STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Aiken County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001354

THE STATE,

Respondent,

vs.

TYRIK GERARD BRIGHT,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

The trial judge did not abuse his broad discretion in admitting Detective Glover's testimony identifying Appellant from the surveillance footage of the break-in because the officer's testimony constituted properly lay witness opinion testimony and because the high probative value of the testimony in regard to the critical fact in dispute in Appellant's case, which was the identity of the burglar shown in the surveillance footage, greatly outweighed any potential prejudice that could have resulted from the testimony.

STATEMENT OF THE CASE

In December of 2011, Appellant Tyrik Gerard Bright was arrested following an investigation into the burglary of a business in Aiken, South Carolina. In March of 2012, the Aiken County grand jury indicted Appellant for one count of second-degree burglary. On June 10, 2013, a jury trial was commenced in the Aiken County court of general sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a twelve-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the afternoon of Christmas Day in 2011, Mike Fanning, the co-owner of All-Star Tents and Events ("All-Star"), went to his business to pick up some ice. (June 11-12 Tr. p. 69; p. 73). When he did so, he noticed that the building had been ransacked in a way that suggested the perpetrator had an "intimate knowledge" of the business.[1] (June 11-12 Tr. pp. 73-74). Based on his discovery, he immediately alerted the Aiken Department of Public Safety of the break-in, and officers quickly responded to All-Star and secured the scene. (June 11-12 Tr. pp. 73-74).

After the scene was secured, Officer Christopher Walker of the Aiken Department of Public Safety connected an audio-visual data collection kit to All-Star's surveillance system and began reviewing and recording the surveillance footage captured during the break-in. (June 11-12 Tr. pp. 50-52; pp. 54-55). While the officer did so, Fanning and Fanning's sister, Mary Fanning Wolf, reviewed the footage to see if they could identify the burglars, and they both recognized and identified one of the burglars as Appellant Tyrik Gerard Bright, who lived across the street from All-Star and was working there at the time as a seasonal employee.[2] (June 11-12 Tr. pp. 61-62; pp. 71-72; pp. 77-78; p. 88; pp. 90-92).

Subsequently, Detective Keith Glover of the Aiken Department of Public Safety personally reviewed the surveillance footage several days later and also identified Appellant, who he had known for approximately fifteen years, as one of the burglars. (June 11-12 Tr. p. 104; p. 106). Due to the fact that Appellant was identified in the surveillance footage by multiple individuals, Appellant was arrested and indicted for

[1] The business incurred losses totaling $13,000 as a result of the items stolen and the damage inflicted during the break-in. (June 11-12 Tr. pp. 89-90).

[2] Wolf was the other owner of All-Star. (June 11-12 Tr. p. 70).

second-degree burglary, and he proceeded to trial.[3] (June 10 Tr. p. 3; June 11-12 Tr. p. 4; Indictment).

At the outset of trial, defense counsel moved for Detective Glover to be prohibited from identifying Appellant from the surveillance footage of the break-in. (June 10 Tr. p. 18). In support of that motion, defense counsel argued that Detective Glover's testimony would be prejudicial because it was allegedly based on his knowledge of Appellant through his police work. (June 10 Tr. pp. 18-19). Additionally, defense counsel argued that the officer's testimony would violate Appellant's right to confront the witnesses due to the fact that his cross-examination of the officer could potentially open the door to Appellant's past criminal record if he questioned the officer about the source of his knowledge of Appellant. (June 10 Tr. pp. 19-20). Furthermore, defense counsel asserted that the officer's testimony would be more prejudicial than probative, that the testimony would be cumulative to the testimony of other witnesses, and that the only "reasonable, rational" conclusion that could be drawn from the testimony would be that Appellant was a criminal. (June 10 Tr. pp. 20-22).

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[3] Appellant's indictment alleged that Appellant had two or more prior convictions for burglary. (Indictment). During trial, the parties stipulated that Appellant had previously been convicted of burglary in 2005 and 2007, and the stipulation was presented to the jury without objection. (June 11-12 Tr. p. 108). Subsequent to the introduction of the stipulation, the trial judge thoroughly explained to the jury the limited purpose for which the stipulation could be considered, instructing: "[Y]ou may have heard testimony or perhaps seen other evidence regarding the Defendant having prior convictions for the crime of burglary. You are instructed that such evidence is offered for and you may only consider it for a very limited purpose. The purpose for which it is offered is to establish a particular degree of burglary in the event that you determine that the evidence in this case has proven the Defendant to be guilty of the crime of burglary. It is not being offered as proof of the Defendant's commission of the crime of burglary for which he now stands trial nor may it be considered by you as evidence that the Defendant did commit the crime of burglary. If you determine that the State has proven beyond a reasonable doubt that the Defendant did commit the crime of burglary, then you may consider any evidence of prior convictions for the crime of burglary as it relates to the degree of any burglary proven to have been committed by the Defendant. You are not permitted to consider evidence of any prior burglary convictions for any other purpose. You may not consider such evidence as evidence of bad character nor may you consider it as evidence that the Defendant may have acted in accordance with prior conduct. It may only be considered by you in determining the degree of burglary if you find beyond a reasonable doubt that the Defendant has been proven guilty of the crime of burglary as I have already defined it for you." (June 11-12 Tr. pp. 136-137).

In response to defense counsel's contentions, the solicitor asserted that Detective Glover's testimony was critical because the surveillance footage was dark and not perfectly clear, which rendered the testimony of a witness who was familiar with Appellant's face, body language, manner of walking, and other mannerisms extremely important and helpful to the jury in determining the identity of the individual depicted in the footage. (June 10 Tr. pp. 23-24). The solicitor further noted that Detective Glover was the only law enforcement officer who was going to identify Appellant and that the officer knew Appellant from the community and from living in close proximity to him as opposed to from his police work. (June 10 Tr. pp. 23-24).

After considering the arguments of counsel, the trial judge denied defense counsel's motion to exclude the identification testimony. (June 11-12 Tr. pp. 29-31). In making that ruling, the trial judge noted that the recording of the surveillance footage depicted Appellant's manner of walking, Appellant's clothing, Appellant's mannerisms, and "some view" of Appellant's face.[4] (June 11-12 Tr. pp. 30-31). As a result, the trial judge ruled that Detective Glover and the other witnesses would be permitted to make identifications from the surveillance footage if they were able to do so through their own personal perceptions and knowledge of Appellant.[5] (June 11-12 Tr. pp. 30-31). However, the trial judge precluded the introduction of any testimony stating, insinuating, or implying that Detective Glover knew Appellant from investigating him for involvement in criminal activity. (June 11-12 Tr. p. 30).

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[4] The trial judge also took note of the fact that Appellant's appearance had changed from the time of his arrest to the time of trial. (June 10 Tr. pp. 26-27).

[5] Before ruling on defense counsel's motion, the trial judge asked the solicitor if she could personally identify Appellant from the surveillance footage. (June 10 Tr. p. 25). The solicitor responded that she could not with certainty but noted that the witnesses who could do so were much more familiar with Appellant than she was. (June 10 Tr. pp .25-26).

Following the trial judge's ruling, defense counsel clarified that his actual objection to the identification testimony was based on the cumulative effect of having Fanning, Wolf, and Detective Glover all identify Appellant from the surveillance footage, which he contended would be more prejudicial than probative. (June 11-12 Tr. pp. 31-32). In response to that contention, the trial judge noted that only a single law enforcement officer was going to identify Appellant from the surveillance footage in Appellant's case, which he found would prevent the jury from hearing testimony that would suggest Appellant had a criminal record due to the fact that numerous law enforcement officers were familiar with him, and that the other witnesses were identifying Appellant based on his employment at their company. (June 11-12 Tr. p. 32). The trial judge then declined to reconsider his ruling after finding that the cumulative identification testimony of the witnesses would not be prejudicial and, even if it would be, would be appropriately so under the circumstances. (June 11-12 Tr. pp. 32-33).

Subsequently, during trial, Fanning testified about the details of the break-in and indicated that he believed the perpetrators of the crime were highly familiar with the business due to the damage that was inflicted and the property that was taken. (June 11-12 Tr. p. 74; p. 79). Additionally, Fanning testified that Appellant worked for All-Star for a little over three months prior to the break-in, that Appellant lived across the street from the business, that he personally observed Appellant working in the field and at the office during Appellant's employment with the company, and that he saw Appellant wearing "mosquito net" attire a few days before the break-in when Appellant picked up his paycheck. (June 11-12 Tr. pp. 71-72; p. 82). Furthermore, Fanning stated that he viewed the surveillance footage of the break-in and recognized Appellant in it as one of the burglars after seeing Appellant's face and Appellant's "mosquito net" attire, which

was the same attire that he had previously seen Appellant wearing.[6] (June 11-12 Tr. pp. 77-78; p. 80).

Thereafter, Wolf testified before the jury and confirmed that Appellant, who lived across the street from All-Star, began working for the company in September of 2011 and last picked up a paycheck on December 21, 2011. (June 11-12 Tr. pp. 87-89). Additionally, she indicated that she personally saw Appellant every day that he worked during his employment with the company, which was approximately four to five times a week. (June 11-12 Tr. pp. 88-89). Furthermore, she testified about the details of break-in at All-Star and stated that she identified Appellant from the surveillance footage as the burglar in "the fishnet" attire. (June 11-12 Tr. pp. 89-93). However, she indicated that she was unable to recognize Appellant's accomplice in the break-in. (June 11-12 Tr. p. 93). As a result, Fanning testified that she attempted to determine the identity of the other burglar by preparing a list several days before Appellant's trial of all the All-Star employees who were working for the company between July of 2011 and December of 2011. (June 11-12 Tr. p. 96; p. 98). After that testimony was presented, the following exchange occurred:

> **[Solicitor]**: And did you review that list with your brother?
>
> **[Wolf]**: I sure did.
>
> **[Solicitor]**: And did you consider all of those people and the possibility of their involvement in this?
>
> **[Wolf]**: I did.
>
> **[Defense Counsel]**: Judge, I object. This is outside of my cross.

[6] Prior to Fanning identifying Appellant from the surveillance footage, defense counsel objected to the admission of a shortened recording of the surveillance footage on the grounds that it was irrelevant and was cumulative to a previously-admitted longer recording of the surveillance footage that was admitted into evidence without objection. (June 11-12 Tr. pp. 59-60; pp. 76-77). However, defense counsel did not object when Fanning identified Appellant from the surveillance footage. (June 11-12 Tr. pp. 77-78).

[Solicitor]: Your Honor, I believe it's firmly within the scope of his cross. He discussed seasonal workers, other workers, implying the possibility of other people's involvement of misidentification.[7]

[Trial Judge]: Overruled. Go ahead.

[Solicitor]: Do remember that list you compiled?

[Wolf]: Yes, sir.

[Solicitor]: Would you mind telling me a little bit about the people on that list?

[Wolf]: Well, I started by the females, took them off the list. And then I had no choice but to segregate the number of blacks that were on the list and the number of whites. And then I took those names of males because at that time we had a pre-release program where we brought gentlemen from the pre-release program for work –

[Defense Counsel]: Judge, I'm going to object. Sidebar?

[Trial Judge]: Let me see y'all just a moment.

(Off-the-record discussion.)

[Solicitor]: Ms. Wolf, not discussing [Appellant] but discussing the rest of the people, you can go on.

[Wolf]: So then I pulled out the fellows, we may have had three, four, I'm not sure on the number that came from the pre-release program. So it really didn't matter what color or nationality they were, they go home every night to what we call the camp. And so they were out of the possibilities and that just left a few behind.[8]

[Solicitor]: And did you see any of the few left behind on that video?

[Wolf]: Oh, no, sir.

[Solicitor]: Did you see [Appellant] on that video?

[Defense Counsel]: Objection. Asked and answered.

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[7] During his cross-examination of Wolf, defense counsel questioned Wolf about the number of temporary and full-time workers that were employed at All-Star. (June 11-12 Tr. pp. 95-96).

[8] The burglars were present on the surveillance footage from shortly before midnight on Christmas Eve until around 2:30 a.m. on Christmas Day. (June 11-12 Tr. p. 67).

[Trial Judge]: Overruled.

[Solicitor]: No further questions for this witness, Your Honor[.]

(June 11-12 Tr. pp. 96-98).

Following Wolf's testimony, Detective Glover testified about his investigation into the break-in at All-Star and noted that he personally reviewed the surveillance footage several days after the crime. (June 11-12 Tr. p. 104). After reviewing the footage, Detective Glover stated that he identified Appellant as one of the burglars. (June 11-12 Tr. p. 104). In response, defense counsel objected on the basis that the testimony was cumulative, and the trial judge overruled the objection. (June 11-12 Tr. p. 104). Detective Glover then noted that he had seen Appellant numerous times at Appellant's home when he was riding through the neighborhood. (June 11-12 Tr. p. 105). Thereafter, the solicitor asked Detective Glover how long he had known Appellant, defense counsel objected to the question on the basis that the testimony was cumulative, and the trial judge overruled the objection. (June 11-12 Tr. pp. 105-106). Detective Glover then stated that he had known Appellant for approximately fifteen years. (June 11-12 Tr. p. 106).

Subsequently, at the conclusion of trial, the jury convicted Appellant of second-degree burglary.[9] (June 11-12 Tr. p. 149). Following the verdict, defense counsel renewed all of his previous objections and motions, and the trial judge reaffirmed his

[9] Prior to the jurors beginning their deliberations, the trial judge instructed them on the applicable law, including on their roles in evaluating the credibility of the witnesses. (June 11-12 Tr. pp. 124-142). Specifically, the trial judge instructed: "Now because you are the judges of the facts and because you are the judges of the credibility of each witness that has testified, you are permitted to believe as much or as little of what a witness has testified to as you deem is appropriate. And therefore you may believe everything that a witness testified to. You may choose to believe none of it. You could believe one witness as opposed to several or several as opposed to one in a given case, but whatever your good judgment and common sense tells you is the most believable and credible testimony is the testimony you should accept. And you should reject any testimony or other evidence that you find not to be credible or believable." (June 11-12 Tr. p. 131).

denial of those motions. (June 11-12 Tr. p. 151). The trial judge then sentenced Appellant to a twelve-year term of incarceration. (June 11-12 Tr. p. 155).

ARGUMENT

I.

Any issue with Wolf's testimony constituting improper bad character evidence was not properly preserved for appellate review because there is no record of such an issue being raised to or ruled upon by the trial judge during trial. However, regardless of any issue preservation concerns, the trial judge committed no error in permitting the introduction of Wolf's testimony regarding the pre-release workers employed by All-Star because that testimony was not bad character evidence or prior bad act evidence and did not relate to Appellant or reflect on his bad character in any way.

Appellant contends that the trial judge erred in allowing the jury to hear the testimony of Wolf, who allegedly identified Appellant as the perpetrator of the burglary after she reviewed a list that included the names of pre-release inmates who were working for All-Star at the time of the crime. In support of that contention, Appellant maintains that Wolf's testimony was inadmissible bad character evidence because it established that he was participating in a pre-release work program and was still incarcerated in prison at the time of the break-in. Initially, any issue with Wolf's testimony constituting improper character evidence was not properly preserved for appellate review because there is no record of Appellant raising such an issue during trial. As a result, the issue cannot now be raised on appeal. However, even assuming that the character evidence issue was somehow preserved for appellate review, the trial judge committed no error in admitting Wolf's testimony because Wolf did **not** testify that Appellant was incarcerated or in a pre-release work program during trial. Instead, while discussing her efforts to determine who Appellant's accomplice was in the burglary, she expressly testified that she excluded the pre-release workers employed by All-Star at the time of the break-in from being Appellant's accomplice because they were detained a prison camp every night and, thus, could not have committed the nighttime break-in of

the business. As a result, Wolf's testimony about the pre-release workers did not reflect on Appellant's character in any way and was not inadmissible character evidence. Appellant's contentions to the contrary are wholly unsupported by the record and are based on a clear misinterpretation of Wolf's testimony. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). An appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

"An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

A. Issue Preservation

In order for an issue to be preserved for appellate review, 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 a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). "Imposing this preservation requirement on the appellant is meant to enable the lower court 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, 725 (2000).

In the case sub judice, Appellant failed to preserve any issue with Wolf's testimony allegedly constituting improper character evidence because no objection to her testimony was raised on that basis during trial. Specifically, during trial, defense counsel raised an unspecified objection when Wolf first mentioned that her list of possible accomplices included the names of employees who were part of a pre-release program and immediately requested a sidebar on the matter. See State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) ("A general objection is ordinarily insufficient to preserve an issue for appeal."). Then, after the issue was discussed during the off-the-record sidebar, defense counsel did not object to Wolf's testimony as improper character evidence or take any action to make the substance of the sidebar discussion a part of the

record. See State v. Hamilton, 344 S.C. 344, 361, 543 S.E.2d 586, 595 (Ct. App. 2001) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review."), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Under those circumstances, it is unclear if a specific objection was ever raised to or ruled upon by the trial judge, or if defense counsel withdrew his unspecified objection after discussing the matter during the sidebar. See State v. Jennings, 394 S.C. 473, 481-482, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground. For an issue to be properly preserved it has to be raised to and ruled on by the trial court." (citations omitted)). As a result, Appellant is precluded from now raising an issue with the propriety of Wolf's testimony on appeal.[10] See State v. Bonner, 400 S.C. 561, 564, 735 S.E.2d 525, 526 (Ct. App. 2012) ("It is well settled that issues not raised and ruled on in the trial court will not be considered on appeal."). Appellant's conviction should be affirmed.[11]

B. Propriety of the Admission of Wolf's Testimony

"Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." State v. Brown, 344 S.C. 70, 74, 543 S.E.2d 552, 554 (2001). Pursuant to Rule 404(a), SCRE,

[10] On appeal, Appellant appears to suggest that defense counsel moved to exclude Wolf's testimony during a pre-trial hearing. (App. Br. p. 7). However, during the portion of the pre-trial hearing referenced on appeal by Appellant, defense counsel objected to the admission of **Appellant's** out-of-court statement on the basis that Appellant's conversation with Detective Glover could constitute bad character evidence. (June 10 Tr. p. 11). Notably, the solicitor subsequently elected not to introduce Appellant's statement during trial. (June 11-12 Tr. p. 29).

[11] Likewise, Appellant's appellate contention that the admission of Wolf's testimony violated his constitutional right to a fair trial was not properly preserved for appellate review because it was not raised to or ruled upon by the trial judge. 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 upon by the trial court to be preserved for appeal."); see also 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.").

evidence in regard to a person's character generally "is not admissible for the purpose of proving action in conformity therewith on a particular occasion[.]" Likewise, pursuant to Rule 404(b), SCRE, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." "This is so because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts." State v. Hough, 319 S.C. 104, 107, 459 S.E.2d 863, 865 (Ct. App. 1995).

In the case at bar, Wolf did not testify about any prior bad acts committed by Appellant, Appellant's prior criminal history, or any negative character traits exhibited by Appellant. Therefore, the trial judge committed no error in allowing the introduction of Wolf's testimony regarding the pre-release workers employed by All-Star as that testimony did not relate to Appellant or reflect on Appellant's bad character or propensity to commit burglaries in any way.

Turning to Wolf's testimony, Wolf testified during trial that she definitively identified Appellant, who she indicated was an employee of All-Star and lived across the street from the business, as one of the burglars after viewing the surveillance footage of the break-in hours after the crime was committed. Then, later during her testimony, she indicated that she reviewed a list of All-Star employees to attempt to determine if any of their other employees were involved in the break-in with Appellant, who she had **already** identified as being involved in the crime prior to the preparation of the employee list. While discussing the list, she noted that some of the employees were pre-release workers who spent their evenings at the pre-release work camp, and she expressly indicated that they were excluded from being involved in the nighttime break-in because they all were required to return to the work camp every night.

Thus, Wolf's testimony regarding the pre-release workers employed by All-Star was **not** related to Appellant and was merely designed to explain to the jury the steps that were taken to identify who Appellant's accomplice was. Although Appellant now contends – for the first time on appeal – that Wolf's testimony regarding the pre-release workers exposed the jurors to the facts that Appellant was a pre-release detainee chosen to participate in a pre-release work program, Wolf's testimony clearly did **not** establish those facts when correctly interpreted, which is likely the reason behind defense counsel's decision not to raise an objection to the testimony on the basis that Appellant is now raising on appeal.[12] As Wolf's testimony did not establish Appellant had bad character based on any prior conduct or suggest that Appellant had the propensity to commit the crime with which he was charged, that testimony did not constitute inadmissible bad character evidence or prior bad evidence and was properly admitted during trial. See, e.g., State v. Michau, 355 S.C. 73, 78-79, 583 S.E.2d 756, 759 (2003) ("The three sentences do not constitute propensity evidence under Rule 404(b), SCRE. The sentences at issue do not refer to any 'crimes, wrongs, or acts' which are generally inadmissible under Rule 404(b)."). Appellant's contentions to the contrary have no support whatsoever in the record. Appellant's conviction should be affirmed.

[12] Notably, even though Appellant now contends that the jury was exposed to the fact that he was a pre-release detainee working for All-Star as part of a pre-release work program, nothing in the record supports such a conclusion. (App. Br. p. 7). In fact, the testimony established that Appellant lived across the street from All-Star and **not** in a pre-release work camp. (Nov. 11-12 Tr. p. 72; p. 88; p. 105). Moreover, had Appellant been living in the pre-release work camp, he would **not** have been able to commit the burglary on the night of the crime since he would have been detained for the night at the work camp, which is exactly what Wolf's testimony conveyed to the jury. (Nov. 11-12 Tr. p. 67; pp. 97-98).

II.

The trial judge did not abuse his broad discretion in admitting Detective Glover's testimony identifying Appellant from the surveillance footage of the break-in because the officer's testimony constituted properly lay witness opinion testimony and because the high probative value of the testimony in regard to the critical fact in dispute in Appellant's case, which was the identity of the burglar shown in the surveillance footage, greatly outweighed any potential prejudice that could have resulted from the testimony.

Appellant contends that the trial judge erred in admitting Detective Glover's testimony identifying Appellant from the surveillance footage of the break-in. In support of that contention, Appellant maintains that Detective Glover's testimony constituted improper bad character evidence because it suggested that the officer was familiar with Appellant through Appellant's involvement in prior criminal activity.[13] Furthermore, Appellant maintains that the probative value of the evidence was outweighed by its prejudicial effect. Contrary to Appellant contentions, Detective Glover's identification of Appellant from the surveillance footage constituted proper lay witness opinion testimony

[13] To the extent that Appellant is challenging the admission of Detective Glover's identification testimony on appeal on the basis that the testimony suggested Appellant had a prior criminal record due to the officer's familiarity with him, it is highly questionable whether that argument is properly preserved for appellate review. Critically, during a pre-trial hearing, defense counsel moved to exclude Detective Glover's testimony on a number of grounds, including on the basis that the testimony would be prejudicial because the officer's familiarity with Appellant might suggest Appellant had previously been involved in criminal activity, and the trial judge issued an in limine ruling denying defense counsel's motion. (June 10 Tr. pp. 18-22; June 11-12 Tr. pp. 30-33). Thereafter, when Detective Glover's identification testimony was introduced during trial, defense counsel solely objected to the testimony on the basis that it was cumulative. (June 11-12 Tr. p. 106). Because defense counsel did not renew his pre-trial motion and, instead, solely objected to the testimony as cumulative during trial, the only argument properly preserved for appellate review was the argument based on the cumulative nature of the testimony. See State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) ("Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial. A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review." (citations omitted)); State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) ("A ruling in limine is not a final ruling on the admissibility of evidence. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review." (citations omitted)). As a result, Appellant cannot now raise additional grounds in challenging Detective Glover's testimony on appeal. See State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited 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.").

because it was rationally based on his own personal perceptions and knowledge of Appellant, was helpful to the jury in determining a fact in issue, and did not require any special knowledge, skill, experience, or training on the part of the officer. Furthermore, because Detective Glover was much more familiar with Appellant than the jury, his testimony was highly probative of the identity of the perpetrator of the burglary, and the resulting probative value of his testimony outweighed any potential prejudicial effect that could have resulted from it, particularly where no evidence was presented suggesting that Detective Glover had any prior knowledge of Appellant from his work in law enforcement. As a result, the trial judge did not abuse his broad discretion in admitting Detective Glover's identification testimony. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

Trial judges are entitled to great deference when ruling on evidentiary matters, and a trial judge's decision to admit or exclude evidence will not be reversed on appeal absent a prejudicial abuse of discretion. Groome, 274 S.C. at 190-191, 262 S.E.2d at 32. Moreover, trial judges have "particularly wide discretion" in ruling on the comparative probative value and potential prejudicial effect of evidence. State v. Collins, 398 S.C. 197, 209, 727 S.E.2d 751, 757 (Ct. App. 2012). A trial judge's ruling on such a matter should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). Importantly, "[a] trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." Hamilton, 344 S.C. at 358, 543 S.E.2d

at 593-594. "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Id. at 358, 543 S.E.2d at 594.

ANALYSIS

Pursuant to South Carolina's rules of evidence, evidence must be excluded from trial if its probative value is substantially outweighed by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). The determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each particular case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case. Collins, 398 S.C. at 202, 727 S.E.2d at 754. Unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000). Significantly though, unfair prejudice does **not** mean damage to a defendant's case that results from the legitimate probative force of a piece of evidence. State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). That is true because all evidence introduced by the State in a criminal trial is meant to be prejudicial to the defendant. Id. It is only unfair prejudice that must be avoided. Id.

Furthermore, pursuant to South Carolina's evidentiary rules, a lay witness is fully permitted to offer opinion testimony during trial when the witness' opinion or inference:

(1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE; see State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the determination of a fact in issue, and c) does not require special knowledge."). Significantly, "conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury." State v. McClinton, 265 S.C. 171, 176-177, 217 S.E.2d 584, 586 (1975). Moreover, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE.

Notably, in State v. Fripp, 396 S.C. 434, 439, 721 S.E.2d 465, 467 (Ct. App. 2012), this Court considered an appellate challenge to a trial judge's admission of witness testimony identifying Fripp from surveillance footage of a burglary. In that case, Fripp was captured on surveillance footage burglarizing a convenience store, and, during trial, two employees of the store who were familiar with Fripp were permitted to identify him from the footage over Fripp's objection. Id. at 437-438, 721 S.E.2d at 466. After he was subsequently convicted, Fripp appealed, arguing that the trial judge erred in permitting the witnesses to make the identifications. Id. at 438, 721 S.E.2d at 467. However, this Court disagreed with Fripp's contentions and affirmed the trial judge's evidentiary ruling. Id. In affirming, this Court found that the witnesses' testimony was admissible because it was based on their own personal perceptions of Fripp, was helpful in determining a key fact in issue, and did not require any specialized, knowledge, skill, training, or experience on the part of the witnesses. Id. at 439-441, 721 S.E.2d at 467-468.

Similarly, in State v. Mitchell, 399 S.C. 410, 416, 731 S.E.2d 889, 893 (Ct. App. 2012), this Court again considered a challenge to a trial judge's admission of testimony identifying a defendant from surveillance footage. In that case, Mitchell was photographed by a motion-activated deer camera when he broke into the victim's home, and a police officer subsequently identified him from the surveillance photographs. Id. at 413, 731 S.E.2d at 891. Thereafter, during trial, Mitchell moved to exclude the officer's testimony identifying him from the photographs on the grounds that the testimony was improper lay witness opinion testimony, that the jurors themselves were capable of determining the identity of the perpetrator from the photographs without the witness' testimony, and that the testimony was unduly prejudicial due to the fact that the witness making the identification was a police officer. Id. However, the trial judge overruled Mitchell's motion, and the testimony was admitted during trial. Id. Subsequently, Mitchell was convicted and appealed, arguing that the trial judge erred in admitting the officer's testimony. Id. at 415-416, 731 S.E.2d at 892-893. However, on appeal, this Court affirmed Mitchell's convictions. Id. at 413, 731 S.E.2d at 891. In affirming, this Court found that the officer's testimony was admissible because the officer had firsthand knowledge of Mitchell, was more likely to correctly identify Mitchell than the jury based on his knowledge, and was capable of providing helpful testimony to the jury in resolving a fact in issue. Id. at 419, 731 S.E.2d at 894-895. Moreover, this Court rejected Mitchell's contention that the probative value of the officer's testimony was outweighed by its prejudicial effect simply because the witness was a police officer. Id. at 420, 731 S.E.2d at 895.

Just like the trial judges in Fripp and Mitchell, the trial judge in Appellant's case committed no error in admitting Detective Glover's testimony identifying Appellant from

the surveillance footage of the break-in.[14] That is true because the testimony constituted proper lay witness opinion testimony and because the probative value of the testimony far outweighed any potential for undue prejudice that could have resulted from its admission.

Regarding the propriety of the testimony as lay witness opinion evidence, Detective Glover's testimony identifying Appellant as one of the burglars was based on his own personal perceptions of the surveillance footage **and** his own personal knowledge of Appellant, who the officer had regularly observed while he was driving through Appellant's neighborhood and had known for roughly fifteen years. Cf. United States v. Allen, 787 F.2d 933, 936 (4th Cir. 1986) ("Though [the detective] did not testify to Allen's appearance on the day of the robbery, his fifteen years of acquaintance provided ample basis for his testimony that Allen was the man in the [surveillance] photographs."), vacated on other grounds by Allen v. United States, 479 U.S. 1077 (1987). Additionally, Detective Glover's testimony was certainly helpful to the jurors in determining a critical issue in dispute in Appellant's case, which was whether Appellant was one of the burglars depicted in the surveillance footage, due to the officer's knowledge of Appellant outside of the trial, which put him in a superior position to be

[14] Significantly, in challenging the trial judge's admission of Detective Glover's testimony on appeal, Appellant does not cite to this Court's decisions in Fripp and Mitchell even though the trial judge based his ruling in Appellant's case on those decisions. (June 11-12 Tr. pp. 29-33). Instead, Appellant relies solely on our Supreme Court's decision in State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). However, the facts and circumstances of that case are far different from the facts and circumstances of Appellant's case. In fact, unlike in Appellant's case, none of the witnesses in Herring identified Herring from surveillance footage based on their familiarity with him. See Herring, 387 S.C. at 216-217, 692 S.E.2d at 498 (noting that the witnesses in Herring's case testified about their perceptions of what occurred in a surveillance video and whether they personally believed a gunshot was fired in the video). Moreover, notwithstanding the fact that the lay witness opinion testimony at issue in Herring was not similar to the testimony at issue in Appellant's case, the Supreme Court did not expressly find that the dissimilar testimony in Herring's case was improper or inadmissible and, instead, simply found that it was not prejudicial and did not warrant a mistrial in light of the trial judge's curative remarks. See id. at 217, 692 S.E.2d at 498 ("We find the trial court's curative instructions sufficient to cure any prejudice, such that there was no error in denying Herring's motions for a mistrial."). For those reasons, the decision in Herring is not useful to the analysis in Appellant's case.

able to recognize Appellant in the footage. See Mitchell, 399 S.C. at 419, 731 S.E.2d at 895 ("[T]he identity of the person in the photographs was a fact in issue, and [the officer's] identification of who he thought was in the photographs was surely helpful to the jury."); see also Allen, 787 F.2d at 936 ("[T]estimony by those who knew defendants over a period of time and in a variety of circumstances offers to the jury a perspective it could not acquire in its limited exposure to defendants."). Finally, the officer's testimony was not based on any specialized knowledge, skill, training, or experience. See Fripp, 396 S.C. at 441, 721 S.E.2d at 468 ("[T]he identification of a familiar person does not require any specialized knowledge, skill, experience, or training as contemplated by subpart (3) of Rule 701."). Instead, it was based on the officer's own personal knowledge of Appellant, which he had acquired over the course of the preceding fifteen years. As a result, Detective Glover's testimony identifying Appellant from the surveillance footage was admissible lay witness opinion evidence.[15] See Williams, 321 S.C. at 463, 469

[15] Notably, appellate courts from numerous other state and federal jurisdictions have concluded that a witness, including one involved in law enforcement, who is familiar with a defendant can properly testify during trial and identify the defendant from surveillance footage. See United States v. Contreras, 536 F.3d 1167, 1170 (10th Cir. 2008) (admitting the testimony of a probation agent who identified Contreras from surveillance footage because the witness' familiarity with Contreras offered the jurors a more sophisticated identification than they could make on their own); United States v. Beck, 393 F.3d 1088, 1094 (9th Cir. 2005) (ruling that lay witness testimony identifying a defendant from surveillance footage is admissible where the witness had sufficient contact with the defendant to achieve a level of familiarity that would render the opinion testimony helpful), vacated on other grounds, 544 U.S. 1016 (2005); United States v. Pierce, 136 F.3d 770, 774 (11th Cir. 1998) ("Because we find, as have most of those circuits, that lay opinion identification testimony may be helpful to the jury where, as here, 'there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury,' we hold the district court acted within its discretion in admitting identification testimony from [the witnesses]." (citation omitted)); United States v. Jackman, 48 F.3d 1, 4-5 (1st Cir. 1995) ("We agree that such testimony is admissible, at least when the witness possesses sufficiently relevant familiarity with the defendant that the jury cannot also possess, and when the photographs are not either so unmistakably clear or so hopelessly obscure that the witness is no better-suited than the jury to make the identification."); United States v. Farnsworth, 729 F.2d 1158, 1160 (8th Cir. 1984) ("A witness's opinion concerning the identity of a person depicted in a surveillance photograph is admissible if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury."); United States v. Robinson, 804 F.2d 280, 282 (4th Cir. 1986) ("A lay witness may give an opinion concerning the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury."); State v. King, 180 Ariz. 268, 280, 883 P.2d 1024, 1036 (Ariz. 1994) (holding that the trial court

S.E.2d at 54 (recognizing that the opinion of a lay witness is admissible if it is rationally based on the perception of the witness, helpful to the determination of a fact in issue, and does not require special knowledge, training, skill, or experience).

Regarding the comparative probative value and potential prejudice effect of the evidence, the probative value of Detective Glover's testimony far outweighed any potential for undue prejudice that could have resulted from the testimony's admission. Critically, Detective Glover's testimony was highly probative of a critical issue in dispute and was extremely important due to the fact that the officer had much more personal knowledge of Appellant than the jurors **or** Fanning and Wolf, who had only known Appellant for a few months prior to the crime. See Fripp, 396 S.C. at 441, 721 S.E.2d at 468 ("Brown's and Young's testimonies, based on their perceptions of [Fripp] over time, aided the jury in making an ultimate determination as to the burglar's identity."); see also

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properly admitted testimony from King's acquaintances identifying him from surveillance footage); Nooner v. State, 322 Ark. 87, 102, 907 S.W.2d 677, 685 (Ark. 1995) (finding the identification testimony of two witnesses who were familiar with both Nooner and the clothing that he was wearing in a surveillance video was properly admissible); Robinson v. People, 927 P.2d 381, 384 (Colo. 1996) (ruling that an officer who had previously had face-to-face contact with Robinson was properly permitted to identify Robinson from a surveillance video); State v. Benton, 567 So. 2d 1067, 1068 (Fla. Dist. Ct. App. 1990) ("A lay witness may offer his opinion about the identification of another person . . . from a photo 'if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury.' " (citation omitted)); Dawson v. State, 283 Ga. 315, 321, 658 S.E.2d 755, 761 (Ga. 2008) (finding Dawson's close friend could properly identify Dawson from a surveillance recording where the quality of the images was not such that the jury could decide the issues solely through their own observations and conclusions, the witness had personal knowledge of Dawson, and Dawson's appearance had changed before trial); Jackson v. State, 316 Ga. App. 80, 83, 729 S.E.2d 404, 407 (Ga. Ct. App. 2012) (finding that a witness' identification of Jackson from surveillance footage was admissible where the witness' "familiarity with Jackson and his clothes was a sufficient basis to conclude that she was more likely to correctly identify him from the video than the jury"); Bennett v. State, 757 So. 2d 1074, 1077 (Miss. Ct. App. 2000) ("It is simply beyond logical dispute that a person having an intimate familiarity through long acquaintance with an individual can positively recognize that person with much less visual data available than can a person lacking the same familiarity. . . . When there is a genuine issue of fact as to who is actually portrayed in a photograph or videotape, it is that sort of lay opinion evidence that can prove 'helpful' to the jury within the meaning of Mississippi Rule of Evidence 701."); People v. Ray, 100 A.D.3d 933, 933, 954 N.Y.S.2d 199, 200 (N.Y. App. Div. 2012) ("[T]he opinion testimony of Detective Gross, who had encountered the defendant on numerous occasions over more than 15 years [and who identified him from a surveillance video], was of assistance to the jury, particular since the defendant had changed his appearance after the commission of the crime[.]"); see also Brent G. Filbert, Annotation, Admissibility of Lay Witness Interpretation of Surveillance Photograph or Videotape, 74 A.L.R. 5th 643 (1999) ("The admission of lay witness testimony interpreting a surveillance photograph or videotape has become increasingly common.").

Allen, 787 F.2d at 936 ("Human features develop in the mind's eye over time."). For that reason, his testimony was particular important in establishing that Appellant was, in fact, the person depicted in the surveillance footage. Furthermore, his testimony was not unduly prejudicial because nothing was presented during trial to suggest that Detective Glover had acquired his fifteen years of knowledge in regard to Appellant from any source other than encountering him in the community. However, even if the jury was somehow led to believe that Detective Glover knew Appellant through an earlier criminal investigation, such an inference would not have resulted in any undue prejudice to Appellant under the circumstances since the jury was unquestionably aware that Appellant had previously been arrested for and convicted of burglary on two earlier occasions, which could not have occurred without some earlier interaction with law enforcement taking place. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."). For that reason, any prejudice that resulted from Detective Glover's testimony stemmed from the legitimate probative force of his testimony in establishing Appellant's guilt for the indicted offense. See Mitchell, 399 S.C. at 420, 731 S.E.2d at 895 ("We also find the probative value of his testimony was not outweighed by the prejudicial effect based upon Mitchell's argument that Lt. McClurkin was a police officer."); see also Gilchrist, 329 S.C. at 630, 496 S.E.2d at 429 ("The prejudice Gilchrist seeks to escape is the prejudicial impact any criminal defendant faces when the State produces relevant evidence that implicates guilt of a crime charged. Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." (citations and internal quotations omitted)). As a

result, the introduction of Detective Glover's testimony in addition to the testimony of Fanning and Wolf did not result in the introduction of needlessly cumulative evidence, and the probative value of that testimony greatly outweighed any potential prejudicial effect. See Dickerson, 341 S.C. at 400, 535 S.E.2d at 123 ("Unfair prejudice means an undue tendency to suggest decision on an improper basis."); cf. Morgan v. Commonwealth, 421 S.W.3d 388, 391-392 (Ky. 2014) (finding no error in the trial judge's decision to permit three witnesses to identify Morgan from surveillance footage and photographs where the testimony was relevant and probative, was not **needlessly** duplicative, and was rationally based on the witnesses' personal knowledge of Morgan).

Because Detective Glover's testimony identifying Appellant from the surveillance footage satisfied all the requirements of South Carolina's evidentiary rules, the trial judge did not abuse his broad discretion in admitting the testimony.[16] See Kelley, 319 S.C. at 176, 460 S.E.2d at 370 ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); Lyles, 379 S.C. at 339-340, 665 S.E.2d at 207 (recognizing that a trial judge's ruling on the comparative probative value and potential prejudicial effect of evidence should be afforded great deference on appeal and should only be reversed in exceptional circumstances). Appellant's contentions to the contrary are wholly without merit. Appellant's conviction should be affirmed.

[16] Moreover, even assuming that the trial judge somehow erred in admitting Detective Glover's testimony identifying Appellant from the surveillance footage, any error was entirely harmless in light of the fact that the officer's testimony was cumulative to the testimony of Fanning and Wolf, who also both identified Appellant from the surveillance footage. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."); see also State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) ("[An appellate court] will not set aside a conviction due to insubstantial errors not affecting the result.").

CONCLUSION

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

Respectfully submitted,

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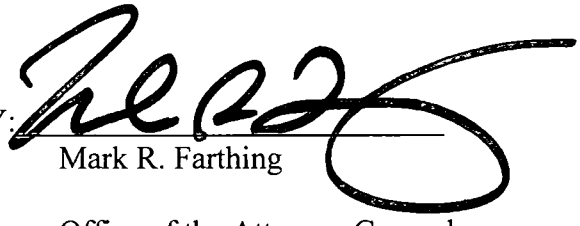
Attorney General

MARK R. FARTHING
Assistant Attorney General

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

May 23, 2014

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001354

THE STATE,

Respondent,

vs.

TYRIK GERARD BRIGHT,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) June 10 Transcript, Pages 1, and 3-29;

(2) June 11-12 Transcript, Pages 1, 4, 29-34, 39-109, 116-142, 149-151, and 155;

(2) Indictment;

(3) Sentencing Sheet; and

(4) State's Exhibits # 7 (Surveillance Recording) and # 17 (Surveillance Recording).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
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BY: _____
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ATTORNEYS FOR RESPONDENT

May 23, 2014

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Honorable J. Derham Cole, Circuit Court Judge
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THE STATE,

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vs.

TYRIK GERARD BRIGHT,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of May, 2014.

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ALAN WILSON
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May 23, 2014

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RE: State v. Tyrik Gerard Bright – Appellate Case No. 2013-001354

Dear Ms. Ganjehsani:

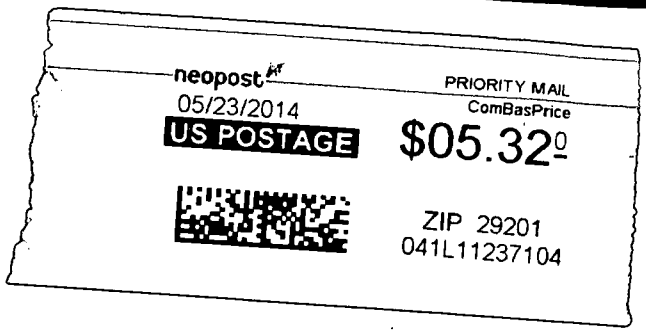
I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services



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