ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Lee S. Alford, Circuit Court Judge

Appellate Case No. 2013-002227

THE STATE, ...RESPONDENT

v.

LYNN SMITH SAUCIER, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Lynn Smith Saucier was indicted at the November, 2012 term of the grand jury for York County for Pointing or Presenting a Firearm (2012-GS-46-04105). Saucier proceeded to a trial by jury from August 27-29, 2013, pursuant to which she was found guilty as indicted. She was sentenced by the Honorable Lee Alford to imprisonment for five years suspended upon probation for five years. Saucier filed a notice of appeal and subsequently submitted a brief. This brief of Respondent follows.

RESPONDENT'S STATEMENT OF FACTS

On April 2, 2012, Barry Foy heard gunshots while on the property of Carol and Robert Jones, his wife's parents. R. pp. 95-96. Mr. Foy drove toward where he heard the gunshots to ensure that the other individuals on the property were safe. R. pp. 97-98. Mr. Foy drove to the property line and found everyone was safe. R. p. 97-68. Mr. Foy remained at that location for another twenty minutes talking to Ms. Jones and the individual working for her. R. p. 99. As Mr. Foy was preparing to leave the area, he heard aggressive "horn honking down the driveway" and took out his iPhone camera. R. p. 99. He saw neighbor Lynne Saucier who is the Appellant in this appeal. R. p. 100. Mr. Foy had not had much previous interaction with Saucier. He had seen her on a tractor and shooting skeet but had never been introduced to, spoken with, or shaken hands with Saucier. R. 1153-116. Mr. Foy testified that he first heard Saucier laughing when she came out from the area of her shed but that she then addressed him and those he was standing with, saying "you stupid bunch of mf'ers." R. p. 102; 131-132. Saucier then escalated to more laughing and name calling. Saucier stated "let's have some more fun." R. p. 102. Saucier then retrieved her shotgun. R. p. 102. Saucier loaded the gun and shot twice in the air. R. p. 104; 127. Saucier then came around the back of her truck, looked at Mr. Foy and his companions, and stated, "call the f'ing cops on me." R. p. 104; 129. Saucier then leaned the shotgun on her hip, pointed it toward Mr. Foy, and shot over his head. R. p. 103-104; 127-130; 147. Mr. Foy testified that he was "pretty startled" and within seconds heard the shotgun pellets falling in the tree line ten to fifteen feet behind him. R. p. 103; 111. Saucier was within 150 feet of Mr. Foy at the time she discharged her shotgun toward Mr. Foy. R. p. 104. Mr. Foy testified that he clearly saw Saucier and the shotgun and heard the gunshots. R. 103. He heard a "crackling noise" as the pellets

fell through the leaves and could see the leaves flutter as the pellets hit. R. 111; 142. Mr. Foy was frightened. R. 113. He was able to record a video of what happened on his iPhone. R. p. 105. Mr. Foy described Saucier's behavior as escalating from laughing, to name-calling to cursing, and ultimately to getting a shotgun and shooting, first in the air, and later to turning and shooting in his direction at an angle over him. R. p. 113. The York police department was able to enhance the video and Mr. Foy authenticated the video at trial. R. pp. 105-106, pp. 112-113; see also 136-143. The video was played for the jury. R. p. 111; see also [State's exhibits 4, 5, 6]).

Deputy Shannon Estep of the York County Sheriff's Office was directed by radio dispatch to respond to a dispute where a gun was fired. R. p. 151. Deputy Estep spoke with Mr. Foy and Saucier. She observed that Mr. Foy was shaken at the incident site and reported that Saucier pointed the shotgun in his direction. R. 167. Saucier told Deputy Estep that she was shooting muskrats at her pond and that the profanity was actually her reference to muskrats. R. 154; 156; [State's exhibit 9]. Saucier was not charged with a crime on-site, as the police department needed to collect further information. R. p. 155; 162. Deputy Estep testified that the iPhone video depicted Saucier with the gun angled up in the air towards the victim and in the opposite direction from that claimed by Saucier. R. 157; 160. Saucier was subsequently charged with discharging a firearm in an incorporated area of the county. R. p. 165. This charge was later dismissed and Saucier was charged with pointing and presenting a firearm. R. p. 165.

Saucier testified to a long-standing series of disagreements with the Jones family. R. p. 208. One particular disagreement involved the property line between the two properties. R. p. 208. Saucier testified at trial that she did not care for the Jones family

and admitted she had disagreements with the Jones about the property line and saw the victim and others there. R. p. 208. However, she admitted she had never had a problem with Mr. Foy aside from Mr. Foy looking at her. R. p.186. She admitted she saw Mr. Foy, made statements directed to Mr. Foy, used profanity, dared Mr. Foy to call police, and fired her shotgun in frustration. R. p.208. Saucier asserted that she fired two shots from her shotgun straight up into the air due to her frustrations with her shoulder, with one of her trucks not starting, and with her audience. R. p. 183-185; 201. She denied shooting at Mr. Foy. R. p.108. She admitted telling Deputy Estep that she was shooting muskrats but justified those statements as a joke. R. p.198; 204. She also admitted using shotgun shells with pellets and shooting the shotgun because she had it with her. R. p.201; 206-207. The jury did not find much credence in Appellant's testimony, subsequently finding her guilty as indicted. R. p. 256.

ARGUMENTS

I.

This Court may not consider Saucier's claim of trial court error in excluding testimony and other evidence respecting a prior civil judgment when the record is devoid of Saucier's pretrial motion to admit the evidence, of the specific grounds offered in support of the motion, timely renewal of a request to admit the evidence during trial, and a proffer of the excluded evidence; nevertheless, the trial court's ruling was proper and, even if erroneous, Saucier failed to establish the requisite prejudice.

Saucier was indicted for pointing or presenting a firearm at Barry Foy in violation of S.C. Code Ann. § 16-23-410 (2003). Saucier argues that the trial judge erred in excluding testimony and other evidence respecting a previous civil suit between the Saucier and someone she claims was one of the victims at trial. The State disagrees and submits that Saucier's argument is without merit. First, the State submits that Saucier's issue was not preserved for appellate review in numerous regards and, therefore, is not proper for consideration by this Court. Second, there was substantial factual support for the judge's ruling that the evidence of the prior civil suit was inadmissible. Third, Saucier failed to establish the requisite prejudice from exclusion of the evidence and any alleged error is harmless as evidence was introduced that established the same fact that Saucier sought to prove through the introduction of the prior civil suit and the evidence against Saucier, including a recording of the commission of the crime, was overwhelming.

The record reflects that during pretrial proceedings, the trial court *sua sponte* ruled that evidence of a prior civil suit and the judgment from the civil suit would not be admitted. R. p. 64-65. The ruling apparently was in response to an unidentified in chambers discussion that was never placed on the record. R. pp. 37; 38. The pretrial motion and the specific grounds offered in support of the motion were never identified

and the issue was not revisited during trial. No proffer was made of the evidence the moving party wished to introduce, and Saucier never objected on the record to the trial court's ruling on the matter. The record before this Court merely reflects the trial court's pretrial ruling.

In ruling, the trial court first conducted an analysis pursuant to Rule 401, SCRE. R. p. 65. In the analysis, the trial judge found that the evidence was not relevant to the current case and certainly not relevant to proving or disproving any part of the criminal case. R. p. 65. The trial judge further ruled that the evidence was only tangentially relevant in that there was prior contact between the parties. R. p. 65. The trial judge stated that the evidence ". . . is not relevant to this particular case of whether the defendant did or did not do what she is alleged to have done in this particular case." R. p. 66. The trial judge also stated, "But it is not relevant and they should not decide this case based on the fact that the defendant got a civil judgment previously. That's not the basis. That has nothing to do with what their decision ought to be in this case." R. p. 70.

The trial judge also conducted an analysis under Rule 403, SCRE. R. p. 65. The trial judge noted that relevant evidence may be excluded on the grounds of prejudice, confusion, or waste of time under Rule 403. R. p. 65. As an alternative ground for exclusion, the trial judge determined that admission of the evidence would cause prejudice and confusion, and would result in a waste of time. R. p. 65. The trial judge also found that the introduction of evidence concerning the civil judgment would create a trial within a trial which would overtake the issues presented in the criminal case. R. p. 66. The trial judge also stated that the differing standards of proof between the civil trial and criminal trial would confuse the jury.R. p.67. The trial judge further noted admission

of the evidence would require explanations for dismissal of the original case from which the civil judgment was sought and would delve into yet another trial. R. p. 68. The judge stated "That's not the purpose of it, and what is going to do is terribly confuse the jury, terribly confuse them and invite them to try to decide the case based on what happened before between the parties and not what happened in this case." R. p. 69. The trial judge concluded by saying "I don't want the jury to be confused and waste all of this time dealing with the prior issue and totally confusing the jury and take them away from the real issue in this case." R. p. 72. When the trial court thereafter inquired whether there was anything from the defense, counsel for Saucier replied, "nothing, Your Honor." R. 72.

Aside from the trial judge's ruling on the matter, the record contains only a few vague references to evidence of a prior civil action and judgment. The record is also devoid of a motion to admit evidence of a prior civil suit, the specific nature of the motion and the grounds supporting it. During the pretrial motion hearing, the prosecutor stated that a videotape that the prosecution sought to introduce would be "subject to the redactions with regard to the civil lawsuit, but that's a different issue. Ignoring that for the time being." R. p. 17. The prosecutor later showed that videotape to the Court and stated, "This would be the two videos. I will make making the Court aware, that version that I just played had the portions referencing the money and the lawsuit and they were not in that." R. p. 22. There is no further mention until the end of the pretrial motion hearing, where Saucier's counsel stated, "Aside from the civil suit that we discussed in chambers, I have one motion concerning the procedural background of this case and. . ."

R. pp. 37; 38. The record is silent of any other mention of the civil suit other than the trial judge's ruling finding the evidence inadmissible.

Due to the absence of the motion from the record and specific grounds argued in support of the motion, the State submits that the issue presented by Saucier is not properly preserved for appellate review. Saucier's failure to place the motion she might have made during in chambers discussions on the record precludes appellate review. A motion or objection which is not made to the trial court on the record does not preserve the question for appellate review. Moreover, any objection or motion made during an off-the- record conference which is not made part of the record does not preserve the question for review. State v. Hamilton, 344 S.C. 344, 361, 543 S.E. 2d 586. 595 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Our error preservation rules require an objection or motion to be made on specific grounds by Saucier and a subsequent ruling by the trial court. A motion or objection without a specific ground or without a ruling fails to preserve an issue for appellate review. Busillo v. City of North Charleston, 404 S.C. 604, 745 S.E.2d 142 (Ct. App. 2013); State v. Jennings, 394 S.C. 473, 481-482, 716 S.E.2d 91, 95 (2011); State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004); State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) overruled on other grounds by State v. Collins, 320 S.C. 23, 495 S.E.2d 202 1998); State v. Morris, 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991). A ruling without motion or objection supported by specific grounds fails to preserve an issue for appellate review. Mize v. Blue Ridge Ry. Co., 219 S.C. 119, 64 S.E.2d 253 (1951); see also State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005), rev. on other grounds by State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). The record is

devoid of motion or objection by Saucier. The fact that the trial court made a reference to a prior civil action and judgment when it ruled it inadmissible as evidence for trial preserves nothing to Saucier who failed to establish a timely request for admission and objection to the ruling on the same grounds she now presents on appeal. It is incumbent upon the appealing party to present the appellate court with a sufficient record for review of the issues presented. Parker v. Fireman's Ins. Co. of Newark, N.J., 297 S.C. 166, 375 S.E.2d 325 (Ct. App. 1988).

Saucier further failed to preserve the issue for appellate review by failing to place on the record the specific grounds argued in support of admission of the evidence and any objections she had to the trial court's pretrial ruling excluding the evidence. See Glover v. Western Union Tel. Co.,78 S.C. 502, 59 S.E. 526 (1907) (where the record does not disclose the grounds of a motion for a new trial, an exception to the refusal to grant a new trial cannot be considered). An issue may not be raised for the first time on appeal, but must have been raised to the trial court to be preserved for appellate review. State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005). "In order to preserve for review, an alleged error[,] an objection should be sufficiently specific to being into focus the precise nature of the alleged error so it can be reasonable understood by the [circuit court]." State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001); see also State v. Dunbar, 356 S.C. 138, 587 S.E. 2d 691 (2003) (stating that in order to properly preserve an issue for review on appeal, the defendant must present the argument to the trial court and receive a ruling); State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct.App. 1998) (stating that arguments not presented to the trial court in support of directed verdict are not preserved for review on appeal). The record simply fails to establish whether the

issue and grounds Saucier now raises on appeal were presented first to the trial court to enable the trial court to consider Saucier's position and make a ruling responsive to Saucier's requests at that time. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724-25 (2000) ("The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues before an appellate court will review those arguments.").

The issue is also not preserved because Appellant failed to address or revisit the matter of admission of this evidence during trial and after the initial *in limine* ruling. State v. Stokes, 339 S.C. 154, 528 S.E.2d 430 (Ct. App. 2000); State v. Peay, 321 S.C. 405, 468 S.E.2d 669 (Ct. App. 1996). Merely raising an issue *in limine* does not preserve the issue for appellate review. Id. *citing* State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (stating that an *in limine* ruling is not a final ruling on the admissibility of evidence).

Furthermore, the issue is not preserved for appellate review because Saucier failed to make a proffer of the evidence after the trial court's pretrial ruling excluding the evidence. Excluded evidence must be proffered at trial to preserve the issue of its exclusion for appellate review. State v. Jackson, 384 S.C. 29, 34, 681 S.E.2d 17, 20 (2009) (stating that proffer of evidence is required to preserve issue whether evidence was properly excluded and appellate court will decline to consider the issue of alleged error in the exclusion of the evidence unless the record before it shows fairly what the excluded evidence would have been). Saucier made no attempt to proffer the testimony

or other evidence concerning the civil lawsuit, therefore the issue of its exclusion is not preserved for appellate review. See State v. Davis, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992) (stating the appellate court may not consider an alleged error in the exclusion of evidence unless the record shows fairly what the excluded evidence would have been) *citing* State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991). It is unclear exactly what the prior civil suit involved and its relevance to the issues at trial in this case; therefore, it is impossible for this Court to discern what the excluded evidence would have been and whether denial of admission was in error or resulted in prejudice to Saucier. Id. (stating that where no proffer is made, the court is unable to determine whether appellant was prejudiced by the trial court's refusal to admit the evidence); State v. Garris, 394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011) (stating that a proffer of the evidence is required to preserve the issue of whether evidence was properly excluded and an appellate court will not consider error in exclusion of evidence unless the record fairly discloses what the evidence would have been); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006) (same); State v. Hawkins, 310 S.C. 50, 425 S.E.2d 50 (Ct. App. 1992)(without a proffer of the excluded evidence, the appellate court is unable to assess the potential relevance of the evidence to determine whether the trial court abused its discretion); see also State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979) (stating that a reviewing court may not consider error alleged in the exclusion of evidence unless the record on appeal shows fairly what the rejected evidence would have been). Unlike in State v. King, 367 S.C. 131, 623 S.E.2d 865 (Ct. Appl. 2005), the record before this Court does not establish that prejudice exists.

Additionally, the State notes that the facts and much of the argument and references in Saucier's brief to the civil proceedings are simply not supported by the record and should not be considered by this Court. In the fourth and fifth sentences of the first paragraph of Saucier's "Statement of the Case," she indicates that she sought introduction of unidentified statements and evidence relating to a previous civil suit against her neighbors, Robert and Carol Jones, and a subsequent civil judgment in her favor. Saucier also claims the trial judge excluded the evidence over her objection. See Amended Brief of Appellant, page 1. These factual statements are not supported anywhere in the record. In the third sentence of Saucier's "Facts," she also states that she:

> . . . and her neighbors have had a long and tumultuous relationship involving unfounded criminal charges initiated by Carol and Robert Jones and a successful malicious prosecution, abuse of process, and defamation civil suit against the Jones.
>
> In 2009, the Jones falsely accused Appellant of firing at them and charged her with Assault and Battery of High and Aggravated Nature. Appellant was arrested and the charge was ultimately dismissed. Appellant initiated a civil suit against the Jones for malicious prosecution and abuse of process, which resulted in a $35,000 verdict in favor of Appellant on March 22, 2012.

See Amended Brief of Appellant, page 2. She argues she was" unduly prejudiced by the trial court's pretrial refusal to permit [her] to introduce evidence of the alleged victim's and the state's key witness' animosity towards Appellant." See Brief of Appellant, page 4. She claims that she sought the ability to produce evidence both testimonial and through civil court orders showing the tumultuous relationship through a pretrial motion. She admits the motion was made in chambers but noted the trial judge ruled on the

record. Id. Other than a vague reference to an in chambers discussion about a civil suit, none of these facts or arguments appear in the record.

She admits the evidence is not relevant to the offense for which she was on trial but now asserts it would be proper impeachment evidence to test the accuracy, bias, prejudice or interest of Mr. Foy who appears not to have been involved in the prior civil actions or altercations between Saucier and Robert and Carol Jones. Carol Jones did not testify at trial and was not the victim listed in the indictment charging Saucier with the offense. Saucier also now contends that the evidence could have been used to show Mr. Foy colluded with Robert and Carol Jones in order to seek retribution for the civil judgment. She further disagrees with the trial judge's findings that the evidence would result in confusion and a waste of time. She contends the judge misapplied the Rule 403, SCRE. However, these facts and arguments cannot properly be advanced by Saucier on appeal and should not be considered by this Court. See Rule 208 (b)(5), SCACR ("the brief shall contain references to the transcript , pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal . . . to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript."). The full transcript has been included in the Record on Appeal. Saucier does not provide citations or references to the transcript or other matter in support of the factual statements, and nothing appears in the record to support her factual assertions as outlined above.

Significantly, "the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. Sauicer never presented the information on pages 2 and 4 of her brief as outlined herein by Respondent on the record

before the lower court. There facts may not appropriately be considered by this Court pursuant to our appellate court rules. See Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth., 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006)("Nothing in the appellate court rules permits a party to unilaterally add aftercreated evidence to the record."); South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their brief any fact which does not appear in the record."); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) ("Under our appellate court rules, we may not consider any fact that does not appear in the record."); see also Rule 210(h), SCACR ("[T]he appellate court **will not consider any fact** which does not appear in the Record on Appeal." (emphasis added); Rule 208 (b)(4), SCACR ("In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced. These assertions and factual statements are outside the record in this case and cannot properly be advanced by Saucier or considered by this Court. Additionally, on page 4 of her brief, Saucier argues that she sought the ability to present evidence respecting the civil action and her "longstanding tumultuous" relationship with the Jones. However, nothing in the record supports or allows for these factual statements. Rule 208 (b) (4), SCACR.

Moving to the trial judge's evidentiary finding, the State submits that the trial judge did not abuse his discretion in excluding the evidence of the prior civil lawsuit. The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E 2d 87 (2002). A court's ruling on the admissibility

of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. The trial court is accorded broad discretion in ruling on questions concerning the relevancy of evidence. State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001). An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support. State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). The decision of a trial court respecting the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Slocumb, 336 S.C. 619, 633, 521S.E.2d 507, 514 (Ct. App. 1999).

"In criminal cases, the appellate court sits to review errors of law only." State v. Hewins, 409 S.C. 93, 102, 760 S.E.2d 814, 818 (2014). Our appellate courts are bound by the trial judge's findings of fact unless the findings are clearly erroneous. Id. The appellate court's review is based upon an abuse of discretion standard when assessing a trial court's decision regarding a Rule 403, SCRE, analysis and accords great deference to the trial court. State v. Alesky, 343 S.C. 20, 538 S.E. 2d 248 (2000). "A trial court's balancing decision under Rule 403 should not be reversed simply because an appellate court would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value and of the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, at 358, 543 S.E.2d at 594 (internal citation omitted).

Rule 401, SCRE, defines relevant evidence as "evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action

more probable or less probable than it would be without the evidence." Rule 402, SCRE, provides that evidence that is not relevant is not admissible. It also provides that relevant evidence is admissible unless excluded by constitutional provision, statute or court rule. Rule 403, SCRE, provides that relevant evidence may be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice or confusion of the issues or will mislead the jury, or result in undue delay, waste of time, or needless presentation of cumulative evidence.

The trial court in this case ruled during pretrial proceedings that the evidence was not relevant to the criminal case or to the issue whether Saucier committed the act as charged. [1] The court concluded the evidence "is not really relevant in proving anything in this case or disproving anything in this case." R. p. 65; 70. The trial court noted that the only tangential relevance was the previous action between the parties but that issue has nothing to do with whether Saucier committed the act alleged. R. p.65 – 66; 72. In the alternative, the trial judge also conducted an analysis pursuant to Rule 403 and concluded, assuming *arguendo* the evidence was relevant, the risk of unfair prejudice, confusion of the issues, and undue delay outweighed the probative value. R. p. 65 – 72. The State submits the rulings are supported by record and did not reflect an abuse of discretion.

[1] In its post-trial order denying Saucier's motion for a new trial, the trial court stated that the evidence was relevant to motive of the complaining witness but was excluded pursuant to Rule 403, SCACR. R. 279 [Order]. However, nothing in the record supports the suggestion that Saucier timely argued this ground to the trial court during pretrial proceedings. The trial court did not rule on this argument during the pretrial rulings and, when asked, Saucier stood silent in the face of the pretrial ruling. R. 72. Instead, the record suggests Saucier might have presented the argument for the first time in the post-trial request for a new trial. An untimely post-trial request cannot be bootstrapped to the earlier ruling to allow consideration of the issue on appeal. State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981).

Because the specific testimony and evidence respecting the prior civil action Saucier now asserts should have been admitted were not proffered and are not a part of the record, there is a complete failure to establish that it was relevant to whether Saucier committed the act of pointing or presenting her shotgun at Mr. Foy and firing the weapon as charged. The trial court properly ruled the evidence was not relevant to the criminal litigation. To the extent Saucier now contends the evidence would have been proper as impeachment of Mr. Foy, the State submits the record is devoid of a timely, contemporaneous argument or ruling on this ground. Moreover, Mr. Foy was the victim and the only eye-witness presented at trial. It appears he was not a party to the civil suit and there was no showing of ill motive by Mr. Foy by way of proffer or otherwise. The prior civil action was between Saucier and other parties and had nothing to do with Barry Foy's observations of Saucier which were also captured on a video recording and presented by the jury. [State's Exhibits 4, 5, and 6].

Nevertheless, the trial judge's exclusion of evidence about the civil judgment in the context of this criminal case is supported by a number of decisions. It has been determined in prior decisions that a civil judgment sought to be introduced in a subsequent criminal prosecution is inadmissible and may not be allowed into evidence to prove a fact on the basis of which the civil judgment was rendered. State v. Weil, 83 S.C. 478, 65 S.E. 634 (1909); State v. Johnson, 298 S.C. 496, 381 S.E.2d 732 (1989). Saucier contends the testimony and evidence concerning the prior civil suit and judgment would have been introduced to prove that Saucier won a civil judgment against Robert and Carol Jones for malicious prosecution stemming from complaints they made against her in the past. Saucier states now that she would have used the evidence to prove that the

victim had a motive to fabricate the charges against Saucier in the past, as well as proving that the victim made allegations concerning her in the past which led to the Jones being civilly liable to her. This evidence is inadmissible, per the language of the case law, further supporting the trial judge's decision to exclude the evidence. Moreover, it does not appear from the record in this case that the victim and prosecuting witness, Barry Foy, was a party to, participant in, or knowledgeable about the civil suit or prior proceedings between Saucier and the Jones.

Additionally, the admission of testimony and evidence about the prior civil suit and judgment would result in unfair prejudice to the State because the evidence would cause the jury to decide the current case based on the result of the previous case, instead of on the merits of the issues being litigated in the criminal prosecution. The admission of the civil judgment would have confused the jury in two ways. First, the civil judgment would have caused confusion because the presentation of the prior civil case would have created a trial within a trial. Instead of trying the issue at hand, the proceeding would evolve into a trial of the previous issue as illustrated by Saucier's protracted complaints during sentencing. R. pp. 261 – 264. Both sides would have to present facts and witnesses supporting their particular side of the prior case. This would only prolong the proceedings and shroud the facts of the current case in a cloud of confusion caused by the facts of the unrelated previous cases. Second, the jury would have been confused by the differing burdens of proof in civil and criminal trials. This difficulty in grasping the differences in the burden of proof and the proof required of each fact in both proceedings would lead to a decision upon an improper basis.

The trial judge also properly determined that the admission of the civil judgment would create undue delay. As mentioned above, introduction of testimony and evidence about the prior civil case would have created trials within a trial, which would greatly delay the proceedings. The presentation of additional evidence and calling of additional witnesses would have considerably and unnecessarily prolonged the proceedings while adding no evidence of probative value to the current case. Any probative value in using the evidence as impeachment was substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, waste of time, and would have been misleading to the jury. The trial judge did not abuse his discretion in excluding the evidence.

The State submits that Saucier also fails to argue or show that exclusion of the evidence resulted in the requisite prejudice. The State further submits that any alleged error in excluding the evidence was harmless. The purpose for which Saucier sought to introduce the prior civil judgment was to establish the acrimonious relationship with Carol and Robert Jones and to show the jury that there could have been an insidious motive on the part of the Barry Foy to fabricate the story. Other evidence was introduced at trial that accomplished this purpose. Saucier testified that she and the Jones family had a longstanding disagreement about the property line. R. p. 208. She also testified that she was being watched and filmed by her neighbors, including Mr. Foy. R. pp. 179; 182; 186. This evidence established the animosity between Saucier and her neighbors, and suggested a malicious motive for the accusation leading to the charges. Introduction of the prior civil suit would have been only cumulative to evidence already presented and

rendered exclusion of the evidence harmless, particularly in view of the overwhelming evidence against Saucier her including the videotape and her admissions at trial.

Saucier's conviction and sentence must be affirmed.

II.

This Court may not consider alleged error in the trial court's denial of Saucier's directed verdict motion when the ground presented on appeal was not specifically argued to the trial court and was not ruled upon by trial court; nevertheless, the evidence before this Court supports the trial court's ruling.

Saucier asserts the trial court erred in failing to direct a verdict in her favor arguing the State failed to present evidence she pointed the firearm at a person. She contends that the trial court should have disregarded the testimony establishing that she pointed the firearm toward Mr. Foy and should only have considered the video recording of the incident. Saucier argues that the video recording contradicts Mr. Foy's testimony on this point. The State submits the trial court properly denied Saucier's motions for directed verdict. First, Saucier did not make this argument to the trial court in support of her motions for a directed verdict. Second, Saucier incorrectly argues the trial court must ignore the existence of evidence establishing the elements of the offense and, instead, only consider the credibility and weight of the evidence. Third, a review of the existence of the evidence taken in the light most favorable to the State reflects the trial court properly declined to direct a verdict of acquittal in Saucier's favor.

"When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of the evidence, not its weight. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. McCombs, 367 S.C. 489, 493, 629 S.E.2d 361, 362 - 63 (2006). However, the trial judge should deny a directed verdict motion and submit the case to the jury if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004)

(emphasis added). "[A] trial [court] is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Zeigler, 364 S.C. 94, 102 – 13, 610 S.E.2d 859, 863 (Ct. App. 2005). In State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004), the Court described circumstantial evidence and direct evidence as follows:

> There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Where the State relies exclusively on circumstantial evidence, the trial court must submit the case to the jury if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001). A case is considered a direct evidence case, rather than circumstantial, when the State relies upon direct evidence to prove the acts of the crime and the identity of the perpetrator, and circumstantial evidence was merely corroborative or offered to demonstrate intent. State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001) (stating the officers' personal observations and opinions of the defendant's actions, appearance, and condition constitute direct evidence of DUI because it is based on the officers' actual knowledge of the situation and requires no inference from the jury) (citing State v. Carroll, 277 S.C. 306, 286 S.E.2d 382 (1982); State v. Jenkins, 270 S.C. 365, 242 S.E.2d 420 (1978); State v. Simmons, 269 S.C. 649, 239 S.E.2d 656 (1977)).

On appeal from the denial of a directed verdict, an appellate court must view the evidence and all reasonable inferences in light most favorable to the State. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Cherry, 361 S.C. at 588, 593 – 94, 606 S.E.2d 475, 478. "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Saucier was charged with pointing or presenting a firearm at Barry Foy in violation of S.C. Code Ann. § 16-23-410 (2003) which makes it "unlawful for a person to present or point at another person a loaded or unloaded firearm." Our supreme court "has held that the offense of pointing and presenting a firearm under § 16-23-410 contains three elements: '(1) pointing or presenting; (2) a loaded or unloaded firearm; (3) at another.'" United States v. King, 673 F.3d 274 (4th Cir. 2012) *citing* State v. Burton, 356 S.C. 259, 589 S.E.2d 6,8 (2003); see also State v. Walsh, 300 S.C. 427, 388 S.E.2d 777 (1988). This Court has opined that § 16-23-410 requires that the perpetrator specifically intend to present or show a firearm at someone and that the act of pointing and presenting be committed in a threatening manner. Id. *citing* In re Spencer R., 387 S.C. 517, 521, 692 S.E.2d 569, 572 - 73 n. 2 (2010). Presenting a firearm is defined as either waving or showing a firearm to another in a direct, actively aggressive, and threatening manner. In re Spencer R., at 521, 692 S.E.2d at 572.

Saucier moved for a directed verdict at the close of the State's case arguing the State failed to present evidence establishing that the offense occurred in York County. She also moved stating "the other evidence not satisfied in the verdict." R. pp. 168 – 169. She renewed this motion when she rested the case for the defense. R. p. 210. The motions were denied. The trial court found that evidence was presented to establish that the offense occurred in York County and that sufficient evidence was presented to establish the elements of the offense. R. pp. 169 – 172.

First, that State submits that the directed verdict issue Saucier presents in her brief cannot be properly considered by this Court on appeal because Saucier did not argue this ground in support of her motions for directed verdict and the trial court did not rule on the issue whether it should refuse to consider the testimony of the victim and only take the videotape into account when ruling on the sufficiency of the evidence for directed verdict. An argument not raised to and not ruled upon by the trial court is not preserved for appeal. State v. McKnight, 352 S.C. 635, 646, 576 S.E.2d 168, 173-74 (2003); State v. Kennerly, at 442, 503 S.E.2d at 214 (stating that arguments not presented to the trial court in support of directed verdict are not preserved for review on appeal).

Second, the State submits that the direct evidence of Saucier's actions was more than sufficient and the trial court properly denied the request for a directed verdict of acquittal. As set forth in Respondent's Statement of Facts herein, the record before this Court reflects that Saucier initiated an unprovoked, aggressive verbal assault upon Barry Foy, including cursing, name-calling, and threatening him with "more fun" while retrieving her shotgun, loading it in front of him and firing twice in the air. Foy was lawfully on the property of his wife's parents at the time. Saucier thereafter further

threatened Foy by daring him to summon law enforcement officers and then pointed her shotgun at Mr. Foy and fired. Shotgun pellets fell directly behind Mr. Foy. Mr. Foy testified that he saw the shotgun and Saucier fire it and then heard the crackling sound of falling shotgun pellets ten to fifteen feet behind him. Foy testified that he was frightened by Saucier and her behavior that escalated from aggressive horn honking, to cursing and name-calling, to statements directed to Mr. Foy threatening "more fun" and daring him to contact the police. Saucier's behavior escalated to getting her rifle, loading it in front of Mr. Foy, and firing the shotgun in the air and then turning the shotgun at Mr. Foy and firing over his head. Saucier's conduct was captured on video. Sauicer presented the firearm when she deliberately retrieved and displayed her shotgun at Mr. Foy in a threatening manner and demonstrated her willingness to use the shotgun by firing it twice in the air. She thereafter directed the shotgun at Mr. Foy and fired. Saucier's actions combined with the statements and threats directed to Mr. Foy were sufficient to establish presenting as well as pointing.

The evidence and inferences arising therefrom were sufficient to withstand the directed verdict motions. See State v. Davis, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992) (The evidence, when viewed in the light most favorable to the State, reflects that the defendant was acting in an aggressive manner and pointed his rifle at the victim. The only question for the jury was whether the defendant pointed or presented the firearm). Saucier argues the weight of the evidence. The weight of the evidence, credibility of the witnesses and conflicts in the evidence were properly left to the jury as the finder of fact. McDill v. Mark's Auto Sales, Inc., 367 S.C. 486, 626 S.E.2d 52 (2006). That task is not undertaken by the trial judge when ruling on a motion for directed verdict. The trial court

properly considered the existence of this evidence and its reasonable inferences when denying the motions for directed verdict and the ruling must be affirmed.

III.

This Court may not properly consider the issue respecting an erroneous jury instruction when Saucier failed to properly preserve the alleged error relating to the jury charge when she expressly waived any issue she had with the jury instructions by affirming to the trial court that she had no objection to the instructions after the instructions were given and when she failed to request the charge she now contends should have been provided.

Appellant argues to this Court that the trial court erred in providing a charge to the jury that she contends was contradictory and confusing and deprived him of a fair trial. Specifically, she asserts the trial court's charge on the language of the statute respecting pointing or presenting a firearm as an act of pointing or presenting a loaded or unloaded firearm at another person coupled with a charge that Saucier must have committed some action that amounts to pointing or presenting is incorrect because it allows pointing in the direction of rather than at another person. Respondent submits that the trial judge's jury instruction cannot be properly addressed by this Court on appeal because the issue was not preserved by Saucier for appellate review and was specifically waived during the trial.

"The law to be charged to the jury must be determined by the evidence presented at trial." State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct.App. 2009). "Generally, the trial judge is required to charge only the current and correct law of South Carolina. A jury charge is correct if it contains the correct definition of the law when read as a whole." State v. Lamire, 406 S.C. 558, 572, 753 S.E.2d 247, 256 (Ct. App. 2013) (internal citation omitted). In reviewing a jury charge for error, the appellate court must consider the charge given as a whole in light of the evidence and issues as presented at trial. Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011). A jury charge must be

erroneous and prejudicial to warrant reversal of the conviction. State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011). "The appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." State v. Lemire, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013) *citing* Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). An ambiguous charge is viewed from the standpoint whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution. Id. If a charge is infirm, a defendant must request further instructions or object to the charge to preserve the issue for appeal. Id.

Rule 20, SCRCrimP, provides that a defendant must object to the jury instructions as given or request a jury instruction at an appropriate time when afforded the opportunity to do so in order to properly preserve an objection to or issue with a jury charge. State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); see Rule 20(a), SCRCrimP ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct."); Rule 20(b), SCRCrimP ("Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection."). "[F]ailure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge." State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976); see State v. Lemire, at 569, 753 S.E.2d at 253 (failure to request the trial court instruct the jury in a particular manner

precludes appellate of alleged error predicated on the trial court's failure to instruct the jury in a certain manner); Rule 20(b), SCRCrimP ("Failure to object in accordance with this rule shall constitute a waiver of objection.").

The record reflects that before the trial judge charged the jury, he asked Saucier if she "had anything on the law" to which she replied "No, Your Honor." R. p. 217. After the jury instructions were given, the trial judge twice inquired whether there were exceptions or additional requests to charge. Saucier specifically and affirmatively informed the trial judge she had no exceptions or requests for additional instructions. R. pp. 252; 255. Accordingly, the issue respecting the jury instruction may not properly be considered by this Court on appeal because Saucier failed to preserve the issue for review by objecting or requesting the charge she now claims should have been given.

Moreover, Saucier expressly waived the issue during trial. See State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Here, after the trial judge twice instructed the jury on the applicable law, Saucier specifically informed the trial judge she had no objections to the jury charge as presented. 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."); see also Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no

objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."). Because Saucier expressly stated she had no exceptions to the instructions or requests for additional charges after the instructions were presented to the jury, any issue Saucier might have had was affirmatively waived, and Saucier is precluded from now raising an issue with the jury charge on appeal. See State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) ("Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object to the charge, Appellant is procedurally barred from raising these issues for the first time on appeal.").

Nevertheless, the jury instruction, taken as a whole, correctly charged the law and did not result in prejudice to Saucier. See In re Spencer R., 387 S.C. 517, 521, 692 S.E.2d 569, 572 - 73 n. 2 (2010); State v. Burton, 356 S.C. 259, 589 S.E.2d 68 (2003); see also State v. Walsh, 300 S.C. 427, 388 S.E.2d 777 (1988). Saucier's convictions must be affirmed.

IV.

This Court may not reverse the trial court on appeal for failing to act as a "thirteenth juror" and grant a new trial when Saucier failed to make that request of the trial court and when the "thirteenth juror doctrine" is a motion for civil and not criminal proceedings.

Saucier contends that the trial court erred in failing to act as a thirteenth juror and grant a new trial. She argues the evidence does not justify the verdict. Respondent submits that the issue is not properly preserved for consideration on appeal, that the motion is inapplicable to criminal trials, and that there was no error in failing to grant a new trial.

The "thirteenth juror doctrine" allows a trial judge to sit as a thirteenth juror and grant a new trial when the judge finds the evidence presented at trial does not justify the verdict based upon its view of the facts. Rivera v. Newton, 401 S.C. 402, 737 S.E.2d 193 (Ct. App.2012). "Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge determines the jury's verdict is 'contrary to the fair preponderance of the evidence.'" Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011). "The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by error of law. Id. at 414, 737 S.E.2d at 198, *citing* Winters v. Fiddie, 394 S.C. 629, 638, 716 S.E.2d 316, 321 (Ct. App. 2011). A review by the appellate court of the trial court's grant of a new trial is limited to a determination whether evidence exists in the record to support the ruling. Id.

Respondent first submits that the issue may not be considered by this Court because the record is devoid of Saucier's specific request that the trial judge act as the

"thirteenth juror" and grant a new trial. The record is also devoid of the trial court's specific ruling on this ground. Issues not raised to or ruled upon by the trial court may not be presented or the first time on appeal. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998).

Nevertheless, the issue is without merit. In a criminal trial, a motion for new trial is the only post-trial motion available for addressing the sufficiency of the evidence to support the verdict. State v. Green, 350 S.C. 580, 584 n 1, 567 S.E.2d 505, 507 (Ct. App. 2002); State v. Miller, 287 S.C. 280, 337 S.E.2d 883 (1985) *citing* State v. Dawkins, 32 S.C. 17, 10 S.E.772 (1890). The thirteenth juror doctrine applies only to civil proceedings where the burden of proof is more lenient. Moreover, where there is competent evidence to support the jury verdict, the trial judge cannot substitute his judgment for that of the jury in a criminal case. State v. Miller, at 283, 337 S.E.2d at 885; State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993). The trial judge is without authority to grant relief on factual grounds after the jury returns a guilty verdict when the relief requested is equivalent to the relief a criminal defendant could have received at the directed verdict stage. Id.

Additionally, as is set forth in Respondent's Argument II herein, the evidence in this case is more than competent to support the jury's verdict. The trial judge "may not substitute his judgment for that of the jury and overturn the verdict" when competent evidence was presented to sustain the verdict. Miller, at 283, 337 S.E. at 885; see also State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) citing State v. Prince, 316 S.C. 57, 64, 447 S.E.2 177, 91 (1993). "[T]o reverse the denial of a new trial motion under [the thirteenth juror] doctrine [a reviewing court] must, in essence, conclude that the moving

party was entitled to a directed verdict at trial." Parker v. Evening Post Pub'g Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994); see also Burke v. AnMed Health, at 55-56, 710 S.E.2d at 88. As set forth in Argument II herein, Saucier was not entitled to a directed verdict at trial.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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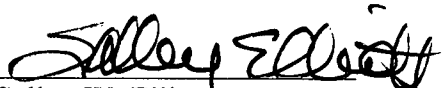
BY: 
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Columbia, South Carolina
June 9, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Lee S. Alford, Circuit Court Judge

Appellate Case No. 2013-002227

THE STATE,.....RESPONDENT

v.

LYNN SMITH SAUCIER, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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THE STATE, ...RESPONDENT

v.

LYNN SMITH SAUCIER, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated June 8, 2015 on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

R. Mills Ariail, Jr. , Esquire
11 North Irvine Street, Suite 11
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I further certified that all parties required by Rule to be served have been served. This 9th day of June, 2015.

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Re: The State v. Lynn Smith Saucier
Appellate Case No. 2013-002227

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No. 1871

SWE/ab
Enclosures

cc: The Honorable Jenny A. Kitchings
(original & 14 copies)
Victim Services