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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-000148

THE STATE

APPELLANT,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

FINAL REPLY BRIEF OF APPELLANT

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SC Court of Appeals

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ARGUMENT

THE STATE PROPERLY PRESERVED ITS OBJECTIONS TO THE TESTIMONY OF OFFICER STAIR AND SGT. DRAKE AS IRRELEVANT AND IMPROPER CHARACTER EVIDENCE

Respondent asserts the objections raised by the State to the testimony of the two officers did not properly preserve the argument that the testimony was irrelevant and inadmissible character evidence. Appellant submits this contention is not supported by the record.

- A. The State did contend the testimony was inadmissible because it was irrelevant and improper character evidence.

In making the objection, Solicitor Finney stated as follows:

I believe counsel is attempting to illicit information **about character/conduct of the deceased** from the period of 2007. And **I do not think it is relevant to this hearing**. We do not think it is probative of the issue of the Duncan case. And we would strongly object, especially because this Court is sitting today as judge and jury, and therefore **any indication of some prior act is going to have some impact on your ability to make a decision** that needs to be made at the conclusion of Duncan Hearing.

(R. p. 133, ll 16-24) (emphasis added).

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010) (citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)). “Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Brannon, 388 S.C. at 502, 697 S.E.2d at 595-96 (citing Hubbard v. Rowe, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939)). Here, the State sufficiently argued that the testimony was improper because it was irrelevant and

was not proper character evidence for the court to consider. The trial court's explanation for why it was overruling the objections reflected that it understood the nature of the objections raised as being both on relevance grounds and on the propriety of the character evidence that was about to be presented. (R. pp. 134-36). The State also renewed those objections in its Motion for Reconsideration. (R. pp. 431-32).

B. The trial court did rule upon the objections, and the State took the actions necessary to preserve the issue for appeal.

Contrary to Respondent's assertions, the court did not reserve its ruling on the objections. The court overruled the objections, but noted that it would allow the State to address the issues again later if the State felt further argument was warranted. This is underscored by the colloquy between the court and the solicitor after the court overruled the objections:

For all those reasons, I am going to overrule your objection.

MR. FINNEY: Please note for the record, Your Honor, our continuing objection throughout his testimony. As we have noted, you are sitting as the Judge and the jury, and we are bound to your acknowledging all of the evidence you are about to hear.

THE COURT: All right. So, noted. And the Court appreciates not only the specifics of your objections, but the nuisance of why it concerns you, and the Court will receive the information and use it accordingly, and not for an inappropriate purpose.

But, nevertheless, that preserves your right to address this again before a final decision is made.

(R. p. 136, ll 4-17).

In light of the fact the State's objection was overruled, it could not move to strike the testimony. State v. Wilson, 389 S.C. 579, 584, 698 S.E.2d 862, 864

(Ct.App.2010)(“[W]hen an objection has been overruled, the objecting party has suffered an adverse ruling which can be appealed without any further allegation of error.”). Further, at the first instance that the State could renew its objections, it did. The State learned the court was going to rely upon the irrelevant and improper testimony of Officer Stair and Sgt. Drake when the court sent the parties its letter dated November 5, 2012. The State sent its letter reasserting its position that the testimony was improperly admitted on November 14, 2012. (R. pp. 431-32). Altogether, Appellant submits these issues were properly preserved and should be considered by this Court.

CONCLUSION

For the foregoing reasons and the reasons stated in the Brief of Appellant, Appellant respectfully requests this Court vacate the trial court's Order Granting Immunity and Dismissing Criminal Charges and remand the case for a jury trial.

Respectfully submitted,

ALAN WILSON
Attorney General

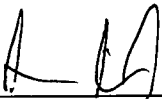
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RESPONDENT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 3rd day of March, 2014.



ALPHONSO SIMON, JR.
Assistant Attorney General

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STATE OF SOUTH CAROLINA
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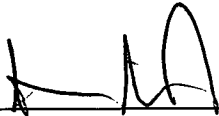
RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Final Reply Brief of Appellant and Certificate of Compliance on Respondent by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, S. Jahue Moore, Sr., Esq., M. Brooks Biediger, Esq., Margaret A. "Meg" Hazel, Esq., 1700 Sunset Blvd., Post Office Box 5709, West Columbia, South Carolina 29171.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of March, 2014.



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