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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. D. Morgan, Jr., Circuit Court Judge
Appellate Case No. 2026-000478

THE STATE,

Respondent,

vs.

DENIS JOHN HINKLE, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Whether the trial court's instruction that extreme indifference to human life was evidenced by the use of a deadly weapon was an unconstitutional comment on the facts?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Is Appellant's constitutional challenge to the trial judge's jury charge on the statutory definition of "circumstances manifesting extreme indifference to the value of human life" for purposes of domestic violence of a high and aggravated nature properly preserved for appellate review when it was neither raised to nor ruled upon by the trial judge and, instead, defense counsel expressly confirmed he had no objections to the trial judge's jury instructions both before and after they were presented?

STATEMENT OF THE CASE

In April of 2023, Appellant Denis John Hinkle, Jr. was arrested following an investigation into an incident that occurred a few weeks earlier in which a woman was attacked, injured, and left along the side of the road in Mauldin, South Carolina. In February of 2025, the Greenville County Grand Jury indicted Appellant for domestic violence of a high and aggravated nature. On February 17, 2026, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable G. D. Morgan, Jr., circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a fifteen-year term of imprisonment, which was suspended to an eight-year term of imprisonment to be followed by three years of probation. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 9:30 p.m. on the night of April 5, 2023, Meranna Masters-Deida, who was working as a delivery driver at that time, was driving her delivery van in the vicinity of West Butler Road in Mauldin when she saw a woman—Brittany Woods ("Victim")—fall out of a nearby truck that had just been rocking side to side like an altercation was occurring inside it. (Tr. pp. 55-57; p. 95; pp. 101-102; State's Ex. # 1 (911 Call Recording)). Disturbingly, as Masters-Deida continued to look on, the truck's driver, who was later identified as Appellant, swiftly stopped the vehicle, shifted into reverse, and backed up in a manner that suggested he was attempting to run over Victim, who was by then lying on the ground near the curb. (Tr. p. 57; p. 102; State's Ex. # 1). Appellant then struck Victim with the truck and spun its tires, which resulted in injuries to the left side of Victim's body. (Tr. p. 57; p. 97; State's Ex. # 1).

In response to witnessing those shocking events transpire, Masters-Deida quickly stopped her van, opened its door, and yelled for Victim to hurry into it for safety. (Tr. pp. 56-58). Victim, who was visibly injured and bleeding heavily from her nose and mouth, promptly did so. (Tr. pp. 58-59; p. 74; p. 96; p. 108; pp. 112-113; pp. 147-148). Once Victim was secured, Masters-Deida called 911 and reported what had occurred. (Tr. p. 59; p. 96; State's Ex. # 1). Following that, officers from the Mauldin Police Department rushed to the scene along with other emergency personnel, and Victim identified Appellant, her former live-in boyfriend, as her assailant when recounting what happened to the officers. (Tr. pp. 59-60; pp. 72-74; pp. 85-86; pp. 89-90; p. 101; pp. 105-106; pp. 144-145; State's Ex. # 2 (Body Camera Recording)). Victim was then transported to the hospital to receive treatment for her injuries, and officers began searching for Appellant, who had already fled from the scene by the time they arrived. (Tr. p. 60; p. 74; pp. 80-81; pp. 96-97; p. 99; p. 113; pp. 150-151).

A few weeks later, the Easley Police Department tracked Appellant down and took him into custody, and he was arrested in connection to the incident involving Victim. (Tr. pp. 154-157). Subsequent to that, Appellant was indicted for domestic violence of a high and aggravated nature, and he elected to proceed forward during trial. (Tr. p. 14; Indictment).

During trial, Victim recounted the details of the incident and identified Appellant as the person who assaulted her and intentionally backed his truck into her. (Tr. pp. 89-104). Along with that, Masters-Deida testified about what she witnessed on the date of the incident, and the officers and other personnel who responded to the scene discussed the details of the response to and investigation of the incident, which culminated in Appellant's arrest. (Tr. pp. 53-61; pp. 72-88; pp. 105-142; pp. 144-151). Furthermore, both the recording of Masters-Deida's 911 call and a body camera recording depicting Victim's initial interactions with and statements to law enforcement were admitted into evidence and played for the jury, and photographs depicting Victim's injuries after the incident were also introduced. (Tr. pp. 51-52; p. 75; pp. 77-79).

After that evidence and testimony was presented, the State rested its case. (Tr. p. 157; p. 164). Following that, the trial judge—outside the presence of the jury—confirmed he discussed his intended jury instructions with the parties in chambers, and both the solicitor and defense counsel expressly affirmed they had no objections to the instructions as discussed.[1] (Tr. p. 160; p. 162). The defense then rested its case without introducing anything additional, and the proceedings were recessed for the day. (Tr. p. 164; p. 167).

On the following morning, the trial resumed, and the trial judge explained he had provided a written copy of his intended jury instructions to both the solicitor and defense

[1] More specifically, the trial judge stated: "Any exceptions at this time? You certainly have the opportunity to raise exceptions after I charge, but any additions or exceptions to the charge as it stands right now?" (Tr. p. 162). Defense counsel responded: "No, Your Honor." (Tr. p. 162).

counsel. (Tr. p. 190). The trial judge then asked if they had reviewed those instructions and were "all in agreement as to the charges[.]" (Tr. p. 190). In response, both the solicitor and defense counsel expressly affirmed they had reviewed the written instructions and were in agreement with what was proposed. (Tr. p. 190).

Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (Tr. pp. 191-222). In doing so, the trial judge instructed the jury on domestic violence of a high and aggravated nature, including on the statutory definition[2] of "circumstances manifesting extreme indifference to the value of human life" for purposes of the offense. (Tr. pp. 213-214). More specifically, the trial judge explained:

> [T]he Defendant is charged with domestic violence of a high and aggravated nature. The State must prove beyond a reasonable doubt that the Defendant caused physical harm or injury to a member of the Defendant's own household, or that the Defendant offered or attempted to cause physical harm or injury to a member of the Defendant's own household, with the apparent present ability to cause harm or injury under circumstances reasonably creating fear of imminent danger.
>
> . . .
>
> Now, the State must also prove one of the following: No. 1) that the Defendant committed the offense under circumstances manifesting extreme indifference to the value of human life, and great bodily harm to the victim results, or; No. 2) The Defendant committed the offense with or without an accompanying battery and under circumstances extreme indifference to the value of human life, and would reasonably case a person to fear imminent great bodily injury or death.
>
> Now, circumstances which may show extreme indifference to the value of human life include using a deadly weapon. Deadly weapon means any instrument which can be used to inflict deadly force.

[2] Pursuant to the plain language of Section 16-25-65, "circumstances manifesting extreme indifference to the value of human life *include*"—amongst other things—"using a deadly weapon[.]" S.C. Code Ann. § 16-25-65(D)(1) (emphasis added).

(Tr. pp. 213-214). Furthermore, the trial judge instructed the jury on the lesser-included offenses of first-degree domestic violence and second-degree domestic violence. (Tr. pp. 214-216).

At the conclusion of the jury instructions, the trial judge inquired if there were any objections. (Tr. p. 222). Defense counsel responded: "No, Your Honor." (Tr. p. 222).

Following that, the case was submitted to the jury. (Tr. p. 222). After a little under two hours of deliberations,[3] the jury unanimously convicted Appellant of domestic violence of a high and aggravated nature as indicted. (Tr. p. 228).

[3] During the deliberations, the jury submitted a note asking for the definitions of domestic violence of a high and aggravated nature, first-degree domestic violence, and second-degree domestic violence to be provided in writing. (Tr. pp. 222-223; Court's Ex. # 2 (Jury Note)). The trial judge responded to that note by—without objection—verbally reinstructing the jury on the elements of the indicted offense and lesser-included offenses. (Tr. pp. 223-227). Once again, defense counsel did not object to the substance of those instructions. (Tr. p. 228).

STANDARD OF REVIEW

In criminal cases, appellate courts 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 properly-preserved issue with the trial judge's jury charge on appeal, an appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see United States v. Park, 421 U.S. 658, 674 (1975) ("[I]n reviewing jury instructions, our task is also to view the charge itself as part of the whole trial."); Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."); State v. White, 253 S.C. 475, 482, 171 S.E.2d 712, 716 (1969) (finding White's appellate issue with a jury instruction was waived because White did not object to the instruction during trial despite having an opportunity to do so). Significantly, an appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENT

Appellant's constitutional challenge to the trial judge's jury charge on the statutory definition of "circumstances manifesting extreme indifference to the value of human life" for purposes of domestic violence of a high and aggravated nature was and is not properly preserved for appellate review because it was neither raised to nor ruled upon by the trial judge and, instead, defense counsel expressly confirmed he had no objections to the trial judge's jury instructions both before and after they were presented.

Appellant contends the trial judge reversibly erred when he instructed the jury on the elements of domestic violence of a high and aggravated pursuant to the statutory definition of that particular offense. In support of that contention, Appellant maintains the trial judge impermissibly and unconstitutionally commented on the facts by purportedly instructing the jury extreme indifference to human life "was evidenced by" the use of a deadly weapon, which Appellant characterizes as an "example" of extreme indifference and suggests if "almost perfectly analogous" to a jury instruction indicating malice can be inferred from the use of a deadly weapon.[4] Furthermore, while conceding no objections to the trial judge's jury instructions were raised during trial, Appellant maintains his failure to object simply does not matter because challenges to unconstitutional comments on the facts can supposedly be raised on appeal for the first time pursuant to our Supreme Court's more-than-a-century-old decision in

[4] Notwithstanding any other problems with Appellant's newly-conceived challenge to the jury instructions presented during trial, the trial judge's jury charge on "circumstances manifesting extreme indifference to the value of human life" for purposes of domestic violence of a high and aggravated nature was *not* analogous—"almost perfectly" or otherwise—to a jury instruction on a permissive inference, and it likewise could not have reasonably been construed by the jury as constituting an expression of the trial judge's opinion on the facts of the case. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); see also State v. Swaringen, 446 S.C. 16, 37, 916 S.E.2d 343, 355 (Ct. App. 2025) ("A trial judge in South Carolina is constitutionally prohibited from making any comments that could be construed as offering an opinion on the facts of the case."). To the contrary, that charge merely communicated the statutory definition of an element of the indicted offense and was necessary to ensure the jury understood what the State was required to establish in order to prove Appellant's guilt for the indicted offense. S.C. Code Ann. § 16-25-65(D).

State v. Orr, 128 S.C. 279, 122 S.E. 771 (1924),[5] which—by Appellant's own admission—has never been followed or applied in any other cases since it was decided. Contrary to Appellant's contentions, his newly-conceived challenge to the trial judge's jury instructions was patently not properly preserved for appellate review because, pursuant to well-established South Carolina law, an issue—including a constitutional one—must have first been raised to and ruled upon by the trial judge before it can properly be raised to and considered by one of our state's appellate courts. Since that did not happen here and, instead, defense counsel expressly confirmed he was in agreement with the trial judge's jury instructions before they were given and had no objections to them after they were given, any issue with the jury charge was waived and cannot appropriately be considered or addressed for the first time on appeal. Appellant's conviction and sentence should be affirmed.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation

[5] In that case, the trial judge instructed the jury during Orr's murder trial it was relieved of the necessity of determining both whether a homicide had been committed and who had committed it because Orr purportedly had admitted to slaying the deceased before claiming he had acted in self-defense. State v. Orr, 128 S.C. 279, __, 122 S.E. 771, 771 (1924). Significantly though, Orr did not actually admit to the killing and, instead, had simply stated he acted in self-defense *if* he was the one who did it. Id. Ultimately, the jury convicted Orr of the murder, and he appealed. Id. On appeal, the Supreme Court reversed Orr's conviction based on the trial judge's misstatement of "the issues" to the jury even though no objection to the misstatement had been raised during trial. Id. at __, 122 S.E. at 771-772. In doing so, the Supreme Court recognized there was a "rule of court" requiring a party to first call an issue to the court's attention before complaining about it on appeal but nevertheless found that rule "must give way to the constitutional prohibition as to a charge on the facts." Id. at __, 122 S.E. at 771.

requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen's Grant, 368 S.C. at 373, 628 S.E.2d at 919 ("The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error."); cf. Unemployment Compensation Comm'n of Alaska v. Aragan, 329 U.S. 143, 155 (1946) ("A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.").

For an issue to be preserved for appellate review pursuant to our state's well-established issue preservation 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. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If an issue—*including a constitutional one*—is not presented to and ruled upon by the trial judge, it cannot appropriately be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see In re Care and 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."). Critically, on appeal, an appellant is limited solely to the grounds raised at trial, and South Carolina appellate courts simply do not engage in plain error review. State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997); see State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be

reviewed[.]"); 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.").

Beyond those general issue preservation requirements, the South Carolina Rules of Criminal Procedure also provide specific guidance for raising and preserving an objection to a jury charge. See Rule 20, SCRCrimP (outlining the requirements for requesting jury instructions and objecting to a jury charge). Specifically, pursuant to our criminal procedure rules, a defendant must object to the jury charge as given or request an additional charge when afforded the opportunity to do so to properly preserve an objection to a charge. State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); see Rule 20(a), SCRCrimP ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct."); Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection."). Thus, the rule in South Carolina "is *firmly* established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge." State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976) (emphasis added); see Rule 20(b), SCRCrimP ("Failure to object in accordance with this rule shall constitute a waiver of objection."); cf. State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 638 (1994) ("Johnson next alleges that the trial judge's instruction on circumstantial evidence violates due process. However, Johnson did not object to the jury charge. Therefore, this issue has not been preserved for appeal.").

With those basic principles in mind, the matter at the heart of the case sub judice rests on a contention the trial judge violated the constitutional prohibition on judicial comments on the facts by—in a manner fully consistent with the statutory provision setting out domestic violence of a high and aggravated nature and its accompanying elements—instructing the jury circumstances which may show extreme indifference to the value of human life include using a deadly weapon. However, during trial, defense counsel did not raise such a contention to the trial judge at any point, including either before or after the trial judge presented the now-challenged instruction to the jury. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."). Instead of doing so, defense counsel personally assured the trial judge he had reviewed the trial judge's intended jury instructions and was in agreement with them prior to the jury being instructed on the law. See State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."). And, after the trial judge subsequently finished instructing the jury on the applicable law, defense counsel was afforded an opportunity to raise any objections he may have had to the jury instructions as presented and expressly affirmed he had none. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review when Brown explicitly stated to the trial judge he had no objection to it); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) ("Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, 'None.' By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal."). Thus, *none* of the arguments currently being raised on appeal in support of Appellant's newly-conceived challenge to the propriety of the trial

judge's jury instructions were ever raised to or ruled upon by the trial judge, and, in fact, those arguments are directly at odds with what defense counsel stated to the trial judge during trial. See State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) ("Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal.").

Despite the glaring issue preservation problems that obviously exist under such circumstances, Appellant maintains his newly-advanced issue with the trial judge's jury instructions should now be addressed on appeal despite having never been presented to the trial judge because, pursuant to the Orr decision from 1924, a challenge to an unconstitutional comment on the facts can purportedly be raised for the first time. Importantly though, since Orr was decided, our Supreme Court *has* expressly and consistently found our state's issue preservation requirements apply to a claim a jury instruction constitutes an unconstitutional comment on the facts. See State v. Holland, 261 S.C. 488, 503, 201 S.E.2d 118, 126 (1973) ("If the appellant thought the foregoing charge violated Art. V, Sec. 26 of the Constitution, counsel should have made timely objection upon such ground. No such objection was interposed at the trial and it cannot be raised for the first time on appeal."); Lundy v. Lititz Mut. Ins. Co., 232 S.C. 1, 10, 100 S.E.2d 544, 548 (1957) ("If appellant thought these instructions violated [the constitutional prohibition on comments on the facts], which we are inclined to think they did, counsel should have made timely objection when the jury was excused at the conclusion of the main charge. They waived the objection by failing to do so." (citations omitted)); see also State v. Lemire, 406 S.C. 558, 573, 753 S.E.2d 247, 255 (Ct. App. 2013) ("As to Lemire's arguments that the charge was redundant, confusing, and *tantamount to a charge on the facts*, these concerns were neither raised to nor ruled upon by the trial court and are therefore not preserved

for appeal." (emphasis added)). Likewise, our Supreme Court has found earlier case law that created an exception to the standard contemporaneous objection requirement in the context of a similar constitutional issue with a jury charge was "nullified" by the adoption of statutory language ensuring litigants in our state will always be afforded an opportunity—just as Appellant was—to object to a trial judge's jury instructions during trial. Williams, 266 S.C. at 335, 223 S.E.2d at 43; see S.C. Code Ann. § 17-23-100 ("In all cases tried before a jury, other than cases in a magistrates or municipal court, after the court has delivered to the jury a charge on the law in the case, the court shall temporarily excuse the jury from the presence of counsel and litigants in order to give counsel and litigants an opportunity to express objections to the charge or request the charge of additional propositions made necessary by the charge, out of the presence of the jury."). Furthermore, due to its effect of encouraging "sandbagging" in a manner that frustrated the goals of the criminal justice system, our Supreme Court has since abolished the in favorem vitae doctrine and affirmed the necessity of contemporaneous objections for issue preservation in our state even in the context of capital cases. See State v. Torrence, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991) (Toal, J., concurring in result for the majority) ("[W]e hold a contemporaneous objection is necessary *in all trials* beginning after the date of this opinion to properly preserve errors for our direct appellate review." (emphasis added and footnote omitted)); see also I'On, 338 S.C. at 422, 526 S.E.2d at 724 (instructing our state's issue preservation requirements prevent a party "from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity"). Based on all those significant developments that have come since the Orr decision was issued over a century ago, it has now been abrogated and no longer constitutes controlling precedent in South Carolina assuming that never-subsequently-relied-upon decision

ever did. Williams, 266 S.C. at 335, 223 S.E.2d at 43; see Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule *shall constitute a waiver of objection*." (emphasis added)); cf. State v. English, 443 S.C. 49, 56-57, 902 S.E.2d 385, 389 (2024) (recognizing an earlier appellate decision was abrogated by subsequent decisions and the adoption of the South Carolina Rules of Evidence).

Accordingly, because defense counsel—instead of objecting—expressly confirmed he had no issues with the jury instruction Appellant now seeks to challenge on appeal, Appellant's newly-conceived appellate challenge to that jury instruction must be rejected on procedural grounds as his issue with it was simply not properly preserved for appellate review pursuant to our state's well-established issue preservation requirements. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) (recognizing an issue will be procedurally barred on appeal when a party fails to timely object because the absence of a contemporaneous objection denies the trial judge an opportunity to cure the alleged error); State v. Burnett, 226 S.C. 421, 424, 85 S.E.2d 744, 746 (1954) ("A defendant may not reserve vices in his trial, of which he has notice as here, taking his chances of a favorable verdict, and in case of disappointment, use the error to obtain another trial."); see also Boyd v. United States, 271 U.S. 104, 108 (1926) ("Certainly, after permitting [a jury instruction] to pass as satisfactory then, the defendant is not now in a position to object to

it."); cf. State v. Charron, 351 S.C. 319, 328, 569 S.E.2d 388, 393 (Ct. App. 2002) (finding allegations of due process and equal protection violations were not preserved for appellate review when there was no indication those issues were raised to the trial judge). Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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