

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No.: 2017-CP-39-00391

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SC Court of Appeals

Zebbulin Alan Short.....Appellant,

v.

The State of South Carolina.....Respondent.

APPELLANT'S FINAL REPLY BRIEF

June 23, 2018

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ARGUMENT

1. THE RESPONDENT RAISES FOR THE FIRST TIME ON APPEAL THAT THERE IS AN ABSENCE OF ANY ARTICULABLE PREJUDICE RESULTING FROM APPELLANT'S DUAC TRIAL AND APPELLANT IS PRECLUDED FROM RAISING AN ISSUE WITH THE EXCLUSION OF SLED RECORDS

The Respondent in his brief argues for the first time, that, "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". (Respondent's Final Brief pp. 12-15). Further, the Respondent argues for the first time that Appellant is precluded from raising an issue with the magistrate's alleged "exclusion" of the records for the first time on appeal. (Respondent's Final Brief pp. 34-36). *See State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996) (A review of the record, however, indicates appellant made no contemporaneous objection at trial and did not raise this issue at any point during trial. Consequently, this issue is not preserved for review." *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (a contemporaneous objection is required to properly preserve an error for appellate review); *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (issues not raised to and ruled on by the trial court are not preserved for appeal). Having not raised these issues before the magistrate court or the circuit court, the Respondent is precluded from raising these issues for the first time on appeal.

2. THE CIRCUIT COURT ERRED IN FAILING TO FIND THAT THE MAGISTRATE COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT ON THE CHARGE OF DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION ON THE GROUNDS THAT THE STATE FAILED TO PRESENT SUFFICIENT INDEPENDENT EVIDENCE CORROBORATING APPELLANT'S EXTRA-

JUDICIAL STATEMENTS TO ESTABLISH THE CORPUS DELICTI OF DUAC

The Respondent in his brief compares this case to *State v. Abraham*, 408 S.C. 589 (2014). (Respondent's Final Brief pp. 21-24). However, these cases are distinguishable. The Court of Appeals in *Abraham* held, ...

Abraham was found at the accident scene of a wrecked vehicle in the presence of emergency personnel. He smelled of alcohol, failed field sobriety tests, and appeared to be intoxicated. A breathalyzer test showed his blood alcohol level to be .22 percent. Trooper Brown noted the wrecked vehicle had "front-end damage consistent with running into a tree." Additionally, the wrecked vehicle was located in Keowee Key, Abraham's stated destination, on a road that passes by the local country club, where Abraham claimed to have previously been. Abraham also admitted to driving the wrecked vehicle. 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. *State v. Abraham*, 408 S.C. 589, 594, 759 S.E.2d 440, 442 (Ct. App. 2014).

The instant case is distinguishable as follows, Trooper Mayfield testified that he came upon a one car accident and Appellant was outside the vehicle on the side of the road talking to a tow truck company. (R. p. 92). Trooper Mayfield asked Appellant if he had been drinking, to which he replied, "not enough for this to occur but that he fell asleep, or dozed off and ran off the road and hit a utility pole". (R. p. 93). Appellant advised Trooper Mayfield that his wife was with him and somebody had picked her up and taken her home. The Trooper inquired about whether she was injured and Appellant replied, "I think the air bag got her". Trooper Mayfield then sent Trooper Baldwin to speak to Appellant's wife and check on her injuries. Trooper Baldwin advised Mayfield that Appellant's wife had an injured nose and declined an ambulance.(R. pp. 93-95).

Trooper Mayfield was standing by the driver's side door of the car when he stated that there was blood on the air bags. (Trooper Mayfield's in car camera video). (R. p. 133). He never

performed any tests or forensic tests on the contents or anything that was in the car. (R. pp. 131-132). Trooper Mayfield testified that Appellant was cooperative, respectful, and the fact that he stayed on scene to try to call a tow company and address the situation was an appropriate thing to do, when he could have left the scene. (R. pp. 132-133).

Trooper Mayfield never talked to the individual who picked Mrs. Short up from the scene of the accident. (R. p. 133). For that matter, no one did. Trooper Mayfield admitted he did not know the time the accident happened. (R. p. 133). Appellant did not have the keys to the car and Trooper Mayfield couldn't remember anything about the keys. (R. pp. 138-140). There was a conversation on the in car video that Mrs. Short had the car insurance information with her. (R. pp. 139-140).

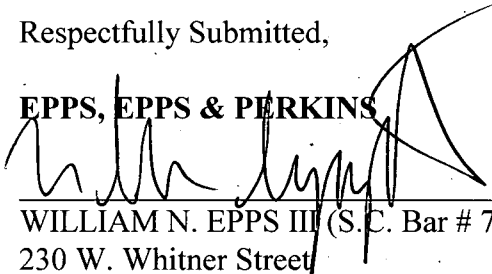
Therefore, you have a Trooper arriving on scene an indeterminate time after the accident. There are multiple individuals in the vehicle and a third party arrived on scene and left before the Trooper arrived. Appellant's wife has an injured nose and blood on the driver's side air bag. The Appellant had no car keys or car insurance information. This independent evidence, taken with Appellant's statement did not allow a reasonable inference that the crime of DUAC was committed by him. The State failed to introduce substantial independent evidence which would tend to establish the trustworthiness of Appellant's statement in this case. The sole evidence Appellant was driving the car in this case was his extrajudicial statement. *State v. Williams*, 321 S.C. 381, 385 n. 2, 468 S.E.2d 656, 658 n. 2 (1996) (Rather, if the State fails to prove the corpus delicti and the sole evidence of guilt is the defendant's confession, then a directed verdict in favor of the defendant is required.) *Id.* Therefore Appellant respectfully asks that his conviction be reversed.

CONCLUSION

For the reasons stated, the Appellant respectfully asks that his conviction be reversed and/or that a new trial be granted.

Respectfully Submitted,

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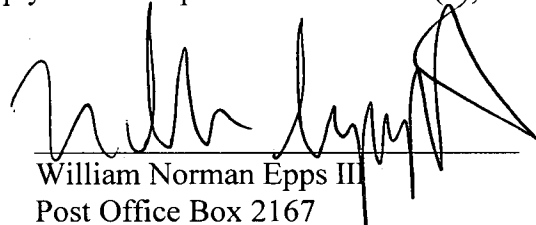
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Reply Brief complies with Rule 211(b), SCACR.



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