STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2017-001983

ZEBULLIN ALAN SHORT,

Appellant,

vs.

THE STATE,

Respondent.

INITIAL BRIEF OF RESPONDENT

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II.

The circuit court judge properly affirmed on appeal because the magistrate correctly denied Appellant's motion for a directed verdict in light of the fact the evidence and testimony presented during trial established Appellant's guilt for all the elements of driving with an unlawful alcohol concentration and was sufficient to independently corroborate Appellant's statements to law enforcement such that all the evidence viewed collectively supported a reasonable belief Appellant was guilty of the charged crime.

III.

The circuit court judge properly affirmed on appeal because the magistrate correctly denied Appellant's request to instruct the jury on the corpus delicti rule due to the fact the question of whether the corpus delicti rule had been satisfied in Appellant's case was solely a question of law for the magistrate to resolve and was not applicable to the jury's deliberations.

IV.

To the extent Appellant is contending the magistrate improperly refused to admit certain records into evidence during trial, any issue regarding the "exclusion" of the records was not properly preserved for appellate review because defense counsel never sought to admit the records and, instead, specifically indicated to the magistrate he was not seeking to do so. Moreover, the circuit court judge properly affirmed on appeal because the magistrate did not prejudicially abuse his broad discretion during trial by refusing to permit Appellant to conduct further cross-examination of a witness in regard to unauthenticated records with which the witness was not personally familiar.

STATEMENT OF THE CASE

On May 11, 2013, Appellant Zebullin Alan Short was arrested for driving under the influence following an investigation into a single-vehicle crash and was issued Uniform Traffic Ticket #F-838374 for a violation of Section 56-5-2930 of the South Carolina Code of Laws. In September of 2015, the solicitor provided notice to Appellant of the State's intent to prosecute him for a violation of Section 56-5-2933 of the South Carolina Code of Laws. On March 15, 2017, a jury trial was commenced in the Pickens County Magistrate Court before the Honorable Michael A. Baker, magistrate for Pickens County. At the conclusion of trial, the jury convicted Appellant of driving with an unlawful alcohol concentration. Following the verdict, the magistrate sentenced Appellant to a thirty-day term of incarceration and ordered the sentence to be suspended upon the payment of a $1,017.00 fine. Thereafter, Appellant filed a timely motion for a new trial, and the magistrate issued an order denying that motion on March 30, 2017. Appellant then timely appealed his conviction to the court of common pleas.

On appeal, the Honorable Letitia H. Verdin, circuit court judge, conducted a hearing on the matter in the Pickens County Court of Common Pleas on June 30, 2017. On August 3, 2017, the circuit court judge issued an order affirming Appellant's conviction. Thereafter, Appellant filed a motion to reconsider, and the circuit court judge denied the motion on August 24, 2017. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 3:30 a.m. on May 11, 2013, Trooper Brian Mayfield of the South Carolina Highway Patrol was on patrol in Easley, South Carolina, when he encountered Appellant Zebullin Alan Short standing alone next to a damaged truck that appeared to have been driven off the roadway into a utility pole. (Trl. Tr. pp. 48-51; p. 87; Uniform Traffic Ticket #F-838374). In response, Trooper Mayfield approached Appellant, who was in the midst of a phone call with a tow truck company and was trying to arrange for his vehicle to be towed from the scene, to find out what had occurred and to make sure he was okay. (Trl. Tr. pp. 50-51; p. 90).

During their ensuing conversation, Appellant, who smelled strongly of alcohol, indicated he was driving the vehicle at the time of the crash, reported the crash occurred after he dozed off, and stated his wife had been in the vehicle with him at that point but had been picked up and driven home before the trooper arrived.[1] (Trl. Tr. pp. 51-53). Trooper Mayfield then asked Appellant if he had been drinking that night, and Appellant replied he had been to several different bars following a graduation event and claimed to have last had some drinks roughly an hour or two earlier. (Trl. Tr. p. 51; pp. 53-54). However, Appellant specifically asserted he had not had enough alcohol to do what he did. (Trl. Tr. p. 51).

In light of Appellant's statements and the circumstances surrounding the crash, Trooper Mayfield suspected Appellant may have been driving under the influence, so he decided to administer some field sobriety tests. (Trl. Tr. p. 54; p. 76). During each of the tests, Appellant

[1] Based on Appellant's remarks about his wife, Trooper Mayfield dispatched Trooper Joey Baldwin, a fellow trooper with the South Carolina Highway Patrol, to her residence to conduct a welfare check. (Trl. Tr. pp. 44-45; p. 52). During trial, Trooper Mayfield testified Trooper Baldwin reported Appellant's wife had an injured nose but declined medical services. (Trl. Tr. pp. 52-53). However, Trooper Baldwin was unable to confirm that testimony as he could not remember whether Appellant's wife had any injuries or was bleeding when he encountered her at her residence. (Trl. Tr. pp. 45-46).

displayed noticeable signs of impairment. (Trl. Tr. pp. 57-60). As a result, Trooper Mayfield arrested Appellant, issued him a uniform traffic ticket for driving under the influence ("DUI"), and transported him to the Pickens County Jail. (Trl. Tr. p. 64; pp. 68-69; p. 98; Uniform Traffic Ticket #F-838374).

At the jail, Trooper Mayfield informed Appellant of his implied consent rights and offered him a breath alcohol test, and Appellant agreed to submit to the testing. (Trl. Tr. pp. 69-70; p. 72). Thereafter, following a twenty-minute observation period, Trooper Mayfield administered a breath alcohol test to Appellant by using a DataMaster machine, and the results of the testing, which was conducted less than two hours after Appellant was arrested, established Appellant's blood alcohol concentration was 0.09 percent, which was consistent with impairment.[2] (Trl. Tr. p. 72; pp. 75-77).

Subsequently, the solicitor provided timely written notice to Appellant indicating the State intended to prosecute him for the offense of driving with an unlawful alcohol concentration ("DUAC"), and Appellant was brought to trial on that charge. (Trl. Tr. p. 29; p. 100; Notice to Defendant). During trial, Trooper Mayfield testified about his observations upon arriving at the scene of the crash on the date of the incident, Appellant's incriminating admissions, Appellant's poor performance during the field sobriety tests, and his administration of the breath alcohol test to Appellant, which revealed Appellant had a blood alcohol concentration above the legal limit.[3] (Trl. Tr. pp. 48-77). Additionally, recordings from the scene and from the breath alcohol test site were admitted into evidence and played for the jury. (Trl. Tr. p. 67; p. 78). At the conclusion of

[2] Pursuant to South Carolina law, an alcohol concentration of 0.08 percent or greater supports an inference the person was under the influence of alcohol. S.C. Code Ann. § 56-5-2950(G)(3).

[3] By the time of trial, Trooper Mayfield had retired from law enforcement. (Trl. Tr. p. 48).

trial, the jury convicted Appellant of DUAC, and Appellant received a thirty-day suspended sentence as a result of the conviction. (Trl. Tr. p. 175; pp. 178-179).

Following his conviction, Appellant unsuccessfully moved for a new trial before appealing his DUAC conviction to the court of common pleas. (App. Hrg. Tr. p. 4; Motion for New Trial; Motion for New Trial Ruling; Notice of Appeal). On appeal, Appellant contended his conviction should be reversed because: (1) the magistrate allegedly did not have jurisdiction to try him for DUAC in light of the fact no uniform traffic ticket or arrest warrant had been issued for that specific offense; (2) the magistrate allegedly erred by refusing to grant a directed verdict on the DUAC charge pursuant to the corpus delicti rule; (3) the magistrate allegedly erred by refusing to instruct the jury on the corpus delicti rule; and (4) the magistrate allegedly erred by refusing to permit him to either enter SLED records into evidence or cross-examine Trooper Mayfield about those records. (App. Hrg. Tr. pp. 5-6; p. 9; pp. 12-17; Circuit Court Appellant's Brief). In rebuttal, the solicitor asserted: (1) the magistrate did, in fact, have jurisdiction because Appellant received the statutorily-required notice of the DUAC prosecution following his DUI arrest; (2) the magistrate properly denied the directed verdict motion because the corpus delicti rule had been satisfied; (3) the magistrate properly refused to instruct the jury on the corpus delicti rule as it was not appropriate for the jury's consideration; and (4) the magistrate committed no error in regard to the SLED records because they had not been properly authenticated. (App. Hrg. Tr. pp. 17-21; Circuit Court Brief of Respondent). After considering the matter, the circuit court judge issued an order affirming Appellant's conviction. (Order Affirming on Appeal). Appellant then filed a motion seeking reconsideration of the circuit court judge's ruling. (Motion to Reconsider). However, the circuit court judge declined to reconsider her earlier ruling and denied Appellant's motion. (Order Denying Motion to Reconsider).

STANDARD OF REVIEW

In criminal cases, appellate courts in South Carolina sit to review errors of law only. State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004); see Rogers v. State, 358 S.C. 266, 269, 594 S.E.2d 278, 279 (Ct. App. 2004) ("Brandon clearly misconstrues our standard of review, for in criminal appeals we sit to review errors of law only."). Therefore, when a criminal matter is appealed from a magistrate court, the circuit court judge does not engage in de novo review and, instead, is limited to reviewing for preserved errors raised by appropriate objections. City of Landrum v. Sarratt, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct. App. 2002); see S.C. Code Ann. § 18-3-70 ("The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."). Likewise, an appellate court reviewing an appeal from the circuit court judge's appellate ruling may solely review for errors of law. City of Aiken v. Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006).

ARGUMENT

I.

The circuit court judge properly affirmed the magistrate's decision to proceed forward with Appellant's trial for driving with an unlawful alcohol concentration because that offense fell within the jurisdiction of the magistrate court and Appellant received the statutorily-required pre-trial notice he was going to be prosecuted for that offense following his arrest for driving under the influence. Moreover, Appellant suffered no articulable prejudice as a result of the trial procedure followed in his case, and, thus, there are no proper grounds upon which to reverse his conviction on appeal.

Appellant contends the circuit court judge erred by failing to find the magistrate did not have jurisdiction to go forward with the trial for DUAC. In support of that contention, Appellant maintains he could not be tried for DUAC because he was never issued a uniform traffic ticket or arrest warrant for that particular offense. To the contrary, the magistrate properly proceeded forward with Appellant's trial for DUAC because Appellant was arrested for DUI, received a uniform traffic ticket for that offense, and subsequently received the statutorily-required pre-trial notice he was going to be prosecuted for DUAC instead of DUI, and the circuit court judge correctly affirmed Appellant's conviction on appeal. However, even assuming an arrest warrant or uniform traffic ticket had been required in order for the magistrate to properly proceed forward with the trial, Appellant suffered no actual prejudice as a result of the procedure that was used in his case. Under those circumstances, there were no proper grounds upon which to reverse his conviction on appeal. Appellant's conviction should be affirmed.

RELEVANT FACTS

Subsequent to Appellant's arrest for DUI, the solicitor served notice on Appellant indicating the State intended to prosecute him for DUAC. (Trl. Tr. p. 29; p. 100; Uniform Traffic Ticket #F-838374; Notice to Defendant). Specifically, through the notice provided, Appellant was advised:

> Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

(Notice to Defendant). Over thirty days later, Appellant was brought to trial for the offense of DUAC. (Trl. Tr. p. 1; p. 4; Notice to Defendant).

At the outset of trial, defense counsel argued the magistrate did not have jurisdiction to try Appellant's case because Appellant had not been issued an arrest warrant or uniform traffic ticket for DUAC, which he maintained had to be done in order for a trial to proceed forward on that particular charge. (Trl. Tr. pp. 4-9; p. 12; pp. 14-15; pp. 20-21). However, defense counsel conceded Appellant had been provided with the statutorily-required notice of the State's intention to prosecute him for DUAC after he had been arrested for and received a ticket for DUI. (Trl. Tr. pp. 4-7; pp. 12-13). In rebuttal, the solicitor asserted Section 56-5-2933 clearly established a person charged with DUI could be prosecuted for DUAC so long as the person was given notice thirty days before trial. (Trl. Tr. p. 10). Because Appellant received both a ticket for DUI and timely notice of the DUAC prosecution, the solicitor argued Appellant could properly be tried for DUAC pursuant to statutory law. (Trl. Tr. p. 10; pp. 17-18). After considering the arguments of counsel, the magistrate agreed with the solicitor and ruled Appellant could be tried for DUAC. (Trl. Tr. p. 22).

ANALYSIS

A. Propriety of Appellant's DUAC Prosecution Following His Arrest for DUI

In South Carolina, the General Assembly is constitutionally vested with the authority to establish the jurisdiction of the magistrate court. See S.C. Const. art. V, § 26 ("The General Assembly shall provide for [magistrates'] terms of office *and their civil and criminal*

jurisdiction." (emphasis added)); see also Bayly v. State, 397 S.C. 290, 295, 724 S.E.2d 182, 184 (2012) (recognizing the legislature has the constitutional authority to establish the jurisdiction of magistrate court). Pursuant to that constitutional authority, our legislature bestowed magistrates with jurisdiction over all offenses subject to fines not exceeding $500.00 and terms of imprisonment not exceeding thirty days while retaining the authority to further extend their jurisdiction in its discretion. See S.C. Code Ann. § 22-3-540 ("Magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days[.] . . . The provisions of this section shall not be construed so as to limit the jurisdiction of any magistrate whose jurisdiction has been extended beyond that stated above."); S.C. Code Ann. § 22-3-550(A) ("Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both."); see also Bayly, 397 S.C. at 296, 724 S.E.2d at 184 ("A magistrate court's jurisdiction . . . is not limited to the provisions of this code section as the last sentence indicates that the General Assembly may extend the jurisdiction of the magistrate court beyond what is set forth in section 22-3-540.").

Similarly, in addition to being vested with the authority to establish the jurisdiction of magistrates, the legislature is necessarily vested with the authority to establish the procedures to be used in the exercise of magistrate court jurisdiction. See Bayly, 397 S.C. at 295, 724 S.E.2d at 184 (recognizing the legislature possesses the authority to establish the procedures of magistrate court). Pursuant to the procedures enacted by the legislature, a criminal case in magistrate court is typically commenced through the issuance of either an arrest warrant or a uniform traffic ticket, which provides notice to the defendant of the charge he is facing. See S.C. Code Ann. § 22-3-710 ("All proceedings before magistrates in criminal cases shall be

commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue."); S.C. Code Ann. § 56-7-10(C) ("The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served."); see also Bayly, 397 S.C. at 295, n. 3, 724 S.E.2d at 184 (recognizing the purpose of an arrest warrant is to provide notice of the charges); State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978) ("The issuance of the uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights."). Notably though, in its discretion, the legislature can adopt and enact other procedures to be used in place of the more general ones when it believes such procedures would be appropriate. See State v. Ramsey, 409 S.C. 206, 210, 762 S.E.2d 15, 17 (2014) (noting the legislature adopted a different method of commencing cases in magistrate court by enacting Section 56-7-10).

Through the enactment of Section 56-5-2933, the legislature established the offense of DUAC, which is committed when a person drives a motor vehicle in the state with a blood alcohol concentration of 0.08 percent or higher. See S.C. Code Ann. § 56-5-2933(A) ("It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more."). In enacting that particular provision, the legislature expressly elected to vest magistrates with jurisdiction over all first offenses for DUAC regardless of the potential penalty. See S.C. Code Ann. § 56-5-2933(A)(1) ("[A] first offense charged for this item may be tried in magistrates court[.]"). Furthermore, pursuant to its authority over procedural matters, the legislature adopted a special procedure for DUAC prosecutions that follow an arrest for DUI, instructing:

> A person charged for a violation of Section 56-5-2930 *may be prosecuted* pursuant to this section if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop.

S.C. Code Ann. § 56-5-2933(I) (emphasis). Thus, based on the plain language of the DUAC statute, a person charged with DUI may be brought to trial for DUAC so long as the statutory conditions are met and the defendant is provided with notice at least thirty days before trial. Id.; see S.C. Code Ann. § 56-5-2933(J) ("A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date."); see also BLACK'S LAW DICTIONARY 341 (9th ed. 2009) (defining "prosecute" as "[t]o commence and carry out a legal action" and "[t]o institute and pursue a criminal action against (a person)"); BLACK'S LAW DICTIONARY 1341 (9th ed. 2009) (defining "prosecution" as "[t]he commencement and carrying out of any action or scheme" and "[a] criminal proceeding in which an accused person is tried"); see generally State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning."); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) ("Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation.").

In the case sub judice, Appellant was validly arrested for DUI following an investigation into a vehicle crash and was issued a uniform traffic ticket for that offense. Subsequently, based on the results of a breath alcohol test that was administered within two hours of his lawful arrest, Appellant was subsequently provided with written notice of the State's intent to prosecute him for DUAC, which was an offense unquestionably falling within the jurisdiction of the magistrate

court. See S.C. Code Ann. § 56-5-2933(A)(1) (instructing first-offense DUAC "may be tried in magistrates court"); see also Bayly, 397 S.C. at 296, 724 S.E.2d at 185 ("[N]either a uniform traffic ticket nor an arrest warrant operates to confer subject matter jurisdiction on the magistrate court."). Significantly, through the notice provided, Appellant was specifically informed of both the name of the offense for which he was going to be tried and of the statutory provision outlining that offense well over thirty days before he was brought to trial on the charge.[4] See, e.g., State v. Owens, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001) (holding an indictment sufficiently provided the requisite notice of the elements of the indicted offense of murder based of the fact it contained a reference to the murder statute), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Under those circumstances, Appellant could properly be tried in magistrate court for DUAC as all the statutory requirements for a DUAC prosecution had been met. See S.C. Code Ann. § 56-5-2933(I) ("A person charged for a violation of Section 56-5-2930 may be prosecuted pursuant to this section[.]"); see also State v. Bolin, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008) (indicating a statute's words must be given their plain and ordinary meaning). Therefore, the magistrate properly refused to dismiss Appellant's case, and the circuit court judge correctly affirmed Appellant's conviction on appeal. See Bayly, 397 S.C. at 296, 724 S.E.2d at 185 ("[T]he absence of a uniform traffic ticket or arrest warrant does not render a magistrate's court conviction a nullity."). Appellant's conviction should be affirmed.

B. Absence of Any Articulable Prejudice Resulting from Appellant's DUAC Trial

Even when an error occurs during a criminal trial, reversal is not automatically warranted as a result. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining

[4] Moreover, Appellant's uniform traffic ticket for DUI expressly alerted him of the specific date, time, and location of his offense. (Uniform Traffic Ticket #F-838374).

the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."); see also United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"). Instead, in order for reversal to be warranted, the party seeking such a reversal has the burden of establishing he was *actually* prejudiced by an alleged error. See State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden is upon the appellant to satisfy [the appellate] court that there has been *prejudicial* error." (emphasis added)); see also Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice."). Critically, an error that has not been shown to be prejudicial simply does not warrant the reversal of a criminal conviction. State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005); see State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974) (instructing "error must be prejudicial in order to be ground for reversal" even when there may have "technically" been a statutory violation).

In the case at bar, even assuming arguendo it was necessary for an arrest warrant or uniform traffic ticket for DUAC to have been issued before Appellant could properly be tried in magistrate court for that particular offense, any error resulting from the absence of such an arrest warrant or ticket resulted in absolutely no articulable or meaningful prejudice to Appellant. Significantly, before Appellant was brought to trial, Appellant received a ticket for DUI before subsequently receiving timely written notice he would be prosecuted for DUAC. As a result, Appellant had unquestionably received notice in his case, which meant he received everything arrest warrants and uniform traffic tickets are designed to provide. See Bayly, 397 S.C. at 295,

n. 3, 724 S.E.2d at 184 (explaining the purpose of an arrest warrant is to provide notice of the charges); Biehl, 271 S.C. at 204, 246 S.E.2d at 860 (instructing a uniform traffic ticket simply serves to summon an individual to appear before a magistrate). Furthermore, based on the notice he received, Appellant was fully prepared to defend against the DUAC charge, and he has not suggested in any way he was not ready to go forward with and defend against that particular charge based on the procedure followed in his case. See State v. Langford, 223 S.C. 20, 31, 73 S.E.2d 854, 859 (1953) ("There is no constitutional requirement in this State that criminal prosecutions in inferior court shall be commenced by the issuance of a warrant."). Under those circumstances, Appellant suffered no actual prejudice as a result of being tried without receiving an arrest warrant or uniform traffic ticket specifically for DUAC. See King, 367 S.C. at 136, 623 S.E.2d at 867 ("Error without prejudice does not warrant reversal."); cf. State v. Huntley, 349 S.C. 1, 6, 562 S.E.2d 472, 474 (2002) (reversing the trial judge's decision to exclude breathalyzer test results based on an alleged statutory violation because Huntley suffered no prejudice even assuming the statute had actually been violated); State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976) (instructing "exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant *cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedures*"). Accordingly, even assuming an arrest warrant or uniform traffic ticket for DUAC should have been issued prior to trial, the absence of one nonetheless would not warrant a reversal of Appellant's DUAC conviction. See Bayly, 397 S.C. at 296, 724 S.E.2d at 185 ("[T]he absence of a uniform traffic ticket or arrest warrant does not render a magistrate's court conviction a nullity."); see also State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.");

cf. State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) ("[T]he procedure employed by the trial court, however irregular, was not sufficient to deprive appellant of his right to a jury trial. There is no right to be tried by a jury composed of particular individuals. The alternate juror had been approved by both sides at the inception of the trial, and there is no showing that the appellant withdrew that approval at the time of substitution. Moreover, appellant has failed to establish in what manner this procedure prejudiced him." (citations omitted)). Appellant's conviction should be affirmed.

II.

The circuit court judge properly affirmed on appeal because the magistrate correctly denied Appellant's motion for a directed verdict in light of the fact the evidence and testimony presented during trial established Appellant's guilt for all the elements of driving with an unlawful alcohol concentration and was sufficient to independently corroborate Appellant's statements to law enforcement such that all the evidence viewed collectively supported a reasonable belief Appellant was guilty of the charged crime.

Appellant contends the circuit court judge erred by failing to find the magistrate committed reversible error by refusing to grant his directed verdict motion during trial. In support of that contention, Appellant maintains a directed verdict should have been granted because the State failed to present sufficient independent evidence to corroborate his statements and establish the corpus delicti of DUAC. To the contrary, evidence and testimony was presented during trial establishing each element of the charged offense of DUAC, and that evidence was sufficient to independently corroborate Appellant's admission to driving the vehicle at the time of the crash such that the corpus delicti rule was satisfied. As a result, the magistrate had a duty to deny and did properly deny Appellant's directed verdict motion, and the circuit court judge correctly affirmed Appellant's conviction on appeal. Appellant's conviction should be affirmed.

RELEVANT FACTS

During the course of trial, Trooper Mayfield recounted to the jury he found Appellant standing alone next to a damaged vehicle that had been driven off a roadway into a utility pole, and, at that time, Appellant was trying to arrange for the vehicle to be towed from the scene. (Trl. Tr. pp. 48-51; p. 87; p. 90). Trooper Mayfield further indicated Appellant smelled strongly of alcohol during their interactions, and Appellant both admitted he was driving the vehicle at the time of the crash and admitted he had ingested some drinks a few hours earlier. (Trl. Tr. pp. 51-54). Additionally, Trooper Mayfield stated he administered field sobriety tests to Appellant at

the crash site, and Appellant displayed signs of impairment during the tests. (Trl. Tr. pp. 57-60). Furthermore, Trooper Mayfield recounted Appellant submitted to a breath alcohol test after he was arrested and transported to jail, and the results of the testing established Appellant had a blood alcohol concentration of 0.09 percent. (Trl. Tr. pp. 69-70; p. 72; pp. 75-76).

Following the presentation of that testimony, defense counsel moved for a directed verdict, arguing no independent evidence was presented other than Appellant's confession to establish Appellant was driving his vehicle at the time of the crash. (Trl. Tr. pp. 121-122; pp. 132-133). Based on that, defense counsel maintained the DUAC charge had to be dismissed pursuant to the corpus delicti rule. (Trl. Tr. p. 125). In rebuttal, the solicitor argued the evidence of Appellant's lone presence at the scene of the crash taken together with his incriminating admissions was sufficient under the circumstances to justify the submission of the case to the jury. (Trl. Tr. pp. 125-127). After considering the arguments of counsel, the magistrate found sufficient evidence had been presented to warrant that submission of the case to the jury, and, therefore, the magistrate the directed verdict motion. (Trl. Tr. p. 133).

ANALYSIS

In a criminal case in South Carolina, the prosecution must present proof of the corpus delicti of the charged offense before the case can be submitted to the jury. State v. McCombs, 335 S.C. 123, 126, 515 S.E.2d 547, 548 (Ct. App. 1999). Significantly, "[a] conviction cannot be had on the extra-judicial confessions of the defendant unless corroborated by proof aliunde of the corpus delicti." State v. Williams, 321 S.C. 381, 384, 468 S.E.2d 656, 657 (1996); see BLACK'S LAW DICTIONARY 395 (9th ed. 2009) (defining the "corpus delicti rule" as "[t]he doctrine that prohibits a prosecutor from proving the corpus delicti based *solely* on a defendant's extrajudicial statements" (emphasis added)). That "rule with regard to the proof of the corpus

delicti, apart from the mere confession of the accused, proceeds upon the theory that the general fact, without which there could be no guilt in the accused or in anyone else, must be established before anyone could be convicted of the alleged criminal act which caused it; for otherwise, the accused might be convicted when there was no criminal agency involved." State v. Thomas, 222 S.C. 484, 486-487, 73 S.E.2d 722, 723 (1952); see City of Easley v. Portman, 327 S.C. 593, 602-603, 490 S.E.2d 613, 618 (Ct. App. 1997) (Anderson, J., concurring) ("The requirement that the corpus delicti be sufficiently corroborated by independent evidence is rooted in the premise that the examination of this additional evidence will avert the danger that a crime was confessed when in fact no such crime was committed. Thus, the rule exists to prevent the conviction of an innocent person." (citations omitted)).

Pursuant to the corpus delicti rule, *some* proof of the corpus delicti must come from a source other than the defendant's out-of-court statements. State v. Saltz, 346 S.C. 114, 137, 551 S.E.2d 240, 253 (2001); see Opper v. United States, 348 U.S. 84, 93 (1954) ("[T]he corroborative evidence *need not be* sufficient, independent of the statements, to establish the corpus delicti." (emphasis added)). However, "the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, *together with such statements*, permits a reasonable belief that the crime occurred." State v. Osborne, 335 S.C. 172, 180, 516 S.E.2d 201, 205 (1999) (emphasis added). Thus, "[i]f the statement is independently corroborated, then *the combination of* the statement and the State's remaining evidence may be considered by the trial court to determine if there is any evidence tending to establish the corpus delicti." State v. Russell, 345 S.C. 128, 132-133, 546 S.E.2d 202, 205 (Ct. App. 2001) (emphasis added); see Smith v. United States, 348 U.S. 147, 156 (1954) ("[C]orroborative evidence does not have to prove the offense beyond a

reasonable doubt, or even by a preponderance, as long as there is substantial independent evidence that the offense has been committed, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty.").

In a case involving a DUAC charge, the corpus delicti of the offense consists of three elements: (1) driving a vehicle; (2) within South Carolina; (3) with an alcohol concentration of 0.08 percent or higher. See S.C. Code Ann. § 56-5-2933 ("It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more."); cf. State v. Townsend, 321 S.C. 55, 58, 467 S.E.2d 138, 140 (Ct. App. 1996) ("The corpus delicti of DUI is: (1) driving a vehicle; (2) within this State; (3) while under the influence of intoxicating liquors, drugs, or any other substance of like character."). Like other offenses, the corpus delicti of DUAC may be established by circumstantial evidence when it is the best evidence obtainable. Cf. Townsend, 321 S.C. at 58, 467 S.E.2d at 140 ("Townsend was at the scene where his car had been involved in a wreck. He smelled like alcohol, failed field sobriety tests, and appeared to be intoxicated. A breathalyzer test showed his blood alcohol level to be .21. This is enough evidence, albeit circumstantial evidence, to submit the case to the jury."). Furthermore, in order for the corpus delicti of DUAC to be established, circumstantial evidence may be sufficient even if the defendant's own statements were the only evidence directly establishing he was driving at the time of the offense. See State v. White, 311 S.C. 289, 295, 428 S.E.2d 740, 744 (Ct. App. 1993) (instructing the specific issue of "whether White drove the motor vehicle in question while under the influence of alcohol or drugs" was a matter for the jury in a felony driving under the influence case when evidence was presented establishing White was located standing next to a roadway while displaying signs of intoxication, White said he had been driving his vehicle at the time of a crash, White's abandoned and crashed vehicle

was subsequently located near where White had been found, and the body of White's brother-in-law was located a few feet away from the driver's side of the vehicle); see also Portman, 327 S.C. at 596, 490 S.E.2d at 615 ("Independent proof of the defendant's identity as the guilty party is not required to prove the corpus delicti.").

Importantly, if there is any evidence presented tending to establish the corpus delicti of the charged offense, it is the trial judge's *duty* to pass that question on to the jury. State v. Dodd, 354 S.C. 13, 18, 579 S.E.2d 331, 334 (Ct. App. 2003). Thus, when presented with a motion for a directed verdict in a case in which an argument is raised pursuant to the corpus delicti rule, the trial judge—just like in any other criminal case—is concerned solely with the existence or non-existence of evidence and should submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court's consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.").

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is *any* direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). Critically, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford, 375 F.2d at 334 ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

Notably, in State v. Abraham, 408 S.C. 589, 590-591, 759 S.E.2d 440, 441 (Ct. App. 2014), a law enforcement officer located Abraham at the scene of a single-vehicle crash involving a tree, and Abraham was the only individual at that location other than emergency personnel. Upon arriving at the scene, the officer spoke with Abraham, and Abraham indicated he had been driving the wrecked vehicle and had ingested some wine earlier that night. Id. As they spoke, the officer noticed Abraham smelled strongly of alcohol, so he administered field sobriety tests to Abraham and ultimately arrested him after he exhibited signs of impairment during the testing. Id. Thereafter, Abraham was transported to a police station and submitted to a breath alcohol test, which revealed his blood alcohol concentration was 0.22 percent. Id. Subsequently, Abraham was tried in magistrate court for DUI, was convicted, and appealed. Id. On appeal, a circuit court judge reversed his conviction after finding the State failed to present

sufficient evidence to establish the corpus delicti of DUI. Id. However, after the State appealed that ruling, this Court reversed and reinstated Abraham's DUI conviction. Id. at 594, 759 S.E.2d at 443. In reversing, this Court found the evidence and testimony presented regarding Abraham's presence at the scene of a single-vehicle crash, signs of intoxication, inability to pass field sobriety tests, and breath alcohol test results provided sufficient evidence to support the trustworthiness of his admission to driving the vehicle involved in the crash and, when considered together with his statements, allowed a reasonable inference the crime of DUI had been committed. Id. at 594, 759 S.E.2d at 442. As a result, this Court determined the circuit court judge erred in finding the case was improperly submitted to the jury during trial. Id. at 594, 759 S.E.2d at 443.

In Appellant's case, Appellant—like the defendant in Abraham—admitted he had been driving a vehicle at the time of a crash, and his admission was introduced against him during trial. Significantly, in addition to that admission, Trooper Mayfield testified he located Appellant alone at the scene of a single-vehicle crash in which a vehicle had been driven off the roadway into a utility pole, Appellant was attempting to arrange for the vehicle to be towed from the scene, Appellant smelled strongly of alcohol, Appellant failed field sobriety tests, and subsequent testing revealed Appellant had a blood alcohol concentration of 0.09 percent. Based on that evidence and testimony, a factfinder could rationally and logically infer the crashed vehicle was Appellant's since he was attempting to have it removed from the scene, Appellant was the individual who drove the vehicle into the utility pole since he was the only person present at the scene of the crash, and Appellant did so with an unlawful alcohol concentration since the testing revealed his blood alcohol concentration was at an unlawful level. See Osborne, 335 S.C. at 180, 516 S.E.2d at 205 ("Applying this rule to the facts at hand, we find the State

provided sufficient independent evidence to support the trustworthiness of [Osborne]'s statements to police. We further find this independent evidence, taken together with the statements, allowed a reasonable inference that the crime . . . was committed."); see also Dodd, 354 S.C. at 17-18, 579 S.E.2d at 333-334 ("Once Dodd confessed to having a gun during the commission of his robbery, the State only needed to present sufficient independent evidence to corroborate those statements so that a jury could reasonably believe an armed robbery occurred. Here, Dodd's confession to having a gun was corroborated by his threat to the clerk that he would kill her if she did not do as he told her. Although his threat, unaccompanied by any representation of a deadly weapon, would not *independently* be sufficient to establish the element of a deadly weapon, the threat *is* sufficient to corroborate Dodd's confession to being armed." (citations omitted)); cf. Russell, 345 S.C. at 133, 546 S.E.2d at 205 ("These facts, taken together, provide a foundation independent of Russell's statements to justify a jury inference that Russell was driving the car.").

Under those circumstances, the evidence and testimony presented during Appellant's trial established each and every element of the offense of DUAC and was sufficient to independently corroborate Appellant's statements such that corpus delicti rule was satisfied. See Williams, 321 S.C. at 385, 468 S.E.2d at 658 ("[I]f there is any evidence tending to establish the corpus delicti, then it is the duty of the trial court to pass that question on to the jury."); see also Opper, 348 U.S. at 93 ("It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth."); cf. McCombs, 335 S.C. at 127, 515 S.E.2d at 549 ("Although no witness testified to seeing McCombs driving his truck that night, the State offered enough evidence of the corpus delicti independent of McCombs's statements for the trial court to submit the case to the jury."). Therefore, the magistrate—just like the magistrate in Abraham—

properly denied Appellant's directed verdict motion and submitted the DUAC charge to the jurors to allow them to resolve the factual disputes raised by the evidence, including those related to whether Appellant was truthful when he indicated he was driving his vehicle at the time he crashed it into the utility pole, and the circuit court judge correctly affirmed Appellant's conviction on appeal. See Abraham, 408 S.C. at 594, 759 S.E.2d at 442-443 ("The State provided sufficient independent evidence to support the trustworthiness of Abraham's statements to the police. Furthermore, this independent evidence, taken together with the statements, allowed a reasonable inference that the crime of DUI was committed. Therefore, we hold the magistrate court properly denied Abraham's motion for a directed verdict and submitted the case to the jury."). Appellant's conviction should be affirmed.

III.

The circuit court judge properly affirmed on appeal because the magistrate correctly denied Appellant's request to instruct the jury on the corpus delicti rule due to the fact the question of whether the corpus delicti rule had been satisfied in Appellant's case was solely a question of law for the magistrate to resolve and was not applicable to the jury's deliberations.

Appellant contends the circuit court judge erred by failing to find the magistrate committed reversible error by declining to instruct the jury on the corpus delicti rule. In support of that contention, Appellant maintains the magistrate should have instructed the jury on the law indicating an extra-judicial confession needs to be corroborated by substantial independent evidence. Importantly though, the question of whether the State's evidence satisfied the corpus delicti rule was a matter of law for the magistrate to resolve and was not applicable to the jury's deliberations. As a result, the magistrate properly declined to present an instruction on the corpus delicti rule to the jury, and the circuit court judge correctly affirmed Appellant's conviction on appeal. Appellant's conviction should be affirmed.

RELEVANT FACTS

After the magistrate denied defense counsel's motion for directed verdict based on the corpus delicti rule, defense counsel asked the magistrate to instruct the jury on the corpus delicti rule as part of his jury instructions. (Trl. Tr. p. 133; pp. 135-137; p. 139). However, the magistrate indicated he believed the proposed instruction would unnecessarily confuse the jury and, therefore, declined to present it. (Trl. Tr. p. 136; p. 139).

Subsequently, as the trial continued forward, the magistrate instructed the jury on the applicable law. (Trl. Tr. pp. 155-162). Through his jury instructions, the magistrate explained to the jurors they were the sole judges of the facts, indicated they were required to weigh the evidence to determine its credibility and truthfulness, informed the jurors any person charged

with a crime was presumed innocent until his guilt was proven beyond a reasonable doubt, thoroughly explained reasonable doubt for the jury, and identified the required elements of DUAC. (Trl. Tr. pp. 155-162).

Following the presentation of those jury instructions, defense counsel objected to the magistrate's failure to present an instruction indicating extra-judicial confessions need to be corroborated by substantial independent evidence. (Trl. Tr. pp. 162-163; p. 166). In response, the magistrate noted defense counsel's objection but did not present an additional instruction on the corpus delicti rule to the jury. (Trl. Tr. p. 163; p. 166).

ANALYSIS

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law *applicable to the jury's deliberations* based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see Winkler v. State, 418 S.C. 643, 655, 795 S.E.2d 686, 693 (2016) (instructing a jury should *not* be instructed on a point of law not applicable to deliberations); State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). Importantly, so long as the trial judge's jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

When reviewing an issue involving a trial judge's jury charge, the appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.").

Notably, in State v. McCombs, 335 S.C. 123, 125-126, 515 S.E.2d 547, 548 (Ct. App. 1999), a law enforcement officer encountered McCombs, who smelled of alcohol, standing near a crashed vehicle and ultimately arrested him for DUI after McCombs admitted he had been both drinking and driving. Subsequently, McCombs was brought to trial, convicted of DUI, and appealed, arguing—amongst other things—the trial judge committed reversible error by declining to instruct the jury on the corpus delicti rule as he had proposed. Id. at 128, 515 S.E.2d at 549. On appeal, this Court affirmed. Id. at 125, 515 S.E.2d at 548. In affirming, this Court noted the question of whether the State's evidence satisfied the corpus delicti rule was a question of law for the court and not for the jury. Id. at 128, 515 S.E.2d at 550. As a result, this Court held the trial judge properly refused to present McCombs's proposed jury instruction, which would have required the jury to determine whether the State proved the corpus delicti of the charged offense independent of McCombs's statements. Id. at 128, 759 S.E.2d at 549-550.

In the case sub judice, Appellant—just like the defendant in McCombs—sought a jury instruction on the corpus delicti rule. Significantly though, as this Court recognized in McCombs, the question of whether the State's evidence satisfied the corpus delicti rule was *not* a matter applicable to the jury's deliberations. See id. at 128, 759 S.E.2d at 550 ("Clearly, it is not within a trial court's discretion to send to the jury a case where the corpus delicti is not proven aliunde of the defendant's extra-judicial confession. As such, the issue is a question of law for the court, not a question of fact for the jury."); see also United States v. Dickerson, 163 F.3d 639, 642 (D.C. Cir. 1999) ("[T]he jury need not be separately instructed on the issue for it is akin to other admissibility issues, and therefore the trial judge alone decides whether the corroboration test has been met. The corroboration rule is undeniably, in part, a rule governing the admissibility of a defendant's out-of-court statements . . . . And it is well settled that preliminary facts relating to the admissibility of evidence are questions for the court and not for the jury." (citations omitted)). As a result, the issue of whether the State had satisfied the corpus delicti rule was simply not a proper matter upon which the jury should have been instructed and could only have been confusing to the jurors under the circumstances. See State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("Only law applicable to the case should be charged to the jury."); see also State v. Durant, 87 S.C. 532, __, 70 S.E. 306, 307 (1911) ("The requirement of the Constitution that the judge shall declare the law does not mean that the judge shall tell the jury all about that branch of the criminal law under which the crime charged in the indictment falls; but it means that he shall explain so much of the criminal law as is applicable to the issues made by the evidence adduced on the trial. The purpose of a charge is to enlighten the jury. This purpose is accomplished by a statement of the law which fits the concrete case; it is

defeated by a discourse filled with abstract legal propositions having the effect of confusing the minds of the jury.").

Because the corpus delicti rule was not applicable to the jury's deliberations, the magistrate committed no error by declining to include an instruction on that particular matter as a part of his jury instructions, which otherwise properly conveyed the relevant and applicable law to the jurors such that they were fully capable of determining whether the evidence admitted during trial proved Appellant's guilt for DUAC beyond a reasonable doubt. See Dickerson, 163 F.3d at 643 ("The jury's role is not to reconsider the judge's corroboration determination . . . but rather to determine for itself whether an out-of-court statement . . . is sufficiently trustworthy to convince the jury, in conjunction with any other evidence, of the defendant's guilt beyond a reasonable doubt. We think that the standard reasonable doubt instruction is adequate to inform the jury of this role."); cf. State v. Newton, 274 S.C. 287, 295, 262 S.E.2d 906, 911 (1980) ("[T]here was no error on the part of the lower court in failing to instruct the jury on the requirements for the admissibility of breathalyzer tests results[.]"). Accordingly, the circuit court judge properly affirmed Appellant's conviction on appeal. See McCombs, 335 S.C. at 128, 515 S.E.2d at 550 ("[T]he trial court did not abuse its discretion in refusing to give the requested jury instruction [on the corpus delicti rule]."); see also Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."). Appellant's conviction should be affirmed.

IV.

To the extent Appellant is contending the magistrate improperly refused to admit certain records into evidence during trial, any issue regarding the "exclusion" of the records was not properly preserved for appellate review because defense counsel never sought to admit the records and, instead, specifically indicated to the magistrate he was not seeking to do so. Moreover, the circuit court judge properly affirmed on appeal because the magistrate did not prejudicially abuse his broad discretion during trial by refusing to permit Appellant to conduct further cross-examination of a witness in regard to unauthenticated records with which the witness was not personally familiar.

Appellant contends the circuit court judge erred by failing to find the magistrate committed error by both refusing to allow him to introduce certain SLED records into evidence and by preventing him from questioning Trooper Mayfield about the records during cross-examination. In support of that contention, Appellant maintains the records were self-authenticating and admissible pursuant to the hearsay exceptions for public records and business records. Initially, to the extent Appellant is contending the magistrate improperly "excluded" the records during trial, that particular argument was not preserved for appellate review because defense counsel did not move to admit the records into evidence at any point during trial and, instead, expressly assured the magistrate he was not seeking to do so. Moreover, the magistrate did not prejudicially abuse his broad discretion by placing reasonable limits on defense counsel's cross-examination of Trooper Mayfield about the records as the trooper was personally unfamiliar with them and they were never sufficiently authenticated during trial. Under those circumstances, the circuit court judge correctly affirmed Appellant's conviction on appeal. Appellant's conviction should be affirmed.

RELEVANT FACTS

During trial, Trooper Mayfield testified on direct examination about his administration of the breath alcohol test to Appellant following his arrest. (Trl. Tr. pp. 68-69). Specifically, Trooper Mayfield stated he was personally certified to administer the test at the time it was

conducted, and he indicated he informed Appellant of his implied consent rights, checked his mouth to make sure nothing was inside, and observed him for the required twenty-minute waiting period prior to the test. (Trl. Tr. pp. 69-72). Additionally, the trooper noted the machine used for the test verified it was functioning properly by conducting a series of standard internal checks prior to the test, and he confirmed the machine would have automatically shut down if it was experiencing any problems. (Trl. Tr. p. 74). Furthermore, Trooper Mayfield indicated the machine used a standard simulator solution that was periodically replaced, and he stated the machine provided a warning and would not perform tests when the simulator solution needed to be replaced. (Trl. Tr. p. 74).

Following the presentation of that testimony, the solicitor moved to admit Appellant's breath test results, and defense counsel objected, arguing the trooper needed to lay a "better foundation" in regard to the functioning of the machine. (Trl. Tr. p. 75). However, the magistrate overruled the objection in light of Trooper Mayfield's testimony and admitted the breath test results, which established Appellant's blood alcohol concentration was 0.09 percent. (Trl. Tr. p. 76).

Subsequently, on cross-examination, defense counsel conducted his own questioning of Trooper Mayfield and elicited testimony establishing the machine was designed to automatically shut down if any issues were present and had shut itself down at different points when the trooper was using it during his many years on patrol.[5] (Trl. Tr. pp. 101-102). Furthermore, defense counsel elicited testimony establishing Trooper Mayfield did not personally know when the machine was last calibrated or inspected, and the trooper indicated he believed SLED

[5] Earlier during his testimony, Trooper Mayfield indicated he worked for the South Carolina Highway Patrol for twenty-five years before he retired in April of 2016. (Trl. Tr. p. 48).

maintained records for the machine but was not personally aware of the information those records contained. (Trl. Tr. p. 105)

As the cross-examination continued, defense counsel asked Trooper Mayfield if he was aware of the machine experiencing multiple errors in May of 2013, and the trooper responded he personally was not aware of that before conceding no machine was foolproof. (Trl. Tr. pp. 105-106). Defense counsel then indicated he was going to hand something to Trooper Mayfield while simultaneously asking the trooper about SLED records maintained on the agency's website, and the solicitor objected. (Trl. Tr. pp. 108-109). At that point, the magistrate excused the jury from the courtroom and conducted an in camera hearing on the matter. (Trl. Tr. p. 109). During the hearing, the solicitor indicated he believed defense counsel was going to attempt to have Trooper Mayfield identify some SLED records even though the witness had already indicated he was not personally familiar with them, and he maintained the records were hearsay and needed to be authenticated by someone capable of doing so, which he argued the trooper was not. (Trl. Tr. p. 108). In response, defense counsel asserted he intended to ask Trooper Mayfield about whether he was aware of the records before maintaining he should have been provided with the records through the discovery process. (Trl. Tr. p. 109). Furthermore, defense counsel asserted the records were certified public records maintained on SLED's website and contended he was entitled to ask the trooper about them. (Trl. Tr. p. 110). After hearing the arguments of counsel, the magistrate stated:

> If you're going to present it to the witness, who does not work for SLED, I would sustain the objection. I'm not going to make him testify based off of something a custodian of records with SLED would need to be here to verify.

(Trl. Tr. p. 111).

Thereafter, defense counsel asserted he could ask the trooper if there were any problems with the machine, and the magistrate indicated defense counsel had already done so. (Trl. Tr. p. 111). Specifically, the magistrate noted defense counsel had already asked the trooper if he was aware of multiple errors with the machine in May of 2013 and the trooper had responded he was not. (Trl. Tr. pp. 111-112). Defense counsel then asserted the records were public while maintaining he could ask the trooper if he was aware of errors from specific dates. (Trl. Tr. pp. 112-113). However, the magistrate finally sustained the objection after finding defense counsel had already asked the officer about the records and had "got[ten] his point across" in regard to them. (Trl. Tr. p. 113). Defense counsel then reiterated his assertion the records were public, and the magistrate again ruled he was not going to make the trooper testify about SLED documentation. (Trl. Tr. pp. 113-114). At that point, defense counsel asserted he was not going to ask Trooper Mayfield "to testify on SLED documentation," and the magistrate responded that was what had been presented to him. (Trl. Tr. pp. 114-115).

As the discussion of the matter continued, defense counsel asserted the records fell within an exception to the hearsay rule as public records while contending they were true and accurate copies of documents kept in the normal course of SLED's business. (Trl. Tr. p. 115). Based on that, he maintained he should be permitted to ask more specifically about the errors. (Trl. Tr. pp. 115-116). Defense counsel then began to personally review some documents and asserted he could get "this" into evidence before quickly explaining he was "not giving into evidence." (Trl. Tr. p. 116). At that point, the magistrate indicated he believed defense counsel had gotten his point across to jury through the testimony elicited from the trooper, and he further stated he believed someone from SLED should have been subpoenaed in regard to the records if defense counsel wished to admit them. (Trl. Tr. pp. 116-117). The magistrate then sustained the

objection to the line of questioning defense counsel was seeking to pursue and had the jury return to the courtroom. (Trl. Tr. pp. 117-119).

Subsequently, the trial continued forward, and defense counsel resumed his cross-examination of Trooper Mayfield. (Trl. Tr. p. 119). As the trial advanced forward, Trooper Mayfield confirmed he did not have any knowledge regarding the simulator solution in the machine, did not know when it was changed, and did not know when it was inserted into the machine. (Trl. Tr. pp. 119-120). Significantly though, no records from SLED were actually introduced or proffered into evidence.[6] (Trl. Tr. pp. 2-3; pp. 119-120; Magistrate's Return and Appeal Return Case Summary).

ANALYSIS

A. Unpreserved Nature of the Issue Regarding the "Exclusion" of the SLED Records

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all

[6] Although no SLED records were actually introduced during trial, defense counsel attached a document purported to be a SLED report to the appellate brief he filed as part of his appeal to the circuit court. (Magistrate's Return and Appeal Return Case Summary; SLED Status Records attached to Circuit Court Appellant's Brief). Notably, the attached document indicates it is a SLED report generated on March 14, 2017, in regard to a specific DataMaster machine, and it contains a notation indicating it "represents true and correct copies of the original documents maintained by SLED in the normal course of business." (SLED Status Records attached to Circuit Court Appellant's Brief). Furthermore, it identifies the name of a particular individual associated with SLED but does *not* contain a signature from that individual. (SLED Status Records attached to Circuit Court Appellant's Brief).

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 order for an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see also JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 185 (3rd ed. 2016) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). If an error is not presented to and ruled upon by the trial judge, it simply cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

In the case at bar, Appellant contends on appeal the magistrate reversibly erred by refusing to allowing him to admit certain SLED records into evidence. Significantly though, defense counsel did *not* actually seek to admit those records during trial and never actually moved for the records to be admitted into evidence. Instead, defense counsel merely sought to cross-examine Trooper Mayfield about the records while expressly assuring the magistrate he was *not* actually attempting to move the records into evidence. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal); see also State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Because defense counsel specifically assured the magistrate he was not seeking to admit the records into evidence, any issue regarding the purported "exclusion" of the evidence during trial

was not properly preserved for appellate review.[7] See State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (instructing a party cannot raise an issue on appeal after acquiescing on that particular issue during trial). Accordingly, Appellant is precluded from raising an issue with the magistrate's alleged "exclusion" of the records for the first time on appeal. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); see also State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal."). Appellant's conviction should be affirmed.

B. Propriety of the Magistrate's Ruling Regarding the SLED Records

In South Carolina, the conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. Bryant, 372 S.C. at 312, 642 S.E.2d at 586; see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). Pursuant to that discretionary authority, trial judges in our state retain wide discretion over the scope of cross-examination. See State v. Sherard, 303 S.C. 172, 174, 399 S.E.2d 595, 596 (1991) ("It is well settled that the scope of cross-examination is within the trial judge's discretion, and this Court will not interfere absent a showing of prejudice by the complaining party."); see also State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007) (recognizing the trial judge retains wide discretion in regard to the scope of cross-examination). Thus, a trial judge is fully permitted to impose "reasonable limits"

[7] In the magistrate's return, the magistrate directly noted defense counsel never actually sought to introduce the SLED records into evidence during trial. (Magistrate's Return and Appeal Return Case Summary).

on cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986).

Similarly, a South Carolina trial judge is vested with broad discretion over evidentiary matters, including matters involving the authenticity of evidence. See Wright v. Pub. Sav. Life Ins. Co., 262 S.C. 285, 290-291, 204 S.E.2d 57, 60 (1974) ("It is well settled that the admission or exclusion of evidence is largely addressed to the sound discretion of the trial judge and that the exercise of his discretion thereabout will not be disturbed in the absence of an abuse of such discretion amounting to a manifest error of law."); see also United States v. Ruggiero, 928 F.2d 1289, 1303 (2nd Cir. 1991) ("[W]e review rulings as to authentication for abuse of the district court's 'broad discretion.' " (citations omitted)); United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982) (recognizing resolution of an authentication question rests in the sound discretion of the trial judge and the trial judge's ruling on such a question will not be reversed on appeal absent an abuse of discretion). Pursuant to that discretionary authority, a trial judge must ensure evidence has been authenticated before it can be introduced during trial. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). In order for evidence to be authenticated, the party offering the evidence must establish the evidence is actually what it is claimed to be. Id.; see Rule 901(a), SCRE ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.").

In the case sub judice, the magistrate appropriately exercised his discretion to limit defense counsel's questioning of Trooper Mayfield about the records from SLED because defense counsel failed to sufficiently authenticate those records before asking about them. That

is true because, during trial, defense counsel merely asserted to the magistrate the records were certified but did not present any other evidence or argument *to the magistrate* to support that particular assertion such that it was sufficiently established the records actually were what defense counsel claimed them to be.[8] See Howard-Arias, 679 F.2d at 366 (recognizing "[t]he purpose of this threshold [authentication] requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be"); see also State v. Homewood, 241 S.C. 231, 245, 128 S.E.2d 98, 104 (1962) ("While the matter is generally within the sound discretion of the trial judge, it is ordinarily improper to introduce writings in evidence as part of cross-examination."). Furthermore, at the time the magistrate restricted defense counsel's cross-examination, Trooper Mayfield had already explained he had no personal knowledge in regard to the records and, thus, would not have been capable of authenticating them personally. Cf. Homewood, 241 S.C. at 244, 128 S.E.2d at 104 ("The court quite properly exclude the check as the witness Camp, of course, could not identify said check, and [Homewood] offered no other proof of its authenticity."). Under those circumstances, defense counsel failed to sufficiently prove the records were authentic, and the magistrate did not abuse his broad discretion by placing reasonable limits on the scope of cross-examination to prevent defense counsel from questioning Trooper Mayfield *any further* about records that had not been properly

[8] Significantly, the records Appellant presented to the circuit court judge on appeal do *not* contain a seal along with signature purporting to be an attestation or execution or an appropriate signature accompanied by the required certification of genuineness. (SLED Status Records attached to Circuit Court Appellant's Brief). As a result, the records would *not* have been self-authenticating pursuant to South Carolina law even if they had been presented to the magistrate. See S.C. Code Ann. § 19-5-10 (permitting the introduction of a copy of a public document or record in place of the original if the document is *certified*); see also Rule 902, SCRE (identifying the certification needed for evidence to be self-authenticating, which includes a requirement for a domestic public record either to bear a seal accompanied by a signature purporting to be an attestation or execution or to contain an appropriate signature accompanied by a certification of genuineness).

authenticated. See State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000) ("The trial court did not abuse its discretion in limiting the scope of cross-examination to comply with the South Carolina Rules of Evidence."); see also United States v. Gelzer, 50 F.3d 1133, 1140-1141 (2nd Cir. 1995) (instructing the "evidence sufficient" standard of Rule 901 of the Federal Rules of Evidence, which is the same as standard enunciated by Rule 901 of the South Carolina Rules of Evidence, requires the proponent of evidence to prove "by a preponderance of the evidence" it is what it is claimed to be).

Importantly though, even assuming the authenticity of the records had been established based on the limited information provided by defense counsel, the magistrate nonetheless did not abuse his broad discretion over the scope of cross-examination because, just as the magistrate recognized during trial, defense counsel was able to elicit the gist of what he was seeking to elicit through the cross-examination actually permitted. Critically, despite the limits imposed by the magistrate, defense counsel elicited testimony from Trooper Mayfield establishing the machine used to conduct Appellant's breath alcohol test was *not* infallible, and the trooper directly stated the machine had actually shut itself down due to issues at various times when he personally was using it. Similarly, defense counsel was able to elicit testimony establishing Trooper Mayfield had no personal knowledge of when the machine was last calibrated, of when the machine was last inspected, or of the error records related to the machine, including of the error records from around the time Appellant's test was conducted. Thus, based on the cross-examination actually permitted, defense counsel was able to elicit what he sought to elicit, which was the fact the machine used to test Appellant did not always function properly, along with all that he would have been able to elicit from the witness through any further questioning, which was the fact Trooper Mayfield did not have any personal knowledge regarding the machine's error records.

As a result, Appellant suffered no prejudice based on the limitations placed on cross-examination during his trial. See Turner, 373 S.C. at 131, 644 S.E.2d at 698 ("Although [Turner] could not elicit testimony about the victim's specific mental illness and her specific medication, the gist of what [Turner] wished to elicit from her testimony was elicited. Therefore, [Turner] has not shown he was unfairly prejudiced by the limitation."); cf. State v. McGee, 185 S.C. 184, __, 193 S.E. 303, 305 (1937) (finding no merit to the contention the trial judge reversibly erred by refusing to require a witness to answer questions during cross-examination where "[a]n examination of the testimony shows that the questions to which these witnesses made no answer had already been answered").

In light of the facts defense counsel failed to sufficiently authenticate the records about which he sought to question Trooper Mayfield and the cross-examination permitted was sufficient to elicit the gist of the testimony defense counsel wanted to elicit, the magistrate did not abuse his broad discretion by placing reasonable limits on the scope of cross-examination during trial. See Turner, 373 S.C. at 130, 644 S.E.2d at 698 (recognizing trial court retain wide latitude to impose reasonable limits on cross-examination "based on concerns about, among other things, prejudice, confusion of the issues, or interrogation that is only marginally relevant."). Accordingly, the circuit court judge properly affirmed on appeal. See State v. Whatley, 407 S.C. 460, 466, 756 S.E.2d 393, 396 (Ct. App. 2014) ("As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 14, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2017-001983

ZEBULLIN ALAN SHORT,

Appellant,

vs.

THE STATE,

Respondent.

PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

William Norman Epps, III, Esq.
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Anderson, SC 29622

I further certify that all parties required by Rule to be served have been served.
This 14th day of May, 2018.

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May 14, 2018

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RE: Zebullin Alan Short v. State – Appellate Case No. 2017-001983

Dear Mr. Epps:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division

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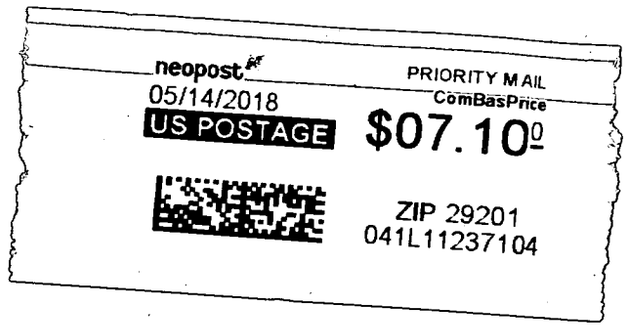

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