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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

The State, Respondent,

vs.

Brittany Martin, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Appellant never sought to challenge her conviction for BOPHAN on the basis that it encroached on the First Amendment, so those claims are not properly preserved for review on appeal. Further, she never moved for a directed verdict related to the BOPHAN charge, so any claim regarding insufficiency of evidence is not preserved for review on appeal. To the extent this Court should conduct an independent examination of the factual basis for the conviction to ensure it is not violative of the First Amendment, there is ample evidence of behaviors constituting breach of the peace of a high and aggravated nature which do not encroach on the First Amendment.

II. The trial court did not err in failing to provide the requested jury instruction regarding the First Amendment. The Court attempted to craft a jury instruction to encompass the First Amendment and Appellant never indicated any issue, deficiency, or problem with the charge so the issue is not preserved. Further, when read as a whole the charge given was sufficient to apprise the jury of the importance of the First Amendment.

III. Appellant never challenged the constitutionality of the common law offense of BOPHAN as unconstitutionally vague, so the issue is not preserved for review on appeal.

IV. Appellant never raised a claim regarding the unanimity of her conviction, so the issue is not preserved for review on appeal.

V. Appellant's sentence does not violate the Eighth Amendment.

STATEMENT OF THE CASE

Among other charges, Appellant was indicted on charges of threatening the life of a public official, instigating a riot, and breach of peace of a high and aggravated nature (BOPHAN). (True-billed Indictments; R.664). She proceeded to trial on the three charges before the Honorable R. Kirk Griffin and a jury. The jury acquitted her of instigating a riot and convicted her of BOPHAN. The jury was unable to reach a unanimous verdict as to the threatening the life of a public official and so the court declared a mistrial. (5/16T.99-100; R.636-637). She was sentenced to four years incarceration with credit for time served. Appellant served and filed a motion to reconsider sentence, which was ultimately denied by the trial court.

Appellant served and filed her notice of appeal. She sought an appeal bond from both the circuit court and the Court of Appeals, and both requests were denied. This appeal followed.

STATEMENT OF FACTS

"Y'all want war, y'all got it. Go call all our hitters now." (State's Exhibit 1; T.217; R.278). At this point on June 3, 2020 after multiple days of protests, Appellant turns to the others gathered in protest, instructing them to call "all our hitters" and explaining "You tell them to get ready, everybody strapped. Everybody." Appellant then directs her attention back to the police officers: "Y'all better be ready." (State's Exhibit 1; T.218; R.279). Unfortunately, she does not stop. Appellant continues: "Them vests ain't gonna save you. Some of us gon' be hurt, some of y'all gon' be hurt, and we're ready to die for this. We're tired of it. You better be ready to die for the Blue." (State's Exhibit 1; T. 218; R.279). Pointing directly at officers she threatens: "I'm dying for the Black. You better be ready to die for the Blue." (State's Exhibit 1; T.218; R.279).

Appellant and a group she directed began protesting in Sumter in the aftermath of the George Floyd murder. On May 31, 2020, Appellant's actions shut down one of the busiest roads in Sumter. Even after multiple requests by officers to go to the sidewalk and get out of the road, Appellant refused. Not only did she refuse to heed the request, but she began engaging and ultimately chest bumping officers seeking to move her to a safer location to allow traffic to resume its normal flow. (State's Exhibit 1). Interfering with traffic continued June 1, 2020, as Appellant and others rode unsafely on top of multiple vehicles.

Subsequently, on June 2, 2020, while one group of protestors attempted to demonstrate unity and understanding with law enforcement, Appellant and her group belittled them, harassed them, and attempted to spread disunity and hate. (State's Exhibit 2). Later the same evening, a group that she claimed to be leading prevented the normal business operations of a Sunoco gas station while confronting officers and screaming "It's attack time N*****." As a result of Appellant's behavior—including significantly disrupting the operations of two gas stations while

having confrontations with officers and stopping traffic on one of the busiest roads in Sumter—and the group of persons she controlled, Sumter County had to institute a 6:00 p.m. curfew on all residents. (State's Exhibits 1, 2, and 5; T.177-178; R.238-239). Sumter Police Department Chief Roark explained it when he testified:

> The last thing that I wanted to recommend was to do a curfew 'cause in doing so, it closes businesses. . . . But as things began to escalate and continued to move forward, my concern was that we could have a situation where violent activity starts. And what I mean by that is, my concern was that from day one up to the night of the 2nd, which was the morning of the 3rd, when you saw the actions on the video, that it was becoming more and more volatile. . . . And the purpose to do that was to provide a time for things to calm down to prevent potential violent activity or destruction of property. We understand why people were upset. We understand why many people wanted protests. We also were hurt and appalled by the activity of the officers and their conduct. At the same time, there's about 45,000 people in this city and we've got to protect everybody.

(T.231-232; R.292-293).

On June 3, 2020, the escalation feared by Chief Roark continued. Appellant instructed her group to go get their "hitters," make certain everyone was "strapped," and that they were prepared to go to "war." Pointing directly at officers she told them that their bulletproof vests would not save them and then threatened: "I'm dying for the Black. You better be ready to die for the Blue." (State's Exhibit 1).

ARGUMENT

I. Appellant never sought to challenge her conviction for BOPHAN on the basis that it encroached on the First Amendment, so those claims are not properly preserved for review on appeal. Further, she never moved for a directed verdict related to the BOPHAN charge, so any claim regarding insufficiency of evidence is not preserved for review on appeal. To the extent this Court should conduct an independent examination of the factual basis for the conviction to ensure it is not violative of the First Amendment, there is ample evidence of behaviors constituting breach of the peace of a high and aggravated nature which do not encroach on the First Amendment.

Appellant raises multiple claims arguing the State failed to provide sufficient evidence of BOPHAN that did not involve constitutionally protected behavior. Any challenge is not preserved for review on appeal. To the extent this Court seeks to perform an independent examination of Appellant's conviction to ensure it did not impermissibly encroach on the First Amendment, there is ample evidence of behaviors outside the protection of the First Amendment which constitute proof of BOPHAN.

Initially, any claims regarding the sufficiency of the evidence and the failure of the trial court to ensure the conviction did not encroach on Appellant's First Amendment rights is not preserved for review on appeal. Appellant never raised a directed verdict motion related to the BOPHAN charge. She raised a directed verdict claim as it relates to both the riot and threatening charges, but not as to BOPHAN. State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) ("In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review."). A defendant cannot argue on appeal an issue in support of her directed verdict motion when the issue was not presented to

the trial court below. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.").

Even if this Court determines to conduct its own examination of the record, the evidence demonstrates the conviction was not based on protected speech. The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

Initially, Appellant and her group engaged in a protest down the middle of a busy road, refusing to move to a sidewalk or out of the roadway. Instead of moving, Appellant engaged in a chest bumping with an officer who was simply trying to reopen the road to oncoming traffic. The following day, she again interrupted traffic and engaged in dangerous behavior on the same street as she rode on top of a moving vehicle.

The United States Supreme Court has explained: "The fundamental right to speak, however, does not leave people at liberty to publicize their views 'whenever and however and wherever they please.'" Wood v. Moss, 572 U.S. 744, 745 (2014) (quoting United States v. Grace, 461 U.S. 171 (1983)). As one court correctly noted: "The First Amendment does not entitle a citizen to trespass, block traffic, or create hazards for others." Frye v. Police Dep't of Kansas City, Mo., 260 F.Supp.2d 796, 799 (W.D.Mo. 2003). The United States Supreme Court articulated:

> When protest takes the form of mass demonstrations, parades, or picketing on public streets and sidewalks, the free passage of traffic and the prevention of public disorder and violence become important objects of legitimate state concern. As the Court stated, in Cox v. State of Louisiana, 'We emphatically reject the notion that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these

> amendments afford to those who communicate ideas by pure speech.' 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471.

Walker v. City of Birmingham, 388 U.S. 307, 316 (1967). As seen in the video on State's Exhibit 1, much of the events of May 31 and June 1 took place down the center of a busy street, ignoring requests by law enforcement to exit the road to allow cars to pass, and even became physical with Appellant chest bumping officers. This behavior is beyond the bounds protected by the First Amendment and can give rise to the charge of BOPHAN.

Additionally, as noted above, the First Amendment does not allow protestors to trespass and to cause harm to businesses during their protest. In this case, both the El Cheapo gas station and Sunoco gas stations had their operations interrupted by Appellant and the protests she was leading. (State's Exhibit 5). Again, this is the type of behavior that is not protected by the First Amendment.

Finally, the fighting words and threats directed at officers on June 3 go well beyond protected speech. See Counterman v. Colorado, 143 S. Ct. 2106, 2114 (2023) (" 'True threats' of violence is another historically unprotected category of communications. . . . True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'"); Brandenburg v. Ohio, 395 U.S. 444, 447–48 (1969) (finding advocacy "directed to inciting or producing imminent lawless action and is likely to incite or produce such action" and concluding "mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action."). In the instant case, even if this Court considers the entirety of the record, the conviction for BOPHAN was supported by ample evidence demonstrating behavior beyond the protection of the First Amendment.

Appellant attempts to compare the facts of this case to United States Supreme Court decisions from the civil rights movement including, *inter alia*, Barr v. City of Columbia, 378 U.S. 146 (1964) and Edwards v. South Carolina, 372 U.S. 229 (1963). Those cases and their facts are vastly different than the behaviors of Appellant during these protests. In Barr, the defendants were involved in a "sit-in" as part of the civil rights movement. While sitting patiently and quietly at the counter seeking merely to be served, they were arrested for breach of the peace among other charges when they refused to leave after service was denied. Barr, 378 U.S. at 147-148. In Edwards, 187 defendants were convicted of breach of peace. They entered the State House grounds, walked in an "orderly way" for 30-45 minutes while carrying placards, and there was "no obstruction of pedestrian or vehicular traffic." Edwards, 372 U.S. at 230-232. As discussed, there was nothing quiet or polite about Appellant's behavior and significant issues occurred to a private business and traffic based on the protestors' complete disregard for the remaining public.

This case is closer to, but still much more severe than, the disorderly conduct discussed in Feiner v. New York, 340 U.S. 315, 318 (1951). In Feiner, the situation was more hostile than in either Barr or Edwards. The defendant urged people to "rise up in arms and fight for equal rights." As the crowd became more agitated, police sought to have him get down off a box and disperse the crowd. The crowd blocked pedestrian movement and spilled into the street interfering with traffic. The defendant ignored the request to cease multiple times and was arrested. The Supreme Court upheld his conviction for disorderly conduct even against a challenge based on the First Amendment.

Appellant's behavior went well beyond the protections afforded by the First Amendment. She interfered with traffic, chest bumped officers seeking merely to clear a roadway, confronted officers in the middle of gas station parking lots interfering with the usual course of the businesses,

and directly threatened to get "hitters" who were "strapped" with guns to go to "war" and hurt or kill law enforcement officers. Her behavior is certainly not the behavior demonstrated in Barr and Edwards and, instead, qualifies as a breach of the peace of a high and aggravated nature.

II. The trial court did not err in failing to provide the requested jury instruction regarding the First Amendment.

Appellant maintains the trial court erred in failing to give a jury instruction related to the First Amendment directly connected to the jury charge for BOPHAN. The issue is not preserved for review, and even if preserved, the jury instruction when read as a whole properly charged the jury.

Initially, the issue is not properly preserved for review on appeal. The trial court asked for proposed jury instructions from the parties. Appellant provided proposed jury instructions. (Proposed Jury Instructions; R.16). The jury instruction related to BOPHAN provides the suggested elements of the offense and then a series of case citations with parentheticals and general case discussion related to the First Amendment. It does not provide the discussion regarding the First Amendment in a manner consistent with an appropriate jury instruction. Further, the trial court specifically noted:

> I'll read appropriate portions of Ms. Rosado's charge where that -- where that concept is conveyed to the jury. I think a lot of, Ms. Rosado, what you've submitted is while certainly good law, I think some of it is commentary by the Court, you know. I'm going to limit it to elemental portions of the law, so.

(5/16T.18; R.555). The trial court also explained:

> I'm making my notes as to what I think is appropriate charge from what's been submitted. I'm really kind of -- I've stricken through -- and I'm going to be working on this -- here's what I'll do. As you're making your closings, I will do my best to make it clear on what's been submitted, what I'm charging and what I'm not. We'll take a break after the closings. We'll make copies of the charge and I'll give them to you before I charge on the law.

(5/16T.22; R.559). Afterward, Appellant's counsel responded: "Thank you, Your Honor" indicating her acceptance of the procedure. (5/16T.22; R.559).

After closing arguments were completed, the trial court provided the parties with a copy of the proposed jury instructions to be given. (5/16T.69-70; R.606-607). After brief discussion between the trial court and parties that did not relate to the BOPHAN jury instruction, the judge charged the jury. At no point after receiving the court's proposed instructions did Appellant indicate the instruction on BOPHAN was lacking, deficient, insufficient, or problematic as it related to the First Amendment. Even after the trial court charged the jury, Appellant never indicated any issue with regard to the charge to the jury on the First Amendment. As a result, she did not raise any objection to the trial court and cannot now complain on appeal. See State v. Avery, 333 S.C. 284, 296, 509 S.E.2d 476, 483 (1998) (stating when an instruction as given is inadequate, a party must object at the completion of the instructions in order to preserve the issue for review); State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999) (to preserve objection to jury charge, defendant must raise the issue at trial).

Even if preserved, the jury charge as a whole is a proper statement of the law and correctly advised the jury on how to consider the First Amendment as it related to all three charges. "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "In reviewing jury charges for error, [the Court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013).

In the instant case, the trial court defined the elements of the three offenses. (5/16T.82-85; R. 619-622). After charging on the elements of the three offenses, the court explained to the jury the impact of the First Amendment and its protections of speech. (5/16T.85-86; R.622-623). As a result, the jury would understand that the First Amendment protection "protects a significant amount of verbal criticism in challenge directed at police officers." The jury was explained the requirement that the words had to make it "inherently likely under circumstances to cause an average person to react with violence and playing no role in the expression of ideas" in order to form the basis of a conviction. (5/16T.85; R.622). As a result, the jury was properly charged regarding the role of the First Amendment and the type of speech which could still result in the conviction of Appellant.

III. Appellant never challenged the constitutionality of the common law offense of BOPHAN as unconstitutionally vague, so the issue is not preserved for review on appeal.

Appellant contends the common law offense of BOPHAN is unconstitutionally vague. However, this issue was not presented to the trial court. Even constitutional challenges must be properly preserved to be raised on appeal. See e.g., State v. Langford, 400 S.C. 421, 446, 735 S.E.2d 471, 484 (2012) ("Constitutional issues are not exempt from issue preservation requirements."); State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court.").

Appellant never challenged the constitutionality of the common law offense of BOPHAN. In a motion filing, Appellant "pursuant to Federal Rule of Civil Procedure 12(b)(1)" submitted Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Appellant, citing to the dissent in State v. Simms, 412 S.C. 590, 600, 774 S.E.2d 445, 450 (2015), claimed there is no criminal offense in South Carolina called BOPHAN. This claim is vastly different than the claim on appeal that the offense is unconstitutionally vague. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal). As a result, the issue is not properly preserved for review on appeal.

Further, the South Carolina Supreme Court has stated: "it is this Court's firm policy to decline to rule on constitutional issues unless such a ruling is required." In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001); see also, Morris v. Anderson Cty., 349 S.C. 607, 610–11, 564 S.E.2d 649, 651 (2002) (refusing to issue "an advisory ruling . . . on a constitutional issue" finding to do so "would violate our firm policy of declining to reach constitutional issues unless necessary to the resolution of the appeal before us."). "The Court will avoid, when possible, passing upon the constitutionality of an Act of the Legislature." Sanders v. Anderson Cty., 195 S.C. 171, 10

S.E.2d 364, 364 (1940). The Court has found that where a ruling on one issue is dispositive, "we therefore refrain from ruling on the constitutional questions raised." Riverwoods, LLC v. Cty. of Charleston, 349 S.C. 378, 387, 563 S.E.2d 651, 656 (2002). As a ruling on the constitutionality of the common law offense of BOPHAN is unnecessary in light of the lack of preservation, this Court should decline to address the issue.

IV. **Appellant never raised a claim regarding the unanimity of her conviction, so the issue is not preserved for review on appeal.**

Appellant contends the trial court erred in failing to ensure the verdict was unanimous as to the conduct resulting in the BOPHAN charge. This issue was never raised to the trial court and, therefore, is not properly preserved for review on appeal.

In order to properly preserve an issue for review on appeal, the process has been succinctly stated with four basic requirements: "The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002). "An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (italics in original). The Court further announced: "imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Id. at 422, 526 S.E.2d at 724; see also, State v. Torrence, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991) (eliminating *in favorem vitae* review in death penalty cases and holding: "A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured."). The South Carolina Supreme Court recently stated:

> One primary purpose of our issue preservation rules is to give the trial court a fair opportunity to rule. A trial court's opportunity to rule necessarily includes both parties being aware of the nature of the objection such that they may present their best arguments addressing that objection. This then serves another purpose of our rules—"meaningful appellate review."

State v. Morales, Op. No. 28154 (S.C. Sup. Ct. filed May 31, 2023). Appellant never challenged the unanimity of the jury's guilty verdict for BOPHAN. As such, she never gave the trial court the opportunity to address the issue, and the issue was not fully explored for meaningful appellate review. Therefore, this Court should not address the issue as it is not preserved for review on appeal.

V. Appellant's sentence does not violate the Eighth Amendment.

Appellant contends the trial court erred in imposing a four-year sentence on Appellant because it violated her Eighth Amendment rights as grossly disproportionate. The sentence was imposed, in significant part, based on Appellant's prior criminal record and the inability of probation to prevent her continued criminal behavior. Appellant's sentence was not grossly disproportionate to the crime and the need for punishment consistent with the court's ability to properly punish for recidivism.

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The South Carolina Supreme Court in State v. Harrison, 402 S.C. 288, 298, 741 S.E.2d 727, 732 (2013) concluded, consistent with other courts, that Justice Kennedy's concurrence in Harmelin v. Michigan, 501 U.S. 957, 1001 (1991), is the controlling opinion for determination of whether a sentence violates the Eighth Amendment. Justice Kennedy explained:

> All of these principles-the primacy of the legislature, the variety of legitimate penological schemes, the nature of our federal system, and the requirement that proportionality review be guided by objective factors-inform the final one: The Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are "grossly disproportionate" to the crime.

Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (Kennedy, J. concurring in part and concurring in judgment). As the South Carolina Supreme Court articulated:

> Thus, in analyzing proportionality under the Eight Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends. In the **rare instance** that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate.

> Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions. Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist.

State v. Harrison, 402 S.C. 288, 299–300, 741 S.E.2d 727, 733 (2013) (emphasis added).

In the instant case, no inference of gross disproportionality exists. There is no fixed statutory range for BOPHAN. Instead, it is controlled by section 17-25-30 which provides:

> In cases of legal conviction when no punishment is provided by statute the court shall award such sentence as is conformable to the common usage and practice in this State, according to the nature of the offense, and not repugnant to the Constitution.

S.C. Code Ann. § 17-25-30 (Supp. 2020). The sentence of four years incarceration, which pursuant to section 24-21-610 means she could have been eligible for parole after serving only one-fourth of the sentence, was proportional to the facts and circumstances of this case—especially considering Appellant's prior convictions and failure to rehabilitate with sentences of probation.

As discussed above, Appellant's behaviors were not as innocent and "undisputedly peaceful and uneventful" as claimed by Appellant. (Ap.Br. 33). She and the group she controlled shut down a busy thoroughfare, interrupted the daily operations of two gas stations, and directly threatened the lives of law enforcement officers. As a result of her escalating behaviors, Sumter was forced to impose a curfew affecting all residents and businesses.

Most significant, however, is the trial court's consideration of Appellant's prior criminal record. See State v. Williams, 380 S.C. 336, 348, 669 S.E.2d 640, 647 (Ct. App. 2008) ("Finally, the United States Supreme Court has also held a state is justified in punishing a recidivist more severely than it does a first offender.") (quoting Riggs v. California, 525 U.S. 1114 (1999)). The convictions presented to the court included:

1. Retail Theft – Illinois - 2008
2. Public Disorderly Conduct – Wisconsin - 2011
3. Possession of Short Barreled Shotgun – Wisconsin - 2011
4. Shoplifting – Georgia - 2014
5. Shoplifting Enhanced – South Carolina - 2015
6. Public Disorderly Conduct – South Carolina - 2015
7. Shoplifting – South Carolina - 2015
8. Leaving the Scene of an Injury or Accident and Willfully Causing Bodily Harm – Iowa - 2019.

(Order dated October 5, 2022; R.4). For these crimes, Appellant repeatedly received probationary sentences and was even on probation at the time of her arrest for BOPHAN. The trial court specifically considered this and found: "Probation has not been a deterrent to further criminal activities for the Defendant. An active prison sentence was appropriate in this instance." (Order dated October 5, 2022; R.4). Given the facts of this case, and Appellant's prior criminal history, the circumstances do not give rise to the "rare" inference of gross disproportionality required to continue the analysis. As a result, Appellant has failed to demonstrate her sentence was grossly disproportionate to the facts and circumstances of her crime—and especially all of her prior charges which resulted in probationary sentences and no deterrence from future criminal conduct.

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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October 13, 2023

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

The State, Respondent,

vs.

Brittany Martin, Appellant.

CERTIFICATE OF COUNSEL

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

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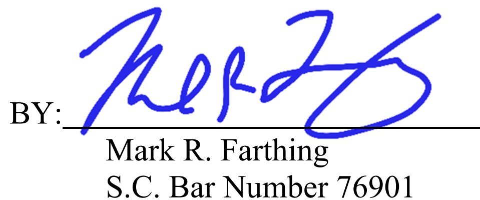

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