

STATE OF SOUTH CAROLINA
In The Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Chesterfield County
Court of Common Pleas

RECEIVED

MAY 23 2016

The Honorable J. Michael Baxley, Circuit Court Judge

SC SUPREME COURT

Opinion No. 2016-UP-039 (S.C. Ct. App. filed 1/20/16)
Appellate Case No. 2016-000871

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

FRITZ ALLEN TIMMONS,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

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STATEMENT OF THE CASE

In March of 2013, Uniform Ordinance Summons were issued against Petitioner for three charges of Ill Treatment of Animals in violation of S.C. Code Ann. § 47-1-40 (1900 – 1902), ten charges of Animal Abandonment or Neglect (1884-1899; 1903-1905) in violation of S.C. Code Ann. § 47-1-70, and eight rabies vaccination violations as proscribed by County Ordinance 415.60 (1891-1892; 1907-1909).

Petitioner entered guilty pleas to the rabies vaccination violations and proceeded to a bench trial on the other charges on March 18, 2013, before Chesterfield County Magistrate Judge John A. Davis. Petitioner was acquitted of three charges for Ill Treatment of Animals (1884 – 1886) and found guilty of the remaining charges. He was sentenced to a fine of \$ 3,000.00.

Petitioner filed and served a notice of appeal dated March 25, 2013, from the magistrate's court convictions. The magistrate filed its Return on March 28, 2013. The appeal was heard by the Honorable J. Michael Baxley in the Chesterfield County Court of Common Pleas. Judge Baxley denied and dismissed and judgment was entered on May 8, 2013. Petitioner thereafter timely filed and served notice of appeal from Judge Baxley's order.

On January 20, 2016, the South Carolina Court of Appeals affirmed Petitioner's conviction. State v. Timmons, Opinion No.2016-UP-039 (S.C. Ct. App. filed January 20, 2016). Petitioner's request for rehearing was denied on March 24, 2016. Petitioner timely submitted a Petition for Writ of Certiorari and this Return follows.

ARGUMENT

I. This Court should deny the Petition for Writ of Certiorari where Petitioner seeks an inappropriate remedy on appeal.

As an initial matter, it is unclear from the Petition what specific remedy Petitioner is seeking. In his brief at the Court of Appeals, Petitioner, for the first time, sought four remedies, including: the return of all dogs seized by the County; Two Million Dollars per dog; public apologies from various animal shelters; and, criminal investigation and termination of employment upon six individuals involved in his criminal conviction, including three judges. None of these issues or requests were presented below and may not now be considered on appeal.

At the circuit court hearing on Petitioner's appeal from magistrate's court, the State noted its difficulty in construing whether Petitioner sought a specific remedy. On appeal, Petitioner certainly included specific remedies; however, Petitioner did not preserve these remedies for appellate review because he made no mention of them at the magistrate court trial or the circuit court appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (stating that issues not raised and ruled upon in the trial court will not be considered on appeal.). The circuit court may not consider a question not presented to the magistrate, Indigo Associates v. Ryan Investment Co., 314 S.C. 519, 431 S.E.2d 271 (Ct. App. 1994), and the appellate court may not consider an issue not raised to the circuit court. A & I, Inc. v. Gore, 366 S.C. 233, 621 S.E.2d 383 (Ct. App. 2005).

Preservation issues aside, Petitioner's alleged remedies are inappropriate for the constitutional violation he alleges. The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing

the place to be searched and the persons or things to be seized. U.S. Const. amend. IV; see also Baccus, 367 S.C. at 50, 625 S.E.2d at 221 (stating a search warrant may be issued only upon a finding of probable cause). “A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property.” State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting Horton v. California, 496 U.S. 128, 133 (1990)).

The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. Brown, 401 S.C. at 88, 736 S.E.2d at 266; Davis v. United States, 564 U.S. 229 (2011). However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which bars the prosecution from introducing evidence obtained in violation of the Fourth Amendment. Id.; See Mapp v. Ohio, 367 U.S. 643, 653-57 (1961). “The rule’s sole purpose, [the Supreme Court] has repeatedly held, is to deter future Fourth Amendment violations.” Id. (quoting Davis, 564 U.S. at 236-37).

Moreover, Petitioner did not object to the production of any evidence against him or move to suppress the evidence at the magistrate court trial or the circuit court appeal. Instead, he moved to dismiss the charges. Motions to dismiss the charges were inappropriate requests and remedies. Without more, the magistrate cannot dismiss the State’s case before trial. State v. Ramsey, 381 S.C. 375, 673 S.E.2d 428 (2009); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994).

In his Petition for Writ of Certiorari as well as his Brief of Appellant at the Court of Appeals, Petitioner contends multiple state officials violated his Fourth Amendment rights. Although the Fourth Amendment does not provide a specific remedy, it allows for the exclusion of evidence upon proper objection by the accused. Regardless of preservation concerns, the

remedies Petitioner seeks are not appropriate remedies for a Fourth Amendment violation.¹ Thus, this Court should deny certiorari where Petitioner has not provided an adequate basis for appeal.

II. The Court of Appeals properly found the warrant issued by the magistrate judge was sufficiently supported by probable cause where officers viewed the incriminating evidence on the property from a lawful vantage point free from Fourth Amendment intrusion.

In Issue “IX” of his Petition for Writ of Certiorari, Petitioner poses the issue, “CAN THIS COURT JUSTIFY THE UNCONSTITUTIONAL SEARCH AND SEIZER AS STATED IN APPELLANT’S BREIF QUESTIONS 2, 4, 5, 6, 7, 8, 9, AND 10 THAT OPPOSED U.S. SUPREME COURT AND S.C. SUPREME COURT CASES.” In support of his argument, Petitioner makes a series of vague assertions and seemingly random citations to authority. Petitioner also seems to insinuate the actions of the State constitute malicious prosecution. Firstly, this argument lacks merit because the issue is not properly preserved for appellate review. Secondly, even if Petitioner’s argument were preserved, the Court of Appeals correctly found the warrant was supported by probable cause.

At the Court of Appeals, Petitioner seemed to argue that the warrant issued to search his residence was not based on probable cause and the warrant itself did not properly describe the property to be searched. However, Petitioner failed to allege these violations with sufficient clarity at the circuit court appeal and magistrate court trial. See Humbert v. State, 345 S.C. 332, 548 S.E.2d.862 (2001) (“The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.”). It was Petitioner’s obligation to allege with specificity the exceptions upon which his appeal was

¹ It appears Petitioner seeks monetary and injunctive relief against certain state officials, more akin to a section 1983 claim and remedy. See Monell v. Dep’t of Soc. Servs. of City of New York, 436 U.S. 658, 673, 98 S. Ct. 2018, 2027 (1978).

based in the Notice of Appeal from the magistrate's court conviction to the circuit court. Judge Baxley correctly determined Petitioner's conclusory exceptions were too broad and insufficient to allege grounds for appeal. See State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1992) (stating the scope of the exception on appeal was too broad to constitute a sufficient ground for appeal to the circuit court in that it failed to apprise the parties and courts of the ground for appeal). The exceptions listed in Petitioner's notice of appeal from the magistrate court were too broad and conclusory for the State and the circuit court to know the specific ground for appeal.

In his brief at the Court of Appeals, Petitioner cited State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979), and argued the affidavit to support the warrant does not properly state what type of crime was committed, when it was, where it was, or who committed it. However, Petitioner failed to raise this specific issue in the trial and circuit courts and the issue is not properly preserved. Although the record reflects Petitioner argued the affidavit did not support the warrant, he did not allege any specific deficiencies with the affidavit, other than the baseless argument that the warrant did not contain the correct property address or correctly describe the property to be searched, leaving the Court guessing as to which ground on which he based his objection. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.").

Also, at the magistrate court trial, Petitioner only argued the e-mail was not a proper basis for obtaining the search warrant. On the contrary, law enforcement used its first-hand observations of the disturbing conditions of the canines on Petitioner's property as the basis of the search warrant. Thus, the record reflects law enforcement did not use the e-mail as a basis for the search warrant. (Supp. R. pp. 4; 39 – 40). Also, at the circuit court hearing, Petitioner

made no response to the court's inquiry regarding probable cause in support of the affidavit. Rather, Petitioner merely argued the property sought in the warrant had "nothing to do with animals." Furthermore, in his brief, Petitioner offered many allegations in support of his assertions that the warrant did not specifically describe the property to be searched. Despite Petitioner's contentions, the warrant did sufficiently describe the property to be searched and included the proper address of the Property. Notably, at the magistrate court trial and the circuit court appeal, Petitioner only argued that the warrant was not specific as the premises to be searched at his Property.² However, the search warrant described the premises to be searched with the specific address and further stated the property or items to be searched for were neglected or abandoned animals. (Supp. R. p. 64). The search warrant affidavit further described the premises as the dwelling and property at the specific address. (Supp. R. p. 65). The County plainly stated only one home was located on the premises. (Supp. R. p. 4). Therefore Petitioner did not properly preserve the issue for appellate review.

However, even if this Court found Petitioner preserved the issue for appellate review, probable cause existed to support the issuance of the search warrant. Contrary to Petitioner's contentions, the record clearly established that the anonymous e-mail did not serve as probable cause for the search warrant. Rather, the search warrant was based upon Animal Control's

² The warrant described the premises to be searched with the specific street address and town and the description of the property or items to be searched for and seized, if found at that location, as "abandoned or neglected animals." The search warrant affidavit indicated that the premises to be searched were the dwelling and property at the specific address. Section 17-13-140 requires only a warrant "identify the property" to be seized and requires no more than the federal and state constitutions, both of which require warrants to "particularly" describe the things to be seized. U.S. Const. amend. IV; S.C. Const. art. 1, § 10; State v. Williams, 297 S.C. 404, 407, 377 S.E.2d 308, 310 (1989) (holding property description of "any illegal drugs" sufficient to describe the property to be seized).

observations of Petitioner's illegal treatment of the canines in plain view in the yard of the Property.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, only unreasonable searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 372, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”).

For purposes of the Fourth Amendment, a search occurs when “an expectation of privacy that society is prepared to consider reasonable is infringed.” United States v. Jacobsen, 466 U.S. 109, 113 (1984). Likewise, a seizure occurs when there is some meaningful interference with an individual's possessory interest in property or with the individual's freedom of movement. Id.; see Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968) (“Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”).

In cases involving Fourth Amendment issues, the critical inquiry is “whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it.” Rakas v. Illinois, 439 U.S. 128, 140 (1978). “That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect.” Id.

Through its express language, the Fourth Amendment specifically protects persons, houses, papers, and effects as constitutionally-protected areas. Florida v. Jardines, __ U.S. __, 133 S. Ct. 1409, 1414 (2013). Thus, the Fourth Amendment unquestionably protects an individual's home from unreasonable governmental intrusion, and those protections extend to the home's curtilage. Id. at 1414-1415.

The United States Supreme Court has held that the Fourth Amendment does not require an officer to have a warrant or reasonable suspicion to approach a home, knock on the door, and conduct an inquiry if the occupant opens the door because the officer does no more than a private citizen might do. Jardines, __ U.S. __, 133 S. Ct. at 1415; see also Wright, 391 S.C. at 436, 706 S.E.2d at 324. The right to do so is based upon an implied license permitting "solicitors, hawkers, peddlers," and other visitors to approach another person's home. This implied license has been held to extend to law enforcement officers if accomplished in a reasonable manner consistent with the way any citizen might approach the home. Id.; see also Kentucky v. King, 563 U.S. 452 (2011). "When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak." Kentucky v. King, 131 S. Ct. at 467-70 (citing Florida v. Royer, 460 U.S. 491 (1983)). Importantly, the act of approaching a home pursuant to the implicit license does not constitute a search for Fourth Amendment purposes. See Jardines, 133 S. Ct. at 1417, n. 4 ("[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that.*" (emphasis in original)).

The record before this Court reflects that Animal Control officers visited Petitioner's property after receiving an anonymous e-mail about mistreatment of animals. Animal Control approached the property to investigate and had proper reason to do so. While lawfully on the premises, Animal Control proceeded to the front door and observed the canines in the yard without food or water. When Animal Control failed to receive a response at the front door, they proceeded toward the back door in an effort to contact the occupant of the home. Animal Control then viewed the canines' poor and disturbing condition and believed those conditions were violations of the law. As a result, Animal Control notified law enforcement, who properly obtained a warrant to search the Property.

Animal Control's first-hand view of the incriminating evidence constituted a sufficient basis for probable cause to obtain the warrant. See Illinois v. Gates, 462 U.S. 213, 244-245 (1983). In Gates, the United States Supreme Court held that "[p]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." Id. at 232. A challenge to the sufficiency of the evidence upon which a warrant is issued faces a major hurdle in the Supreme Court's often stated preference for searches conducted pursuant to a warrant. See Beck v. Ohio, 379 U.S. 89 (1964). Petitioner has not overcome this hurdle. The facts as observed constituted sufficient probable cause to believe Petitioner was violating laws relating to animal abuse and neglect.

Petitioner mentioned in the circuit court appeal and his brief at the Court of Appeals that his driveway is one tenth of a mile long. Petitioner seems to argue that Animal Control officers and the deputies were not in a lawful position to view the disturbing treatment of animals on his Property since they travelled down the driveway to investigate the matter. However, these actions were reasonable and mirrored that of an ordinary citizen when approaching a home. See

Nieminski v. State, 60 So.3d 521 (Fla. 2011) (stating evidence developed for a search warrant during a “knock and talk” after officers walked through an unlocked gate to approach the door did not violate the petitioner’s expectation of privacy); Robinson v. Commonwealth, 625 S.E.2d 651 (Va. App. 2006) (stating the implied invitation to have members of the public intrude upon areas of a homeowner’s property extends only to those areas a visitor could reasonably be expected to cross when approaching the residence in an ordinary attempt to speak with the occupants such as the driveway, parking area, sidewalks, pathways, and front porch).

Pursuant to the implicit license, a law enforcement officer or other person is “*typically*” permitted “to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” Jardines, 133 S. Ct. at 1415). However, if reasonable under the circumstances, officers may also attempt to make contact with a resident at a location other than the front door so long as they do so in a reasonable manner. See United States v. Raines, 243 F.3d 419, 421 (8th Cir. 2001) (“[L]aw enforcement officers must sometimes move away from the front door when attempting to contact the occupants of the residence.”); United States v. Garcia, 997 F.2d 1273, 1279 (9th Cir. 1993) (“This circuit and other circuits have . . . recognized that officers must sometimes move away from the front door when they are attempting to contact the occupants of a residence.”); see, e.g., Carroll v. United States, 267 U.S. 132, 147 (1925) (“The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable.”).

Here, Animal Control received an anonymous tip indicating that Petitioner was mistreating canines on his property. However, the officers were *not* required to abandon any efforts to investigate the anonymous tip and to simply allow criminal activity to take place unimpeded merely because they had not yet developed sufficient probable cause for a warrant.

See, e.g., Adams v. Williams, 407 U.S. 143, 145 (1972) (“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.”). As a result, the officers elected to drive to the residence in an effort to speak with Petitioner about the tip, and their decision to do so was unquestionably reasonable and constitutionally permissible under the circumstances. See King, 131 S. Ct. at 1862 (“When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak.”) Also, the officers did not veer from the normal route to the front door, meander, or take another route. Petitioner has not asserted any facts to indicate there were any signs warning trespassers not to enter or other impediments restricting access to the apartment or the porch. As confirmed in Florida v. Jardines, the United States Supreme Court in Kentucky v. King established that law enforcement officers do not engage in a Fourth Amendment search when officers approach a house to speak with the occupants because all citizens are entitled to do that. The mere purpose of discovering information while doing so does not violate the Fourth Amendment. Jardines, 133 S. Ct. at 1416. The officers in this case did not exceed their investigative authority, but only used the senses any ordinary citizen would have available.

Moreover, the officers approached the apartment to *investigate* and had reason to do so based on the e-mail indicating Petitioner mistreated canines on his Property. Beyond the reasonableness of their decision to go to the residence to investigate the anonymous tip, the officers’ actions remained entirely reasonable once they arrived at their destination due to the fact that Petitioner’s property consists of a home and surrounding land, and it was objectively

reasonable for the officers to believe they would make contact with Petitioner at the back of the residence when he did not answer the front door. See Alvarez v. Montgomery County, 147 F.3d 354, 356 (4th Cir. 1998) (“The Fourth Amendment does not prohibit police, attempting to speak with a homeowner, from entering the backyard *when circumstances indicate they might find him there[.]*” (emphasis added)); see also In re Bazen, 275 S.C. 436, 437-438, 272 S.E.2d 178, 178 (1980) (holding that a law enforcement officer did not violate Bazen’s Fourth Amendment rights when he responded to Bazen’s home in response to a noise complaint, walked to the rear of the house, saw Bazen enter an open garage, followed him into it, and subsequently arrested Bazen for possession of marijuana after smelling marijuana in the garage); see, e.g., Raines, 243 F.3d at 421 (holding that a law enforcement officer did not violate a homeowner’s Fourth Amendment rights by obtaining a warrant to seize marijuana plants that the officer observed growing in plain view in the back yard of the homeowner’s residence when the officer legitimately went to the residence to make contact with the homeowner and proceeded into the backyard based upon a reasonable belief that he would find the homeowner there).

Therefore, it was reasonable for the officers to proceed toward the back door of the residence when Petitioner did not respond their knocks at the front door. Likewise, not only was their decision to approach the property entirely reasonable, the officers’ manner of approach backyard to access the doors was consistent with the manner of entry that any private citizen was impliedly permitted to use in making contact with Petitioner to inquire about the tip.

Because the officers moved toward the backyard for a legitimate purpose in an objectively reasonable manner, the officers’ entry did not constitute a search and did not violate Petitioner’s Fourth Amendment rights. See Jardines, 133 S. Ct. at 1417, n. 4 (“[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all*

are invited to do that.” (emphasis in original)); see also Foster, 269 S.C. at 378, 237 S.E.2d at 591 (“It is only unreasonable searches and seizures that are prohibited.”); cf. Alvarez, 147 F.3d at 359 (holding that law enforcement officers did not violate Alvarez’s Fourth Amendment rights by entering the backyard of his residence to speak with him about a report of underage drinking when it was reasonable for the officers to believe they would find the homeowner in the backyard under the circumstances.). Furthermore, upon viewing the disturbing and unlawful conditions, the officers applied for a warrant to come back to the Property and seize the abused or neglected canines. The officers’ actions were proper. Accordingly, this Court should deny certiorari.

III. The Court of Appeals properly found Petitioner’s remaining issues were not preserved for appellate review.

At the Court of Appeals, Petitioner raised seventeen issues on appeal. After finding probable cause existed to support the issuance of the search warrant, the Court of Appeals found Petitioner’s remaining issues on appeal to be unpreserved. In his Petition for Writ of Certiorari, Petitioner raises ten issues. The allegations in the Petition are difficult to understand; however, it appears that Petitioner is arguing new issues not previously raised in his Brief at the Court of Appeals. To the extent that Petitioner is arguing issues not argued at the Court of Appeals, this Court should find these arguments unpreserved pursuant to Rule 242(d)(2), SCACR. “Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court. See also State v. Primus, 349 S.C. 576, 583, 564 S.E.2d 103, 107 (2002) (an issue not raised in the brief to the Court of Appeals, but instead raised for the first time in the petition for rehearing is not properly preserved for the Supreme Court’s consideration in a petition for writ of certiorari) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

As to the issues Petitioner did argue below, the Court of Appeals properly found those issues were unpreserved. Approximately fifteen of the seventeen issues in Petitioner's brief were arguments raised by Petitioner for the first time and were not preserved for appellate review. The only issues raised at trial and preserved for review by the Circuit Court were the contentions that the email did not provide sufficient probable cause to support the search warrant and that the search warrant lacked specificity as to the property to be searched. Petitioner's remaining fifteen issues at the Court of Appeals, and the iterations of those issues he raises in his Petition, are thus not preserved for Appellate review. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (ruling the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review). An argument not raised to and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id. "The appellants have the responsibility to identify errors on appeal, not the Court." Kennedy v. South Carolina Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 322-23 (2001). "An issue that was not preserved for review should not be addressed by the Court of Appeals. . ." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (citing Hendrix v. E. Distrib., Inc., 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995)). The circuit court may not consider a question not presented to the magistrate, Indigo Associates v. Ryan Investment Co., 314 S.C. at 519, 431 S.E.2d at 271, and an appellate court may not consider an issue not raised to the circuit court. A & I, Inc. v. Gore, 366 S.C. at 233, 621 S.E.2d at 383. The Court of Appeals, therefore properly found Petitioner's arguments unpreserved. To the extent Petitioner raises new arguments for the

first time in his Petition, these arguments are also not preserved for appellate review. This Court should therefore deny certiorari.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 23, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Chesterfield County

The Honorable J. Michael Baxley, Circuit Court Judge

THE STATE,

Respondent,

v.

FRITZ ALLEN TIMMONS,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Fritz Allen Timmons
P.O. Box 367
Hartsville, SC 29551

This 23RD day of May, 2016.


NORMA BIGBEE
LEGAL ASSISTANT