ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000966

THE STATE,

Respondent,

vs.

ROBERT MAX WATKINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court judge did not abuse his discretion in denying Appellant's motion for a new trial pursuant to Rule 29(b), SCRCrimP, where the evidence Appellant presented did not meet the requirements for the grant of a new trial.

II. To the extent Appellant is raising allegations of a Brady violation, the issue is not preserved for appellate review because it was never ruled upon by the circuit court judge, and, therefore, is not preserved for this Court's review. Regardless, even if the issue was preserved, Appellant was not entitled to a new trial based on an alleged Brady violation because the presented evidence was not material for Brady purposes and its alleged suppression did not undermine confidence in the outcome of the trial.

STATEMENT OF THE CASE

On December 19, 2001, law enforcement officers with the Greenville Police Department arrested Appellant Robert Max Watkins for the armed robbery of a Chuck-E-Cheese restaurant in Greenville, South Carolina. Following further investigation, the Greenville County Grand Jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime. On October 23, 2002, Appellant proceeded to a jury trial in the Greenville County Court of General Sessions with the Honorable Victor Pyle, Jr., circuit court judge, presiding. On October 25, 2002, the jury convicted Appellant as indicted. Judge Pyle sentenced Appellant to thirty years' imprisonment for armed robbery and five years for possession of a weapon during the commission of a violent crime. Appellant appealed his conviction and sentence. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 73 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Watkins, Op. No. 2004-UP-406 (filed June 22, 2004).

Thereafter, Appellant filed an application for post-conviction relief on October 22, 2004. An evidentiary hearing was held in the Greenville County Court of Common Pleas with the Honorable Larry R. Patterson, circuit court judge, presiding. On January 17, 2006, Judge Patterson denied and dismissed Appellant's application for post-conviction relief. Appellant sought certiorari review from the South Carolina Supreme Court to review this denial, and the Court granted certiorari. Following briefing, the Supreme Court reversed Judge Patterson and granted Appellant a new trial.

On September 22, 2008, following several pre-trial hearings, Appellant proceeded to a re-trial before a jury in the Greenville County Court of General Sessions with Judge Patterson presiding. Appellant had appointed counsel for pre-trial hearings and at the start of trial, but

ultimately elected to proceed *pro se* with his appointed counsel acting as standby counsel. On September 24, 2008, the jury convicted Appellant as indicted. Judge Patterson sentenced Appellant to an aggregate thirty years' imprisonment. Appellant appealed his conviction and sentence. Following briefing, the Court of Appeals reversed Appellant's conviction, finding error in having the same judge preside over a post-conviction relief action and subsequent re-trial. The State petitioned for rehearing and then for certiorari to the Supreme Court. Following briefing an argument, the Supreme Court reversed the Court of Appeals and reinstated Appellant's convictions and sentence. State v. Watkins, 406 S.C. 360. 752 S.E.2d 261 (2013).

On June 10, 2014, Appellant filed a motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP, alleging he was entitled to a new trial based on a forensics report indicating the scene was processed for latent fingerprints that he had recently discovered. The State filed its return to this motion on July 8, 2014, and Appellant then filed his response on July 17, 2014. On August 8, 2014, the Honorable Edward W. Miller, acting in his capacity as Chief Administrative Judge for the Thirteenth Judicial Circuit, denied and dismissed the motion without a hearing.

On January 31, 2014, Appellant filed an application for post-conviction relief and filed an amendment to this application on July 11, 2014. The State filed its return on July 14, 2014. An evidentiary hearing was convened on April 22, 2015, in the Greenville County Court of Common Pleas with Judge Miller presiding. Following the evidentiary hearing, Judge Miller denied and dismissed the application on October 2, 2015. Appellant filed a notice of appeal challenging Judge Miller's denial of his post-conviction application. On April 20, 2016, Appellant's appellate counsel filed a petition for a writ of certiorari and accompanying appendices pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Appellant filed a *pro se* response to

counsel's Johnson petition on June 24, 2016. This petition is currently pending before the Supreme Court.

On October 7, 2015, Appellant filed a motion for a new trial, captioned "Motion for a New Trial Pursuant to § 17-23-110, Brady v. Maryland, 373 U.S. 83 (1963), and SCRCrimP Rule 29(b), After or Newly Discovered Evidence." In this motion, Appellant asserted the Greenville Police Department and prosecution withheld the incident dispatch detail report for his case, which he asserts is material and exculpatory because it disproves the State's timeline of events. On January 19, 2016, the State made its return to Appellant's motion, asserting the evidence Appellant presented was not material and did not meet the requirements requisite for the grant of a new trial. Appellant made a reply to the State's return on February 10, 2016. On April 26, 2016, Judge Miller denied and dismissed Appellant's motion. Appellant filed a timely notice of appeal and subsequent initial brief of appellant. This brief follows.

STATEMENT OF FACTS

In 2001, Jeannnie Pireda was employed as a birthday coordinator at a Chuck-E-Cheese restaurant in Greenville, South Carolina. (Supp. R. p. 226-27). One Sunday evening in December 2001, Pireda was working late with fellow employees after the restaurant had closed for business and she noticed a white Ford Taurus slowly driving around the restaurant and eventually stopping at the back exit from the kitchen. (Supp. R. p. 227-29). After a couple of minutes, the vehicle drove the remainder of the way around the building and left the parking lot. (Supp. R. 227-229).

On December 19, 2001, Pireda and several coworkers, including the general manager and an assistant manager, were working late in the evening to ready the restaurant for a visit the next day from corporate supervisors. (Supp. R. p. 166, 195, 230). After a few hours of cleaning, Pireda and a coworker, Krystyna Reilly, left the closed restaurant to pick up food for the five employees who had stayed late to clean. (Supp. R. p. 230). Pireda again saw the white Ford Taurus in the Chuck-E-Cheese parking lot, and this time she was able to see two people inside the vehicle. (Supp. R. p. 230-232). Pireda could only see silhouettes of the two occupants, but could distinguish that one was a female and one was a male. (Supp. R. 231-32).

Approximately twenty minutes later, Pireda and Reilly returned to Chuck-E-Cheese with food and the employees gathered around a booth and began eating together. (Supp. R. p. 232). Shortly thereafter, Appellant, wearing a dark jacket or hooded sweatshirt, dark pants, boots, and something covering his face, entered the restaurant through the rear, approached the group, and demanded money. (Supp. R. p. 174, 232-235). He carried a small gun, which fit in the palm of his hand. (Supp. R. p. 232, 237). Appellant made one of Pireda's managers empty the safe and he left through the back emergency door. (Supp. R. 236-237). Appellant left with cash and rolled

coins. (Supp. R. 182). Once Appellant left the premises, one of the managers called for emergency and law enforcement assistance. (Supp. R. 201).

Shortly thereafter, Lt. Thompson with the Greenville City Police Department stopped a white Ford Taurus driven by Appellant exiting the apartment complex directly behind the Chuck-E-Cheese that had been robbed; Appellant's roommate, Elena Pelzer, was in the passenger seat. (Supp. R. 271, 275-77). Directly prior to being stopped, another law enforcement officer witnessed Appellant drive from the apartment complex to a dumpster, where he discarded a dark hooded jacket into the dumpster before driving off. (Supp. R. 263-64, 344-45). When Lt. Thompson stopped Appellant, Appellant initially gave a false identification and reported he had no driver's license. (Supp. R. 275-77). As Appellant was removed from the vehicle, he reached into his pocket and threw "hands full of cash" into the car. (Supp. R. 277-78, 368-69). Appellant's roommate tried to pick up the cash and stuff it into the passenger door pocket. (Supp. R. 277-278, 369-70).

Investigator Fuller and Detective Bruce obtained a search warrant for Appellant's residence, an apartment in the complex directly behind the Chuck-E-Cheese. (Supp. R. 306-07; 387; 363-64). Inside the apartment, they located a stocking cap in which a small, derringer-style handgun was concealed. (Supp. R. 390-391). The stocking cap had two eye holes cut out. (Supp. R. 391). Additionally, they found some money in the apartment, including rolled coins, that was of similar denominations to the money taken during the robbery. (Supp. R. 391-392, 399-402).

ARGUMENT

I. The circuit court judge did not abuse his discretion in denying Appellant's motion for a new trial pursuant to Rule 29(b), SCRCrimP, where the evidence Appellant presented did not meet the requirements for the grant of a new trial.

Appellant contends the circuit court judge erred in denying his motion for a new trial based on after-discovered evidence. Specifically, Appellant asserts his purported after-discovered evidence—the "Greenville Police Incident Dispatch Detail Report" for this incident—cast doubt on the State's timeline of events following the armed robbery and would have resulted in a different outcome if it had been introduced to the jury. To the contrary, Appellant's alleged after-discovered evidence would not have had any impact on the verdict. The evidence Appellant presented in his written motion before the circuit court consisted of reports indicating the times of dispatch and location of various officers following the armed robbery, particularly the location of Lt. Thompson and Sgt. Jones, which Appellant erroneously asserts establishes it was Jones, not Thompson, who stopped his vehicle. Appellant asserts he could have used these reports to impeach the testimony of various law enforcement witnesses called by the State and to challenge the initial stop and detention of himself and his vehicle. Critically, this purported evidence presented by Appellant does not credibly dispute any of the overwhelming evidence of Appellant's guilt presented by the State during trial, including the evidence of: Appellant's close proximity to the robbery location shortly after the robbery in a car matching the description of a car previously seen casing the restaurant, Appellant's act of discarding a dark hooded jacket similar to that worn by the robber in a dumpster, the discovery of the large amount of cash in similar denominations to that taken during the robbery in his apartment and vehicle, and the discovery of the stocking cap with two eye holes cut out with the small, derringer-style handgun concealed inside Appellant's apartment. Based on that evidence, the circuit court judge

did not abuse his discretion in finding the alleged after-discovered evidence would not have probably changed the result of the trial if a new trial was granted.

In criminal cases, the appellate court reviews errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The grant or refusal of a new trial based on after-discovered evidence is left to the sound discretion of the circuit court judge. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977); see State v. Wells, 162 S.C. 509, 533, 161 S.E. 177, 187 (1931) ("[T]he granting or refusing of new trials, on the ground of after discovered evidence, is within the discretion of the trial Judge, and this Court will not interfere with that discretion, unless it manifestly appears that there was an erroneous exercise of it."). The circuit court judge's decision will not be disturbed on appeal absent a clear abuse of discretion. State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 182 (1993).

After-discovered evidence is "evidence of facts existing at time of trial of which [the] aggrieved party was excusably ignorant." State v. Haulcomb, 260 S.C. 260, 270, 195 S.E.2d 601, 606 (1973). The granting of a new trial based on after-discovered evidence is not favored in South Carolina. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998); see State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197-198 (1978) ("The granting of a new trial because of after-discovered is not favored, and this Court will sustain the lower court's denial of such a motion unless there appears an abuse of discretion.").

In order to prevail on a motion for a new trial based on after-discovered evidence, the party requesting the new trial must establish that the evidence: (1) would probably change the result of the trial if a new trial was granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999). When dealing with this type of motion, the trial judge is placed in the role of gatekeeper in making a credibility assessment of the evidence. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). "The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter of determination by the circuit judge to whom it is offered. In him, not [the appellate court], resides the power to weigh such evidence; and his judgment will not be disturbed except for error of law or abuse of discretion." State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959); see State v. Corn, 224 S.C. 74, 81, 77 S.E.2d 354, 357 (1953) ("In an appeal from an order denying a motion for a new trial, it is settled by numerous cases that this Court may not nicely weigh the testimony upon which such a motion is based; that power rests in the Circuit Court, for it has at hand the instrumentalities with which to exercise the power, and that Court's settled judgment ought not to be impeached except for errors of law, or for an abuse of its discretion.").

In the present case, Appellant argues the "Greenville Police Incident Dispatch Detail Report" contained "favorable, impeachment, and material evidence that Officer John Thompson . . . could not have been the officer that stopped Appellant . . . because he did not arrive on the scene until 1:26:34 a.m." (FBOA p. 10). Appellant further asserts this report establishes that Sgt. Jones therefore must have been the officer who stopped him because "Jones . . . arrived on the scene at 1:07:40 a.m." (FBOA p. 10). Appellant bases a majority of his argument on the

testimony of his former roommate and State's witness, Elena Pelzer, who testified she believed they were stopped by law enforcement at approximately 1:10 a.m. Appellant contends this information was not given to him until after trial, thereby making it after-discovered pursuant to Rule 29(b), SCRCrimP. He further asserts this information would have affected the outcome of his trial, as he could have used it to impeach Thompson and Jones, as well as challenge the initial stop of his vehicle and the evidence that flowed from this stop. However, the circuit court judge correctly denied this motion, finding Appellant's evidence failed to sufficiently meet the test for a new trial based on after-discovered evidence.

Initially, it is crucial to note that Appellant's reliance on the testimony of Pelzer is misplaced. Although Pelzer testified she and Appellant were stopped at 1:10 a.m., she also testified that she was estimating approximate times and her approximations could be off by twenty to twenty-five minutes. (Supp. R. 366-67). Therefore, based on Pelzer's own vacillation in the time she was stopped coupled with the testimony of Thompson and Jones, the information Appellant has gleaned from the dispatch report is not material and would not have had any impact on the outcome of Appellant's trial. Furthermore, Appellant has admitted numerous times that this purported after-discovered evidence would have been useful **impeachment** evidence to challenge the testimony of Thompson and Jones. Most importantly, Appellant failed to establish the alleged after-discovered evidence would probably change the result at trial. The information contained within the report supports the testimony and evidence presented by the State at trial, including the timeline presented through the testimony of Thompson and Jones.

Additionally, notwithstanding the fact Appellant failed to establish the alleged after-discovered evidence would probably change the result of trial if presented, when looking to the other factors necessary to prevail on a motion for a new trial based on after-discovered evidence,

Appellant was still likely not entitled to a new trial. Looking particularly to the requirement that the newly-discovered evidence could not have been discoverable prior to trial, Appellant potentially could have discovered, through the exercise of due diligence, the referenced dispatch report before his trial. Appellant failed to establish that this report could not have been discovered by him prior to his re-trial in 2008. Likewise, looking to the remaining factors, the evidence Appellant presented in his motion was not material to any issue in dispute during the trial and, therefore, did not entitle Appellant to a new trial based on its discovery. Applying an analysis of the factors required for a new trial based on after-discovered evidence to the evidence Appellant identified in support of his motion, Appellant failed to establish he was entitled to a new trial based on this evidence. See Spann, 334 S.C. at 619-620, 513 S.E.2d at 99 (listing the factors to be considered on a motion for a new trial based on after-discovered evidence).

The grant of a new trial based on after-discovered evidence is not favored in South Carolina and should be reserved for cases where the new evidence raises substantial questions as to a defendant's guilt. Appellant's guilt was not in question with or without the alleged after-discovered evidence. The evidence presented during trial overwhelmingly and conclusively established Appellant's guilt, including the evidence of: Appellant's close proximity to the robbery location shortly after the robbery in a car matching the description of a car previously seen casing the restaurant, Appellant's act of discarding a dark hooded jacket similar to that worn by the robber in a dumpster, the discovery of the large amount of cash in similar denominations to that taken during the robbery in his apartment and vehicle, and the discovery of the stocking cap with two eye holes cut out with the small, derringer-style handgun concealed inside in Appellant's apartment.

The circuit court judge properly weighed Appellant's purported after-discovered evidence and concluded it would have had no impact on the jury's verdict after carefully weighing the potential significance of the evidence to Appellant's case, and this ruling was supported by the testimony and evidence presented at trial.

Based on the overwhelming evidence of guilt presented during trial, the alleged after-discovered evidence presented could have had any impact on the jury's verdict. For this reason, there is no reasonable possibility the disputed evidence would probably change the result at trial. See State v. Wells, 249 S.C. 249, 264, 153 S.E.2d 904, 912 (1967) (" 'It cannot be said, therefore, that the affidavits must necessarily lead any reasonable mind to the inference that the newly-discovered evidence would probably change the result. Nothing short of this would justify the conclusion that the Circuit Court abused its discretion in refusing the motion.' " (quoting State v. Jackson, 122 S.C. 493, 115 S.E. 750 (1923))). Appellant had the burden of establishing the evidence would have probably changed the result at trial, and he has failed to meet that burden. The circuit court judge did not abuse his discretion in denying Appellant's new trial motion. See Corn, 224 S.C. at 88, 77 S.E.2d at 360 ("The [circuit court] Judge is the determiner of the facts in such matters and unless his findings are influenced or controlled by error of law or unless his conclusions are so illogical and unreasonable to amount to an abuse of discretion[,] his findings are binding upon this Court[.]"). The circuit court judge properly denied Appellant's motion.

II. To the extent Appellant is raising allegations of a Brady violation, the issue is not preserved for appellate review because it was never ruled upon by the circuit court judge, and, therefore, is not preserved for this Court's review. Regardless, even if the issue was preserved, Appellant was not entitled to a new trial based on an alleged Brady violation because the presented evidence was not material for Brady purposes and its alleged suppression did not undermine confidence in the outcome of the trial.

Appellant claims the circuit court judge erred by failing to rule on his allegations of a Brady violation. Appellant appears to acknowledge this issue is not preserved for appellate review, but nevertheless asks this Court to consider it "to save this Court its valuable time." (FBOA p. 19). Initially, as this issue was never ruled upon by the circuit judge, it is not preserved for appellate review. Regardless, even if the issue was preserved, Appellant was not entitled to a new trial based on the allegedly suppressed evidence because, just as the evidence did not entitle him to a new trial based on after-discovered evidence since the evidence could not have reasonably changed the result of trial, the presented evidence was not material for Brady purposes as its disclosure could not have reasonably resulted in a different outcome at trial.

A. Issue Preservation

It is well settled that an issue that has not been presented to or passed upon by the trial judge will not be considered on appeal. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974). If an issue is raised but **not ruled upon**, it is not preserved for appellate review. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (1996) (emphasis added). Only a matter that has been ruled on below can be reviewed; otherwise, the appellate court would be exercising original jurisdiction. Gee, 262 S.C. 373, 204 S.E.2d 727. Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

In the case at bar, the trial judge did not consider or base any part of his ruling on the constitutional requirements addressed in Brady. Subsequently, on appeal, Appellant contends he is entitled to a new trial because the prosecutors violated the ethics of their position and committed prosecutorial misconduct and the State willfully concealed evidence in violation of Brady. However, as the circuit court judge never ruled upon this issue, the issue is not preserved for appellate review.

B. Alleged Brady Violation

The prosecution is required to disclose, upon motion by the defendant, evidence which would be favorable to the accused and which is material to guilt or punishment. State v. Kirkpatrick, 320 S.C. 38, 47, 462 S.E.2d 884, 890 (Ct. App. 1995). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998).

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the United States Supreme Court instructed: "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where evidence is material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution." In Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999), the South Carolina Supreme Court addressed the requirements for a Brady violation: "A Brady claim is based upon the requirements of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment."

Evidence is material for Brady purposes "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been

different." United States v. Bagley, 473 U.S. 667, 682 (1985). The United States Supreme Court further analyzed materiality in Kyles v. Whitley, 514 U.S. 419, 434 (1995):

> Bagley's touchstone of materiality is a "reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial."

(citations omitted). To establish a Brady violation, the aggrieved party must show "that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Id. Evidence is not material under Brady if the accused received a fair trial resulting in a just verdict even without the allegedly suppressed evidence. Id. There is no real Brady violation "unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler v. Green, 527 U.S. 263, 281 (1999).

In Appellant's case, he asserts the "Greenville Police Incident Dispatch Detail Report" is material pursuant to Brady. However, Appellant has failed to credibly show how this report was necessary for a fair trial or how its alleged suppression undermined confidence in the guilty verdict. As discussed previously, the report ultimately is cumulative to the other testimony and evidence presented during trial. Based on the nature of the evidence presented during trial, even if this allegedly suppressed evidence had been introduced, there is not a reasonable probability the trial would have ended in a different result. The evidence presented during trial by the State was overwhelming and conclusively established Appellant's guilt. None of the allegedly suppressed evidence could put the case in such a different light that it would undermine

confidence in the outcome, which is a requirement for materiality pursuant to Brady. Therefore, Appellant's allegedly suppressed evidence was not material for Brady purposes.

Furthermore, the evidence presented against Appellant in this case was overwhelming. Viewing the disputed evidence in totality, there is neither a reasonable probability its introduction would have resulted in a different outcome at trial nor a credible showing its suppression undermined confidence in the verdict. For this reason, the evidence is not material under Brady. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993) ("Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."). Thus, for the same reason Appellant was not entitled to a new trial based on the allegedly after-discovered evidence, Appellant was not entitled to a new trial based on his allegations of a Brady violation. Because the presented evidence was not material in a Brady context, any alleged suppression of this evidence did not entitle Appellant to a new trial. In conclusion, this issue is not preserved for this Court's review because the circuit court did not rule on it. However, even if the issue was preserved, Appellant was not entitled to any appellate relief.

CONCLUSION

For all the foregoing reasons, this Court should affirm the circuit court judge's denial for Appellant's motion for a new trial.

Respectfully submitted,

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Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000966

THE STATE,

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vs.

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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert Max Watkins, SCDC #24803
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

I further certify that all parties required by Rule to be served have been served.
This 15th day of June, 2017.

Megan Harrigan Jameson

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ALAN WILSON
ATTORNEY GENERAL

June 15, 2017

Robert Max Watkins, SCDC #24803
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Pelzer, SC 29669

RE: State v. Robert Max Watkins – Appellate Case No. 2016-000966

Dear Mr. Watkins:

Enclosed please find two copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

Megan Harrigan Jameson

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

MHJ/kc

Enclosures

cc: The Honorable Jenny A. Kitchings (original and twelve enclosed)
Victim Services