denial of Petitioner's claims. Insisting on more than that elevates form over substance and will guarantee longer and more cumbersome petitions for rehearing going forward, and with very little contribution to the resolution of pertinent issues.

Respondent raises two additional procedural bars. First, Respondent argues that since Petitioner's Question III only addresses the obscene photograph and not

internet searches and enemas, this Court should therefore decline to address the issue. Respondent's Brief, p. 6, footnote 1. Then, Respondent argues that Petitioner did not raise a 404 challenge in Petitioner's Question II. As to Respondent's first argument, Petitioner disagrees. The issue of the internet searches is argued in the body of the argument. It is true that there is additional argument as to the photograph, but the issue is properly raised to this Court. As to Respondent's claim that the 404 issue is not properly preserved-- Respondent raised this issue to the Court of Appeals which properly rejected it when it addressed the issue in its opinion. To reiterate the argument Petitioner made below in response to this same objection by Respondent before the Court of Appeals: Respondent's brief fails to note that these issues were exhaustively argued during a pre-trial hearing on September 6, 2018. Supplemental Appendix, pp. 26-38. Additionally, trial counsel filed written motions specifically raising a 404(b) objection to the admission of the photographs, as well as motions to prevent the State from discussing appellant's sexual preferences altogether. At the conclusion of the hearing on September 6, 2018, the trial court judge indicated that the material was admissible, and that she had made her ruling based on both 404(b) grounds and 403. Supplemental Appendix, p. 38.

When the photographic evidence was admitted during trial, counsel renewed his objection. The State argues that because counsel mentioned relevance and Rule 403 but did not mention 404(b) that he therefore abandoned that claim. That is an ambiguous reading of the objection. Trial counsel stated: "Your Honor, we previously objected for relevance and—under Rule 403 and *renew those previous grounds.*" App.

164, ll. 5-7 (emphasis added). The passage reads as though counsel intended to communicate that ground raised before and argued extensively earlier were on-going. It is clear—since this was a central issue in the case—that trial counsel did not abandon this claim. Counsel’s objection was as specific as our rules require. To preserve an issue for appeal, specific grounds in support of the objection must be clearly stated. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). The objection must be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge. *Id.* The trial court was well-familiar with trial counsel’s objections as evidenced by her review of his written motion and the lengthy pre-trial hearing. Trial counsel renewed the objections at the time the evidence was sought to be admitted. The Court of Appeals found the issue properly preserved and addressed the claim on its merits. This Court should reject Respondent's argument there is a procedural issue with the claim.

CONCLUSION

This Court should reverse Petitioner’s convictions and remand for a new trial.

Respectfully submitted,

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