STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-001887

THE STATE,

Respondent,

vs.

RODERICK GERMAINE WYNN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were not raised during trial and, instead, were improperly raised for the first time after the jury reached a verdict. However, even assuming the issue was somehow preserved for appellate review, the trial judge correctly denied Appellant's motion for a new trial because the evidence and testimony presented during trial established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation.

STATEMENT OF THE CASE

In August of 2013, Appellant Roderick Germaine Wynn was arrested after he fatally injured another man during a physical altercation. In January of 2014, the Spartanburg County Grand Jury indicted Appellant for one count of murder. On August 27, 2014, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable R. Keith Kelly, circuit court judge, presiding. At the conclusion of trial, the jury acquitted Appellant of murder and convicted him of the lesser-included offense of voluntary manslaughter. Following the verdict, Appellant moved for a new trial, and the trial judge denied the motion. Thereafter, the trial judge sentenced Appellant to a twenty-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On August 14, 2013, Jeffrey Holt, a paramedic in Spartanburg, South Carolina, received a report of an unconscious individual situated in the parking lot of the Money Tree, and he quickly responded to the scene. (Tr. p. 39). Upon arriving, he was directed to a vehicle parked in the parking lot by several bystanders and observed a man seated in the driver's seat of the vehicle with his head slumped down. (Tr. pp. 39-40). He then approached the vehicle, examined the man, and discovered the man had no pulse, was not breathing, and had recently vomited. (Tr. pp. 39-40). He further noticed the man had a "fairly small" contusion to his left temporal forehead, a small indention into the contusion, and a laceration above that injury. (Tr. pp. 41-42). In response, he removed the man from the vehicle, began resuscitation efforts, and quickly transported the man to the hospital by ambulance. (Tr. pp. 40-41). However, his resuscitation efforts were unsuccessful, and the man – fifty-six-year-old Curtis Goldsmith ("Victim") – was pronounced deceased at the hospital. (Tr. p. 41; p. 50; p. 153).

Meanwhile, officers from the Spartanburg Police Department arrived at the location where Victim was discovered and began speaking to the bystanders to ascertain what led to Victim's injuries and death. (Tr. pp. 45-48; pp. 133-134; pp. 139-140). After speaking with the bystanders, the officers determined Victim had just been involved in an altercation with Appellant Roderick Germaine Wynn, and they began attempting to locate Appellant. (Tr. pp. 47-48; pp. 134-135; p. 142). While searching for Appellant, Officer Christopher Banks discovered Appellant's girlfriend lived at a nearby motel and went to the motel to speak with her. (Tr. p. 134). During his ensuing conversation with Appellant's girlfriend, Appellant called her phone but refused to tell her where he was located. (Tr. p. 135). Officer Banks then took the phone and asked Appellant to meet

with him at the motel in regard to an unrelated incident, and Appellant agreed to do so. (Tr. pp. 135-136; p. 139). However, Appellant never arrived at the motel to meet with the officer, and his whereabouts remained unknown. (Tr. pp. 135-136; p. 142).

Later that afternoon, Dr. David Wren, an expert in forensic pathology, conducted an autopsy on Victim's body. (Tr. pp. 150; pp. 152-153). During the autopsy, Dr. Wren discovered abrasions along Victim's elbow, abrasions to both of Victim's knees, and an injury to Victim's right forearm that was consistent with a fall against something. (Tr. p. 154). Additionally, he located hemorrhages on the vertex of Victim's scalp and just above Victim's left ear that were inflicted shortly before Victim's death and that could have resulted from strikes or a fall. (Tr. p. 155). Furthermore, Dr. Wren discovered Victim had sustained a subdural hemorrhage, a subarachnoid hemorrhage, and an intraventricular hemorrhage in his brain. (Tr. pp. 157-158). Based on Victim's injuries, Dr. Wren determined Victim died as a result of an altercation and Victim's specific cause of death was closed head trauma with subdural, subarachnoid, and intraventricular hemorrhages. (Tr. p. 159).

Thereafter, a tipster informed the investigating officers four days after Victim's death Appellant was hiding in an abandoned house. (Tr. p. 143). In response, officers quickly headed to that location, found Appellant there, and apprehended and arrested him for his involvement in Victim's death. (Tr. p. 143). Subsequently, the Spartanburg County Grand Jury indicted Appellant for murder, and he elected to proceed forward to trial. (Tr. p. 7; Indictment).

During trial, Holt testified about his attempts to resuscitate Victim, and the officers from the Spartanburg Police Department testified about their investigation into Victim's death that resulted in Appellant's arrest for the killing. (Tr. pp. 39-41; pp. 46-

48; pp. 133-136; pp. 140-143). Likewise, Dr. Wren testified about the injuries he discovered through the autopsy he conducted on Victim's body. (Tr. pp. 153-159). During his testimony, Dr. Wren opined Victim's injuries could have resulted from Victim falling four to five feet and were unlikely to have been caused solely by a blow from a fist. (Tr. p. 159). Based on Victim's injuries, Dr. Wren concluded Victim died as a result of an altercation and was likely thrown up against something, fell and hit something, or was hit by an object that was swung at him. (Tr. p. 159).

In addition to that testimony, Freddie Young, a resident of a motel located near the Money Tree, testified he was working on a car outside of the motel when he heard a woman pleading with someone to "just leave the situation alone" in a nearby alley and the other person responding he was "going to take care of business." (Tr. pp. 58-62). After that, Young indicated he went to investigate, saw Appellant engaged in an argument with Victim that turned physical, observed Appellant throw the first punch he saw exchanged between the men, and heard Appellant state Victim owed him money and he was going to get it from him. (Tr. pp. 65-66; p. 68; pp. 77-78). Regarding the fight, Young testified Victim tried to protect himself from Appellant's punches, Victim seemed dizzy after he was knocked to the ground by Appellant, and Appellant picked Victim up by the legs and slammed him to the ground. (Tr. pp. 68-70; p. 85). He further stated he believed Victim hit his head on a trash can during the fight and testified Appellant struck Victim again and caused him to fall to the ground while Victim was attempting to walk back to his car. (Tr. p. 70; pp. 72-73; p. 85). However, Young indicated he was not sure who actually threw the first punch and noted the men were already engaged in the altercation when he arrived on the scene. (Tr. p. 65; p. 79).

Additionally, Kerri Blanchard, a "good friend" of Appellant's, testified about the events of August 14, 2013, noted she did not see anything that happened during the incident, and stated she called 911 after Appellant told her Victim needed help because he had punched Victim so hard Victim could no longer move. (Tr. pp. 91-93; p. 97; p. 108). Blanchard further testified Appellant informed her Victim owed him money and had swung at him, and she indicated Appellant was upset at the time. (Tr. p. 93; p. 99; pp. 101-102).

Likewise, Katrina Price, another of Appellant's friends, testified for the State, indicated she was walking with Blanchard towards the Money Tree, and watched as Blanchard crossed the street and began talking with Appellant, who had been arguing. (Tr. pp. 112-113). During Appellant's conversation with Blanchard, Price stated she overheard Appellant say he "lit his ass up" and she noticed Appellant was "pretty" mad, "pretty well upset," and was speaking in a "very loud" manner at the time. (Tr. p. 113; p. 117). Price further indicated she believed Appellant had been involved in a fight while conceding she did not see any of the fight that had occurred. (Tr. p. 114; p. 116).

Furthermore, Joyce Brewton testified about the incident and indicated she went to the Money Tree on August 14, 2013, to pay her bills. (Tr. pp. 122-123). On that date, Brewton stated she saw Appellant and another man arguing before she entered the business, remained inside for a few minutes, exited, and saw the men engaged in a physical fight at that time. (Tr. pp. 123-125). Additionally, she testified she saw the other man throw a punch at Appellant followed by Appellant "whoop[ing] his ass." (Tr. p. 125). Brewton further testified Appellant's opponent appeared to be dead at the time she left the parking lot of the Money Tree, and she noted she heard Appellant state he had knocked the other man out while claiming the other man was okay. (Tr. pp. 125-127).

Subsequently, the State rested its case, and defense counsel called several witnesses to testify in Appellant's defense. (Tr. p. 163; p. 165; p. 171; p. 186). Amongst those witnesses, Matthew Teamer, a convicted felon, testified he was driving through the parking lot of the Money Tree when the incident occurred while inconsistently claiming he was and also was not present when the fight began. (Tr. p. 171; p. 178; pp. 183-184). Regarding the fight itself, Teamer stated he observed Appellant and another man arguing, the other man struck Appellant, and then both men fell to the ground. (Tr. p. 172). After that, Teamer claimed Appellant and the other man got back up before Appellant punched, threw, and kneed the other man. (Tr. p. 172). He stated he then continued to leave the parking lot and did not perceive the altercation to be a serious one. (Tr. pp. 173-174).

Similarly, Marion Bridges, the sister-in-law of Brewton, testified about her observations during the incident and stated she drove Brewton to the Money Tree, waited in her vehicle while Brewton went inside, and saw Victim and Appellant arguing. (Tr. pp. 186-187). After that, Bridges indicated Victim "took a swing" at Appellant, Appellant and Victim "scuffled a little bit" while punching and wrestling with each other, and then Victim got into his vehicle and slumped over. (Tr. pp. 187-188). Additionally, she claimed Appellant "hollered" during the incident about how Victim owed him money and had taken a swing at him, and she stated Victim informed her he "just knocked the 'H' out of" Victim when she asked him what happened. (Tr. pp. 188-189). Furthermore, she admitted she did not see the whole argument between Appellant and Victim and noted Appellant panicked and fled when Brewton called 911. (Tr. pp. 189-190).

Following the presentation of that testimony, the defense rested, and the trial judge presented the solicitor and defense counsel with copies of his proposed jury instructions. (Tr. p. 203; p. 206). Defense counsel then moved for a directed verdict on

the murder charge, arguing the killing was not intentional and Victim's injuries were not directly caused by punches. (Tr. pp. 206-209). Defense counsel further contended Appellant's actions constituted "at most a manslaughter." (Tr. p. 208). After considering the arguments of counsel, the trial judge denied the directed verdict motion. (Tr. p. 209). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law, including on the law of murder, voluntary manslaughter, involuntary manslaughter, and self-defense. (Tr. pp. 210-249). The trial judge then inquired of the parties whether they had any issues, and defense counsel responded: "No, Your Honor." (Tr. p. 249).

Subsequently, at the conclusion of trial, the jury acquitted Appellant of murder and convicted him of the lesser-included offense of voluntary manslaughter. (Tr. pp. 251-252). Following the verdict, defense counsel renewed her motion for a directed verdict and additionally moved for a new trial. (Tr. pp. 253-254). In seeking a new trial, defense counsel contended – for the first time – the evidence presented during trial was not sufficient to prove the offense of voluntary manslaughter based on the fact there was allegedly no evidence Appellant killed Victim in a sudden heat of passion upon a sufficient legal provocation. (Tr. pp. 253-254). In response, the solicitor noted the evidence presented during trial could have supported a finding Appellant confronted Victim about money and became enraged when Victim struck him, which would have been sufficient to establish Appellant's guilt for voluntary manslaughter. (Tr. pp. 254-255). Thereafter, the trial judge denied defense counsel's post-trial motions, including the motion for a new trial, after finding ample evidence had been presented to support the jury's verdict. (Tr. p. 255). The trial judge then sentenced Appellant to a twenty-year term of imprisonment. (Tr. p. 271).

ARGUMENT

Any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were not raised during trial and, instead, were improperly raised for the first time after the jury reached a verdict. However, even assuming the issue was somehow preserved for appellate review, the trial judge correctly denied Appellant's motion for a new trial because the evidence and testimony presented during trial established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation.

Appellant contends the trial judge erred by denying his motion for a new trial. In support of that contention, Appellant maintains the jury's guilty verdict on the charge of voluntary manslaughter was allegedly not supported by the evidence in light of the fact no evidence or testimony was presented establishing Appellant acted in a sudden heat of passion resulting from sufficient legal provocation at the time he fatally injured Victim. Initially, Appellant's challenge to the sufficiency of the evidence of voluntary manslaughter, which was raised for the first time through his post-trial motion for a new trial, was not properly preserved for appellate review due to the fact defense counsel did not raise such a challenge to the sufficiency of the evidence during trial and specifically indicated she had no objection after the trial judge submitted the voluntary manslaughter charge to the jury. However, notwithstanding any issue preservation concerns, the trial judge correctly denied Appellant's new trial motion because the evidence and testimony presented during trial, including the testimony establishing Appellant fatally injured Victim during a physical altercation that followed a heated argument between the two, established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In a criminal case, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A decision as to whether to grant or deny a motion for a new trial is left to the sound discretion of the trial judge and will not be reversed absent a clear abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); see State v. Jamison, 221 S.C. 312, 319, 70 S.E.2d 342, 344 (1952) ("The granting or refusal of a motion for a new trial is within the discretion of the Trial Judge and unless he commits an abuse of discretion, this Court is powerless to interfere."). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001).

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); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "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, 724 (2000).

Regarding the requirement a timely objection be raised, a defendant must make a **contemporaneous** objection to a perceived error **during trial** in order to preserve the issue for further review. State v. Blalock, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); see State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."). Thus, when a perceived error arises, the defendant must object at the first opportunity to do so or the issue is waived. State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993); see State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) ("A defendant must object at his first opportunity to preserve an issue for appellate review."); see also State v. King, 349 S.C. 142, 157, n.1, 561 S.E.2d 640, 647 (Ct. App. 2002) ("[N]o objection was made contemporaneously with this testimony so as to preserve the issue for review. King's belated objection to subsequent testimony came too late."). Significantly, "[i]t is axiomatic that an issue cannot be raised for the first time **in a post-trial motion**." Bank of New York v. Sumter County, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) (emphasis added).

In the case at bar, any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were **not** raised at any point prior to the verdict. Critically, during Appellant's trial, defense counsel moved for a directed verdict on the indicted offense of murder while conceding Appellant's actions may have constituted "at most a manslaughter." Then, at the close of the evidentiary phase of trial, the trial judge presented the parties with a draft of his proposed jury instructions before instructing the jury on the applicable law, including on voluntary manslaughter. After that, the trial judge asked the parties if they had any objections or issues to raise at that time, and

defense counsel specifically affirmed to the trial judge she had no objections. Thus, prior to the submission of the case to the jury and prior to the jury finding Appellant guilty of the lesser-included offense of voluntary manslaughter, defense counsel did **not** raise any objections to the sufficiency of the evidence in regard to voluntary manslaughter and did not object to the submission of the voluntary manslaughter charge to the jury. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); cf. Collins Cadillac, Inc. v. Bigelow-Sanford, Inc., 276 S.C. 465, 468, 279 S.E.2d 611, 612 (1981) ("Collins failed to raise this issue in its motion for a directed verdict. Therefore, it was not a proper ground upon which to base its motion for a new trial, and will not be heard on appeal."). Instead, defense counsel indicated to the trial judge she had no objection to his presentation of jury instructions that included a charge on the law of voluntary manslaughter, which constituted a waiver of any objection Appellant may have had to such a charge. 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 where Brown explicitly stated to the trial judge he had no objection to the instruction); 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."). As a result, any issues regarding the submission of the voluntary manslaughter charge to the jury or the sufficiency of the evidence to prove that charge were waived, and Appellant was precluded from raising such a challenge through a post-trial motion for a new trial. See Bank of New York, 387 S.C. at 159, 691 S.E.2d at 479 ("It is axiomatic that an issue cannot be raised for the first time in a post-trial motion."); see also State v. Black, 319

S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995) ("It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review.").

Significantly, in Appellant's case, defense counsel raised her first and only objection in regard to the sufficiency of the evidence of voluntary manslaughter through a post-trial motion for a new trial made **after** the jury returned with a guilty verdict. Cf. Bowers v. Charleston & W. Carolina Ry. Co., 210 S.C. 367, 371, 42 S.E.2d 705, 706 (1947) (not reviewing an issue on appeal where the issue was not raised at the time the allegedly objectionable argument was made but, instead, was raised for the first time in a motion for new trial made after the jury issued its verdict). However, pursuant to South Carolina's issue preservation rules, defense counsel was not permitted to wait and see if the trial resulted in an outcome favorable to Appellant and then use a motion for a new trial to raise a new, previously-unraised objection if and when the desired outcome did not come to fruition. See State v. Penland, 275 S.C. 537, 538, 273 S.E.2d 765, 766 (1981) ("One may not preserve a vice until he learns what the result will be and then, take advantage of the error on appeal."); 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."); State v. Ballew, 83 S.C. 82, 87, 63 S.E. 688, 690 (1909) ("The general principle that a party can not take his chances of a successful issue, reserving vices in the trial, of which he has notice, for use in case of disappointment, is universally recognized and obviously just."); see also State v. Logan, 279 S.C. 345, 348, 306 S.E.2d 622, 624 (1983) ("Appellant can neither take advantage of an error he contributed to at trial nor preserve a vice and, upon learning of the outcome of trial, raise

it on appeal."). Accordingly, for the foregoing reasons, any issues regarding the trial judge's denial of Appellant's motion for a new trial or the sufficiency of the evidence presented to establish Appellant's guilt for voluntary manslaughter were not properly preserved for appellate review and cannot now appropriately be raised or addressed on appeal. See State v. Holmes, 320 S.C. 259, 266, 464 S.E.2d 334, 338 (1995) ("Because a new trial motion may not be used to raise an evidentiary issue for the first time, appellant's argument is not preserved for review."); cf. State v. Jones, 172 S.C. 129, 131, 173 S.E. 77, 78 (1934) ("Having not taken the legal steps to secure a preliminary, and not having informed the Court that one was wished, it must be held that the appellants waived any and all right to such examination. To hold otherwise would be to encourage numerous uncalled-for new trials, for many defendants, hoping to be acquitted, would keep quiet as to preliminary examinations until their hope for acquittal had resulted in disappointment."). Appellant's conviction should be affirmed.

B. Propriety of the Trial Judge's Denial of the Motion for a New Trial

In criminal cases, a motion for a new trial is the only appropriate method to raise a post-trial challenge to the sufficiency of the evidence. State v. Miller, 287 S.C. 280, 282, n. 2, 337 S.E.2d 883, 884 (1985); see State v. Taylor, 355 S.C. 392, 394, 585 S.E.2d 303, 304 (2003) ("It is well-settled that a verdict in arrest of judgment should not be granted based on the insufficiency of the evidence; the proper remedy is a new trial."). "In considering a new trial motion based on insufficiency of the evidence, the trial court is concerned with the existence of evidence rather than its weight." State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005). Significantly, when **no** evidence exists to support a conviction, a trial judge should grant a properly-raised motion for a new trial challenging the sufficiency of the evidence. See State v. Garrett, 350 S.C. 613,

619, 567 S.E.2d 523, 526 (Ct. App. 2002) ("If there is no evidence to support a conviction, we should uphold an order granting a new trial."); see also Collins Cadillac, 276 S.C. at 468, 279 S.E.2d at 612 (holding an issue not raised in a motion for a directed verdict during trial was "not a proper ground" upon which to base a motion for a new trial). However, when any competent evidence is presented establishing the defendant's guilt, the trial judge **may not** substitute his or her judgment for that of the jury and should deny a motion for a new trial based on the sufficiency of the evidence. State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993); see State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975) ("Where there is any evidence tending to establish guilt on the charges alleged, neither a refusal to direct a verdict of acquittal nor a refusal to grant a new trial is error of law.").

In the case at bar, Appellant's motion for a new trial challenging the sufficiency of the evidence of voluntary manslaughter was improper because defense counsel never challenged the sufficiency of that evidence during trial and specifically assured the trial judge she had no objections after he submitted the voluntary manslaughter charge to the jury. See Holmes, 320 S.C. at 266, 464 S.E.2d at 338 (instructing a new trial motion cannot be used to raise an issue for the first time); see also Winters v. Fiddie, 394 S.C. 629, 639, 716 S.E.2d 316, 321-322 (Ct. App. 2011) ("South Carolina jurisprudence indicates that a moving party must raise the objectionable issue at the appropriate time during trial; thus, unobjected to trial error cannot be advanced as grounds for a new trial."). As a result, the trial judge committed no error in denying that improper motion. See State v. Bailey, 253 S.C. 304, 310, 170 S.E.2d 376, 379 (1969) (recognizing a trial judge commits no error by rejecting an improperly-raised objection). However, even assuming the grounds raised by defense counsel could somehow have properly been

raised for the first time through a post-trial motion for a new trial, the trial judge nonetheless correctly denied Appellant's new trial motion because the evidence presented during trial established Appellant's guilt for each and every element of voluntary manslaughter. See Smith, 363 S.C. at 115, 609 S.E.2d at 530 ("Where there is any evidence supporting the jury's verdict, the court commits no error in denying the [new trial] motion.").

Looking to the elements of the offense, voluntary manslaughter is "the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951). In order for a killing to constitute voluntary manslaughter, both heat of passion and sufficient legal provocation must exist at the time of the killing, and the heat of passion must result from the legal provocation. State v. Starnes, 388 S.C. 590, 596-597, 698 S.E.2d 604, 608 (2010). Sudden heat of passion resulting from sufficient legal provocation in the context of voluntary manslaughter "need not dethrone reason entirely, or shut out knowledge and volition[.]" State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011). However, it "must be such as would naturally disturb the sway of reason, render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." Id. "In determining whether the act which caused death was impelled by heat of passion . . . , all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969).

In Appellant's case, the testimony presented during trial established Appellant angrily confronted Victim about a perceived debt owed to him, and a heated argument ensued between the two men. See State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) ("[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing]."); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was engaged in a heated argument with the victim and the victim's sister prior to the killing); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (holding the trial judge committed reversible error by **not** instructing the jury on the law of voluntary manslaughter where the testimony tended to show Lowry was engaged in a heated argument with the decedent and the decedent was about to initiate a physical encounter when the fatal shooting occurred). Furthermore, the testimony presented during trial demonstrated the heated argument eventually turned into a physical fight between Appellant and Victim, and Appellant struck Victim repeatedly and knocked him to the ground during the fracas. See State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (recognizing "an overt, threatening act or physical encounter may constitute sufficient legal provocation"). In fact, Appellant's own witnesses' testimony established Appellant punched, kneed, threw, and "knocked the 'H' out of" Victim just before Victim died from the injuries he sustained during the fight.

In light of that trial testimony, including the testimony suggesting Victim may have struck Appellant first before Appellant began physically assaulting him, sufficient evidence existed from which the jury could rationally and logically conclude Victim was fatally injured by Appellant while Appellant was acting in a sudden heat of passion that

resulted from sufficient legal provocation. See State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) ("Here, a witness testified that appellant and the victim had been 'fighting.' From this circumstance of 'provocation' and 'heat of passion,' guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination."). Accordingly, under those circumstances, the trial judge properly denied Appellant's motion for a new trial even assuming that motion had somehow been proper. See id. ("[W]here there is evidence tending to establish guilt on the charge, neither a refusal to direct a verdict of acquittal nor a refusal to grant a new trial is error."). Appellant's conviction should be affirmed.

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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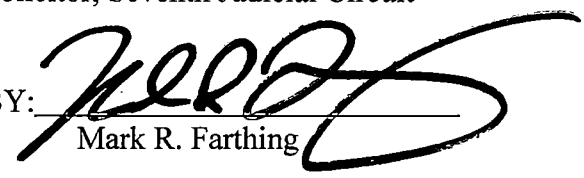
BY: 
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ALAN WILSON
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June 4, 2015

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RE: State v. Roderick Germaine Wynn – Appellate Case No. 2014-001887

Dear Ms. Caudy:

I am enclosing two 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-001887

THE STATE,

Respondent,

vs.

RODERICK GERMAINE WYNN,

Appellant.

PROOF OF SERVICE

I, Angela S. Bennett, 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:

Lara M. Caudy, 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 4th day of June, 2015.

ANGELA S. BENNETT
Legal Assistant

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