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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenwood County

Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHRISTOPHER LONGSHORE, JR.,

APPELLANT

APPELLATE CASE NO. 2025-000219

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# FINAL REPLY BRIEF OF APPELLANT

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W. CHANDLER NORVILLE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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## ARGUMENT IN REPLY

Because Appellant referred to *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976), with sufficient clarity that the trial court knew the basis of his argument, all constitutional issues addressed in *Ellefson* are preserved for appellate review.

Appellant asserts that the trial court erred in admitting the jail calls at issue in this case under the First, Fourth, Sixth, and Fourteenth Amendments, as well as Article I, § 10 of the South Carolina Constitution. The state responds that only the Fourth Amendment argument is preserved for review because Appellant did not specifically articulate the arguments to the trial court. BOR at 13. However, Appellant referenced *Ellefson* with sufficient clarity to allow the trial court to understand what it was ruling upon. Further, the *Ellefson* Court's decision was not based solely on the Fourth Amendment, but a combination of several different constitutional provisions. Therefore, by sufficiently referencing *Ellefson*, Appellant's arguments are preserved.

To preserve an issue for appellate review, the "objecting party must be sufficiently clear in framing the objection; however, the party is not required to use the exact name of a legal doctrine to preserve the issue." *Cone v. State*, 443 S.C. 487, 493-94, 905 S.E.2d 368, 372 (2024). "A trial court's opportunity to rule necessarily includes both parties *being aware of the nature of the objection*...." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (emphasis added). The *Cone* rule is one of fairness and practicality; if the trial court knows what it is ruling on, it makes little sense for this Court to refuse to address it due to minor procedural failings by trial counsel. After all, this Court must not "apply preservation rules 'in a technical manner as if this is some sort of game of "gotcha" elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.'" *Cone*, 443 S.C. at 494, 905 S.E.2d at 372 (quoting

*Morales*, 439 S.C. at 609, 889 S.E.2d at 556). Therefore, it is sufficient to preserve an issue if "it is apparent the trial court understood the objection and expressly ruled" on it. *Id.*

Here, Appellant argued the following to the trial court:

> Your Honor, related to the jail calls, we – there's a push amongst defense attorneys to generally argue that these are not admissible. And there's some actual evidence that would support that. One: There's a case involving letters from the '70s. And essentially the jail calls and the chats of today are the letters of the 1970s. Okay. And what – it says that, basically, *they have to have some real security interest in actually scanning these things*.
>
> That doesn't happen here. What happens here is...the solicitors just indiscriminately just scrolling through whenever they have free time checking out what the people at the jail are saying, okay? *This isn't because they have some particular security concerns about a particular person.*
>
> They're just randomly looking through people's chats, and people's calls, and people's video chats with their people, things like that.... I think that *without any sort of real security interest* that they need to actually – they can't do that, because essentially, it's the same thing as going through someone's mail, which they can't indiscriminately do, Your Honor....

R. 13, l. 22 – 14, l. 22 (emphasis added). The trial court then interjected to "play devil's advocate" and address its concerns with whether an inmate has a reasonable expectation of privacy. R. 14, l. 23. It also distinguished the opening of a letter from the listening in on a recorded line. R. 15, ll. 2-6. Following that interjection, Appellant continued:

> You know, like, they trust the family members. And a lot of times what they're doing is trying to do what you would normally do protecting yourself. Say, "Okay. We need to *track down these witnesses*. My public defender hasn't talked to me in three, four months or six months." And that's on us. And I understand that, but, you know, my public defender hasn't talked to me in forever. You need to track down these people. I need to get out of here. *We*

> *need to prepare my case for trial.* And the problem is that they're relying on family members and things like that because that's what they have.

R. 16, ll. 9-19 (emphasis added). The trial court denied the motion to suppress, stating, "...you got no expectation of privacy, just you're dumb enough to put it out there." R. 16, ll. 5-6.[1] The trial court's statements here evidence that it was likely aware of the case Appellant was referring to.

In any event, Appellant's arguments went beyond the Fourth Amendment. Apart from the Fourth Amendment, the *Ellefson* Court[2] found—and Appellant asserted, *see* Brief of Appellant 17-21—that the indiscriminate reading of inmate mail clashed with an inmate's right to communicate privately with associates to develop a defense. *Ellefson*, 266 S.C. at 502, 224 S.E.2d at 670. The *Ellefson* Court also held that the practice violated inmates' right to "communicate without the uninvited ears and eyes of the government." *Id.* at 501, 224 S.E.2d at 670 (citing *Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting)).

Appellant asserted these same arguments, asserting it was bad practice to indiscriminately record jail phone calls, because inmates need to speak with associates "to track down witnesses,"

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[1] The state points out that later on in the conversation (after the trial court had ruled on the motion to suppress the entirety of the jail calls) the Solicitor made an argument where he referenced only the Fourth Amendment. BOR at 9 (*citing* R. 19, ll. 12-21). The Solicitor's statements bear no relevance to the question of whether the *Ellefson* issues are preserved. For one, the trial court had already ruled on the issue without the Solicitor's input. The Solicitor had no reason to address the whole of Appellant's arguments, and the fact that he did not does not mean that Appellant did not make them. Secondly, an opposing counsel's counterargument is perhaps the worst source of information about the contours of another attorney's argument.

[2] The state appears to argue that *Ellefson* is not binding precedent. BOR at 11. However, *Ellefson* has never been overruled or abrogated by the South Carolina Supreme Court. Thus, this Court remains bound to follow it, regardless of whether it is "out of date." BOR at 11.

and "to prepare [their] case for trial." R. 16, ll. 11-12; 16-17. Appellant further stressed that phone calls were the letters of the modern age and stressed the importance of inmates' ability to speak with their friends and family. Appellant may not have used the exact names of the legal doctrines he was referring to; but he is not required to. The record before this Court shows that "the trial court understood the objection" *Cone*, 443 S.C. at 494, 905 S.E.2d at 372.

The issue is at least close. And when an issue of error preservation is doubtful, the "Supreme Court has observed 'it may be good practice for us to reach the merits of an issue when error preservation is doubtful.'" *State v. Williams*, 417 S.C. 209, 229, 789 S.E.2d 582, 593 (Ct. App. 2016) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012)); *see also id.* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring in part and dissenting in part) ("where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation").

Accordingly, Appellant's arguments are preserved for appellate review. This Court should reach the merits.

## CONCLUSION

For the foregoing reasons, Appellant's issues are preserved for this Court's review. For the reasons stated in Appellant's initial brief, the trial court was wrong on the merits, and this Court should reverse.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of January, 2026.

## CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant 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."



This 26th day of January, 2026.

W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT