

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Krista L. Harrington, Circuit Court Judge

The State,

Respondent,

v.

Anthony Janirus Robinson,

Petitioner.

APPELLATE CASE NO. 2015-605
OPINION NO. 2017-UP-437

APPELLANT'S PETITION FOR REHEARING

Ronald G. Tate, Jr.
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ATTORNEYS FOR APPELLANT/PETITIONER

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Pursuant to Rule 224(i), SCACR, Petitioner requests rehearing because the Court may have misapprehended the fact that the trial court made a final ruling on a Motion to Suppress that rendered further exceptions and objections unnecessary and futile. Moreover, the doctrine of futility excused further argument on the issues, so Petitioner's trial counsel was excused from raising the issues after the Court denied his Motion to Suppress the evidence.

The Court's opinion rested entirely upon the belief that the public defender failed to preserve objections to the introduction of evidence following the public defender's unsuccessful argument to the Court on a Motion to Suppress. The public defender made a Motion to Suppress prior to trial. In denying it, the Trial Judge ruled: "Your Motion to Suppress is denied. Note your exception to my ruling." (R. p. 8, Lines 20-21). The Trial Judge indicated that her ruling on the Motion to Suppress was a final decision. Accordingly, the public defender was not required to restate or reiterate his objection to the evidence. This fact is bolstered by the Trial Judge's statement at the directed verdict stage that "As to all your previous motions, I stand by the Court's original ruling. I haven't heard anything that would cause me to change my ruling at this time." (R. p. 139, Lines 4-7) (*emphasis added*). The Trial Judge's statement made it clear that she considered her prior rulings to be final.


Under South Carolina law cited in Petitioner's Reply Brief, trial counsel is not required to restate his objection to the introduction of evidence following an adverse ruling under all circumstances. If the Trial Court clearly indicated its ruling is final rather than preliminary, "the issue is preserved for appellate review." *State v. Wiles*, 383 S.C. 151, 157, 659, S.E.2d 172, 175 (2009); *State v. Humphries*, 346 S.C. 435, 551, S.E.2d 286 (Ct. App. 2001), *reversed on other grounds*, 354 S.C. 87, 579 S.E.2d 613 (2003).

Moreover, Petitioner argued that the doctrine of futility would excuse further contemporaneous objections to the contested evidence. *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). (Where it would be futile to raise an objection to the trial judge, failure to raise an objection is excused if the “tone and tenor” of the trial judge’s remarks indicate further objections would be unavailing. The judge’s “tone and tenor” in making rulings may well indicate that any further objection would be futile and the failure to make a contemporaneous objection or otherwise except to the Court’s ruling is excused. *State v. Higgenbottom*, 344 S.C. 11, 14 n.4, 542 S.E.2d 718, 719 (2001).

Allowing the appeal to be considered on the merits works no unfairness to the Trial Court. The Motion to Suppress the contested evidence was fully argued at the suppression hearing. The Court made a firm and final ruling on the motion, as noted above. It does not appear from the record that the State changed its position in any way or changed its presentation of evidence at trial based on the trial court’s ruling. Accordingly, Petitioner respectfully submits that rehearing should be granted and the case heard on the merits of the issues presented in its Briefs.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

By: 

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This 7th day of December 2017.

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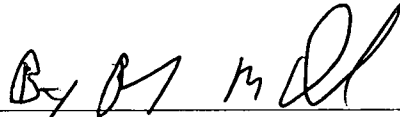
Anthony Janirus Robinson

Appellant.

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PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellant's Petition For Rehearing in the above entitled case has been served upon Amie L. Clifford, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of December, 2017.

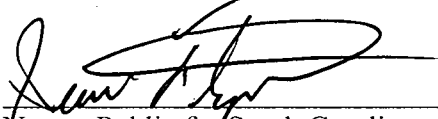


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ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of December, 2017.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.