STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-210566

THE STATE,

Respondent,

vs.

WILLIAM LAUREANO,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

ARGUMENT 9

Any issue regarding the admission of evidence and testimony related to the grounds for Appellant's wife's divorce from Appellant was not properly preserved for appellate review because defense counsel did not raise any objection to the admission of that evidence and testimony during trial but, instead, elicited testimony on the grounds for the divorce and introduced a copy of the divorce decree as an exhibit. Likewise, any issue regarding the admission of testimony establishing that Appellant was released from jail prior to the incident was not preserved for appellate review because the trial judge sustained defense counsel's objection to that testimony, the trial judge immediately instructed the jury to disregard that testimony, and defense counsel did not object to the sufficiency of the trial judge's curative measures. 9

CONCLUSION 14

TABLE OF AUTHORITIES

Cases:

Doe v. S.B.M., 327 S.C. 352, 488 S.E.2d 878 (Ct. App. 1997). 10

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). 10

In re Walter M., 386 S.C. 387, 688 S.E.2d 133 (Ct. App. 2009). 10

State v. Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003). 10

State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). 12

State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005). 11, 12

State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). 12

State v. Fleming, 254 S.C. 415, 175 S.E.2d 624 (1970). 10

State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). 10

State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005). 10

State v. Martin, 155 S.C. 495, 152 S.E. 738 (1930). 13

State v. Morris, 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991). 13

State v. Robinson, 238 S.C. 140, 119 S.E.2d 671 (1961). 13

State v. Sinclair, 275 S.C. 608, 274 S.E.2d 411 (1981). 11

State v. Singleton, 284 S.C. 388, 326 S.E.2d 153 (1985). 12

State v. Thompson, 304 S.C. 85, 403 S.E.2d 139 (Ct. App. 1991). 11

State v. Thompson, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003). 13

State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). 13

State v. Washington, 315 S.C. 108, 432 S.E2d 448 (1993). 12

State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006). 13

STATEMENT OF ISSUE ON APPEAL

Any issue regarding the admission of evidence and testimony related to the grounds for Appellant's wife's divorce from Appellant was not properly preserved for appellate review because defense counsel did not raise any objection to the admission of that evidence and testimony during trial but, instead, elicited testimony on the grounds for the divorce and introduced a copy of the divorce decree as an exhibit. Likewise, any issue regarding the admission of testimony establishing that Appellant was released from jail prior to the incident was not preserved for appellate review because the trial judge sustained defense counsel's objection to that testimony, the trial judge immediately instructed the jury to disregard that testimony, and defense counsel did not object to the sufficiency of the trial judge's curative measures.

STATEMENT OF THE CASE

In February of 2010, Appellant William Laureano was arrested following an investigation into a domestic incident. In June of 2010, the Anderson County grand jury indicted Appellant for one count of criminal domestic violence of a high and aggravated nature. On March 14, 2012, a jury trial was commenced in the Anderson County court of general sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. During trial, the trial judge held Appellant in contempt for attempting to make contact with the jurors. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to an eight-year term of imprisonment suspended upon the service of four years of imprisonment and five years of probation for the criminal domestic violence of a high and aggravated nature conviction. Additionally, the trial judge sentenced Appellant to a consecutive ninety-day term of imprisonment for contempt of court. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In early 2010, Appellant William Laureano and his wife, Miriam Laureano ("Wife"), lived in Easley, South Carolina, with their son ("Son"), their daughter ("Daughter"), and their daughter's two young children. (Tr. pp. 61-62; p. 98; pp. 139-140). During that time period, Appellant and Wife continuously argued with one another. (Tr. p. 62).

On the morning of February 2, 2010, Appellant began arguing with Wife as she showered and prepared to go get milk. (Tr. pp. 61-63). When she finished her shower, Wife got dressed and discovered that her wallet, keys, and phone were missing. (Tr. p. 63). As she searched for her belongings, she asked Appellant for her keys. (Tr. p. 63). Appellant responded by cursing at her and telling her that he would not give them to her. (Tr. p. 63). Wife then began looking for her phone and located it between the bed and a wooden post. (Tr. p. 63). Once she found her phone, Appellant attempted to take it from her. (Tr. p. 63). When he was unable to do so, he shattered a lamp against the bedroom door. (Tr. pp. 63-64; p. 66). Appellant then retrieved a loaded .357-caliber revolver from the nightstand, held it in Wife's face, and told her he was going to kill her, Daughter, and the police officers who came to arrest him.[1] (Tr. pp. 64-65; p. 139). Following that, he pulled off one of Wife's shoes and threw it across the room along with some of Wife's other belongings. (Tr. p. 65).

Frightened by Appellant's actions and concerned that her grandchildren would hurt themselves on the debris from the shattered lamp, Wife began to clean up the lamp and other items that Appellant had thrown around the room. (Tr. p. 65). Wife then retrieved her shoe and began to put it back on. (Tr. p. 65). When she did so, Appellant

[1] Appellant was not legally allowed to possess a firearm at that time. (Tr. p. 159).

pushed her several times and caused her to fall down and hit her back on the bedframe.[2] (Tr. p. 65; p. 67). Wife responded by getting up and pushing Appellant back. (Tr. p. 65). Appellant then slapped her twice in the face "real hard," grabbed something from the table, and stormed out of the bedroom. (Tr. p. 65; p. 67).

Shocked by Appellant's actions, Wife sat on the bed and cried. (Tr. p. 67). She then got her keys, left the residence with her grandchildren and Daughter, drove to a church, and parked behind it. (Tr. pp. 68-69; pp. 145-146). Once they were safely hidden behind the church, Daughter called 911 and reported the incident to law enforcement. (Tr. p. 146).

Following Daughter's call, Deputy Dustin Williams of the Anderson County Sheriff's Office was dispatched to the church and met with Wife, who appeared to be terrified. (Tr. pp. 160-161). Wife informed the deputy that she had been in a physical altercation in her home and was threatened with a gun. (Tr. p. 161). Deputy Williams then went to Wife's residence, carefully approached it with another officer, and called out to Appellant through the open front door. (Tr. pp. 162-163). However, no one inside responded. (Tr. p. 163). Deputy Williams and the other officer then backed away to wait for additional units, and someone inside of the residence closed the door and turned off the lights. (Tr. p. 163).

Thereafter, the S.W.A.T. team responded to the scene, and Investigator Todd Caron of the Anderson County Sheriff's Office made contact with Appellant using the phone. (Tr. pp. 168-172). During their conversation, Appellant admitted he had a verbal altercation with Wife, acknowledged that he took her keys, and denied physically harming her. (Tr. p .172). The S.W.A.T. team then remained at Appellant's residence

[2] During trial, Wife testified she had scoliosis and Appellant was aware of her condition. (Tr. p. 66).

for several more hours until Appellant eventually surrendered and was arrested for criminal domestic violence of a high and aggravated nature. (Tr. p. 164; pp. 172-173).

Following Appellant's arrest, officers searched the residence. (Tr. p. 179). During the search, they discovered several firearm holsters, numerous types of ammunition, a shotgun hidden underneath a futon, and multiple pistols hidden underneath the bottom panel of a dresser. (Tr. p. 179). However, the officers did not find the gun that Appellant used during the incident. (Tr. p. 72). Wife then returned to the residence and began cleaning up with Daughter. (Tr. p. 73). As they cleaned, Daughter discovered the loaded gun that Appellant used in the incident hidden in a shoe inside of a shoebox with clothes piled on top of it. (Tr. p. 73). Wife then set the gun aside and notified law enforcement of the discovery. (Tr. p. 74).

Subsequently, Appellant was indicted for criminal domestic violence of a high and aggravated nature, and he proceeded to trial. (Tr. p. 48; Indictment). At the outset of trial, Appellant moved for the trial judge to instruct the solicitor and the witnesses not to mention Appellant's prior criminal domestic violence charge from 2010.[3] (Tr. p. 14). In response, the solicitor indicated she did not intend to introduce evidence of the prior charge and would not do so unless Appellant opened the door to it or took the stand. (Tr. p. 15). Following the arguments of counsel, the trial judge granted Appellant's motion but cautioned the parties that the prior charge could be an issue if Appellant took the stand or if the door was opened to it. (Tr. p. 15). The trial judge then presented preliminary instructions to the jury, and the solicitor and defense counsel made their opening statements. (Tr. pp. 46-60). During defense counsel's opening statement,

[3] During the sentencing proceedings, the details of Appellant's prior convictions were discussed. (Tr. p. 281). The solicitor and defense counsel confirmed Appellant previously pled guilty to one count of criminal domestic violence and two counts of assault and battery in 2009 as opposed to 2010. (Tr. p. 281; p. 284). Wife indicated she was **not** Appellant's victim in regard to those prior charges. (Tr. p. 281).

defense counsel asserted that Wife wanted Appellant out of the home and was able to get him out and get a divorce. (Tr. pp. 59-60). However, defense counsel alleged to the jury that Appellant had not actually threatened or physically harmed wife. (Tr. p. 60).

Thereafter, as the trial progressed, Wife recounted the details of the incident involving Appellant. (Tr. pp. 62-69). Then, on cross-examination, defense counsel asked Wife about when she obtained a divorce from Appellant, and she responded that "it was five months after he went in." (Tr. pp. 93-94). The following exchange then occurred:

> **[Defense Counsel]**: Let me hand you Defense Exhibit # 1, which is a certified copy of the certificate for a divorce. Do you recognize that?[4]
>
> **[Wife]**: Yes.
>
> **[Defense Counsel]**: And that is the decree for divorce where you are divorced from [Appellant]? . . . It says in the decree that ---
>
> **[Trial Judge]**: Before you publish that, any objection to that, [Solicitor]?
>
> **[Solicitor]**: No, sir.
>
> **[Trial Judge]**: Admitted without objection.
>
> **[Defense Counsel]**: Thank you, Your Honor.

(Tr. p. 94). Defense counsel then began discussing the grounds for the divorce with Wife, and the following exchange occurred:

> **[Defense Counsel]**: Do you remember what the grounds were for this divorce?
>
> **[Wife]**: I think it was CDV, battery or ---
>
> **[Defense Counsel]**: Does physical cruelty ring a bell?
>
> **[Wife]**: Yes.

---

[4] Defense Exhibit # 1 was a copy of the divorce decree issued after Wife sought a divorce from Appellant on the grounds of physical cruelty. (Defense Exhibit # 1, p. 1). In the decree, the family court judge made a factual finding that Appellant engaged in acts of physical cruelty towards Wife. (Defense Exhibit # 1, p. 2). However, the decree contained no details regarding those acts of physical cruelty. (Defense Exhibit # 1, pp. 1-3).

(Tr. p. 95). As the cross-examination of Wife continued, defense counsel questioned Wife about the fact that she was able to obtain a divorce so quickly by alleging physical cruelty. (Tr. p. 95). Thereafter, defense counsel asked Wife about when she and Appellant began arguing prior to the incident, and Wife responded: "Well, he started as soon as he got out of jail the first time." (Tr. p. 96). Following Wife's response, defense counsel immediately objected, and the trial judge issued a curative instruction to the jury, stating:

> Ladies and Gentlemen, anything that happened before this incident, I'm telling you to disregard that. That's not what this case is about. This case is about the current charges, the facts and circumstances surrounding these charges and so I order that stricken from the record.

(Tr. p. 96). Defense counsel then thanked the trial judge for the curative instruction. (Tr. p. 97).

Subsequently, Daughter and the law enforcement officers who responded to the scene testified about the incident and Appellant's arrest, and the State rested its case.[5] (Tr. pp. 140-146; pp. 160-164; pp. 169-173; pp. 179-181; p. 183). After the State rested its case, Son testified on behalf of the defense. (Tr. p. 199). During his testimony, Son indicated he was in his bedroom smoking marijuana with a friend on the day of the incident and could not remember if his parents were arguing on that day. (Tr. pp. 200-202; p. 213). However, Son stated his mother left around the middle of the afternoon and he saw two officers approached his home a few hours later. (Tr. pp. 204-206). Upon seeing the officers, Son testified he went to speak with Appellant and Appellant acknowledged that the officers were probably there for him. (Tr. p. 206). Son stated he

[5] During Daughter's testimony, she confirmed she heard the argument between Wife and Appellant and heard Appellant threaten Wife. (Tr. pp. 140-142).

then remained in the house with Appellant for several more hours so he could spend time with Appellant before Appellant was taken away. (Tr. p. 207).

Following Son's testimony, the defense rested its case, and the parties presented their closing arguments to the jury. (Tr. pp. 228-244). During defense counsel's closing argument, defense counsel urged the jury to consider Wife's credibility and contended that Wife wanted a divorce from Appellant, could only get a divorce quickly by alleging physical cruelty, and, thus, made that exact allegation. (Tr. pp. 232-234). The trial judge then instructed the jury on the applicable law, and the jury began its deliberations. (Tr. pp. 244-262). Subsequently, during its deliberations, the jury asked to be reinstructed on criminal domestic violence and criminal domestic violence of a high and aggravated nature. (Tr. p. 273). When the jury returned to the courtroom to receive the requested instructions, Appellant attempted to show a message to the jury using a notepad. (Tr. p. 273). In response, the trial judge held Appellant in contempt of court. (Tr. p. 277). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (Tr. p. 278). The trial judge then sentenced Appellant to an eight-year term of imprisonment suspended upon the service of four years of imprisonment and five years of probation for criminal domestic violence of a high and aggravated nature and a consecutive ninety-day term of imprisonment for contempt of court. (Tr. pp. 295-296; p. 299).

ARGUMENT

Any issue regarding the admission of evidence and testimony related to the grounds for Appellant's wife's divorce from Appellant was not properly preserved for appellate review because defense counsel did not raise any objection to the admission of that evidence and testimony during trial but, instead, elicited testimony on the grounds for the divorce and introduced a copy of the divorce decree as an exhibit. Likewise, any issue regarding the admission of testimony establishing that Appellant was released from jail prior to the incident was not preserved for appellate review because the trial judge sustained defense counsel's objection to that testimony, the trial judge immediately instructed the jury to disregard that testimony, and defense counsel did not object to the sufficiency of the trial judge's curative measures.

Appellant contends "[t]he trial judge erred in allowing the jury to hear testimony that appellant's wife divorced appellant on the ground of physical cruelty due to his prior criminal domestic violence conviction while appellant was on trial for the charge of aggravated criminal domestic violence[.]" (App. Br. p. 3). In support of that contention, Appellant maintains that the jury was improperly informed of his prior criminal domestic violence conviction, which he asserts denied him his right to a fair trial. (App. Br. pp. 7-9). Notwithstanding the fact that no evidence indicating Appellant was previously convicted of criminal domestic violence was presented during trial, any issue regarding the evidence and testimony that Appellant is now challenging on appeal was not properly preserved for appellate review. Regarding the evidence and testimony related to the grounds for Wife's divorce from Appellant, defense counsel did not raise any objection to the admission of that testimony or evidence during trial. Instead, defense counsel **elicited it** and **introduced it** as part of Appellant's defense. As a result, Appellant is precluded from complaining about an alleged error that resulted from the admission of testimony and evidence his own defense counsel elicited and introduced. Regarding the testimony related to Appellant's release from jail prior to the incident, defense counsel's objection to the admission of that testimony was sustained. The trial judge then instructed the jury

to disregard the testimony, and defense counsel thanked the trial judge for his ruling without raising any additional objections or challenging the sufficiency of the trial judge's curative measures. Accordingly, because defense counsel received all of the relief he requested from the trial judge and did not object to the sufficiency of the trial judge's curative instruction, any error in the admission of the challenged testimony was deemed cured and no further issue was preserved for appellate review. Appellant's conviction should be affirmed.

"Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review." In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009). In order to properly preserve an issue for appellate review, a defendant must make a contemporaneous objection to a perceived error during trial. State v. Blalock, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); see also Doe v. S.B.M., 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997) ("The duty is on the litigant to make a timely objection in order to preserve the right of review."). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal."). The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000).

Likewise, if a defendant **does** properly raise an issue during trial through a timely objection and the objection is sustained, no issue remains for appellate review unless the defendant requests some relief from the trial judge that is **not** granted. See State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) ("Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide."); see also State v. Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct. App. 1991) ("On appeal, Thompson contends the trial judge erred in allowing hearsay identification testimony. The record reveals, however, the trial judge sustained defense counsel's objections to the testimony of which appellant complains. No motion to strike, no request for instruction that the jury disregard the testimony, nor a motion for a new trial based on the admission of the testimony was made at trial. Appellant has failed to preserve this issue. He obtained the only relief he sought and this court, therefore, has no issue to decide."). Similarly, a defendant cannot raise an issue on appeal related to an error his own conduct induced. State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005).

In the case sub judice, Appellant contends on appeal that the trial judge committed reversible error by allowing the jury to hear testimony and evidence related to the grounds for Wife's divorce from him and to his release from jail prior to the incident. Appellant maintains that the testimony and evidence informed the jury of his prior conviction for criminal domestic violence. Notwithstanding the fact that no evidence indicating that Appellant was previously convicted of criminal domestic violence was ever introduced during trial, any issue with the admission of the testimony and evidence that Appellant is now challenging on appeal was not preserved for appellate review.

Regarding the testimony and evidence related to the grounds for Wife's divorce from Appellant, defense counsel elicited testimony from Wife that she sought a divorce

on the grounds of physical cruelty shortly **after** the incident with Appellant, which involved threats and physical cruelty, and introduced a copy of the divorce decree to confirm that Wife obtained a divorce on that basis.[6] Because that evidence and testimony was introduced by defense counsel, Appellant cannot permissibly complain about the admission of that evidence and testimony on appeal. See State v. Washington, 315 S.C. 108, 110, 432 S.E2d 448, 449 (1993) ("Appellant may not now be heard to complain of the admission of evidence elicited by his own counsel."); see also Carlson, 363 S.C. at 595, 611 S.E.2d at 287 ("A party cannot complain of an error which his own conduct induced."); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal."). Accordingly, any issue related to the admission of the evidence and testimony regarding the grounds for Wife's divorce from Appellant was not properly preserved for appellate review.

Regarding the testimony related to Appellant's release from jail prior to the incident, defense counsel contemporaneously objected to the testimony when it was introduced, and the trial judge **sustained** defense counsel's objection. Thereafter, the trial judge instructed the jury to disregard the testimony and struck it from the record, which cured any error that could have resulted from the admission of that testimony.[7]

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[6] The apparent purpose of the admission of that testimony and evidence was to impeach Wife's credibility, which was a key issue in Appellant's case, by establishing that she had a motive for fabricating the allegations against Appellant, and defense counsel used his closing arguments to call the jury's attention to the fact that Wife was only able to obtain her divorce from Appellant as quickly as she did by alleging that he engaged in acts of physical cruelty. (Tr. pp. 232-234).

[7] Furthermore, even assuming that the trial judge had not cured the error, the brief reference to Appellant being released from jail in connection to some unspecified offense was far too vague to be sufficiently prejudicial to warrant the grant of a mistrial or the reversal of Appellant's conviction on appeal. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding no prejudice resulted from the admission of testimony establishing that law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding

See State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission."). Following the issuance of the trial judge's curative instruction, defense did not raise any objection to the sufficiency of the instruction or ask the trial judge to take any additional actions. See State v. Morris, 307 S.C. 480, 486, 415 S.E.2d 819, 823 (Ct. App. 1991) ("No issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial."); see also State v. Martin, 155 S.C. 495, 502, 152 S.E. 738, 741 (1930) ("If the appellants wished the judge to say something further to the jury about the testimony, they should have at least requested him to say something."). Instead, defense counsel simply thanked the trial judge for his ruling. As a result, no issue was preserved regarding the testimony that was stricken from the record following defense counsel's objection.

On appeal, Appellant seeks to have his conviction reversed based on the admission of testimony and evidence that was either elicited and introduced by defense counsel in Appellant's defense or stricken from the record. Under those circumstances, no issue has properly been preserved for appellate review, and there is no proper basis upon which to reverse Appellant's conviction. Appellant's conviction should be affirmed.

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an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676 (1961) (finding testimony by a witness that Robinson told him that he was on the way to the "probition office" did not create an inference that Robinson had been convicted of another crime), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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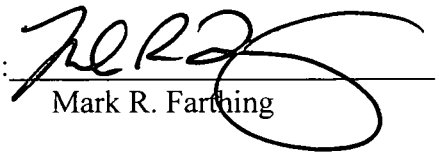
BY: 
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ATTORNEYS FOR RESPONDENT

August 28, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-210566

THE STATE,

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vs.

WILLIAM LAUREANO,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) Trial Transcript, Pages 14-15, 46-113, 139-183, 198-217, 228-262, 273, and 277-299;

(2) Indictment;

(3) Sentencing Sheet; and

(4) Defense Ex. # 1 (Divorce Decree).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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Appellant.

PROOF OF SERVICE

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

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 28th day of August, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
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