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Jun 18 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
THE HONORABLE H. STEVEN DEBERRY, IV., CIRCUIT COURT JUDGE

Appellate Case No.: 2025-000919

Wendy Lynch, Respondent,

v.

Elizabeth Langley and Rebecca White Lynch, Appellant,

of whom Elizabeth Langley is the Appellant and Rebecca White Lynch is a Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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s/Kathy R. Schillaci
Joseph M. McCulloch, Jr. (S.C. Bar No. 3760)
Kathy R. Schillaci (S.C. Bar No. 17248)
McCulloch & Schillaci, Attorneys at La
1116 Blanding Street, First Floor (29201)
P.O. Box 11623
Columbia, South Carolina 29211
joe@mccullochlaw.com
kathy@mccullochlaw.com

Patrick James McLaughlin
Wukela Law Office
PO Box 13057
Florence, SC 29504
patrick@wukelalaw.com

ATTORNEYS FOR RESPONDENT, WENDY LYNCH

Other Counsel of Record:
James Ross Snell, Jr.
Law Office Of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, SC 29072
jamessnell@snelllaw.com
(803) 359-3301
(800) 567-6249
Attorneys for Appellant Elizabeth Langley

Respondent, Wendy Lynch offers this return to the petition for writ of certiorari submitted by Appellant, Elizabeth Langley.

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Does this case present special and important reasons that merit a writ of certiorari?

II. Is Appellant's argument as to the lower court denial of her civil conspiracy directed verdict motion preserved for review by this Court where it was not raised in the petition for rehearing to the court of appeals?

III. Did the court of appeals err in holding Appellant failed to preserve for review the lower court's denial of her directed verdict motion for civil conspiracy?

IV. Is Appellant's argument as to the lower court denial of her intentional infliction of emotional distress directed verdict motion preserved for review by this Court where it was not raised in the petition for rehearing to the court of appeals?

V. Did the court of appeals err in holding Appellant failed to preserve for review the lower court's denial of her directed verdict motion for intentional infliction of emotional distress?

VI. Has Appellant's argument as to the verdict form been preserved for review by this Court where it was not raised in the petition for rehearing to the court of appeals?

VII. Did the court of appeals err in holding Appellant failed to preserve the verdict form argument for appellate review because she did not raise the argument to the trial court and indicated she had no issues with the verdict form?

VIII. Did the court of appeals err in holding the trial court did not abuse its discretion when it admitted a voicemail of Appellant's former attorney because the statement was admissible under Rule 801(d)(2)(D) of the South Carolina Rules of Evidence?

IX. Did the court of appeals err in holding Appellant's issue concerning the use of the word "kill" is not preserved for appellate review because prior to trial, Appellant confirmed she did not object to the use of the word "killing"

at trial, did not object when it was used at trial, and in her motion for a new trial, she did not raise the issue?

COUNTER STATEMENT OF THE CASE

The underlying case involves a February 8, 2016, civil lawsuit brought by Wendy Lynch ("Respondent") against her sisters, Elizabeth Langley ("Appellant"), and Rebecca White Lynch ("Respondent White") for civil conspiracy, defamation, intentional infliction of emotional distress, and abuse of process. The parties are all daughters of James Lynch ("Judge Lynch"), a Florence County magistrate who served the State of South Carolina for over two decades before his death from glioblastoma in February 2013. (R. p. 667, lines 6-7; p. 670, lines 8-12).

Beginning on April 15, 2022, a Florence County jury heard five days of testimony and evidence. Evidence was presented that Appellant accused Respondent of "starving" and "dehydrating" Judge Lynch despite the fact he was being cared for by doctors, nurses, hospitals, and Appellant and Respondent White. (R. p. 158, lines 1-25; p. 161, lines 8-12; p. 328, line 9 - p. 329, line 4; p. 341, lines 2-8; p. 352, line 23 – p. 354, line 1; p. 408, lines 2-17; p. 509, lines 21-25; p. 521, lines 14-17; p. 663, line 21– p. 664, line 1; p. 795, lines 21-24; p. 158, lines 3-7; p. 436, lines 7-8; p. 865, line 25 – 866, line 2). These accusations led to an Adult Protective Services (DSS) investigation, to include interviewing Judge Lynch in the final months of his life. (R. p. 346, lines 13-16; p. 347, lines 2-14; *see also* p. 355, lines 16-25). DSS found no harm by Respondent and to the contrary, noted that Judge Lynch trusted Respondent, that money appeared to be at the root of the allegations, and

that the accusations began when Appellant and Respondent White read the Judge Lynch's will. (R. p. 352, line 23 – p. 353, line 13).

At trial, Appellant freely admitted to telling several individuals, "I alleged that [Respondent] tried to send [Judge Lynch] to heaven early." (R. p. 328, lines 17-20). Immediately upon Judge Lynch's death, Appellant and Respondent White demanded an autopsy and told hospital staff that Respondent "accelerated" Judge Lynch's death. (R. p. 570, line 16 – p. 571, line 14). While coroners do not usually get involved when someone has died following a long hospital stay, Appellant's accusations against Respondent were such that the Florence County Coroner began investigating Judge Lynch's death. (R. p. 574, lines 1-7).

Coroner Von Lutcken testified at trial that based on his investigation to include toxicology, he determined the manner of death was *natural* noting nothing suspicious in the toxicology or otherwise. (R. p. 565, line 17 – p. 566, line 6; p. 577, line 24 – p. 578, line 2). The death certificate was issued on February 11, 2013, and certified by the attending physician, Mark A. Fox, MD and lists Judge Lynch's cause of death as "glioblastoma multiforme" and the manner of death as "natural." (R. p. 1148). Even at trial in light of this testimony, Appellant disputed the cause of death with Appellant telling the jury "My daddy died of dehydration and starvation." (R. p. 337, line 16; p. 375, line 18; p. 339, lines 2-6).

Evidence was presented at trial that Respondent was notified by the SC Board of Nursing ("SCBON") that a complaint had been made against her nursing license alleging she had harmed Judge Lynch. (R. p. 1156). The SCBON complaint contained the *same*

allegations Appellant had made to DSS, the coroner, and others. Specifically, that "while in [Respondent's] care, Mr. Lynch suffered from Dehydration, Malnourishment from not having fluids and eating," along with other claims. (R. p. 1156). Appellant did not deny speaking with SCBON investigators as she had "an obligation to report." (*Id.*) After investigation, the SCBON dismissed the complaint. (R. p. 1157).

After Judge Lynch's death, evidence was presented that Appellant and Respondent White drilled into Judge Lynch's safe with a locksmith. Despite that fact, evidence was presented that Appellant and Respondent White began accusing *Respondent* of stealing Judge Lynch's estate assets which they alleged included "50 pounds of gold bars," "bags of silver," and "five million dollars in cash in a duffle bag."[1] (R. p. 186, line 3 – p. 187, line 3; p. 377, line 3 – p. 378, line 14; p. 470, line 16 – p. 471, line 11; p. 558, line 24 – p. 559, line 15). When Appellant was confronted at trial with making these statements to include Facebook posts purporting to be from her Facebook account, the jury was able to judge Appellant's credibility with her continual answer of "I don't recall." (R. p. 378, lines 15-24; p. 410, line 4 – p. 412, line 18). At trial, Appellant made these same allegations in testimony before the jury. (R. p. 445, line 23 – p. 446, line 2; p. 470, lines 22-25)(Q: What about the gold? Do you have any idea what happened to the gold that you think is missing? Appellant: I assume [Respondent] has it hidden somewhere.").

[1] Respondent testified she has never seen a gold bar in her life and has never seen five million in a duffle bag. As to the "bags of silver," Respondent testified that the Special Administrator, trial witness Porter Stewart, has in his care three bags of nickels, dimes, etc. that may have silver content. (R. p. 719, line 9 – p. 720, line 22).

Evidence was presented that Appellant filed a will contest action alleging both that Judge Lynch was incompetent and that Respondent had unduly influenced him into making the will. See *Langley v. Lynch,* Op. No. 2015-001941 (S.C. Ct. App. Filed May 24, 2017). Appellant was given every opportunity for two years to discover and produce evidence of undue influence and/or incompetence but produced none. On May 24, 2017, this Court issued an Order in *Langley v. Lynch*, *supra,* affirming Judge Brown's grant of summary judgment dismissing Appellant's will contest action.

Although the will contest has been fully litigated, with no incompetence or undue influence found, the jury heard accusations from Appellant's own mouth that 1) the will attorney, Frederick Hoefer, was not her father's attorney (contrary to Mr. Hoefer's testimony); (2) Judge Lynch did not make the will (despite Mr. Hoefer's testimony); and (3) despite no evidence in support, that Respondent and Mr. Hoefer "conspired" together and "had this Will facilitated." (R. p. 315, lines 20-21; p. 317, lines 22-25; p. 434, lines 18-25; p. 516, line 3 – p. 517, line 1).

There was ample evidence presented to the jury that Appellant and Respondent White have continued to delay and frustrate the administration of the probate case to harm Respondent and prevent her (and her son) from enjoying their full inheritance. Although Judge Lynch passed away in 2013 and the will contest ended in 2017, the matter is still pending in the probate court today, more than ten years after Judge Lynch's death. (R. p. 1117).

Evidence was presented at trial that Appellant and Respondent White have damaged Respondent's reputation in the community with these allegations.

As Respondent testified:

> Q: You talked about their search for gold. How did it make you feel that they were putting out here that you were – you had stolen $5 million in cash in a duffle bag and 50 pounds of gold and six bags of silver. Did that cause you any type of fear?
>
> A: Well, sure it did. I lived in a small town in the country by myself. And, you know, Timmonsville is a high-crime area. I worried, you know, who's coming on the property, you know? Who's going [to] try to go find that money? Again, I lived in fear.

(R. p. 718, lines 14-23).

As Respondent further testified:

> So many allegations. I took money. I locked them out of the house. I malnourished my father. I dehydrated my father. I mean, it was constant. Riding by my house, parking across the street taking pictures of my guests. Accusing me of inviting a guy that works for a propane company to cut into the floors in the house looking for gold. I mean it was never ending, the abuse, the harassment. It just – it just got so unbearable at times.

(R. p. 684, lines 10 – 18).

Appellant even accused *her own attorneys* of a "cover up to protect [Respondent]," having "swept evidence under the rug," doing things "underhanded," and conspiring to help Respondent because of her "being a magistrate" even though her appointment ended in 2014. (R. p. 291, lines 5-8; p. 292, lines 8-21; p. 304, lines 3-6; p. 306, line 20 – p. 307, line 1; p. 316, lines 11 – 21; p. 541, lines 21-25; p. 1032, lines 12 – 17; p. 1035, lines 14 – 19).

Respondent testified to the jury she did not influence her father to make the will, did not kill him, and has not stolen estate assets. (R. p. 718, lines 5-6; p. 719, lines 4-10). Respondent testified to the thousands of dollars she has expended in legal fees and expenses defending her father's Last Will and Testament and defending her nursing

license. The jury heard testimony as to the nearly ten-years spent in probate court, which continues today even though Judge Lynch passed in 2013. (R. p. 696, line 14 - p. 697, line 4). As Respondent further testified, "It continues and it continues and it continues. And you heard [Appellant] say that she'll never accept it. She's never going to accept it. . . . It will never end." (R. p. 722, lines 11-15).

After five days of testimony, the jury returned verdicts in Respondent's favor against Appellant and the other sister on Respondent's causes of action for civil conspiracy, intentional infliction of emotional distress, and abuse of process. On the cause of action for defamation, the jury found Appellant alone responsible. In addition to actual damages, the jury awarded $250,000 in punitive damages against each of the defendant. *Id.* Only Appellant appealed. The Court of Appeals upheld the jury verdict in its decision filed January 29, 2025. Appellant filed a Motion for Rehearing and two amended motions for rehearing which were denied by the Court of Appeals. Appellant now petitions this Court for a writ of certiorari. For the reasons set forth below, Respondent requests the petition for writ of certiorari should be denied.

ARGUMENT

I. This case presents no special and important reasons that merit a writ of certiorari

A writ of certiorari to review a decision of the Court of Appeals is "not a matter of right" and "will be granted only where there are special and important reasons." Rule 242(b), SCACR. While "neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general," the Court looks at the following criteria

in determining whether a case merits a writ of certiorari. As set forth below, these criteria are not present in this case.

First, there are no novel questions of law presented here. Rule 242(b)(1), SCACR. The issues here involve ordinary evidentiary rulings within the trial court's discretion and/or preservation of issues for appeal. Second, there is no dissent in the January 29, 2025, decision of the Court of Appeals. Rule 242(b)(2), SCACR. Third, Respondent is aware of no conflict between the Court of Appeals' decision and a prior decision of the Supreme Court. Rule 242(b)(3), SCACR. Fourth, substantial constitutional issues are not directly involved in this appeal. Rule 242(b)(4), SCACR. Lastly, no federal question is included. Rule 242(b)(5). As such, this case does not merit a writ of certiorari, and the petition for writ of certiorari be denied.

II. Appellant's argument as to her civil conspiracy directed verdict motion has not been preserved for review by this Court where it was not raised in the petition for rehearing to the court of appeals.

Per Rule 242(d)(2), SCACR, "only those questions raised in the Court of Appeals *and in the petition for rehearing* shall be included in the petition for writ of certiorari...." (emphasis added). *Id.*; *see also Holly Hill Lumber Co. v. McCoy,* 210 S.C. 440, 442, 43 S.E.2d 143, 144 (1947)(holding issue not raised in petition for rehearing is the law of the case); *Mazloom v. Mazloom*, 392 S.C. 403, 709 S.E.2d 661 (2011). In the Appellant's Second Amended Petition for Rehearing filed March 19, 2025, only two issues were raised and this was not one of them. As such, the civil conspiracy issue is not preserved for review by this Court, and the writ of certiorari should be denied.

III. **The court of appeals did not err in holding Appellant failed to preserve for review the lower court's denial of her directed verdict motion for civil conspiracy.**

The court of appeals held "Langley's directed verdict motion on the civil conspiracy cause of action is not preserved for appellate review because she failed to renew her motion at the close of all evidence." *Lynch v. Langley*, Op. No. 2025-UP-034 S.C. Ct. App. Filed January 29, 2025). During the trial, Appellant moved for a directed verdict after the close of the case, which motion was denied. (R. p. 869, line 16 – p. 878, line 19; p. 886, lines 2-10). Thereafter, Appellant presented witnesses (R. p. 911, lines 2-12) *but did not renew the motion* at the close of all the evidence. (*See generally* R. p. 911, line 2 - p. 988, line 17).

To preserve a directed verdict motion, the motion must be renewed at the close of all evidence. "If a defendant presents evidence after the denial of his motion for a directed verdict motion at the close of the state's case, he must make another directed verdict motion at the close of all evidence in order to appeal the sufficiency of the evidence." *State v. Bailey*, 368 S.C. 39, 43 n. 4, 626 S.E.2d 898, 900 n. 4 (Ct. App. 2006); see also *State v. Rosemond*, 348 S.C. 621, 560 S.E.2d 636 (Ct. App. 2002), aff'd as modified 356 S.C. 426, 589 S.E.2d 757 (2003); *see also Wright v. Craft*, 372 S.C. at 1, 640 S.E.2d at 496-497 ("Because Craft did not renew his motion for a directed verdict at the close of all evidence, there is no JNOV motion to review.")

As the Court of Appeals has stated:

> Where, on the trial of a civil action, the defendant at the close of the plaintiff's evidence moves for a verdict thereon in his favor, and on excepting to the decision of the court overruling such motion introduces evidence to support his grounds of defense, and rests without renewing

> the motion at the close of all the evidence, the exception is deemed to be waived and it is no longer a predicate for error in a reviewing court.

Freeman v. A. & M. Mobile Home Sales, Inc., 293 S.C. 255, 359 S.E.2d 532, 534 (Ct. App. 1987)(internal citations omitted).

"The rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of all the evidence is a strict one." *Henderson v. St. Francis Cmty Hosp.*, 295 S.C. 441, 447, 369 S.E.2d 652 (Ct. App. 1988), rev'd other grounds, 303 S.C. 177, 399 S.E.2d 767 (1990).

"[A]n objection to the sufficiency of the evidence cannot be raised for the first time in a motion for a new trial; a motion for a directed verdict is a prerequisite to a motion for a new trial on the ground that the evidence does not support the verdict." *Peay v. Ross*, 292 S.C. 535, 536, 357 S.E.2d 482, 483 (Ct. App. 1987)

Here, Appellant presented witnesses but did not renew her motion for a directed verdict at the close of all evidence. Any claims that Respondent White somehow prevented Appellant from making the motion (Petition, p. 14) is not supported by the record as Appellant had ample opportunity to make the motion. As such, the court of appeals did not err in holding Appellant failed to preserve the issue for review. The petition for writ of certiorari should be denied.

IV. Appellant's argument as to her intentional infliction of emotional harm directed verdict motion has not been preserved for review where it was not raised in the petition for rehearing to the court of appeals.

Per Rule 242(d)(2), SCACR, "only those questions raised in the Court of Appeals *and in the petition for rehearing* shall be included in the petition for writ of certiorari...." (emphasis added). *Id.*; *see also Holly Hill Lumber Co. v. McCoy,* 210 S.C. 440,

442, 43 S.E.2d 143, 144 (1947) (holding issue not raised in petition for rehearing is the law of the case); *Mazloom v. Mazloom*, 392 S.C. 403, 709 S.E.2d 661 (2011). Here, Appellant did not raise the issue in her Second Amended Petition for Rehearing filed March 19, 2025. As such, the issue is not preserved for review by this Court, and the writ of certiorari should be denied.

V. The court of appeals did not err in finding Appellant failed to preserve for review the lower court's denial of her directed verdict motion for intentional infliction of emotional distress.

The court of appeals held "Langley's directed verdict motion on the IIED cause of action is not preserved for appellate review because she failed to renew her motion at the close of all evidence." *Lynch v. Langley*, Op No. 2025-UP-034 (S.C. Ct. App, filed January 29, 2025). Appellant moved for a directed verdict after the close of Plaintiff's case, which motion was denied. (R. p. 869, line 16 – p. 878, line 19; p. 886, lines 2-10). Thereafter, Appellant presented witnesses *but did not renew the motion* at the close of all the evidence. (*See generally* R. p. 911, line 2 - p. 988, line 17). Similarly, Appellant did not raise the issue in the Motion for New Trial. (R. pp. 25-27). As such, as set forth in Section III above, the court of appeals did not err in finding Appellant failed to preserve the issue for review.

VI. Appellant's argument as to the verdict form has not been preserved for review by this Court where it was not raised in the petition for rehearing to the court of appeals.

Per Rule 242(d)(2), SCACR, "only those questions raised in the Court of Appeals *and in the petition for rehearing* shall be included in the petition for writ of certiorari...." (emphasis added). *Id.*; *see also Holly Hill Lumber Co. v. McCoy,* 210 S.C. 440, 442, 43 S.E.2d 143, 144 (1947) (holding issue not raised in petition for rehearing is the law of the case); *Mazloom v. Mazloom*, 392 S.C. 403, 709 S.E.2d 661 (2011). In the Appellant's Second Amended Petition for Rehearing filed March 19, 2025, this issue was not raised. As such, the issue is not preserved for review by this Court, and the writ of certiorari should be denied.

VII. The court of appeals did not err in holding Appellant failed to preserve the verdict form argument for appellate review because she did not raise her argument to the trial court and indicated she had no issues with the verdict form.

The court of appeals held "Langley's verdict form argument is not preserved for appellate review because she did not raise her argument to the trial court and indicated she had no issues with the verdict form." *Lynch v. Langley*, Op. No. 2025-UP-034 (S.C. Ct, App. Filed January 29, 2025). "In order for an issue to be preserved for appellate review, the issue must have been timely raised by the appellant with sufficient specificity and ruled upon by the trial court." *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 200 n.3, 810 S.E.2d 848, 850, n. 3 (2018); see also *Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

A party must make a timely objection to the verdict form to raise it as an issue on appeal. *Gause v. Smithers,* 403 S.C. 140, 151, 742 S.E.2d 644, 650 (2013); see also *Dixon v. Dixon,* 362 S.C. 388, 608 S.E.2d 849 (2005)(holding that issue raised for first time in Rule 59, SCRCP, motion is not preserved for review).

Here, Appellant approved the very verdict form that she now disputes. (R. p. 945, lines 2-15). As the legal somnolence has been described, "one who sleeps on a right cannot then assert it." While Appellant cites *Day v. Kilgore*, 314 S.C. 365, 444 S.E.2d 515 (1994) in support of her argument, that matter did not involve verdict forms but rather active participation by jurors in questioning witnesses which absolutely did not occur here.

As such, the court of appeals did not err in holding the issue was not preserved for appellate review. The petition for writ of certiorari should be denied.

VIII. **The court of appeals did not err in holding the trial court did not abuse its discretion when it admitted a voicemail of Appellant's former attorney because the statement was admissible under Rule 801(d)(2)(D) of the South Carolina Rules of Evidence.**

The court of appeals held "the trial court did not abuse its discretion when it admitted a voicemail [of] Eric Poston, [Appellant's] former attorney, left for Respondent, because the statements he made in the voicemail were admissible under Rule 801(d)(2)(D) of the South Carolina Rules of Evidence." *Lynch v. Langley*, Op. No. 2025-UP-034 (S.C. Ct. App., filed January 29, 2025).

Here, the trial judge used his discretion in admitting the evidence, and there is no abuse of discretion. "The admission of evidence is a matter addressed to the sound discretion of the trial judge." *Creed v. City of Columbia,* 310 S.C. 342, 344, 426 S.E.2d 785, 786 (1993). As cited by the court of appeals, "Absent clear of abuse of discretion amounting to an error law, the trial court's ruling will not be disturbed on appeal." *Id.*

The court of appeals held that as Appellant testified Poston was representing her at the time he left the voicemail, "Poston was acting as [Appellant's] servant and an

employment relationship between the two existed at the time." *Lynch v. Langley*, Op. No. 2025-UP-034 (S.C. Ct. App., filed January 29, 2025). As the court of appeals further held: "Poston made the statements within the scope of his employment relationship because Langley testified she hired Poston to represent her in a civil matter, [Appellant]previously brought an action contesting their father's will in which she alleged [Respondent] had exerted undue influence over their father, and [Respondent] testified Poston indicated she was living on her father' farm when [Appellant] 'had every right' to go on the property." *Id.*

Specifically, during Appellant's cross-examination at trial, she volunteered testimony that Poston was representing her in a civil case, and that Poston tried to "sabotage me by threatening [Respondent] on a telephone call that I had nothing to do with, and so I – I fired him." (R. p. 285, lines 22-24). Thereafter, during the Respondent's testimony, she was asked about Appellant's testimony in regard to Mr. Poston's voicemail. (R. p. 701, line 4 – p. 702, line 9). She described the substance of the call including but limited to Mr. Poston's identifying himself and stating he represented Appellant. (R. p. 701, line 14 – p. 702, p. 5). Late into this testimony wherein Respondent was relaying what Mr. Poston said in the voicemail, it appears Appellant's counsel objected to hearsay but did not move to strike any of Respondent's testimony describing the substance of the call. (R. p. 701, line 5 – p. 706, line 19).[2] Taking up Appellant's earlier

[2] *See State v. Saltz*, 346 S.C. 114, 129, 551 S.E.2d 240, 248 (2001)(When a witness answers a question before an objection is made, the objecting party must make a motion to strike the answer to preserve the issue of that statement's admissibility.). However, Appellant is appealing the voicemail, and not appealing Respondent's description of what was said by Mr. Poston.

invitation in front of the jury to play the voicemail, Respondent's counsel offered to let the court hear the voicemail. *Id.* Respondent's counsel stated that the voicemail (which was an original recording) was an exception to the hearsay rule as an admission of a party opponent. (R. p. 712, line 9 – p. 715, line 21); *see also* Rule 801(d)(2), SCRE. Appellant's counsel admitted, "I don't deny that the party's bound by the admissions, but again, that doesn't change the hearsay nature of the statement." (R. p. 712, lines 1-3).

After hearing the voicemail outside of the jury, Appellant's attorney objected to hearsay, and the lower court overruled the objection based on "evidence that's already been presented in this case and the law that's been argued here." (R. p. 714, line 25 – p. 715, line 3). Respondent returned to the stand and the voicemail was played with no further objection by Appellant's counsel.

Here, there is evidentiary support for the trial court's ruling under 801(d)(2) and the case law. Under Rule 801(d)(2), SCRE, a statement is not hearsay where it is offered against a party and is:

> (A) The party's own statement in either an individual or a representative capacity;
> (B) A statement of which the party has manifested an adoption or belief in its truth, or
> (C) A statement by a person authorized by the party to make a statement concerning the subject, or
> (D) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
> (E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Id.

Attorneys are representatives of their clients and are authorized to make statements on behalf of their clients. As set forth in our case law: "Acts of an attorney are directly attributable to and binding upon the client." *Arnold v. Yarborough*, 281 S.C. 570, 572, 316 S.E.2d 416, 417 (Ct. App. 1984); *see also* Motley v. Williams, 374 S.C. 107, 647 S.E.2d 244 (Ct. App. 2007)("Any communication failure or mistake on the part of an attorney is directly attributable to his client.")

Here, Appellant *is the one who put the fact of the voicemail into evidence.* (R. p. 285, lines 22-24). While Appellant's counsel tried to argue that Mr. Poston was not representing Appellant at the time of the voicemail (as Appellant also does in her Brief, Appellant stated under oath that Mr. Poston was representing her and verbally corrected her trial counsel twice to confirm that Mr. Poston *was* representing her in the civil case. (R. p. 285, lines 22-24; p. 714, lines 2-6; p. 713, lines 14-25).

Moreover, the record supports testimony from both Appellant and Respondent as to the substance of the call, the words said by Mr. Poston. (R. p. 286, lines 7-10; p. 701, line 14 – p. 702, p. 5). Mr. Poston, advancing the interests of the legal claims for which he had been hired by Appellant, left the voicemail on Appellant's behalf, stating he was representing Appellant, and advancing factual claims and conduct in the voicemail that Appellant herself has adopted. (R. p. 701, line 15 – p. 702, line 5).

Based on the trial record, there is evidentiary support for the trial judge's finding that the voicemail is an admission by a party opponent under any of the 801(d)(2) subsections. Appellant and Respondent both testified to the substance of the call. As Respondent had the original recording (the actual voicemail left on Respondent's phone),

this constitutes the best evidence of what was said in the voicemail. *See* Rule 1002, SCRE ("To prove the content of a . . . recording, the original . . . recording is required, except as otherwise provided in these rules or by statute)(emphasis added). As such, the trial court's reasoned decision to allow the introduction of the recording was not a manifest abuse of discretion.

Here, *Appellant herself* volunteered the fact of the voicemail and testified to the substance of the call, all in support of her *own theory* that her attorney was trying to *help Respondent* by leaving the voicemail. (R. p. 285, lines 22-24). Respondent testified to the substance of the call and that testimony is part of the record. She offered to play it. There is no evidence that the actual recording added or detracted from the trial testimony but was the best evidence of what was said.

Contrary to Appellant's claim in her brief that this was a "life threatening" threat, the threat established in the record was more time and legal expense if Respondent did not settle with Appellant. Moreover, although Appellant's trial counsel objected, he did not proffer the actual voicemail for the record. Given the overwhelming amount of evidence in the case, Appellant cannot show that the voicemail reasonably affected the rest of the trial or resulted in an abuse of discretion.

As an additional sustaining ground, Appellant "opened the door" to the testimony by her putting the fact of the voicemail into evidence, claiming the voicemail from her own attorney was an effort by him to help Respondent, and then offering to play the voicemail to the jury.

For all of these reasons, the judge did not abuse his discretion in allowing the playing of the voicemail. As such, the petition for writ of certiorari should be denied.

IX. The court of appeals did not err in holding Appellant's issue concerning the use of the word "kill" is not preserved for appellate review because prior to trial, Appellant confirmed she did not object to the use of the word "killing" at trial, did not object when it was used at trial, and in her motion for a new trial, she did not raise the issue.

The court of appeals correctly held that Appellant did not preserve this issue for appellate review as there was no objection at trial to use of the word "kill" or it's derivations (e.g. killing, killed). The Court of Appeals was the first time the issue was raised. *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004)("An issue may not be raised for the first time on appeal.")

At the beginning of the trial, Appellant's counsel objected *in limine* to the Respondent using the word "murder." (R. p. 76, lines 14-22; R. p. 85, lines 16-24). The trial court agreed and then asked Appellant's counsel: "do you object to the term killing?" His response was, "No." (R. p. 82, lines 16-19). Thereafter, Appellant never objected to the trial court's decision to allow the use of the word "kill."

In fact, the trial court brought up the issue again and no objection was raised by Appellant.

> Court: All right. With regard to the motion yesterday about the term murder, I've thought about it and I've tried to look it up. I think I'm going to stay with my ruling. Certainly we refer to the statement as an accusation that the plaintiff killed her father or along those lines. I'm just thinking that when we get into the term murder, you know, legal definitional term that might confuse or be more prejudicial than probative. All right.
>
> Counsel: Okay.

(R. p. 133, lines 10-18).

During opening argument, the word "kill" is used by Respondent's counsel, again without objection. (*See* R. p. 148, lines 9 and 15; p. 156, line 9); *see also State v. Somerset*, 276 S.C. 220, 277 S.E.2d 593 (1981)(appellant should object the first time a statement is made). Indeed, the word is used without objection by all parties during the trial. (e.g. R. p. 96, line 15; p. 323, lines 7-11, p. 328, lines 17-20; p. 537, line 4; p. 560, lines 13 and 25; p. 718, lines 9 and 12, p. 1000, line 11). As such, this objection is simply not preserved for appeal. *See CFRE, LLC v. Greenville County* Assessor, 395 S.C. 67, 81, 716 S.E.2d 877, 885 (2011)("A litigant cannot concede an issue at trial and then raise it on appeal."); *Burke v. AnMed Health,* 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011)("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the pervious motion is not preserved for appellate review).

For these reasons, the issue is not preserved for appellate review. As such, the petition for writ of certiorari should be denied.

CONCLUSION

As there are no special and important reasons to grant a writ of certiorari, and the issues raised by Appellant are either not preserved for appellate review or were proper evidentiary findings within the trial judge's discretion, the petition for writ of certiorari should be denied.

Dated: June 18, 2025

Respectfully submitted,

s/Kathy R. Schillaci
Joseph M. McCulloch, Jr. (S.C. Bar No. 3760)
Kathy R. Schillaci (S.C. Bar No. 17248)
McCulloch & Schillaci, Attorneys at La
1116 Blanding Street, First Floor (29201)
P.O. Box 11623
Columbia, South Carolina 29211
joe@mccullochlaw.com
kathy@mccullochlaw.com

Patrick James McLaughlin
Wukela Law Office
PO Box 13057
Florence, SC 29504
patrick@wukelalaw.com

ATTORNEYS FOR RESPONDENT, WENDY LYNCH

Other Counsel of Record:
James Ross Snell, Jr.
Law Office Of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, SC 29072
jamessnell@snelllaw.com
(803) 359-3301
(800) 567-6249
Attorneys for Appellant Elizabeth Langley