

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM HORRY COUNTY  
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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Appellate No.: 2017-000281

The State of South Carolina

Respondent

Vs.

Jawan Rayel White

Appellant,

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PETITION FOR REHEARING BY APPELLANT

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MAY 16 2019  
SC Court of Appeals

## ARGUMENT

I. The Court's May 1, 2019 opinion misapprehends the first issue appealed in the Final Brief of Appellant: whether the trial judge's denial of petitioner's motion for a new trial was an abuse of discretion and controlled by an error of law on the ground that the trial court erroneously charged the jury that appellant's guilt could be found on either the legal theory of conspiracy to purchase heroin or attempt to purchase heroin.

The Court's opinion corrected states that an issue must be raised before and ruled upon by the trial court in order to be preserved for appellate review. *State v. Dunbar*, 356 S.C. 138; 587 S.E.2d 691 (2003). However, Appellant is not appealing the admitted trial error of erroneously charging the jury with the legal theory of conspiracy. It is true that Appellant's trial counsel did not object to the erroneous charge; therefore, that issue was not preserved for appellate review. What Appellant in fact is appealing was the trial court's denial of his post-trial motion for a new trial under the Thirteenth Juror doctrine, which was raised before the trial court and denied twice on the original motion and on request for reconsideration. (See Final Brief of Appellant). Appellant accepts some culpability for the Court's misapprehension of first issue on appeal; the issue probably would have been more apparent should Appellant had put more emphasis on the trial court's failure to grant his post-trial motion for a new trial under the Thirteenth Juror doctrine because the verdict was affected by juror confusion, and less emphasis on the basis of the confusion, the unpreserved, erroneous jury charge.

Specifically, Appellant is appealing whether the trial court abused its discretion in failing to grant his post-trial motion for a new trial under the Thirteenth Juror doctrine because there is a significant probability that the verdict was affected by jury confusion.<sup>1</sup> (See, Reply Brief of

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<sup>1</sup> Petitioner accepts some responsibility for the court's misapprehension of the issue appealed because it would have been more apparent should Petitioner had put more emphasis on the trial court's failure to grant his motion for a new trial under the Thirteenth Juror doctrine because of juror confusion and less emphasis on the bases of the juror's confusion, the erroneous jury charge, which was not preserved for review.

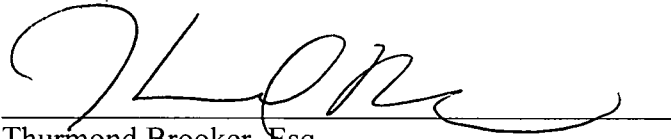
Appellant, p. 2). The Court in *Johnson v. Hoechst Celanese Corp* recognized a distinction between appealing a trial error not preserved for review, and appealing a trial court's failure to grant a post-trial motion for a new trial under the abuse of discretion standard of Thirteenth Juror doctrine, where incidentally the unpreserved trial error cause or contributed to a verdict not supported by the evidence or caused jury confusion. 453 S.E2d 908, 910, 317 S.C. 415 (S.C. App. 1994). The latter is properly before the appellant court for review if raised before or during the trial and ruled upon by the trial court. *Id.* An unpreserved trial error may cause or contribute to the underling foundation for which a post-trial motion for a new trial under the Thirteenth Juror doctrine is based, insufficiency of the evidence to support the verdict or a verdict marred by jury confusion, but is not the basis for the motion. *Id.* The issue *sub judice* is whether the trial court abused its discretion for failing to grant Appellant's motion for a new trial under the Thirteen Juror doctrine.

Therefore, the true questions presented by Appellant's first issue on appeal identified in the Final Brief of Appellant, which was not addressed by the Court's May 1, 2019 opinion, is whether Appellant's guilty verdict might have been the product of juror confusion, incidentally caused by the unpreserved erroneous jury charge? If the answer is yes, the next question that the Court must answer is whether the trial court's denial of Appellant's motion for a new trial under the Thirteenth Juror doctrine was an abuse of discretion under the circumstances?

#### CONCLUSION

Appellant respectfully request that the court grant's this petition for rehearing on the grounds argued herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Brooker', written over a horizontal line.

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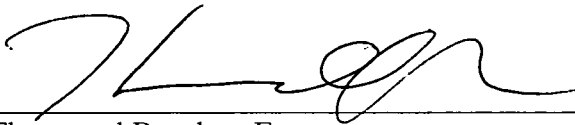
CERTIFICATE OF MAILING

I certify that I have served copies of the Petition for Rehearing by Appellant was deposited with the United States Postal Service, with sufficient postage prepaid attached thereto, on this 16<sup>th</sup> day of May 2019, addressed to the Following:

Assistant Attorney General Joshua A. Edwards  
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May 16, 2019

Florence, SC



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