STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Keith Kelly, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2018-001561

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON APPEAL

I.

Petitioner's argument that he is "entitled to a reversal of his conviction" on the ground that the State failed to prove the elements of Witness Intimidation is not a proper issue for appellate review because it does not allege a trial court error. To the extent this Court may construe Petitioner's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

II.

Petitioner's argument that the trial court erred by admitting evidence of the underlying incident that gave rise to the witness intimidation charge is not preserved for review because Petitioner did not object when testimony regarding the incident was offered at trial. Likewise, Petitioner's constitutional argument was never raised to the trial court and is not preserved. Even if preserved, the trial court correctly admitted the evidence because it was necessary to prove the elements of the offense.

III.

Petitioner's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

STATEMENT OF THE CASE

A Greenville County grand jury indicted Petitioner for Intimidation of a Witness. On February 12, 2015, Petitioner proceeded to jury trial before the Honorable R. Keith Kelly and a jury. The jury found Petitioner guilty, and Judge Kelly sentenced him to ten years' imprisonment. The Court of Appeals affirmed the conviction in an unpublished opinion on April 11, 2018. Petitioner submitted a petition for rehearing on April 26, 2018, which was denied on May 25, 2018. This petition follows.

STATEMENT OF FACTS

On June 22, 2013, Petitioner met some former coworkers, including Gina Jones, for lunch. App. 63-65. Throughout the lunch, Petitioner made bizarre, threatening statements, such as telling the group he had a new military-grade sniper rifle with armor-piercing bullets. App. 63. He expressed anger at his former boss at UPS and told the group "his fixation was to carry—for the [UPS] director of inside sales to be—to leave that place in a box[.]'" App. 63. His former team coach, Gina Jones (Victim), reported the incident to her Human Resources department at UPS and Petitioner was arrested for breach of peace. App. 27; App. 65. She was expected to testify against him. App. 65.

On July 26, 2013, before the breach of peace case was called for trial, a man dropped off a package at the UPS office for Derrill Bailey, an inside sales representative. The package contained Bailey's leaf blower, which he had given to Petitioner to have repaired. App. 52-55. Along with the leaf blower, which had not been repaired, the man gave Bailey an envelope for Gina Jones. He delivered it to Jones and they both looked through it and found: three cell phones; a check written to cash for $50; two trespass notices; a copy of Petitioner's concealed weapons permit (CWP); a Whitten's Nursery business card; a note referencing an earlier text message Jones had received from Petitioner, which was written on the letterhead of a hunting club; and a receipt from a 7-Eleven near Jones's mother's house. App. 52-56; App. 65-67; App. 90; App. 92. After Bailey reported the incident to a police officer and Jones reported it to Human Resources, a warrant was issued for Petitioner's arrest on the charge of intimidation of a witness. App. 56-58; App. 94.

Petitioner subsequently filed a motion to vacate orders of protection that had been obtained for UPS employees involved in the incident. He also filed a motion to compel and served these documents on UPS, and on February 9, 2015, Petitioner's attorney and the attorney

for UPS went before Judge Kelly regarding UPS's motion to quash these motions. App. 14. Judge Miller previously held a hearing on July 11, during which he denied Petitioner's motion to compel information regarding 401(k) information. App. 14. Petitioner again sent subpoenas asking for the same information, and UPS filed a motion to quash. App. 15. Petitioner then sent two more subpoenas, including one for Gina Jones, seeking the exact same information Judge Miller denied. App. 15.

Petitioner argued Judge Miller's earlier ruling used the word "it" and, thus, he did not know which of the motions Judge Miller was ruling on. App. 17. He also told Judge Kelly he had requested a speedy trial on the breach of peace charge. App. 17. Petitioner then stated his understanding was that the breach of peace charge was not going to trial. App. 17. He argued the intimidation of a witness charge was based on a charge that was no longer there. App. 17. He then stated he had subpoenaed both his own and Jones's personnel files. App. 18-29. Judge Kelly asked Petitioner and UPS to get anything to him by the next day so that he could review and consider it before the trial started. App. 21.

On February 12, 2015, Petitioner proceeded to trial before Judge Kelly and a jury. Defense counsel did not mention the subpoenas or ask for a ruling on his motion to compel. He also did not mention the personnel files. Defense counsel argued before trial that nothing connected the victim in this case to the breach of peace charge and, therefore, no evidence concerning the alleged breach of peace should be allowed. The State argued the breach of peace incident was part of the res gestae of the witness intimidation charge. App. 27-29. After the State listed the evidence it would present and defense counsel argued about why it should not be admissible, the trial court ruled the evidence was admissible. App. 28-29. The trial court then asked whether the State would bring in the prior charge or just the facts of the incident. App. 30. The trial court determined the State could both mention that Petitioner was charged with breach

of peace and call witnesses to testify to the facts regarding that incident, but that it shouldn't go into too much detail about the prosecution of that charge. App. 32.

Next, defense counsel argued a motion for dismissal based on alleged difficulties getting discovery from the State. App. 33. Specifically, he argued he was given a UPS security video on January 15 that had "gaps" in it. App. 33. The solicitor explained he had requested the video long ago but did not receive it until recently and gave a copy to defense counsel as soon as he got it from UPS. App. 34. After determining the State had the exact same video with gaps, and that the State had given defense counsel everything it had, the trial court denied Petitioner's motion to dismiss. App. 35, lines 5–25; App. 42, lines 10–21.

The case then proceeded to trial. First, the State called Keith McNeel, the UPS supervisor responsible for facilities, safety, and security. App. 45. He verified the security cameras were working on July 26, 2013, and that he was able to obtain video from the security footage for that morning. App. 46. He identified State's Exhibit No. 1 as the video, and it was admitted into evidence without objection and played for the jury. App. 47-49. On cross-examination, defense counsel asked if McNeel was concerned there were two gaps of forty-eight and forty-nine seconds in the four-minute video. App. 49-50. McNeel stated he was not concerned, that he did not have any control over the video, and that he could not have cut out any portions; rather, he left it just as he received it from the security group. App. 50.

Next, the State called Wiley Derrill Bailey, an inside sales representative for UPS, who testified that on July 26, 2013, he saw a man in the lobby of UPS with the leaf blower he had previously given to Petitioner to have repaired. App. 51-54. Bailey also testified the man had a manila envelope with him, which Bailey looked through with Gina Jones. App. 54-55. Inside the envelope were three cell phones, a concealed weapons card with Petitioner's picture on it, a

check for cash in the amount of $50, and possibly some more items. App. 55-56. Bailey talked to a police officer about it, and Jones took the envelope to Human Resources. App. 57-59.

Gina Jones testified next, explaining she was a team coach at UPS on July 26, 2013, and that Petitioner was previously an inside sales representative on her team. App. 60-61. She recalled that early that morning, around 1:00 a.m., she received a bizarre text message from Petitioner concerning an $80,000 offer from an attorney, in which he referred to Jones as his sister and told her to send his belongings to an address in Abbeville. App. 62. She testified that approximately a month before that date, she and her team had gone to lunch with Petitioner, who was no longer working with them at the time. App. 63. During the lunch, Petitioner behaved erratically, told everyone about owning a new military-grade sniper rifle with armor-piercing bullets, and said his fixation was for the director of inside sales to leave that place in a box. App. 63. She testified Petitioner had then corrected himself and said he meant leave with a box and beside him. App. 63. Petitioner also made derogatory statements, used racial slurs, and called specific UPS employees names. App. 63. Jones stated he was very loud and boisterous and that it was both embarrassing and scary. App. 64. She felt obligated to alert her management team because Petitioner threatened the life of one of her managers, so she notified Human Resources when she returned to work from lunch. App. 64.

Jones then testified again regarding July 26, 2013, the day she received the envelope. App. 65-66. She testified that inside the envelope were three cell phones; two trespass notices for Dwight Inman (another inside sales representative at UPS) and Ken Baca (the director of inside sales); Petitioner's concealed weapons permit; a Whitten's Nursery business card; a note referencing the text message she had received from Petitioner earlier that morning that was written on the letterhead of a hunting club; and a receipt from the 7-Eleven near her mother's house. App. 66-68. At that point, Petitioner objected on the basis of relevancy, but the trial

court advised him the contents had not been offered into evidence yet. App. 67. The solicitor then showed each item to Jones, had her identify it, and moved them all into evidence without objection by Petitioner. App. 67-70. Jones testified that when she saw the items, and based on things Petitioner knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that "he has a gun, and he knows where I live, he knows where my family lives." App. 70-71. She stated, "I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family." App. 71. When asked if she was afraid to testify against Petitioner after receiving the items, she said she was. App. 71.

Lastly, the State called Detective Gregory Scott Wood of the Greenville Police Department, who was working at UPS on special assignment on July 26, 2013. App. 88-89. He testified he found out from Keith McNeel that Petitioner had contacted Bailey by phone and Jones and another employee by text. App. 91. Detective Wood related that there was concern Petitioner might make contact with current employees after the incident from the lunch. App. 92. Wood was notified that a package had been delivered so he went to Mr. Baca's office to examine it and learn more about the situation. App. 92. He testified the package contained three cell phones, a CWP, a check for $50, a receipt from the 7-Eleven, a nursery business card, and the letters to Inman and Baca for trespass notice. App. 92.

On cross-examination, Detective Wood testified he spoke to Jones and sensed fear in her. App. 93. He stated that he believed her fear was reasonable. App. 95. When asked if he knew of anything that would make Petitioner want to intimidate Jones, he testified he knew Jones was part of the reason Petitioner had been charged with breach of peace for the lunch incident. App.

96. When asked what force Petitioner used to try to intimidate Jones, he testified, "Psychological force." App. 97.

The State rested, and Petitioner moved for a directed verdict arguing "there's been no offering of threat" and "no showing of intent." App. 96-97. The State argued enough evidence existed between sending one's CWP, along with the receipt and business card, combined with Petitioner's talking about killing a co-worker and having firearms and armor-piercing bullets. App. 99-100. The court denied the motion, reminding Petitioner the court does not weigh the evidence but rather is only concerned with whether any evidence exists. App. 100. Defense counsel introduced various exhibits and then rested without calling any witnesses or having Petitioner testify. App. 100-107.

After closing arguments and the jury charge, the jury found Petitioner guilty and the trial court sentenced him to ten years' imprisonment. App. 120-21.

ARGUMENT

I.

Petitioner's argument that he is "entitled to a reversal of his conviction" on the ground that the State failed to prove the elements of Witness Intimidation is not a proper issue for appellate review because it does not allege a trial court error. To the extent this Court may construe Petitioner's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

Petitioner's first argument, which reads more like a closing argument at trial than an appellate brief, asserts he is "entitled to a reversal of his conviction" because the State failed to prove its case. Petition 9. Petitioner does not point to any trial court ruling as the basis for his claim of error. Rather, he attempts to re-litigate the facts of the case, his version of which has already been rejected by a jury of his peers. Because this Court is without jurisdiction to overturn a jury's factual determinations, this issue is not reviewable by this Court. S.C. Const. art. V, § 5 (providing "The Supreme Court shall constitute a court for the correction of errors at law"). The Court of Appeals generously construed Petitioner's argument as alleging error in the trial court's denial of his motion for a directed verdict, but correctly found the trial court properly denied that motion based on the evidence presented. In either case, Petitioner's stated issue is meritless and his petition should be denied.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Dawson, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). On appeal from the denial of a directed verdict, appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge

properly submitted the case to the jury. State v. Larmand, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (internal citation omitted).

Discussion

Petitioner argued in his Court of Appeals brief that the trial court "erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt." Although the trial court made no such holding, the Court of Appeals construed Petitioner's issue as challenging the trial court's denial of his directed verdict motion. This Court should hold Petitioner to a higher standard. Petitioner has not assigned error to any trial court ruling. He alleges jury error. In doing so, he conflates the role of judge and jury, contending that the trial judge should have decided for himself whether the State proved its case. Now, he asks this appellate court to overturn the jury's verdict on appeal for the same reasons. Because he has not alleged error in any specific trial court ruling, this issue is not properly before this Court for review. A reviewing court should not consider an issue that is not presented on appeal. State v. Bray, 342 S.C. 23, 535 S.E.2d 636, 639 n.2 (2000).

If this Court construes Petitioner's argument as alleging error in the trial court's denial of his directed verdict motion, his argument nonetheless fails because the State presented evidence to support a finding of guilt. When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight. State v. Pearson, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. at 470, 783 S.E.2d at 806. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. (citations omitted).

Section 16-9-340 of the South Carolina Code provides:

(A) It is unlawful for a person by threat or force to:

(1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or

(2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

S.C. Code Ann. § 16-9-340 (2015).[1]

Petitioner asserts he did not use any threat or force. He argues the State failed to establish Petitioner made any threat to Jones and specifically points out "[t]here was no note or letter directed to Jones containing any threatening statement." However, the State elicited testimony from both Jones that the combination of the previous threat regarding a co-worker and the contents of the envelope, which included Petitioner's CWP and personal information about Jones and her family, were enough to cause Jones to feel threatened. Jones testified that when she saw the items, and based on things Petitioner knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that "he has a gun, and he knows where I live, he knows where my family lives." App. 70-71. She stated, "I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family." App. 71. When asked if she was afraid to testify against Petitioner after receiving the items, she said she was. App. 71. This evidence supports a finding that Petitioner's actions were intended to intimidate Jones, a potential witness against him.

[1] Petitioner misquotes the statute in his petition as requiring an "unlawful threat of force." Petition 5.

Petitioner repeatedly claims that Jones is not a reasonable person and that she gave theatrical explanations for the items in the envelope. However, his sweeping generalization that "no reasonable person could interpret receipts and a leaf blower as threatening or intimidating" ignores the most troubling items and Jones's direct testimony that she interpreted the sending of the items as a message that "he has a gun, and he knows where I live, he knows where my family lives." App. 70-71. Furthermore, even if Petitioner believes a "reasonable person" would not have interpreted the items the way Jones did, that would be a decision for the jury, not Petitioner or the trial judge. The trial court could only base its directed verdict ruling on the existence of evidence from which a reasonable juror could find Petitioner guilty, not on whether the victim's reaction was reasonable. See Pearson (quoting State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016) ("[T]he court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."). Only the jury was tasked with determining whether Petitioner intended to threaten Jones.

Because the State presented evidence that Jones was a potential witness against Petitioner, was intimidated by Petitioner's thinly veiled threat to her and her family, and feared testifying against Petitioner after receiving the package, the State met its burden of producing evidence that reasonably tended to prove Petitioner's guilt. The trial court properly denied Petitioner's directed verdict motion, and the Court of Appeals correctly affirmed. The petition should be denied.

II.

Petitioner's argument that the trial court erred by admitting evidence of the underlying incident that gave rise to the witness intimidation charge is not preserved for review because Petitioner did not object when testimony regarding the incident was offered at trial. Likewise, Petitioner's constitutional argument was never raised to the trial court and is not preserved. Even if preserved, the trial court correctly admitted the evidence because it was necessary to prove the elements of the offense.

Petitioner claims the Court of Appeals erred "in affirming the trial court's decision admitting the breach of peace as evidence under the res gestae theory." Petitioner first alleges the State "introduced the breach of peace charge as part of the res gestae," but failed to prove by clear and convincing evidence that a breach of peace occurred. Petitioner did not object on this basis at trial, so the issue is not r=preserved for review. Even if preserved, Petitioner ignores the fact that in order to prove witness intimidation, the State was required to prove that the victim was a potential witness against Petitioner in a legal action. Petitioner repeatedly claimed the breach of peace charge was legally invalid, that he could prevail if that case was brought to trial, and that the State should be required to try that case before the witness intimidation case. But these are separate issues, and irrelevant to guilt of witness intimidation. Furthermore, Petitioner has not properly preserved this issue for appeal because he did not object when testimony regarding the breach of peace incident was offered at trial, and did not make this argument to the Court of Appeals. Instead, Petitioner argued the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional. Petitioner maintains this assertion in his petition. However, this issue was neither raised to nor ruled upon by the trial court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); see also State v. Langford, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be

preserved like any other issue on appeal."). The Court of appeals correctly ruled this issue is not preserved for appellate review. Even if preserved, Petitioner has not stated a constitutional violation or given any legitimate basis for exclusion of evidence of the breach of peace incident. The issue is meritless and the petition should be denied.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. An appellate court will affirm a trial court's factual findings "if there is any evidence to support the ruling." State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

Discussion

It is unclear whether Petitioner desired the trial court to exclude all evidence of the underlying incident or just the fact that Petitioner was charged with breach of peace. Petitioner made little argument to the trial court, and did not specify which testimony he wanted the court to exclude. He vaguely argued, "with regard to the breach of peace, I don't think it is connecting to the victim in this case [sic]" and "based on that, I don't think it should be a part of the intimidation charge." App. 27. He claimed that the State's only interest in the breach of peace incident was to "bring it in the back door" as a prior bad act. App. 30. In either case, Petitioner abandoned the issue when he failed to object when Jones testified regarding Petitioner's conduct that gave rise to the breach of peace charge. App. 63-65. Jones testified that she and several coworkers met Petitioner for lunch around June, 2013. Petitioner was not working with UPS at that time. App. 63. During this lunch, Petitioner made the comments about owning a military-style rifle and armor-piercing bullets, and that he wanted to see the director of inside sales "to

leave that place in a box." App. 63. Petitioner did not object to this testimony. Jones then testified that she notified her human relations department at work, and that she believed Petitioner was thereafter arrested, but she didn't know the specifics. App. 64-65. Jones then testified "there was a lot of police presence on-site, and they dismissed us early." App. 65. At this point, Petitioner made a generic objection and asked to approach the bench. The court overruled the objection, and Petitioner never stated the basis for his objection on the record. Jones testified she agreed to testify against Petitioner if the breach of peace case went to trial. App. 63.

Investigator Wood also testified about the lunch as the basis for the breach of peace charge. Petitioner did not object to this testimony either. App. 92-93. On the contrary, Petitioner specifically questioned Investigator Wood about the lunch incident during his cross examination. App. 94-95. In so doing, Petitioner has waived any objection to testimony regarding the facts of the underlying incident. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005) (noting that petitioner has the burden of establishing a sufficient record and declining to address the merits of a claim when facts underlying the claim are not included in the record); State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal).

Furthermore, Petitioner never alleged at trial or the Court of Appeals that the State failed to prove the facts of the underlying charge by clear and convincing evidence. Neither did he make this argument at trial or to the Court of Appeals. Petitioner may not raise this issue for the first time in this petition. Kleckley v. Northwestern National Casualty Company, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (quoting Rule 226(d)(2), SCACR as follows: "Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the

petition for writ of certiorari as a question presented to the Supreme Court." (emphasis in the opinion)).

Petitioner argued at length during pretrial hearings that his arrest for the underlying breach of peace was improper. Again in his brief to the Court of Appeals, he argued that "there is no basis in fact to establish that [Petitioner]'s conversation with his co-workers was a breach of peace." Ct. App. Br. 7. Even now, in his petition, he alleges that "without resolution on breach of peace charge, there is no established predicate acts for the witness intimidation charge." Petition 12. This is simply false, as the statute does not require that a defendant be guilty or liable in whatever action involving the potential witness. Petitioner claims "He simply made a statement that he wanted to see a manager take his belongings out in a box." Ct. App. Br. 7.[2] Petitioner also claims none of the other co-workers expressed any discomfort regarding his statements at the lunch and that he did not say anything about or to the co-workers who were there. Finally, he claims he was not arrested at the scene of the incident.

Petitioner still fails to grasp that the question of guilt or innocence on the breach of peace charge is not relevant to the question whether the State was entitled to show the fact of the charge. Regardless of its merits, the fact that an underlying charge existed was necessary to show that Petitioner had been charged with a crime and that Victim was a potential witness in a trial for that crime. Petitioner alleges trial court error on a case that was never brought to trial.

Petitioner also repeats the accusation that his arrest for breach of peace was unconstitutional— an argument that was rejected by the Court of Appeals as unpreserved. Petitioner never asked the trial court to make a determination that his underlying conviction was

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[2] Jones's testimony was that Appellant *first* said his fixation was for the director of inside sales to "*leave that place in a box*" and only then did he correct himself and say he meant "*with a box*" with him beside the director. Appellant admits he made the original statement but asks this Court to consider only the portion made after he "corrected" himself. Ct. App. Br. 7.

unconstitutional, so he cannot argue now that the trial court erred in failing to dismiss his current charge on that basis. In any event, Petitioner has failed to articulate any valid grounds to support his argument that his arrest for breach of the peace was in fact unconstitutional. None of his claims in any way demonstrate an error by the trial court regarding a failure to declare the breach of peace arrest unconstitutional, particularly where that arrest did not lead to the conviction that is the subject of this appeal. His argument amounts to a challenge to the factual basis for his arrest for breach of peace, not a claim that any particular constitutional provision was violated. Petitioner erroneously confounds the merits of the breach of peace arrest with its relevance to proving witness intimidation.

Finally, Petitioner has not shown prejudice from the alleged error. The State did not introduce evidence of Petitioner's guilt of the breach of peace charge or go into any unnecessary details about his arrest. The State did not go into any detail beyond the fact the Petitioner was arrested because of his conduct at the restaurant, testimony that was necessary to prove the elements of witness intimidation. Petitioner's assertions that the State was merely trying to make him look bad is completely without support in the record. Petitioner's arguments are both unpreserved for appeal and without merit. His petition should be denied.

III.

Petitioner's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

Petitioner argues the trial court erred by denying him his right to a speedy trial, yet this issue was never brought before the trial court. The only mention in the record of a speedy trial motion was what Petitioner told Judge Kelly on February 9, 2015, during the hearing with UPS counsel. Thus, this issue was not raised to or ruled upon by the trial court and is not proper for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

Furthermore, Petitioner never argued either at trial or at the pretrial hearing with UPS that he was being denied a speedy trial on the charge now on appeal. Rather, he brought it up in the larger context of arguing to the court that because the breach of peace charge seemed not to be going forward, the intimidating a witness charge was based on nothing. Petitioner stated, "So the breach of peace case that he spoke of earlier, they never brought that to trial because there's no breach of peace. And I've asked for speedy trials and everything all along, never given the opportunity to do that. Now I understand they're not going to bring that. So the case that he's allegedly intimidating a witness they're not even pursuing. . . . [T]here's nothing there." App. 15-16. (emphasis added.) Petitioner continues this argument on appeal.

Based on Petitioner's statements above and in his appellate brief, it is clear that any speedy trial motions he may have made were in reference solely to the breach of peace charge, not the charge in this case. Nothing in this record indicates he made any such motion on the intimidation of a witness charge now on appeal before this Court. Therefore, there is no ruling to

review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."). The petition should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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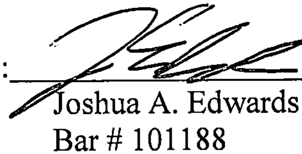
WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 24, 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2018-001561

THE STATE, Respondent,

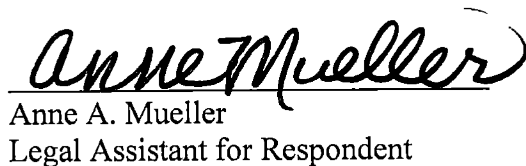
v.

COURTNEY RAY MITCHELL, Petitioner.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Return to the Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his counsel of record Donald L. Smith, Esquire, 122 N. Main Street, Anderson, SC 29621.

I further certify that all parties required by Rule to be served have been served.
This 24th day of September, 2018.



Anne A. Mueller
Legal Assistant for Respondent

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SEP 24 2018
S.C. SUPREME COURT