THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case No. 2016-000713

RECEIVED
JAN 17 2017
SC Court of Appeals

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,

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FINAL REPLY BRIEF OF APPELLANT

January 16, 2017

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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. ROA, pp. 95-97. 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. ROA, p. 105. With respect to Leon Lott testifying, that too was raised and argued to the trial judge. ROA, pp. 333-334. 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. ROA, pp. 333-334.

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. ROA, pp. 278-279. 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. ROA, pp. 278-294. While the jury was out, Appellant's Counsel cited the same statutes and case law cited to this Court in Appellant's Brief. ROA, pp. 278-294. 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). ROA, p. 386.

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

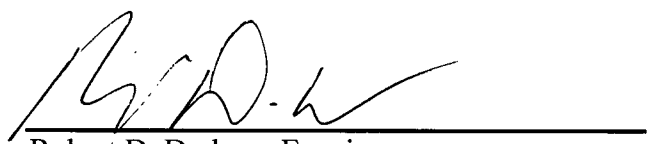
before him again.'" State v. McDaniel, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995) *quoting* Dunn v. Coca-Cola Bottling Co., 311 S.C. 43, 426 S.E.2d 756 (1993).

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,



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief of appellant complies with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings,* 407 S.C. 607, 757 S.E. 2d 421 (April 15, 2014).

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