

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2014-CP-40-6297

Do Yeon Kim,

v. Appellant,

County of Richland, Richland
County Sheriff's Department
and Leon Lott in his Official
Capacity as Richland County
Sheriff,

Respondents,

INITIAL REPLY BRIEF OF APPELLANT

RECEIVED

NOV 28 2016

SC Court of Appeals

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ARGUMENT

I. THE ISSUES IN THIS APPEAL ARE PROPERLY PRESERVED BECAUSE EACH ISSUE WAS RAISED TO THE TRIAL JUDGE AND RULED UPON BY THE TRIAL JUDGE.

In their brief, Respondents contend none of the substantive issues raised in this appeal were preserved. Even though the trial judge ruled upon each of the issues raised in this appeal and those same issues were again raised in post-trial motions, Respondents argue Appellant should have raised the issues a third time to the court below on a 59(e) motion following post-trial motions. Respondent's arguments are spurious and ignore well settled and established law on issue preservation.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues" and provide the appellate courts with a platform for meaningful appellate review. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011). "Issue preservation requires that an issue be raised to and ruled upon by the trial judge." Id. In the case now before this Court each issue raised on this appeal was argued to the trial judge and ruled upon by the trial judge. For example, Respondents moved to exclude one of Appellant's witnesses from testify and Respondents also moved to exclude evidence of certain medical bills. Trial Transcript, 30-32. Counsel argued the issue and the trial judge made specific findings and ruled Appellant could not call Sunny Fain to testify or introduce certain medical bills that were disclosed a few weeks before trial. Trial Transcript, 40. With respect to Leon Lott testifying, that too was raised and argued to the trial judge. Trial Transcript, 268-269. While the specific word "objection" was not used, both of Mr. Kim's attorneys argued the issue to the trial judge, the trial judge treated these arguments for what they were – objections to the testimony of Leon Lott and the

trial judge ruled that Sheriff Lott could testify because he was a named party. Trial Transcript, 268-269.

As to introduction of the TR-310 accident report, Appellant's counsel sought to cross-examine the at-fault driver with the contents of the report. Trial Transcript, 213-214. Respondents objected, the trial judge excused the jury and Appellant's Counsel made a specific proffer concerning the contents of the TR-310 accident report. Trial Transcript, 213-229. While the jury was out, Appellant's Counsel cited the same statutes and case law cited to this Court in Appellant's Brief. Trial Transcript, 213-229. The same is true with regards to liability on a directed verdict. Motions for a directed verdict were made, argued and ruled upon by the trial court. Trial Transcript, 321-324. In making those motions, Appellant relied upon the same case law cited to this Court - Miller v. Ferrellgas, 392 S.C. 295, 709 S.E.2d 616 (2011). Trial Transcript, 321.

Respondents try to add an additional element to the issue preservation requirements by claiming that the issues above should have been raised to the trial court a third time through a 59(e) motion. In making these arguments, Respondents ignore well settled case law. Specifically: "Post trial motions are not necessary to preserve issues that have been ruled upon at trial." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1997). The simple fact is Appellant raised each issue on appeal to the trial judge. The trial judge ruled on each of these issues. According to the Court's holding in Wilder supra and other case law, these issues did not even have to be raised in post-trial motions to be preserved for appeal. The fact that these issues were raised a second time in post-trial motions does not obligate Appellant to raise them a third time on a 59(e) motion. To the contrary: "So long as the judge had an opportunity to rule on an issue, and did so, it was 'not incumbent upon defense counsel to harass the judge by parading the issue

before him again.” State v. McDaniel, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995) *quoting* Dunn v. Coca-Cola Bottling Co., 311 S.C. 43, 426 S.E.2d 756 (1993).

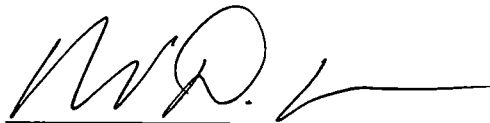
In approaching “issue preservation rules with a practical eye and not in a rigid, hyper-technical manner” it is evident the substantive legal issues raised in this appeal were properly preserved and are now properly before this Court. Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011).

CONCLUSION

For the reasons outlined above and as more explained in Appellant’s Brief, this Court should reverse the lower court and order a new trial.

Respectfully submitted,

November 28, 2016



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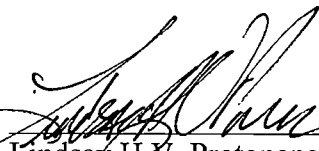
Respondents,

CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Robert Dodson, counsel for the Appellant, does hereby certify that service of the Initial Reply Brief of Appellant in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this 28th Day of November, 2016.

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