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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Hampton County
Honorable Robert J. Bonds, Circuit Court Judge
Appellate Case No. 2026-001132

THE STATE,

Respondent,

vs.

RONALD LEE LYONS,

Appellant.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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"Whether the Court of Appeals erred in holding that the trial court did not err in denying Lyons's motion for specific performance of a promise made by SLED agents to not obtain warrants for Petitioner's arrest if he assisted them in other investigations, where the agents were acting within the scope of their authority in making the promise and Petitioner relied on the promise to his detriment?"

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals somehow err by affirming the trial judge's refusal to grant Lyons's request for "specific performance" of a non-arrest agreement he purportedly entered into with agents from the South Carolina State Law Enforcement Division when: (1) the agents—just like other law enforcement officers in our state—did not have the power or authority to grant Lyons immunity from arrest or prosecution for his completed crimes; (2) a grant of "specific performance" would have had no practical effect in Lyons's case since an arrest warrant was not necessary for Lyons to be indicted or prosecuted for the criminal acts he had committed; and (3) Lyons's newly-conceived appellate claim of entitlement to relief based on principles of due process and fundamental fairness was not properly preserved for appellate review since it was neither raised to nor ruled upon by the trial judge?

STATEMENT OF THE CASE

Procedural History

In May of 2019, Petitioner Ronald Lee Lyons was arrested after he sold large quantities of illegal narcotics to an undercover law enforcement officer on multiple occasions over a span of several weeks. In March of 2021, the Hampton County Grand Jury indicted Lyons for trafficking in methamphetamine, trafficking in heroin, and distribution of fentanyl in connection to one of the drug transactions that led to his arrest.[1] On November 15, 2021, a jury trial was commenced on those three indicted charges in the Hampton County Court of General Sessions with the Honorable Robert J. Bonds, circuit court judge, presiding. Although initially present for trial, Lyons absconded during a recess on the trial's second day, and the trial proceeded forward in his absence. At the conclusion of the three-day trial, the jury convicted Lyons as indicted. Following the verdict, the trial judge sentenced Lyons, and that sentence was sealed. Subsequently, Lyons was apprehended, and a sentencing hearing was conducted on February 3, 2022, in the Hampton County Court of General Sessions with the Honorable Michael G. Nettles, circuit court judge, presiding. During the hearing, the sentencing judge unsealed Lyons's sentence and imposed concurrent terms of imprisonment of fifteen years for each of Lyons's three convictions. Lyons then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished opinion in which it unanimously affirmed Lyons's convictions and aggregate sentence. State v. Lyons, Op.

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[1] In total, the Hampton County Grand Jury indicted Lyons between October 2020 and September 2023 for five counts of trafficking in methamphetamine, three counts of trafficking in heroin, one count of distribution of fentanyl, two counts of unlawful carrying of a pistol, and one count of possession of a weapon during the commission of a violent crime in connection to his series of drug transactions with the undercover law enforcement officer. Records for Ronald Lee Lyons, Jr., Hampton County Fourteenth Judicial Circuit Public Index, https://publicindex.sccourts.org/hampton/publicindex.

No. 2026-UP-010 (S.C. Ct. App. filed Jan. 14, 2026). Thereafter, Lyons petitioned the Court of Appeals for rehearing, and the petition was denied. Lyons then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Toward the outset of Lyons's trial on charges of trafficking in heroin, trafficking in methamphetamine, and distribution of fentanyl that stemmed from one of *several* drug transactions in which Lyons sold large quantities of heroin, methamphetamine, or fentanyl to—unbeknownst to him at the time—an undercover agent from the South Carolina State Law Enforcement Division ("SLED"), Lyons sought "specific performance" of the terms of a non-arrest agreement he purportedly entered into with the agents after they disclosed their true identities to him at the conclusion of their undercover operation. (R. p. 1; p. 8; pp. 150-155). However, during the ensuing hearing on the matter, the specific terms of that agreement were never clearly established. (R. pp. 2-32; pp. 35-53; pp. 56-100).

At various points in his testimony, Lyons—who conceded he never entered into a formal cooperation agreement with a solicitor—claimed he and his family were told by the agents: (1) he "wouldn't be charged *if* [he] worked for them"; (2) *if* he "cooperated," then he was "not going to jail"; (3) "*[a]s long as* [he and his girlfriend, Courtney Lane,] work and cooperate with [the agents] and do what [they] want, they will not be getting charged"; (4) he and his girlfriend "were not going to jail *as long as* [they] worked with them"; and (5) "*as long as* [they] cooperate, [no charges] will be filed." (R. p. 7; p. 9; p. 14; pp. 29-30) (emphasis added). And, Lyons asserted he did—at least in his view—do as directed by participating in several controlled buys for the agents after that. (R. p. 11; p. 14). However, Lyons further acknowledged he continuously used illegal drugs during the entirety of the time he worked for the agents, and he

candidly admitted he bungled at least one of the controlled buys he was involved in by dropping the drugs on the ground outside the seller's residence when he was leaving, which required him to go back to retrieve them later. (R. pp. 11-12; pp. 31-32).

Generally consistent with what Lyons had claimed, Lane testified she was told no charges would be filed against them *if* they cooperated[2] and "part of the deal was no jail time." (R. pp. 36-37). Likewise, Samantha Gore, who was Lyons's sister, asserted the agents said Lyons and Lane would not be going to jail "*as long as* they were doing what [the agents] wanted them to do." (R. p. 46) (emphasis added). Furthermore, Joanne Lyons, who was Lyons's mother, stated the agents said Lyons and Lane were not going to jail "*as long as*" they worked with them, "d[id] what [they] needed [Lyons] to do," and "cooperated with what [they] needed them to do." (R. pp. 52-53) (emphasis added).

Contrastingly, Lieutenant[3] Randal Risher, who was the primary case agent on Lyons's case, asserted SLED never made any promises to Lyons in exchange for his work as a confidential informant. (R. p. 57). More specifically, he affirmed they never promised Lyons he would not go to jail or warrants would not be issued if he served as an informant and made no plea agreements with him since they had no authority to do so. (R. pp. 57-58). He further indicated the only thing he could do for a cooperating suspect would be to speak on his behalf and request help from a solicitor in exchange for any assistance provided but he could not—and did not—make any guarantees. (R. pp. 61-62). Beyond that, he stated Lyons did, in fact, participate in several controlled drug transactions for SLED. (R. pp. 65-66). However, he

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[2] Later on, Lane acknowledged her participation in the work for the agents after the agreement was reached was limited because she was deemed by them to be a "liability." (R. p. 38).

[3] By the time of trial, Risher worked for the Hampton Police Department instead of SLED. (R. p. 56).

explained Lyons was *not* a reliable informant, used illegal drugs throughout the period he was working for them, and failed to lead them to a pill press—which is what they were trying to locate through their work with him—despite his claim he could get them to it. (R. pp. 56-57; pp. 77-78).

Likewise, Agent Jarrett Maffett, the undercover SLED agent who had directly purchased the narcotics from Lyons in the earlier transactions, indicated he asked Lyons to work for them as a confidential informant after revealing the ruse to him. (R. pp. 79-80). However, in doing so, he indicated he made no promises to Lyons and, instead, only told him they would speak with a prosecutor on his behalf if he assisted them. (R. pp. 80-81). Furthermore, Agent Maffett asserted that limited offer was contingent on Lyons providing the pill press to them, which he subsequently failed to do. (R. p. 81). Beyond that, Agent Maffett stressed he never promised Lyons he would not go to jail, never promised no arrest warrants would be obtained or served if he worked with them, and never made any plea agreements, which he had no authority to make. (R. pp. 82-83; p. 92). Agent Maffett further explained he ultimately arrested Lyons at the beginning of May[4] of 2019 because that was the point in time they decided Lyons—who, by his own admission, accidentally dropped and left the purchased drugs on the ground during one of the controlled buys he participated in—was simply too unreliable[5] to continue working with them as an informant. (R. p. 11; p. 86; pp. 96-97).

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[4] Prior to that point, Agent Maffett indicated Lyons had purchased narcotics for them twice in March and once in April after Lyons began working for them on March 14, 2019, which was the date the agent revealed his true identity to Lyons. (R. p. 2; pp. 99-100).

[5] As to Lyons's unreliability, Agent Maffett indicated Lyons was under the influence of drugs "every time" he worked for them, Lyons was difficult to deal with "in all aspects," Lyons routinely complained to them, Lyons self-admittedly lied to them, and Lyons failed to obtain any good recorded footage during the limited controlled buys in which he participated. (R. pp. 81-82).

After that testimony was presented, defense counsel maintained the agents entered into an agreement with Lyons and Lyons detrimentally relied upon that agreement. (R. pp. 107-108). Defense counsel further maintained the agreement constituted "an *implied* contract that [Lyons] would not be going to jail" and asked the trial judge to enforce that agreement based on the fact Lyons—at least in his view—had provided valuable intelligence to the agents and then suffered consequences[6] as a result. (R. pp. 108-109) (emphasis added). However, when pressed to identify authority to support his position, defense counsel alleged his argument was a "novel" one and cited not to the constitutional guarantees of due process or fundamental fairness but to the state constitutional provision stating the South Carolina Attorney General is the chief law enforcement officer in the state. (R. pp. 109-112).

In rebuttal, the solicitor contended the only offer made to Lyons was to discuss his cooperation if he did, in fact, cooperate and assist the agents in achieving their goal of finding the pill press. (R. pp. 112-113). Moreover, the solicitor noted the agents lacked authority to grant immunity from arrest or prosecution in South Carolina and, thus, could not validly enter into a non-arrest agreement even assuming they had done so. (R. pp. 118-119).

Upon considering those arguments, the trial judge asserted the State's witnesses were "terrible," "not truthful," and "disrespectful" based on their behavior on the witness stand. (R. pp. 123-124). The trial judge further indicated he "[a]bsolutely" believed the agents were after a pill press and—without identifying the actual terms of the purported agreement—"absolutely" believed there "certainly, most probably" was a promise made to Lyons. (R. p. 125; pp. 127-128). Beyond that, the trial judge indicated he believed Lyons detrimentally relied upon the

[6] As to the consequences, Lyons asserted he was assaulted in jail for being a "snitch," and his mother stated she relocated for her own safety since one of the controlled buys Lyons arranged involved a co-worker of hers. (R. pp. 18-20; pp. 26-27; pp. 52-53).

promise since he was beaten up in jail, his mother had to move, and he faced danger to himself during the controlled buys. (R. pp. 126-128). Nevertheless, the trial judge denied the request for specific performance of the purported non-arrest agreement because the agents did not have the authority in South Carolina to enter into an agreement that would grant immunity from arrest or prosecution. (R. p. 128).

After Lyons was subsequently convicted for criminal acts that occurred *before* he ever entered any cooperation agreements with the SLED agents, Lyons appealed, arguing—in part[7]—the trial judge erred by failing to grant his request for "specific performance" of the agreement he entered into with the SLED agents. (App'x pp. 1-21). As support for that contention, Lyons maintained the agents did have authority to promise not to obtain arrest warrants and, therefore, he "was entitled to specific performance of the promise." (App'x pp. 16-17). Furthermore, even if the agents acted outside the scope of their authority in his case, Lyons maintained "fundamental fairness" dictated their promise nevertheless be enforced. (App'x p. 17). And, even though he alleged the promise made by the agents was "not so broad" as to be construed as a promise not to prosecute, Lyons nevertheless contended it was "fundamentally unfair" for his case to have been prosecuted under the circumstances involved and asked the Court of Appeals to reverse and remand for the dismissal of all the arrest warrants issued against him. (App'x pp. 17-18; p. 21).

On appeal, the Court of Appeals affirmed. (App'x pp. 37-38). In affirming, the Court of Appeals rejected[8] Lyons's claim the trial judge reversibly erred by denying his motion seeking

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[7] Lyons also argued the sentencing judge erred by declining to reconsider the sentence after it was unsealed. (App'x pp. 18-21).

[8] The Court of Appeals likewise rejected Lyons's appellate challenge to his sentence, which has now been abandoned. (App'x pp. 38-46).

specific performance of the promise made by law enforcement not to obtain warrants for his arrest for multiple reasons. (App'x p. 37). Specifically, "[t]o the extent Lyons argue[d] SLED promised not to arrest him or that he would not be prosecuted," the Court of Appeals held "the trial court did not err in finding SLED did not have the authority to enter into such an agreement because law enforcement officers do not have the authority to promise not to arrest or prosecute a defendant." (App'x p. 37). Likewise, "[t]o the extent Lyons argue[d] solely that SLED only promised not to obtain arrest warrants for" him, the Court of Appeals concluded "the trial court did not err in denying Lyons's motion for specific performance because an arrest warrant was not necessary for Lyons to be indicted and prosecuted; therefore, granting specific performance in this circumstance would have no practical effect." (App'x p. 37). Finally, the Court of Appeals determined Lyons's newly-conceived "fundamental fairness" argument was not properly preserved for appellate review since Lyons never raised that particular argument to the trial judge. (App'x p. 37).

STANDARD OF REVIEW

In criminal cases, appellate courts in South Carolina sit only to review *preserved* errors of law. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). When reviewing a pre-trial ruling on appeal, an appellate court is " 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge's ruling on such a matter "will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's refusal to grant Lyons's request for "specific performance" of a non-arrest agreement he purportedly entered into with agents from the South Carolina State Law Enforcement Division because: (1) the agents—just like other law enforcement officers in our state—did not have the power or authority to grant Lyons immunity from arrest or prosecution for his completed crimes; (2) a grant of "specific performance" would have had no practical effect in Lyons's case since an arrest warrant was not necessary for Lyons to be indicted or prosecuted for the criminal acts he had committed; and (3) Lyons's newly-conceived appellate claim of entitlement to relief based on principles of due process and fundamental fairness was not properly preserved for appellate review since it was neither raised to nor ruled upon by the trial judge.

On certiorari, Lyons contends the Court of Appeals reversibly erred by failing to find the trial judge should have granted the request for "specific performance" of the non-arrest agreement Lyons allegedly entered into with the SLED agents. As support for that contention, Lyons maintains the agents did, in fact, have authority to promise not to obtain arrest warrants and, therefore, he was entitled to relief in the form of dismissal of the *indictments* against him since he performed actions for the State in reliance on that promise, it was breached, and he suffered harm as a result. Furthermore, although he self-admittedly never used the phrases "fundamental fairness" or "due process" when arguing for specific performance at the trial level, Lyons appears to maintain the Court of Appeals erred by finding his newly-conceived fundamental fairness and due process arguments were not properly preserved for appellate review since, in his view, "[t]he concepts [we]re intertwined" and must inherently be considered as part of the analysis of his request for specific performance, including even if the SLED agents "were not acting within their authority." For multiple reasons, Lyons is wrong, and his petition for a writ of certiorari should be denied.

Initially, since the actual relief Lyons was and is seeking on appeal is the dismissal of all the indictments against him, Lyons's appellate argument—no matter how he seeks to frame it—

amounts to a contention the agreement he purportedly entered into with the SLED agents should be interpreted as one granting him full immunity from prosecution for the many, many "serious"[9] crimes he committed prior to entering into it. However, just as the trial judge and the Court of Appeals correctly recognized, law enforcement officers in South Carolina simply do not have authority to enter into such an agreement. See State v. Peake, 345 S.C. 72, 77-78, 545 S.E.2d 840, 843 (Ct. App. 2001) (citing to multiple out-of-state authorities for the principle law enforcement officers do not have the authority to promise or grant immunity from prosecution to a criminal offender), aff'd, 353 S.C. 499, 579 S.E.2d 297 (2003); see also United States v. Flemmi, 225 F.3d 78, 85 (1st Cir. 2000) ("[A] government agent possesses express authority to bind the government if—and only if—the Constitution, a federal statute, or a duly promulgated regulation grants such authority in clear and unequivocal terms."); State v. Cox, 253 S.E.2d 517, 521 (W. Va. 1979) ("Every court addressing this issue has held that law enforcement officers do not have authority to promise that in exchange for information, a defendant will not be prosecuted for the commission of a crime and such a promise is unenforceable as being beyond the scope of their authority."). Instead, only prosecutors have the authority in our state to grant

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[9] In South Carolina, trafficking in controlled substances like heroin and methamphetamine constitutes a "serious" offense. S.C. Code Ann. § 17-25-45(C)(2)(b). Thus, based on his commission of multiple "serious" offenses during separate and distinct transactions with the undercover SLED agent, Lyons was potentially facing a mandatory sentence of life without parole for the crimes he committed. Cf. Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009) ("We find no ambiguity concerning the application of section 17-25-50 to Bryant's multiple armed robberies over several days. Bryant committed the three separate armed robberies on different days, at different locations, and the robberies involved different victims. These separate and distinct crimes over a several day period were not inextricably connected and did not share an immediate temporal proximity. Thus, Bryant's multiple armed robberies may not, as a matter of law, be considered 'one offense' under section 17–25–50."); see also State v. Boyd, 288 S.C. 206, 210, 341 S.E.2d 144, 146 (Ct. App. 1986) ("[W]here multiple convictions are obtained for violations of the Controlled Substance Act where the violations are unrelated to one another and do not arise out of a single incident that there be no prohibition of counting for sentencing purposes each conviction separately.").

immunity from prosecution to criminal defendants, and Lyons—by his own admission—was *not* seeking enforcement of an agreement he reached with a solicitor. See State v. Blackburn, 271 S.C. 324, 330, 247 S.E.2d 334, 338 (1978) ("The granting of immunity from prosecution is a matter within *the solicitor's* discretion." (emphasis added)); cf. State v. Reed, 879 P.2d 1000, 1002 (Wash. Ct. App. 1994) ("We hold that the promise by police to 'drop charges' exceeded their authority and that, without the involvement of the county prosecutor, such an agreement cannot be enforced as a contract. The police have no authority to make prosecutorial decisions. The county prosecutor is charged with prosecution of all criminal actions in which the state is a party. The decision whether to file criminal charges is within the prosecutor's discretion." (citations and footnote omitted)). Therefore, even assuming the SLED agents entered into a non-prosecution agreement with Lyons *and* Lyons actually upheld his end of the conditional agreement based on its terms, that agreement was not an enforceable one, and the trial judge—just as the Court of Appeals accurately held—correctly declined Lyons's motion seeking "specific performance" of it. See Peake, 345 S.C. at 77, 545 S.E.2d at 842 ("[E]nforcement of an agreement not to prosecute is subject to two conditions: (1) the agent must be authorized to make the promise; and (2) the defendant must rely to his detriment on the promise."); see also S.C. Coastal Council v. Vogel, 292 S.C. 449, 452, 357 S.E.2d 187, 189 (Ct. App. 1987) ("The doctrine of estoppel will not be applied to deprive the State of the due exercise of its police power or to thwart its application of public policy.").

Meanwhile, to the extent Lyons was and is contending he is entitled to "specific performance" because the promise made to him was limited to being one not to arrest him, the trial judge did not err by declining to grant such specific performance because—just as the Court of Appeals aptly found—granting such relief would have had no practical effect in Lyons's case.

Critically, that is true because Lyons was not seeking release from pre-trial incarceration through his motion for specific performance; the "specific performance" he was seeking by the time of trial was the permanent dismissal of all the indictments against him and a determination he could never be prosecuted for the crimes he had committed. But, as the Court of Appeals correctly recognized, the arrest warrants obtained in Lyons's case were not necessary for the solicitor to be able to prosecute Lyons for his litany of crimes. See State v. Walker, 232 S.C. 290, 295-296, 101 S.E.2d 826, 829 (1958) (explaining a solicitor may obtain an indictment and prosecute a case even without an arrest warrant first being issued); State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978) (reiterating the illegality of an arrest does not bar a subsequent prosecution or conviction for the charged offense); State v. Swilling, 246 S.C. 144, 148, 142 S.E.2d 864, 866 (1965) (explaining the unlawfulness of an arrest neither constitutes a valid ground for quashing an indictment nor precludes a criminal defendant from being tried for the charged offense), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see also Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." (footnote omitted)); State v. Smith, 17 S.C.L. (1 Bail.) 283, 290 (1829) ("The prisoner is an offender against our laws, and to them he owes atonement."). Therefore, regardless of whether the arrest warrants obtained by the SLED agents were valid, the solicitor's prosecution of Lyons was proper and there were no legitimate grounds upon which the indictments could have been quashed or dismissed.

Finally, to the extent Lyons was and is contending *on appeal* principles of due process and fundamental fairness[10] were what entitled him to "specific performance" of his agreement with the SLED agents, that particular constitutional claim was—just as the Court of Appeals accurately recognized—never presented to, considered by, or ruled upon by the trial judge and, thus, was not properly preserved for appellate review. Significantly, in South Carolina, an issue, including a constitutional one, must first be raised to and ruled upon by the trial judge before it can properly be raised or considered on appeal. See In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal."). With that basic procedural requirement in mind, defense counsel did *not* seek specific performance of the "implied contract" he believed the agents entered into with Lyons based on the Due Process Clause or principles of fundamental fairness at the trial level; instead, when pressed by the trial judge to identify what authority he was relying upon as support for his motion, defense counsel pointed to the state constitutional provision establishing the South Carolina Attorney General "shall be the chief prosecuting officer" in our state. See S.C. Const. art. V, § 24 ("The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record."). Under such circumstances, the trial judge was never asked to consider or rule upon any constitutional claims related to due process or fundamental fairness,

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[10] Critically, the primary authority upon which Lyons is now relying—the decision of the Fourth Circuit Court of Appeals in United State v. Bailey, 74 F.4th 151 (4th Cir. 2023)—involved an analysis of an issue expressly focused on whether the defendant's constitutional *due process rights* had been violated. See United State v. Bailey, 74 F.4th 151, 157 (4th Cir. 2023) ("Bailey . . . does not allege a violation of his Fourth Amendment rights. Rather, he argues that his November 13 arrest violated his due process rights because, by obtaining the relevant arrest warrants, Officer Page breached a promise not to arrest Bailey for either the 0.7 grams of cocaine Bailey turned over *or* the 0.1 grams of cocaine found on Johnson.").

and, resultantly, Lyons cannot now properly raise or prevail upon such issues and arguments for the first time on appeal pursuant to the plain mandates of South Carolina law.[11] See State v.

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[11] Moreover, notwithstanding the issue preservation problems involved with Lyons's newly-conceived constitutional claim, it is not readily clear how Lyons's due process rights were violated, particularly to such an extent that principles of fundamental fairness would have warranted the extreme remedy of dismissal of his charges. Cf. State v. Peake, 353 S.C. 499, 506, 579 S.E.2d 297, 301 (2003) ("It may well have been unfair of Ms. Hunter-Shaw not to reveal the fact that she had referred the matter for criminal consideration. We nevertheless do not find that her conduct rose to a level that would cause us to question the constitutionality of petitioner's criminal prosecution."). Demonstrating that fact, Lyons—based on his own recitation of the terms of the agreement he entered into with the SLED agents—was *only* not going to be arrested for his already-committed crimes *if* and *as long as* he was cooperating and doing what the agents wanted him to do. (R. p. 7; p. 9; p. 14; pp. 29-30). Thus, pursuant to plain terms of that opened-ended and conditional agreement, the SLED agents were only required to refrain from arresting Lyons so long as he was doing precisely what they asked him to do, and, if he wanted to avoid being arrested for his completed crimes, Lyons had to continue doing whatever the agents asked him to do for as long as they wanted him to do so. Cf. State v. Compton, 366 S.C. 671, 677-678, 623 S.E.2d 661, 664-665 (Ct. App. 2005) ("Looking at the agreement, there is nothing to evidence an understanding between the parties that Compton could not be prosecuted for the Hanna murder. It is generally recognized that immunity agreements and plea agreements are to be construed in accordance with general contract principles. Accordingly, this court should not read terms or conditions into the contract that the parties did not intend. The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." (citations omitted)). However, Lyons—who routinely engaged in additional criminal behavior by using drugs while working for the agents and who was described as being unreliable by the agents for a multitude of reasons—failed to live up to those terms in the agents' view due to, amongst other things, his failure to deliver the pill press they were seeking. (R. pp. 31-32; p. 57; p. 70; pp. 77-78; pp. 81-82; p. 84; pp. 95-97). Under such circumstances, the agents' decision to arrest Lyons after he proved to be an unreliable informant, self-admittedly bungled at least one of the controlled buys, and failed to deliver what they asked him to deliver appears fully consistent with the terms of the conditional agreement Lyons claimed to have entered into, and that arrest decision certainly could not be reasonably described as one shocking to the universal sense of justice. See Kinsella v. United States ex rel. Singleton, 361 U.S. 234, 246 (1960) ("Due process cannot create or enlarge power. It has to do . . . with the denial of that fundamental fairness, shocking to the universal sense of justice." (citations, footnote, and internal quotations omitted)); cf. United States v. Russell, 411 U.S. 423, 432 (1973) ("The law enforcement conduct here stops far short of violating that fundamental fairness, shocking to the universal sense of justice, mandated by the Due Process Clause of the Fifth Amendment." (citation and internal quotations omitted)); United States v. Lilly, 810 F.3d 1205, 1217 (10th Cir. 2016) ("[H]aving thoroughly reviewed the pertinent caselaw, we must conclude that, aside from perhaps one noteworthy factor that actually does not benefit her, Ms. Lilly's case is patently mine-run. Like Ms. Lilly, the typical defendant in this setting complains that investigators made unfulfilled promises that the defendant would not be

Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (instructing an appellant is limited solely to the grounds raised at trial); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."). Therefore, the Court of Appeals did exactly what it was supposed to do by declining to rule on that unpreserved newly-conceived argument. Cf. State v. English, 443 S.C. 49, 59, 902 S.E.2d 385, 390 (2024) (concluding the Court of Appeals erred by addressing an unpreserved argument and vacating the portion of its decision doing so).

Accordingly, for all those reasons, the trial judge properly rejected Lyons's request for specific performance of the purported non-arrest agreement, and the Court of Appeals correctly affirmed the trial judge's sound ruling on appeal. Cf. State v. Peake, 353 S.C. 499, 504-506, 579 S.E.2d 297, 300-301 (2003) (affirming the decision of the Court of Appeals reversing a trial judge's order quashing an indictment because, contrary to the conclusion reached by the trial judge, the authority to grant immunity from prosecution "resides exclusively in the Attorney General"). Lyons's petition for a writ of certiorari should be denied.

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prosecuted or would receive other favorable treatment relative to potential criminal charges if the defendant truthfully disclosed information regarding an investigation—including self-incriminating information—or actively assisted the investigators in efforts aimed at catching other possible criminals. Accordingly, because Ms. Lilly's case is mine-run, it is not a suitable candidate for application of the fundamental-fairness exception." (citations omitted)).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

Respectfully submitted,

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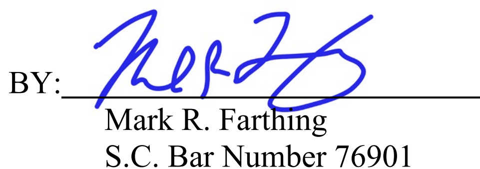

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