RECEIVED
Aug 14 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellant Case No. 2023-000218

THE STATE, RESPONDENT

v.

RENO RODREIGUS BLAKELY, APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Randy E. Newman, Jr.
Solicitor, Sixth Judicial Circuit
P.O. Box 607
Lancaster, South Carolina 29721
(803) 416-9367

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the court abuse it discretion by excluding the statement made by Antonio "Tony" Mickle Appellant's codefendant, during his recorded interview with police that Appellant did not have a gun during the shooting, since the statement, which was made in conjunction with Tony's admission that he (Tony) had a 9 mm gun and fired his gun five times, was admissible pursuant to Rule 804(b)(3), SCRE, as a statement against penal interest?

2. Did the trial court err by sentencing Appellant to a consecutive term of five years imprisonment for possession of a weapon during the commission of a violent crime where the court erroneously found the sentence had to be served consecutively to the sentence imposed for the violent crime since pursuant to S.C. Code Ann. §16-23-490 (B) the court had discretion to order the five-year sentence to be served consecutively or concurrently?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in not allowing a statement from Appellant's co-defendant Tony Mickle during his confession stating that Appellant did not have a gun because it was not a statement against interest and in the totality of the circumstances not reliable? And if it was an error, should it be considered harmless due to the doctrine of the "hand of one is the hand of all?"

2. Did the court err in sentencing the Appellant to a consecutive sentence when it is not an illegal sentence, but the court was informed by the Solicitor that the sentence had to be consecutive, a misinterpretation of the law never objected to by trial counsel, therefore not preserving this issue for appeal?

STATEMENT OF THE CASE

On August 8, 2020, Keisha McDow was having a birthday party for her nineteen-year-old son Deavion. (R. 36 l. 14-20). Her boyfriend Antonio "Tony" Mickle (Tony) was in attendance along with Reno Rodreigus Blakely (Appellant). During the party Appellant left to get cigarettes. (R 41 l. 18-23). After the Appellant left, Keisha got into an argument with Tony that began in the house then went out into the yard. (R. 42 l. 19-21). Once in the yard Tony and the victim Ethan Dailey (victim) started rapping. (R. 43 l. 4-7). The rapping got heated, so Tony and the victim started fighting. (R. p. 43 l. 10-14). Keisha tried to break up the fight and they all ended up on the ground. (R. 43 l. 16-19). While on the ground fighting Tony attempted to pull out a gun from a holster on his hip. Keisha and Deavion held Tony's hand down so he would be unable to pull out the gun. (R. 46 l. 9-11). Someone then pulled the victim off Tony; the victim then left the party. (R. 45 l. 12-17).

After the fight ended, Tony was still upset and was saying that he could hurt somebody. (R. 47 l. 7-8). Tony was also saying that he could kill the victim because the fight did not make sense. (R. 48 l. 1-3). Everyone was talking to Tony trying to calm him down, and he finally did calm down. (R. 70 l. 11-12). When the Appellant returned from the store, he found out that Tony got into a fight with the victim. Appellant got into Tony's ear and Tony once again became angry. (R. 71 l. 10-14). Appellant and Tony started yelling "let's go get him," they got into Tony's car with the Appellant driving and left. (R. 49 l. 12-20; 50 l. 9-10). They were gone for about fifteen or twenty minutes, they then returned with more people. (R. 50 l. 19-20; 51 l. 16-18). Tony and Appellant brought back Appellant's nephew, son, mother and sister. (R. 51 l. 22-24). Appellant approached everyone at the party trying to get them to tell him where the victim was. He told them, "y'all motherfuckers going to tell me where they at." (R. 56 l. 17-23). When they told them they

did not know, they all then left the scene. Appellant's mother and sister went in a different direction than everyone else. (R. 53 l. 21-22).

Larry Truesdale a good friend of the victim, was at the party until he left to check on his wife who was still getting ready. (R. 343 l. 21-25). The fight occurred after Larry left to check on his wife. Larry went back to the party to check on the victim when he saw him walking down the road. Larry stopped him and the victim told him "They jumped me." (R. 345 l. 9-13). Larry took the victim back to his house, then Larry and his wife Lakisha went back to the house party to retrieve the victim's cell phone. (R. 279 l. 8-9). When Larry and Lakisha got back to their house, sitting in their yard was the victim along with another friend Gary Roddy. Larry went into the house while the other three remained in the front yard. Cars then pulled up beside Larry's driveway. Inside one of these cars was Tony with the Appellant. (R. 281 l. 6-8). They got out of the car and began yelling "Where's he at?" (R. 282 l. 15-16). When they arrived Lakisha and Gary ran into the house, Larry was trying to get outside but Lakisha pushed him back in the house telling him to stay inside because "they got guns." (R. 337 l. 19-23). During trial Lakisha testified that she saw the Appellant with a gun and one of the "younger guys" with a long gun. (R. 284 l. 5-8). Larry also testified that from his porch he saw Appellant with a gun behind his back as though he was "hiding it." (R. 340 l. 14-16). Larry stated that he saw two guys walk up to the victim, one being the Appellant, both carrying handguns. (R. 341 l. 21-25).

Tony and the Appellant walked up to the victim who had his arms up. The victim told them "Hey it's me. Yeah, I'm the one that was fighting." (R. 339 l. 1-3). While inside looking towards the front porch, Larry, Lakisha and Gary heard the sound of shots outside. (R. 285 l. 14-15). That is when Larry phoned 911. When law enforcement arrived, they found the victim lying face down unresponsive with Larry standing beside his body. Law enforcement officers spoke to Larry and

he gave them Tony's name. (R. 22 l. 10; R. 25 l. 3). EMS arrived and pronounced the victim dead at the scene. (R. 26 l. 1-4; R. 31 l. 17-21). At the scene officers found five 9 mm cartridge casings, and a .223 caliber cartridge. (R. 133 l. 5-21; 121 l. 10).

Since law enforcement had the name of Tony Mickle, they were able to obtain a search warrant for his vehicle and his girlfriend's house. During the search of his vehicle, officers found a black holster, and in the glove box 9 mm ammunition. Law enforcement also found in the interior door panel a 9 mm cartridge casing. (R. 153 l. 11-13; R. 154 l. 25 – 155 l. 2). In the back seat of the vehicle officers found Appellant's pants with his driver's license. (R. 153 l. 11-13). In the house they were able to find in a chest in the bedroom a box of ammunition for a .223 caliber gun. (R. 159 l. 24 – 160 l. 7).

Officers went to Tony's home where they found his mother and sister. Officers inquired about the whereabouts of Tony, and they told them he was not home. Officers thought they were lying so they decided to get a search warrant. (R. 324 l. 17-21). During the search of Tony's house, officers found Tony, Appellant, Kendarious Mickle, and Damarkus Nivens. (R. 526 l. 8-10). Tony was arrested for the offense of murder, the Appellant at that time was arrested for accessory before the fact of murder. (R. 527 l. 9-11). After this search Larry and Lakisha came to the police station where they gave statements implicating both Tony and Appellant. They both also identified the Appellant in a photo lineup. After the interviews with these witnesses and the positive identifications, Appellant was charged with the offense of murder.

On January 19, 2023, Appellant was indicted by the Lancaster Grand Jury for the offenses of murder and possession of a weapon during the commission of a violent crime. On January 30, 2023, Appellant's case was called for trial before the Honorable R. Lawton McIntosh. Present before the trial court was Appellant along with his attorneys Tracy and Russell Racine.

Representing the state of South Carolina were Assistant Solicitors Luck Campbell and Nicole Wine of the Sixth Circuit Solicitor's Office.

During trial Agent Samuel Steward of the South Carolina Law Enforcement Division (SLED) testified. Agent Steward was qualified as an expert in DNA analysis. (R. 424 l. 4-6). A cigarette butt that crime scene investigators found on the scene was collected and tested for DNA. Agent Steward testified that the results were that it was 1.2 octillion times more likely that the Appellant contributed to this profile than an unidentified, unrelated individual. (R. 436 l. 4-9).

Agent Megan Fletcher another SLED agent also testified. Agent Fletcher was qualified as an expert in trace evidence. (R. 449 l. 4-6). Prior to arrest a gunpowder residue test was conducted on the Appellant and later on his clothing. Agent Fletcher testified that as a result of these tests gunshot residue was found on the Appellant's right shoe, left shoe, right and left side of his jean shorts. (R. 466 l. 5-11). Agent Fletcher also testified that you could get gunshot residue from being in the vicinity of a discharged firearm, or coming in contact with someone that has gunshot primer on him. (R. 460 l. 2-9). Agent Fletcher believed that the Appellant was either around a gun that was fired or that gun that was fired was transferred to his hand. (R. 460 l. 14-17).

Forensic pathologist Dr. Ellen Riemer also testified. She was qualified as an expert in the field of forensic pathology. (R. 233 l. 3-22). Dr. Riemer performed the autopsy on the victim on August 12, 2020. Dr. Riemer found eight defects on the victims' body, four entry and four exit wounds. (R. 238 l. 5-6). There was a total of four gunshot wounds, one on the left side of his chest; left side of his abdomen; right side of his chest; and right side of the abdomen. (R. 238 l. 15-20). The first gunshot went into the upper side of the left chest and out the left side of the back. (R. 245 l. 15-21). The second gunshot went to left side of the abdomen through the diaphragm and liver before exiting out the right abdomen area. (R. 246 l. 7-19). The third gunshot went in the right

chest through the right lung and exited out the right lateral chest wall; the fourth gunshot went in at the lower belly right beneath the belly button and exited out of the right side of the back. (R. 247 l. 22 – 248 l. 2). Dr. Riemer determined that the cause of death was multiple gunshot wounds. (R. 249 2-4).

After three days of testimony, a jury of his peers found the Appellant guilty of murder; possession of a weapon during the commission a violent crime; and possession of a weapon by a person convicted of a crime of violence. (R. 737 l. 17 – 738 l. 3). During sentencing the court asked Assistant Solicitor Campbell if the offense of possession of a weapon during a violent crime carries a mandatory consecutive sentence. (R. 740 l. 6-8) Ms. Campbell informed the trial court that she thought it was a mandatory consecutive sentence if the sentences are not life or death. (R. 740 l. 9-10). The trial court informed everyone that was what he believed to be correct. (R. 740 l. 11). The trial court then proceeded to sentence the Appellant to a forty-year period of incarceration for the offense of murder, running the possession of a weapon during the commission of a violent crime consecutively to the murder conviction. (R. 741 l . 11-16).

ARGUMENT

1. **The trial court did not err in not allowing a statement from co-defendant Antionio "Tony" Mickle stating that Appellant did not pull the trigger, because it was not a statement against interest, and looking at the totality of the circumstances it was not credible. However, if the trial court was in error in not allowing this statement into evidence it should be considered harmless due to accomplice liability.**

Relevant Facts

During trial, Investigator Sean Leonard was called to testify. Investigator Leonard questioned Tony after he was arrested. After being read his *Miranda* rights Tony told Investigator Leonard that he owned a 9 mm that and he pulled out this gun and fired it five times. (R. 654 l. 16-20). Tony also told investigator Leonard that he had the gun, and the Appellant never had a gun.

(R. 638 l. 22-23). The Appellant moved to have that statement introduced into evidence. During a brief hearing arguments were made by both parties. The trial judge decided most of the statement was inculpatory, therefore, allowed under Rule 803(b)(3), SCRE. However, the statement about the Appellant was not against his penal interest so it cannot be introduced into evidence. (R. p. 642 l. 3-6, p. 643 l. 8-13).

Investigator Leonard testified that during his questioning, Tony told him that he fired the gun five times. (R. 654 l. 17-20). Tony also told Investigator Leonard that he acted alone. However, Investigator Leornard testified that after leaving Tony alone in the interrogation room, he mumbled, "I ain't pull the trigger." (R. p. 656 l. 4).

Standard of Review

In a criminal case the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King.* 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). To bring evidence within the 804(b)(3) exception, Defendant must show that the proffered statements were made by an unavailable declarant, that the statements exposed the declarant to criminal liability, and that corroborating circumstances clearly indicate the trustworthiness of the statements. *State v. McDonald,* 343 S.C. 319, 325, 540 S.E.2d 464, 466 (2000). Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons,* 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018). Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental

to the execution of common design and purpose. *State v. Thompson,* 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2017).

Discussion

The Appellant argues that the trial court erred in not allowing into evidence a statement made by his co-defendant stating that Appellant did not pull the trigger. The co-defendant confessed that it was him that shot the victim, and it was a "one man job." The Appellant argues that this statement should have come into evidence pursuant to Rule 804 (b)(3) of the South Carolina Rules of Evidence which states:

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Rule 804(b)(3), SCRE.

The Appellant argues that the trial judge erred in not allowing this statement into evidence. The Court decided not to allow it into evidence due to the fact that the portion that spoke of the Appellant not shooting and not having a gun was not a statement against penal interest. The trial court also believed that the statement was not reliable due to the fact all of the defendants were either related or friends.

The trial court applied the United States Supreme Court decision of *Williamson v. United States,* 512 U.S. 594, 114 S.Ct. 2431 (1994). In *Williamson,* the United States Supreme Court decided that "the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally

self-inculpatory. *Williamson,* 512 U.S. at 600-601, 114 S.Ct. at 2435. The United States Supreme Court also stated in *Williamson,*

> The principle behind the Rule, so far as it is discernible from the text, points clearly to the narrower reading, so that only those remarks within a confession that are individually self-inculpatory are covered. The Rule is founded on the commonsense notion that reasonable people, even those who are not especially honest, tend not to make self-inculpatory statements unless they believe them to be true. This notion does not extend to a confession's non-self-inculpatory parts – to parts that are actually self-exculpatory, or to collateral statements, even ones that are neutral as to interest.

Id., 512 U.S. at 595, 114 S.Ct. at 2432.

The statement that the Appellant thought was unlawfully not allowed into evidence was not a statement against the penal interest of the co-defendant. The trial court found that the statement regarding him as the shooter fell under 804(b)(3); however, the portion that excluded the Appellant was not self-inculpatory, so not allowed under this rule. The trial court also must look at the totality of the circumstances when making this decision. The question under Rule 804(b)(3) is always whether the statement was sufficiently against the declarant's penal interest "that a reasonable person in the declarant's position would not have made the statement unless believing it to be true," and this question can only be answered in light of all the surrounding circumstances. *Id.,* 512 U.S. at 604, 114 S.Ct. at 2437. During his statement to police Tony told investigator Leonard that he shot the victim with his 9 mm that would be found under his bed. (R. 654 l. 16-24). Law enforcement searched his mother's residence and looked in his room under his bed and found no gun. (R. 655 l. 9-10). Tony also said that he acted alone, (R. 654 l. 25), which in looking at all the evidence was obviously not true. Investigator Leonard testified that once he left the room and the Appellant was alone, he stated to himself, "I ain't pull the trigger." (R. 656 l. 4) So in looking at the totality of the circumstances there is a possibility that Tony was not telling the truth.

Even if this court finds that the trial court erred in not allowing the statement regarding the Appellant not being the shooter, there is sufficient evidence revealing the Appellant was the reason this event occurred in the first place. Appellant was present when it occurred, so he was an accomplice. He is still as guilty as the shooter under the doctrine of the "hand of one is the hand of all." This statement would not have changed the outcome of the trial so any error that might have been committed by the trial court should be considered harmless.

The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promote public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error. *State v. Young,* 420 S.C. 608, 628 S.E.2d 888, 889 (2017), *quoting, Delaware v. VanArsdall,* 475 U.S. 673, 106 S.Ct. 1431 (1986). The principle that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt. *VanArsdall,* 475 U.S. at 681, 106 S.Ct. at 1486.

It is clear from the evidence presented by the State that the Appellant was an accomplice in this murder. Devion McDow testified that after the fight they were trying to calm Tony down, and they succeeded. Tony became calm and started rapping. (R. 70 l. 14). As Devion testified, when the Appellant pulled up "it was over with." (R. 70 l. 15-16). Appellant got into Tony's ear and things once again got heated. They started yelling and then got into Tony's car with the Appellant driving. (R. 71 l. 10-23). Appellant drove Tony to pick up the other co-defendants. They drove back to the party where the Appellant demanded that they tell him where the victim was located. Appellant actually told the people at the party, "y'all motherfuckers going to tell me where

they at." (R. 56 l. 17-23) Appellant then yelled to Tony, "you wanna find him? I know where he be at." (R. 74 l. 17-19).

Appellant demanded that Tony get into the car, and he drove him to Larry's house. (R. 71 l. 10-14; 71 l. 22-23). They got to Larry's house armed yelling "where's he at?" (R. 282 l. 15-16).. Tony admitted to having the 9 mm and shooting the victim, however, the Appellant also had gun powder residue on his person. Therefore, he was standing very close to Tony when he fired the fatal shots. Presence at the scene of the crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal. *State v. Hill,* 268 S.C. 390, 395-396, 234 S.E.2d 219, 221 (1977). Appellant was the only reason this crime escalated to this point. Evidence revealed that Tony was calm, and he was riled up by the Appellant to the point of searching for the victim which led to his murder. This definitely makes the Appellant an accomplice and this cannot be considered mere presence since this all began by the influence of the Appellant. Appellant also was the one who got his nephew and son involved. They all drove to Larry's residence armed with the sole purpose of finding the victim. This definitely falls under the doctrine of "a hand of one is the hand of all." Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. *State v. Condrey,* 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002).

It is the fault of the Appellant that this murder even occurred. Due to his causing this matter to escalate to the point of the victim being shot to death, he is as guilty as the shooter himself. So even if the trial court erred in not allowing the Tony's statement into evidence, if the statement had been allowed the fact that the Appellant encouraged and assisted Tony to commit this murder would not have changed. The outcome of the case would have been the same, so if an error

occurred it must be considered harmless. Error is harmless where a defendant's guilt has been conclusively proven by competent evidence that no other rational conclusion can be reached. *State v. Bryant,* 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006).

2. The court did not err in sentencing Appellant to a consecutive sentence since this is not an illegal sentence, the trial court has the right to sentence a convicted defendant to a concurrent or consecutive sentence, and this issue was not preserved since trial counsel failed to object to the misunderstanding of the law during sentencing.

Relevant Facts

After conviction Appellant appeared before the trial court for sentencing. The trial court inquired whether the offense of possession of a weapon during the commission of a violent crime must be a consecutive sentence. (R. 740 l. 6-8). The Assistant Solicitor informed the court that it was her belief that a consecutive sentence was mandatory if the sentence was not for death or life. (R. 740 l. 9-10). The trial court affirmed this. (R. 740 l. 11). Defense counsel never objected or attempted to correct the trial judge. The Appellant was later sentenced to a five-year term of incarceration that would be served consecutive to the forty-year sentence for murder. (R. 741 l. 14-16). The Appellant argues that since this sentence could be consecutive or concurrent this Court should remand this case for a resentencing. The Respondent argues that since this was a legal sentence, the failure to object by trial counsel caused this issue not to be preserved, so there should be no remand.

Standard of Review

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court, issues not raised and ruled upon will not be considered for appeal. *State v. Dunbar,* 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003).

Discussion

The trial court made a mistake in the interpretation of the law; however, this mistake was never raised to the attention of the court so it could be corrected. Once trial counsel failed to relay to the trial court that his interpretation was incorrect this issue was not preserved so it should not be ruled upon by this court.

Within his brief the Appellant raised court opinions of cases regarding illegal sentencing that were not objected to by trial counsel, however, the court ruled that there *should* be a resentencing. In each of those cases the sentence given was unlawful; therefore, those sentences had to be corrected. *State v. Johnson,* 333 S.C. 459, 510 S.E.2d 423 (1999)(the sentencing court issued a sentence for conspiracy to possess marijuana that exceeded the maximum allowed by law); *State v. Vick,* 384 S.C. 189, 682 S.E.2d 275 (2009)(the defendant was unlawfully sentenced for kidnapping upon being sentenced for murder involving the same occurrence); *State v. Bonner,* 400 S.C. 561, 735 S.E.2d 525 (2012)(Juvenile received a life without parole sentence for burglary 1st).

The present case is similar to the South Carolina Supreme Court case of *State v. Plumer,* 439 S.C. 346, 887 S.E.2d 134 (2023). In *Plumer,* the trial court added to a life sentence for murder a consecutive sentence for possession of a weapon during the commission of a violent crime. During sentencing the defense counsel failed to object. The Supreme Court decided:

> When a trial court imposes what the State concedes is an illegal sentence, the appellate court may correct that sentence on direct appeal or remand the issue to the trial court, even if defendant did not object to the sentence at trial and even if there is no real threat of incarceration beyond the limits of a legal sentence.

Id.

In each of the above referenced cases the State conceded that the sentence made by the trial court was illegal. The Respondent in his case does not concede because of the fact the sentence

given by the trial court in this case was lawful. Section 16-23-290 of the South Carolina Code of Laws specifically states, "[S]ervice of the five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run **consecutively** or concurrently. S.C. Code Ann. §16-23-490(B)(2010)(emphasis added). Appellant argues that the court erred in sentencing the Appellant to a consecutive term of imprisonment when the court erroneously found that the sentence had to be served consecutively. This is not an unlawful decision; the Appellant can receive a consecutive sentence. This was a misinterpretation of the law, which should have been addressed by defense counsel. Failure to question the trial court failed to give the trial court an opportunity to address it during sentencing. This failure to raise an objection caused this issue not to be preserved for appeal; therefore, it should not be remanded by this Court. This sentence is perfectly legal so the prior mentioned cases that were decided by the Appellant courts do not apply. It is clear that South Carolina Appellate Courts in the past has ruled that an issue not raised and ruled upon by the trial court is not preserved for appeal. If it was not preserved it should not be remanded. A sentencing issue would not be considered on appeal when no objection to sentencing was raised at trial. *State v. Garner,* 304 S.C. 220, 403 S.E.2d 631 (1991).

CONCLUSION

The Respondent believes that trial court's decision was lawful, and even if this court deems it was an error it should be considered harmless. The consecutive sentence given by the trial court was a legal sentence and the misinterpretation of the law was never raised to the attention of the trial court by the Appellant's trial counsel; therefore, it was never preserved for appeal. This case should not be remanded for a resentencing. The lawful sentence of the trial court should remain.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

By: *s/ Tommy Evans, Jr.*
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

Columbia, South Carolina
August 14, 2024

RECEIVED
Aug 14 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellant Case No. 2023-000218

THE STATE, RESPONDENT

v.

RENO RODREIGUS BLAKELY, APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This is the 14th day of August 2024.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

RECEIVED
Aug 14 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellant Case No. 2023-000218

THE STATE, RESPONDENT

v.

RENO RODREIGUS BLAKELY, APPELLANT

PROOF OF SERVICE

I, Tommy Evans, Jr., hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent, Certificate of Compliance, and Proof of Service have been forwarded to Appellant's counsel Lara M. Caudy., via email today, August 14, 2024 to LCaudy@sccid.sc.gov, and Ms. Caudy's legal assistant, Sarah McInnis, to SMcInnis@sccid.sc.gov.

I further certified that all parties required by Rule to be served have been served. This is the 14th day of August 2024.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT