STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to Marlboro County
Appeal from Marlboro County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2018-000493

HARRY JAMES ROLLER,

Petitioner,

vs.

THE STATE,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion by declining to grant the extreme remedy of a mistrial after the solicitor improperly made a vague reference to Roller's prior convictions as part of her opening statement because the solicitor's brief remark was not sufficiently prejudicial to warrant the grant of a mistrial in light of the facts it was never repeated or alluded to again, no evidence was ever presented to corroborate the solicitor's remark or establish Roller had previously been convicted of any offenses, and the trial judge presented instructions to the jury both before and after the isolated comment was made that ensured the jurors understood arguments of counsel were not evidence and the verdict had to be based solely on the actual evidence presented during trial.

STATEMENT OF THE CASE

In October of 2016, Petitioner Harry James Roller was arrested shortly after he was observed running from a retail store located in McColl, South Carolina, with his arms full of stolen merchandise. In November of 2016, the Marlboro County Grand Jury indicted Roller for one count of third-offense-or-greater shoplifting. On December 12, 2016, a jury trial was commenced in the Marlboro County Court of General Sessions with the Honorable D. Craig Brown, circuit court judge, presiding. At the conclusion of trial, the jury convicted Roller as indicted, and the trial judge sentenced him to a seven-year term of imprisonment.

Following the trial, Roller did not file an appeal. Instead, on March 15, 2017, Roller filed an application for post-conviction relief, and, in response, the State filed a return and motion to dismiss seeking summary dismissal based on Roller's failure to state a cognizable claim. Thereafter, on August 24, 2017, an amendment to Roller's application was filed by post-conviction relief counsel requesting belated appellate review.

Subsequently, on January 16, 2018, an evidentiary hearing was conducted in regard to Roller's post-conviction relief application in the Dillon County Court of Common Pleas with the Honorable Roger E. Henderson, circuit court judge, presiding. During the hearing, the State conceded Roller was entitled to belated appellate review pursuant to White v. State, 263 S.C 110, 208 S.E.2d 35 (1974), and Roller voluntarily withdrew his remaining allegations. Thereafter, through an order filed on February 28, 2018, the post-conviction relief judge granted Roller belated appellate review pursuant to White and denied Roller's other allegations. Roller then timely filed a notice of appeal.

STATEMENT OF FACTS

On the afternoon of October 3, 2016, Sergeant Billy Stubbs of the McColl Police Department was positioned near the Dollar General store located in McColl, South Carolina, when he observed a burgundy truck pull up and stop outside the store. (App'x pp. 42-43; p. 48). Shortly after that, Petitioner Harry James Roller, who was a passenger in the truck, exited the vehicle and entered the Dollar General store. (App'x p. 43). Then, only ten to fifteen minutes later, Roller exited the store carrying a load of shirts in his arms, and an employee quickly followed behind him excitedly yelling out Roller had stolen the merchandise he was carrying.[1] (App'x pp. 43-44; p. 55; pp. 57-58). At that point, Roller took off running and ran directly by Sergeant Stubbs, who called out for Roller to stop. (App'x p. 44; p. 48; p. 50; pp. 58-59). However, Roller ignored the officer's commands and continued on to an apartment complex located just a hundred yards away from the store. (App'x pp. 44-45).

After seeing Roller flee to the apartment complex, Sergeant Stubbs quickly headed to that location, and some residents there directed him to the apartment of Wayne Taylor. (App'x p. 45). When the officer arrived at Taylor's apartment, he noticed the door was ajar, knocked, and received no response from anyone inside. (App'x p. 45; p. 51). He then secured the apartment from outside, and Taylor, who had not been home until that time, arrived on the scene a few minutes later. (App'x p. 45). At that point, Sergeant Stubbs obtained consent from Taylor to search the apartment, went inside, and found Roller hiding inside the kitchen pantry, which also contained around fifteen or twenty stolen Carolina Gamecocks shirts. (App'x pp. 45-47; p. 55). Upon being discovered, Roller quickly denied taking the shirts. (App'x p. 47). However, the officer advised Roller he saw him run out of the store, and Roller responded by hanging his head

[1] Tellingly, Roller's arms had been empty when he entered the store. (App'x p. 54).

and asserting Taylor had nothing to do with "it." (App'x p. 47). Roller was then arrested for shoplifting.[2] (App'x p. 47; pp. 131-132).

Subsequent to Roller's arrest, he was indicted for third-offense-or-greater shoplifting based on his extensive prior criminal record, and he proceeded to trial.[3] (App'x p. 4; pp. 91-92; pp. 128-129). At the outset of trial, defense counsel stipulated outside the presence of the jury to the existence of Roller's prior convictions, which were necessary to enhance his crime to a felony, to prevent the jury from learning of those convictions, and the trial judge accepted the stipulation. (App'x pp. 18-20; pp. 128-129). Thereafter, as the trial moved forward, the trial judge presented some preliminary remarks to the jury during which he noted the State had the burden of proving Roller's guilt beyond a reasonable doubt, specifically instructed the jurors they must determine the facts based on the testimony and evidence, and cautioned the jurors the things said by the attorneys during the opening statements were *not* evidence, which would solely come from the witness testimony and exhibits presented. (App'x pp. 25-33).

Following those preliminary remarks, the parties proceeded to present their opening statements to the jury, and, during the solicitor's opening statement, the solicitor made the following comments:

> [Y]ou have heard the Judge tell you that my burden of proof, burden of proof on behalf of the State, to prove to you beyond a reasonable doubt that this particular Defendant, Harry James Roller, did commit this offense. And as you have also heard the offense was actually shoplifting of a value of goods or

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[2] At some point prior to trial, the stolen shirts, which had a reported value of $225, were returned to the store. (App'x pp. 47-48; p. 56; p. 59).

[3] Prior to his most recent arrest, Roller had previously been convicted of five different counts of shoplifting along with numerous other crimes, including assault and battery of a high and aggravated nature, criminal domestic violence, grand larceny, second-degree burglary, breach of trust, third-degree assault and battery, malicious injury to personal property, driving under suspension, failure to stop for a blue light, and obtaining property by false pretenses. (App'x pp. 91-92).

> merchandise of a value of less than $2,000 with an enhancement which is he has these prior convictions for the same type of a charge of shoplifting. And there will be a stipulation in this case --

(App'x p. 34). At that point, defense counsel swiftly objected, and the trial judge conducted a bench conference with the parties. (App'x pp. 34-35). During the bench conference, the trial judge offered to present a curative instruction, but defense counsel rejected the trial judge's offer on the basis he believed it would call too much attention to the issue. (App'x pp. 63-64). The solicitor then continued forward with her opening statement without making any further references to the existence of any prior convictions. (App'x pp. 35-38). After that, defense counsel presented his opening statement to the jury and specifically reminded the jury nothing he or the solicitor stated constituted evidence. (App'x pp. 37-38).

Thereafter, the jury was excused from the courtroom, and defense counsel moved for a mistrial based on the solicitor's reference to Roller's prior convictions during her opening statement. (App'x p. 39). In response, the solicitor conceded her remark about the prior convictions was improper but indicated she had mistakenly believed the parties' stipulation was going to be presented to the jury during trial. (App'x pp. 39-40). After considering the matter, the trial judge ruled the solicitor's remark was improper. (App'x p. 40). However, the trial judge found the remark was merely a vague reference to Roller's past conduct and, therefore, concluded it was questionable whether the jury understood its implication. (App'x pp. 40-41). Furthermore, the trial judge noted the State would not be introducing any evidence of Roller's prior convictions as the trial moved forward and the jury had been instructed the arguments of counsel were not evidence. (App'x p. 41). Accordingly, the trial judge concluded the solicitor's vague remark about Roller's prior convictions was not sufficiently prejudicial to warrant the grant of a mistrial and denied the motion. (App'x pp. 40-41).

Subsequently, as the trial continued into the evidentiary phase, Sergeant Stubbs recounted the events of the date of the incident, specifically identified Roller in the courtroom as the person he saw rapidly fleeing from the Dollar General store with his arms full of stolen merchandise, and indicated he apprehended Roller a short time after the crime hiding in another person's pantry while still in possession of the stolen goods. (App'x pp. 42-55). Likewise, Shameika Clark, who was working at the Dollar General store on the date of the incident, confirmed a man stole "a bunch" of shirts that day, and she recounted she watched as the man ran away from the store with the pilfered items before she called the police. (App'x pp. 55-59).

Following the presentation of that testimony, the trial judge reminded the jurors the arguments of counsel were not evidence. (App'x p. 67). The parties then presented their closing arguments to the jury. (App'x pp. 68-75). During those closing arguments, no references to Roller's prior convictions were made in any way, and defense counsel again reminded the jury the arguments of counsel were not evidence. (App'x pp. 68-75). After that, the trial judge instructed the jury on the applicable law. (App'x pp. 75-87). In doing so, the trial judge advised the jurors they had a duty to apply the law as instructed, explained the State had the burden of proving Roller's guilt beyond a reasonable doubt, emphasized Roller was presumed to be innocent until proven guilty, and directly instructed the jurors they must *only* consider the competent evidence presented when determining whether the State had met its burden of proving Roller's guilt. (App'x pp. 75-79).

Subsequently, at the conclusion of trial, the jury convicted Roller as indicted. (App'x pp. 88-89). The trial judge then sentenced Roller to a seven-year term of imprisonment. (App'x p. 95).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Decisions regarding whether to grant or deny the extreme remedy of a mistrial rest within the broad discretion of the trial judge, and such decisions will not be disturbed on appeal absent a prejudicial abuse of discretion amounting to an error of law. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000); see State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988) ("This Court favors the exercise of the wide discretion of the circuit judge in determining the merits of such motion in each individual case."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The trial judge did not abuse his broad discretion by declining to grant the extreme remedy of a mistrial after the solicitor improperly made a vague reference to Roller's prior convictions as part of her opening statement because the solicitor's brief remark was not sufficiently prejudicial to warrant the grant of a mistrial in light of the facts it was never repeated or alluded to again, no evidence was ever presented to corroborate the solicitor's remark or establish Roller had previously been convicted of any offenses, and the trial judge presented instructions to the jury both before and after the isolated comment was made that ensured the jurors understood arguments of counsel were not evidence and the verdict had to be based solely on the actual evidence presented during trial.

Roller contends the trial judge erred by refusing to grant a mistrial after the solicitor mentioned he had prior convictions for the same type of charge as shoplifting during her opening statement. In support of that contention, Roller simply maintains the solicitor's comment to the jury about his prior convictions was prejudicial to him. Although the solicitor's brief reference to Roller's prior conviction was—by the solicitor's own admission—improper, that vague reference was not repeated again at any point during the trial, was not followed by the presentation of any evidence establishing Roller had previously been convicted of any criminal offenses, was both preceded by and followed by repeated instructions from the trial judge the arguments of counsel were not evidence, and was followed by other jury instructions that emphasized Roller was presumed to be innocent and could only be convicted based on the competent testimony and evidence presented during trial. Under those circumstances, any prejudice that could have resulted from the solicitor's vague and unrepeated remark about Roller's prior convictions was sufficiently eliminated or reduced such that the extreme sanction of the granting of a mistrial was not warranted in Roller's case. Therefore, the trial judge did not abuse his broad discretion by declining to grant a mistrial based solely on a brief, isolated, and vague reference to Roller's past criminal conduct, and there is no proper basis upon which to reverse the trial judge's ruling on appeal. Roller's conviction should be affirmed.

During the course of a criminal trial, the occurrence of an error in some form or fashion is "virtually inevitable[,]" which is why a defendant is only guaranteed a fair trial as opposed to a perfect one. Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986); see State v. Black, 400 S.C. 10, 29, 732 S.E.2d 880, 891 (2012) ("[A] defendant is entitled to a fair trial, not a perfect one."). When an error occurs, one remedy available to a trial judge is to grant a mistrial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). However, the granting of a mistrial is an extreme remedy that should only be imposed when an incident occurs during trial that is so grievous its prejudicial impact cannot be removed through any other means. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). In determining whether to grant a mistrial, the trial judge should consider whether the mistrial is dictated by manifest necessity and must exhaust all other methods to cure any possible prejudice that occurred prior to stopping the trial. State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct. App. 2002); see Council, 335 S.C. at 13, 515 S.E.2d at 514 ("[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial."); State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment."). Significantly, a mistrial should *not* be granted unless "absolutely necessary." Harris, 340 S.C. at 63, 530 S.E.2d at 627-628; see State v. Brown, 389 S.C. 84, 94, 697 S.E.2d 622, 627 (Ct. App. 2010) ("A manifest necessity must exist for the trial court to discharge the jury and declare a mistrial.").

In the case sub judice, the solicitor—by her own admission—improperly made a vague remark during the course of her opening statement that suggested Roller had "prior convictions for the same type of a charge" as the one for which he was on trial. Unquestionably, under the

circumstances, the solicitor should not have made that particular remark as Roller's prior convictions were only relevant for jurisdictional and sentencing purposes and were not properly admissible as evidence during Roller's trial. Compare Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (recognizing "the fact of a prior conviction" does *not* have to be submitted to the jury when that fact merely serves to statutorily enhance a crime); with State v. Benton, 338 S.C. 151, 155, 526 S.E.2d 228, 230 (2000) (instructing a defendant cannot require the solicitor to stipulate to the existence of prior convictions in lieu of informing the jury about the convictions when the existence of prior convictions is an actual element of the charged offense).

Nonetheless, even though an error occurred in Roller's case, a mistrial was not warranted under the circumstances for a variety of different reasons. See State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999) ("A mistrial should not be ordered in every case in which incompetent evidence is received."); see also Darden v. Wainwright, 477 U.S. 168, 181 (1986) (explaining it is not alone enough for a solicitor's remarks to be "undesirable or even universally condemned" for those remarks to rise to the level of reversible error (internal quotations omitted)). First and foremost, the solicitor's remark—which was never repeated or alluded to again at any point during trial—only vaguely referenced the existence of Roller's prior convictions, which helped minimize any prejudice that could have resulted from the remark. See Council, 335 S.C. at 13, 515 S.E.2d at 514 (finding no prejudice resulted from the admission of testimony establishing law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676

(1961) (finding a witness's testimony Robinson told him he was on the way to the "probition office" did not create an inference Robinson had been convicted of another crime), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Additionally, no actual evidence of Roller's prior convictions was ever introduced during trial, and the jury never learned any specific details of Roller's prior crimes at any point during trial, which similarly helped to minimize or eliminate any possible prejudice that could have resulted. See State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes."); cf. State v. Wiley, 387 S.C. 490, 496, 692 S.E.2d 560, 563 (Ct. App. 2010) ("[W]e believe the State's comment regarding Wiley's warrant was merely a vague reference to his prior criminal record that did not justify granting his motion for mistrial. Furthermore, even if the jury inferred that Wiley committed another crime from the State's opening statement, we believe Wiley was not prejudiced because the State never attempted to prove Wiley was convicted of some other crime. Therefore, we conclude the State's opening statement regarding Wiley's unrelated outstanding warrant was not sufficiently prejudicial to warrant a mistrial." (citations omitted)). Furthermore and significantly, the trial judge repeatedly instructed the jurors both before and after the improper remark was made the arguments of counsel were not evidence and the verdict had to be based on the competent evidence actually presented during the course of trial, which ensured the jurors would not improperly consider the solicitor's improper comment when deciding Roller's case.[4] See Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999)

[4] Significantly, defense counsel never specifically argued the trial judge's instructions to the jury were insufficient to cure or eliminate any prejudice that could have resulted from the solicitor's improper opening statement remarks. (App'x pp. 39-41; pp. 63-65). Instead, defense counsel

("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice." (citations omitted)); see also United States v. Mullins, 446 F.3d 750, 762 (8th Cir. 2006) (holding the trial judge's instruction to the jury indicating the arguments of the lawyers were not evidence "served to alleviate any risk of unfair prejudice" that could have resulted from improper remarks made by the prosecutor during his closing argument); cf. Zafiro v. United States, 506 U.S. 534, 540-541 (1993) (finding any prejudice that could have resulted from a potential error was cured by instructions to the jury that included an admonishment "that opening and closing arguments are not evidence"); State v. Arther, 290 S.C. 291, 295, 350 S.E.2d 187, 189 (1986) ("The trial judge did charge the jury not to consider anything heard outside the courtroom. This charge was adequate under the circumstances to ensure the jury would render a verdict based upon the

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rejected the trial judge's offer of a contemporaneous curative instruction based on a belief it would call unnecessary attention to the error while appearing to acquiesce in the trial judge's suggestion he "may be able to clean it up a little bit later on." (App'x pp. 63-65). Therefore, because Roller rejected the trial judge's offer of a contemporaneous curative instruction and never raised any specific objections to the sufficiency of the curative measures ultimately undertaken, any issue regarding the sufficiency of the curative measures was not properly preserved for appellate review and cannot properly be considered on appeal. See State v. Wilson, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) ("[A]s the law assumes a curative instruction will remedy an error, failure to accept such a charge when offered, or failure to object to the sufficiency of that charge, renders the issue waived and unpreserved for appellate review."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); cf. State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 267 (1996) (holding Tucker waived any issue with the trial judge's refusal to grant a mistrial in response to an improper argument made by the solicitor because "he refused the trial judge's offer of a curative instruction"); State v. Bantan, 387 S.C. 412, 418, 692 S.E.2d 201, 204 (Ct. App. 2010) ("Bantan objected, requesting a mistrial and the matter was discussed outside the jury's presence. The court denied the motion for mistrial and offered a curative instruction . . . . Bantan declined both proposed curative instructions, arguing the prejudicial impact of the testimony could not be cured. This issue is not preserved for our review. By rejecting the trial court's offer to give a curative instruction, Bantan waived any challenge to the offending testimony on appeal.").

evidence presented."). Finally, since the existence of Roller's prior convictions was never established or confirmed at any point subsequent to the solicitor's brief remark on that matter, the solicitor's failure to support her opening statement remark could have only served to damage the solicitor's credibility in the eyes of the jury, which helped ensure Roller was not personally prejudiced by the remark. See McAleese v. Mazurkiewicz, 1 F.3d 159, 166 (3rd Cir. 1993) (instructing an attorney's failure to later produce evidence during trial that was promised in an opening statement constitutes "a damaging failure").

Accordingly, as the solicitor's vague reference to Roller's prior convictions was never repeated, no evidence was presented to support the solicitor's remark, no actual evidence of Roller's prior convictions was ever introduced, and the trial judge's instructions served to ensure no consideration would be given to anything other than the actual evidence presented, the isolated error that occurred during the solicitor's opening statement was not sufficiently prejudicial to warrant the grant of the extreme remedy of a mistrial in Roller's case.[5] See Beckham, 334 S.C. at 310, 513 S.E.2d at 610 ("The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial

[5] Notably, in light of the presentation during the course of trial of unrefuted testimony establishing Roller was directly observed running from the Dollar General with an armful of stolen merchandise on the date of the incident and was apprehended just minutes later hiding in another person's pantry along with his ill-gotten goods, any error that could have resulted from the solicitor's remarks was rendered entirely harmless as it could not have had any impact on the outcome of the case. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the 'wicked flee when no man pursueth;' and Shakespeare made guilty Hamlet to soliloquize that 'conscience does make cowards of us all.' "); cf. State v. Jenkins, 412 S.C. 643, 652, 773 S.E.2d 906, 910 (2015) ("Notwithstanding the DNA evidence, there was abundant, independent evidence in the record from which the jury could have found [Jenkins] guilty.").

effect can be removed in no other way."); see also United States v. Robinson, 110 F.3d 1320, 1326-1327 (8th Cir. 1997) ("The District Court instructed the jury before closing arguments began that the statements of counsel are not evidence. These instructions served to alleviate any risk of prejudicial impact."); cf. State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 268 (1996) (finding the trial judge did not abuse his discretion by declining to grant a mistrial based on the solicitor's improper closing argument remarks where "the comment was one isolated event in the entire argument" and "the trial judge charged the jury that counsel's arguments had no evidentiary value and could not be used as that basis to reach a verdict"). Therefore, the trial judge did not abuse his broad discretion by declining grant a mistrial, and there is no proper basis upon which to disturb the trial judge's discretionary decision on appeal. See Harris, 340 S.C. at 63, 530 S.E.2d at 628 (instructing a trial judge's ruling on a mistrial motion "will not be disturbed on appeal absent an abuse of discretion amounting to an error of law"); see also State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 179, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."). Roller'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,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: _____
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 8, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to Marlboro County
Appeal from Marlboro County
Honorable Roger E. Henderson, Circuit Court Judge
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HARRY JAMES ROLLER,

Petitioner,

vs.

THE STATE,

Respondent.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: _____
Mark R. Farthing
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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HARRY JAMES ROLLER,

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vs.

THE STATE,

Respondent.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Brief of Respondent Pursuant to White v. State on Petitioner by sending two copies of the same to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of February, 2019.

Shana Montgomery

SHANA MONTGOMERY
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

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FEB 08 2019
S.C. SUPREME COURT

February 8, 2019

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: Harry James Roller v. State – Appellate Case No. 2018-000493

Dear Ms. DuRant:

I am enclosing two copies of the Brief of Respondent Pursuant to White v. State, along with proof of service, in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Daniel E. Shearouse (original and fourteen enclosed)
Victim Services