

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of General Sessions

Michael G. Nettles, Jr., Circuit Court Judge

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Appellate Case No. 2016-002010

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**RECEIVED**  
MAY 06 2019  
SC Court of Appeals

THE STATE,

Respondent,

v.

GEORGE HOLMES,

Appellant.

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RETURN TO PETITION FOR REHEARING

Opinion No. 2019-UP-133

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On April 10, 2019, this Court affirmed Appellant’s conviction for indecent exposure. Appellant raised one issue on appeal: whether the trial court erroneously refused to grant a directed verdict. Appellant gave two reasons why the motion should have been granted: 1) Appellant’s cell at the Berkeley County Detention Center was not a “public place” within the meaning of the indecent exposure statute; and 2) the State produced no evidence of “willful and malicious” conduct.

Appellant petitions for rehearing on the ground that this Court did not address his “willful and malicious” argument. Although the Court’s opinion indeed did not address this specific

aspect of Appellant's argument, it correctly held that the denial of the directed verdict was proper. Appellant suggests this Court did not reach the "willful and malicious" aspect of his argument because it found Appellant's challenge to the directed verdict standard employed by the trial judge unpreserved. The State does not believe this to be accurate. The Court's finding that Appellant failed to preserve his challenge to the trial court's articulation of the directed verdict standard has no bearing on whether evidence existed to support its ruling denying the motion for directed verdict. See State v. Larmand, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (explaining an appellate court must affirm the denial of a directed verdict motion if there is any evidence reasonably tending to prove guilt). Indeed, the State did not argue in its brief that the "willful and malicious" argument was unpreserved, but instead addressed (and refuted) the merits of Appellant's argument. See Brief of Respondent at 13–16.

In any case, there is ample evidence in the record of willful and malicious conduct to support the trial court's ruling in this regard. As discussed in the State's brief, Appellant intentionally positioned himself so that a female corrections officer could see his penis through a gap in the cell door as he masturbated. This act was the culmination of Appellant's continuous harassment of the officer, during which he yelled at her, calling her names such as "a cunt, a coke head, a dope fiend, a slut, a whore." He further threatened the officer, telling her he knew where she lived and was going to pay her a visit. See Brief of Respondent at 15–16. Certainly, this conduct meets the threshold for willful and malicious conduct. See Brief of Respondent at 13–15. The trial court found that whether the conduct was intentional was "clearly a legitimate question of fact," and correctly submitted the case to the jury. (R. pp. 19–20). Accordingly, although the Court did not explicitly address this aspect of Appellant's argument, it arrived at a correct result.

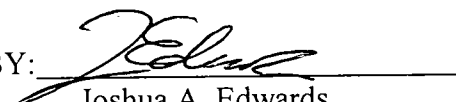
The remainder of Appellant's petition rehashes the error preservation and "public place" arguments this Court addressed in its opinion. Appellant has failed to demonstrate any fact or rule of law which was either misapprehended or overlooked by this Court in its determination of these issues. Even though the Court's opinion does not specifically address the "willful and malicious" aspect of Appellant's argument, this ground can be subsumed within Part One of the Court's opinion addressing the denial of the directed verdict motion generally. Even if the Court deems it necessary to address the argument in an amended opinion, no substantive rehearing is necessary. The issue is fully argued in the parties' briefs. Because this Court arrived at the correct result and no further argument is necessary to address the issue, Appellant's petition for rehearing should be denied.

Respectfully submitted,

ALAN WILSON  
Attorney General

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BY:

  
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ATTORNEY FOR RESPONDENT

May 6, 2019

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the within Return To Petition For Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to attorney of record, Lara M. Caudy, 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 6<sup>th</sup> day of May, 2019.



Anne Mueller  
Legal Assistant

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ALAN WILSON  
ATTORNEY GENERAL

May 6, 2019

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MAY 06 2019

SC Court of Appeals

Lara M. Caudy, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

RE: State v. George Holmes  
Appellate Case No. 2016-002010

Dear Ms. Caudy:

I am enclosing two (2) copies of the Return to the Petition for Rehearing in the above-referenced case.

Sincerely,

Joshua A. Edwards  
Assistant Attorney General  
S.C. Bar No. 101188

JAE/aam  
Enclosures

cc: Honorable Jenny A. Kitchings (original and 6 copies enclosed)  
Victim Advocacy Division