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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2019-001815

THE STATE,

Respondent,

vs.

WILLIAM D. LEWIS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

Did the trial judge properly deny Appellant's motion to quash the pertinent count of the misconduct of a public officer indictment when it fully provided Appellant with all the required notice by including sufficient language and information identifying the crime for which he was charged and detailing the specific manner by which his conduct—which involved his use of the resources and authority of his office in pursuit of obtaining a personal benefit for himself in the form of an adulterous affair—violated the applicable statute such that the trial judge was able to know what judgment to pronounce in the event of a conviction, Appellant was able to know what he was called upon to answer, Appellant was apprised of the elements of the offense charged, and Appellant was protected against a subsequent prosecution for the same offense?

III.

Was any issue regarding the trial judge's decision to deny the directed verdict motion properly preserved for appellate review when defense counsel did not challenge the sufficiency of the evidence after all of it was presented, which had to occur before such an issue could properly be raised or considered on appeal? Furthermore, notwithstanding any issue preservation concerns, did the trial judge correctly deny the directed verdict motion when the evidence and testimony presented during trial established all that was needed to prove Appellant's guilt for misconduct of a public officer by showing he corruptly used the resources and authority of his public office in pursuit of obtaining a purely personal benefit for himself in the form of sexual gratification from a subordinate employee, which was conduct violative of the inherent duties of any public officeholder?

STATEMENT OF THE CASE

Following an investigation into allegations of inappropriate acts committed while he was acting in his role as Greenville County's elected sheriff, Appellant William D. Lewis was indicted in April of 2018 by the Greenville County Grand Jury for one count of misconduct in office along with one count of obstruction of justice. In December of 2018, Appellant moved to quash the indictments. In February of 2019, the Greenville County Grand Jury additionally indicted Appellant for one count of misconduct of a public officer along with one count of perjury. In response, Appellant moved to quash those indictments as well. In March of 2019, the Greenville County Grand Jury issued superseding indictments charging Appellant with six counts of misconduct of a public officer, six counts of misconduct in office, and one count of obstruction of justice. Once again, Appellant moved to quash those indictments. On June 17, 2019, a pre-trial hearing was conducted on the pending motions in the Greenville County Court of General Sessions with the Honorable G. Thomas Cooper, Jr., circuit court judge, presiding. Subsequent to the hearing, Judge Cooper issued an order quashing one count each of misconduct of a public officer and misconduct in office and declining to quash any of the remaining charges. Thereafter, Appellant moved for reconsideration of the order, and that motion was denied. On October 21, 2019, a jury trial was commenced on a single count each of misconduct of a public officer and misconduct in office in the Greenville County Court of General Sessions with Judge Cooper again presiding. At the conclusion of the multi-day trial, the jury convicted Appellant solely of misconduct of a public officer. Following the verdict, Judge Cooper sentenced Appellant to a one-year term of imprisonment. Appellant then filed a timely notice of appeal.[1]

[1] After initiating his appeal, Appellant moved for an appeal bond, and Judge Cooper granted that motion. (Order for Bond Pending Appeal).

STATEMENT OF FACTS

In November of 2016, Appellant was elected to the office of Sheriff of Greenville County. (Trl. Tr. p. 131). After the election, Appellant began working as a county employee during the transitional period. (Trl. Tr. p. 303; p. 745). During that period, Appellant also arranged for Savanah Nabors to get a county job with his plan being to hire her once he took office. (Trl. Tr. p. 134; p. 200; p. 303; pp. 670-671; pp. 675-675). At that time, Nabors was twenty-two years old, was—as described by Appellant and others—"pretty," and had met Appellant several years earlier when the two worked at a law firm together. (Trl. Tr. p. 147; p. 326; pp. 328-329; p. 382; p. 661; p. 726). Despite Nabors having no law enforcement experience by that point, Appellant made hiring her a priority, called her just a day after he was elected, and offered to double her salary if she would leave her current job and serve as his personal assistant. (Trl. Tr. pp. 331-334). Appellant further advised Nabors she was going to be "two steps besides [him] and two steps behind [him]" in that role. (Trl. Tr. p. 332).

On January 3, 2017, Appellant officially took office as sheriff and, as a result, became a public officer for purposes of South Carolina law. (Trl. Tr. p. 131; p. 801). When he took office, Appellant gained control over a budget of approximately $45,000,000 to $47,000,000, and he had full discretion as to how those funds were spent. (Trl. Tr. pp. 282-283; p. 295). Upon gaining control of that expansive budget, Appellant had some funds reallocated from a deputy position in order to create a new "upgrade[d]" position for Nabors.[2] (Trl. Tr. pp. 134-135; pp. 301-302). As to what the position entailed, Nabors's duties included responding to emails, answering phone calls, putting things on Appellant's calendar, and accompanying him to luncheons, meetings, and other places. (Trl. Tr. p. 338). Nabors's official title was

[2] Nabors was not required to interview or even submit a résumé before she was hired for that position. (Trl. Tr. p. 338).

administrative coordinator, and her starting salary was set at $62,000, which was a little more than double the typical starting salary of a new deputy. (Trl. Tr. pp. 135-136; p. 338). At that time, the office already had two other administrative coordinators, and, despite them having decades of experience, their salaries were markedly lower than Nabors's.[3] (Trl. Tr. pp. 135-138; p. 145). In fact, at the time she began working for the sheriff's office, Nabors's starting salary was on par with the salaries of lieutenants and sergeants who had worked as actual law enforcement officers at the office for decades. (Trl. Tr. pp. 137-138).

After Nabors was hired, Appellant provided her with a brand-new county vehicle equipped with a special "police package," an assigned parking spot close to his own, a cell phone, an iPad, and a computer. (Trl. Tr. pp. 145-146; pp. 148-149; p. 168; p. 202; p. 204; p. 334; pp. 339-341; p. 915; pp. 917-918). The other administrative coordinators did not receive similar perks, and parking spots were typically only provided to the highest-ranking law enforcement personnel at the office. (Trl. Tr. pp. 145-146; p. 169; p. 202; p. 204). It was also rare for civilian employees at the office to be provided with vehicles. (Trl. Tr. pp. 764-764). In addition to those things, Appellant obtained an expensive custom-made ballistic vest for Nabors along with a set of tactical shoes, which was something not typically done for other civilian employees. (Trl. Tr. pp. 169-170; p. 342). Appellant's provision of those atypical perks to Nabors was a contentious issue for some in the office. (Trl. Tr. pp. 530-531; pp. 763-764).

As Appellant settled into the role of sheriff, he continued singling out Nabors for special and exciting perks, and he took her to a performance driving school, allowed her to participate in rappelling training with the SWAT team, and brought her to test out weapons at the firing range

[3] Later on, Appellant obtained a substantial raise for an administrative coordinator with roughly thirty years of experience and brought her salary up to $63,000, which was just $1,000 more than Nabors's starting salary. (Trl. Tr. p. 136; p. 145; p. 155; p. 160). However, that raise was only obtained after Nabors had left the office. (Trl. Tr. p. 160).

along with the SWAT team. (Trl. Tr. pp. 146-147; pp. 170-171; pp. 207-209; pp. 339-340; pp. 530-531; p. 727; pp. 741-742; pp. 763-764). Appellant also routinely brought Nabors along with him wherever he went, and, despite providing her with a county vehicle, he typically had Nabors ride in his vehicle with him on those outings. (Trl. Tr. p. 207; p. 337; p. 765). Likewise, Appellant regularly brought Nabors to crime scenes, including "high profile" crime scenes, despite there being no compelling reason for him to do so. (Trl. Tr. p. 156; p. 205; p. 242; pp. 343-345; p. 507; pp. 532-533; p. 751; p. 755). In fact, Appellant even brought Nabors *into* active crime scenes despite the risks involved in doing so, and, during one such occurrence, he took her up to a body at the site of a murder. (Trl. Tr. p. 205; p. 344; pp. 536-537; pp. 753-754).

Beyond those things, Appellant communicated to his subordinates at the office Nabors was "off limits to them," and Appellant's employees interpreted that message as a warning they were not permitted to engage in a personal relationship with Nabors or it would "not be good."[4] (Trl. Tr. p. 166; p. 532; pp. 614-615). Meanwhile, as to Nabors herself, Appellant regularly posed questions to her about her personal life. (Trl. Tr. pp. 345-346; p. 382). Furthermore, despite being married and much older, he would frequently send text messages to her after work in regard to personal matters. (Trl. Tr. pp. 345-346; p. 382).

In February of 2017, Nabors, who was also married at the time, separated from her husband due to marital difficulties. (Trl. Tr. p. 347). At the end of one work day after that, Appellant asked Nabors what she was doing for dinner, and she let him know about the separation. (Trl. Tr. p. 349). In response, Appellant asked her to ride with him and tell him what happened, spoke with her about the matter for more than an hour, and advised her she was the

[4] During trial, Appellant reported he was "happy to say" Nabors's eventual replacement met and eventually married one of the other employees at the sheriff's office, which demonstrated Appellant's "off limits" proclamation regarding Nabors was not connected purely to her position as his administrative coordinator. (Trl. Tr. p. 721; p. 723).

"whole package." (Trl. Tr. pp. 350-352). Later that same date, Appellant also spontaneously called to tell Nabors there was going to be an out-of-town budget meeting and asked her if she would prefer going to Atlanta or Charlotte for it. (Trl. Tr. p. 351).

Although such meetings were ordinarily conducted in Greenville at county offices, Appellant proceeded to set up a meeting in Charlotte with the county administrator's office to discuss his office's budget. (Trl. Tr. p. 210; p. 238; p. 256; p. 301; pp. 353-354). When the meeting was held in early March, three employees from the county administrator's office went on the trip, and Chief Deputy Marcus Davenport came from the sheriff's office. (Trl. Tr. p. 194; pp. 209-210; p. 258; p. 354). Likewise, Appellant drove up for the trip in his own vehicle, and he insisted on Nabors riding with him. (Trl. Tr. p. 214; pp. 354-355). Over the course of the next few days, Appellant expended more than a thousand dollars from his office's budget on food, accommodations, and alcohol. (Trl. Tr. pp. 211-212; pp. 215-216; p. 731; pp. 806-808; State's Ex. # 14 (Receipts)). In addition to that, the group talked about budget matters for a number of hours on at least one day of the trip. (Trl. Tr. p. 214; p. 269; pp. 272-273; p. 694; pp. 697-698; p. 702). However, having no experience with budgets, Nabors did not participate in the discussions, and she did not take notes. (Trl. Tr. pp. 371-372; pp. 829-830; p. 832). In fact, she missed several hours of the lone organized budget meeting held on the trip. (Trl. Tr. p. 223; p. 271; p. 370; p. 694). Her reason for doing so related to her efforts to collect herself after what had occurred on the preceding night. (Trl. Tr. p. 368).

Specifically, that night, Appellant came to Nabors's room after the group had returned from drinking and socializing together away from the hotel.[5] (Trl. Tr. pp. 260-262; pp. 358-359;

[5] At one point before the group returned to the hotel, Appellant suddenly grabbed Nabors and attempted unsuccessfully to carry her on his shoulders. (Trl. Tr. pp. 263-264; pp. 266-267; p. 362; pp. 689-690).

p. 363). The purpose for Appellant's visit was purportedly to retrieve a bottle of liquor he had stowed in Nabors's bag upon arriving at the hotel. (Trl. Tr. pp. 357-358; p. 363; pp. 685-686; pp. 690-691; pp. 810-811; p. 814). After retrieving the bottle, Appellant poured liquor drinks for himself and Nabors, and Nabors accepted the drink because she did not feel comfortable refusing her boss. (Trl. Tr. pp. 363-364; p. 691; pp. 815-816). During the course of the events that followed, Appellant claimed his marriage was failing, attempted to kiss Nabors, and ultimately ended up on top of her engaging in sexual intercourse.[6] (Trl. Tr. pp. 364-366; p. 820; p. 822).

On the next night, a similar incident again took place after Appellant convinced Nabors to let him into her room by promising not to touch her.[7] (Trl. Tr. pp. 377-382). Everyone then headed back to Greenville on the following morning. (Trl. Tr. p. 230; pp. 281-282; p. 382). After that, Nabors tried to treat the events that occurred on the trip like they did not happen. (Trl. Tr. p. 384). Meanwhile, Appellant tried on several occasions to talk with Nabors about the trip, but she declined to engage in such a conversation. (Trl. Tr. p. 384; p. 709; p. 838).

Over the course of the next few weeks, Appellant sometimes behaved appropriately towards Nabors at work. (Trl. Tr. p. 390). However, at other times, he was flirty towards her, directed inappropriate comments at her, and attempted to make physical advances, including by trying to kiss her. (Trl. Tr. p. 352; pp. 385-386; p. 390). When Appellant engaged in such acts, Nabors rebuffed his advances, and Appellant responded by treating her in a hostile fashion at the office. (Trl. Tr. pp. 385-386). He also made it clear to Nabors she could not date anyone that worked there. (Trl. Tr. p. 391).

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[6] During trial, Nabors explained what occurred was non-consensual. (Trl. Tr. p. 368; pp. 436-438). Meanwhile, Appellant claimed Nabors initiated the physical contact between them and the sex that followed was consensual. (Trl. Tr. pp. 692-693; p. 822; p. 898).

[7] Appellant later denied anything sexual occurred on the trip's second night. (Trl. Tr. p. 706; p. 846).

Appellant's inappropriate actions towards Nabors continued until she reached her "breaking point" based on an incident that occurred in April of 2017. (Trl. Tr. p. 395). Regarding that incident, Appellant advised Nabors he wanted to come by her home to retrieve a pressure washer he had loaned to her, and she arranged for him to be able to pick it up when she was not at home in order to avoid being alone with him there. (Trl. Tr. pp. 395-396). To achieve that desired result, Nabors went to a restaurant located fifteen to twenty minutes away from her house to wait while Appellant was supposed to be picking up the equipment. (Trl. Tr. pp. 395-397). As she waited, Appellant called her and asked her if she was at the restaurant. (Trl. Tr. pp. 395-397). Startled, Nabors turned around to find Appellant behind her, which startled her even more. (Trl. Tr. pp. 395-397; p. 400). Nabors then returned to her home, and Appellant followed behind. (Trl. Tr. pp. 395-397; pp. 400-401).

Once back at her home, Nabors engaged in a conversation with Appellant, and she covertly recorded it due to the bizarreness of his behavior. (Trl. Tr. pp. 401-402; p. 404; pp. 411-414). During the course of the conversation, Appellant invited Nabors to go with him to Reno, which is where a national conference for sheriffs was being held.[8] (Trl. Tr. pp. 309-310; p. 711; Rec. # 1 Tr. p. 2; State's Ex. # 12 (Recordings)). However, Appellant claimed the county would only pay for one room even though it would pay for two plane tickets. (Rec. # 1 Tr. p. 2; State's Ex. # 12). In response, Nabors indicated she would not go if they would be sharing a room. (Rec. # 1 Tr. p. 3; State's Ex. # 12). As the conversation continued, Appellant informed Nabors there was "no fun to be had in going" if she did not go. (Rec. # 2 Tr. p. 2; State's Ex. # 12). He then asked Nabors if she understood the probability of them staying in the same room was

[8] By that point, Appellant had already contacted Sheriff Chuck Wright from Spartanburg County about the conference, and Sheriff Wright advised Appellant he had personally never felt there was a reason to go to it. (Trl. Tr. pp. 308-310; p. 313).

"pretty high" and inquired as to whether she would be comfortable with that even if separate rooms for them were booked. (Trl. Tr. pp. 896-897; Rec. # 2 Tr. p. 2; State's Ex. # 12). At that point, Nabors hesitated, and Appellant informed her he interpreted her hesitation as an indication she would not be comfortable with such an arrangement. (Rec. # 2 Tr. p. 2; State's Ex. # 12). He then attempted to convince Nabors it was common amongst male and female law enforcement officers to be uninhibited around one another. (Trl. Tr. p. 547; p. 777; Rec. # 2 Tr. p. 4; State's Ex. # 12). Appellant further advised Nabors he wanted her to go on trips with him because he wanted them to be able to "roll around in the bed together," sit around, and drink on "company time." (Rec. # 2 Tr. p. 6; State's Ex. # 12). Appellant then again asked Nabors if she would be "cool" with what he was suggesting for the trip, and she responded by asking Appellant why they could not have a relationship that was not sexual in nature. (Rec. # 2 Tr. p. 8; State's Ex. # 12). At that point, Appellant stated he was "fine" with what Nabors wanted but informed her there would have to be "some changes" to her job going forward due to his "original expectations" apparently not being met. (Trl. Tr. p. 861; Rec. # 2 Tr. p. 8; State's Ex. # 12). In response, Nabors sought clarification of what Appellant meant by "changes," and Appellant explained he was no longer going to take her places anymore. (Rec. # 2 Tr. pp. 8-9; State's Ex. # 12).

Subsequent to that discussion, Nabors went to Florida for a few days to stay with her sister. (Trl. Tr. p. 415; p. 713; Rec. # 3 Tr. p. 1; State's Ex. # 12). While there, Appellant repeatedly contacted her in an effort to get her to return and tried to convince her she had simply misunderstood the obvious import of the things he said before she left. (Trl. Tr. p. 416; Rec. # 4 Tr. pp. 2-4; Rec. # 5 Tr. p. 3; Rec. # 6 Tr. pp. 2-4; State's Ex. # 12). He further informed Nabors she was irreplaceable and suggested he would be willing to trade his entire command staff for

her. (Trl. Tr. p. 416; p. 760; Rec. # 5 Tr. p. 6; State's Ex. # 12). However, he also made clear to Nabors he could fire her if he wanted to and directly informed her she served at his pleasure. (Trl. Tr. p. 416; p. 890; Rec. # 9 Tr. p. 1; State's Ex. # 12).

A few days later, Nabors returned from the trip. (Trl. Tr. p. 402; p. 417; p. 718). However, due to Appellant's actions, she resigned from her position. (Trl. Tr. p. 150; p. 231; p. 402; p. 421; p. 718). At the time she did, Nabors loved her job.[9] (Trl. Tr. p. 415). However, she did not feel she could continue working for Appellant because she did not want to do the things he had made clear he wanted her to do in her position at the office.[10] (Trl. Tr. p. 415; p. 419; p. 615; pp. 617-618; Rec. # 10 Tr. p. 7; State's Ex. # 12).

Several months after Nabors resigned, she submitted a blog story revealing what had occurred during her time working for Appellant. (Trl. Tr. p. 171; p. 232; pp. 427-429; pp. 553-554; p. 659). Initially, Appellant categorically denied the allegations to staff members at the office. (Trl. Tr. p. 171; p. 232; p. 252; pp. 553-554). Eventually though, Appellant was forced to publicly admit to having a sexual relationship with Nabors during her time working for him.[11] (Trl. Tr. pp. 174-175; p. 233; p. 252; pp. 554-557). Around the same time, an investigation into Appellant's actions as sheriff was initiated, and it led to him being indicted for numerous charges, including multiple counts of misconduct of a public officer and misconduct in office. (Trl. Tr. pp. 25-26; p. 660; All Seven Indictments).

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[9] Around the time Nabors resigned, Appellant was attempting to obtain a large pay raise for her despite her only having worked at the office for a few months. (Trl. Tr. pp. 233-234; p. 500).

[10] During one of the phone conversations Nabors had with Appellant while she was in Florida, Nabors directly asked him if they could resume working together "without it becoming physical." (Trl. Tr. p. 402; p. 415; Rec. # 8 Tr. p. 3; State's Ex. # 12). In response to that unambiguous question, Appellant stated: "Without it becoming a friendship? I doubt it, very seriously." (Rec. # 8 Tr. p. 3; State's Ex. # 12).

[11] Appellant's initial dishonesty and subsequent admission harmed morale at the office. (Trl. Tr. pp. 175-176; pp. 252-253; pp. 565-566; pp. 773-774).

Ultimately, Appellant was brought to trial on one count each of misconduct of a public officer and misconduct in office. (Trl. Tr. pp. 25-26; pp. 1071-1072). As to the misconduct of a public officer count, the indictment identified the applicable statute as Section 8-1-80 of the South Carolina Code of Laws and contained the following language describing the charged offense:

> [Appellant] did, on or about January 3, 2017, through April 17, 2018, commit the crime of Misconduct of a Public Officer. During the above listed dates, [Appellant] was the Greenville County Sheriff who is a public officer whose authority is limited to the single election district of Greenville County, South Carolina. [Appellant] committed the crime of misconduct of a public officer by performing acts of official misconduct, habitual negligence, corruption, fraud, or oppression. To wit: . . .
>
> [Appellant] did, from the date he took office through April 24, 2017, misuse public resources and abuse the power and authority of his office for the corrupt purpose of pursuing or facilitating an adulterous relationship[.]

(Indictment # 2019-GS-23-001146A-F).

During the course of the lengthy trial, testimony and evidence was presented establishing Appellant gained full control of a considerable sum of public funds upon becoming the county sheriff. (Trl. Tr. p. 131; pp. 282-283; p. 295). Likewise, testimony and evidence was presented detailing Appellant's unusual actions and behavior in regard to Nabors—a subordinate employee—after he took charge of those public funds, including about her atypical salary in relation to others in the office, the special perks he bestowed upon her, the things that occurred on an unnecessary out-of-town budget trip involving them, the attention he gave to her personal life, and the steps he took to prevent her from engaging in personal relationships with anyone else from the office. (Trl. Tr. pp. 133-141; p. 143-188; pp. 194-303; pp. 316-322; pp. 326-478; pp. 487-507; pp. 521-576; pp. 605-621; pp. 659-788; pp. 800-882; pp. 886-903; pp. 913-918).

Furthermore, testimony and evidence was presented establishing Appellant's unusual actions and behavior towards Nabors created a hostile work environment for her and culminated with him—in his role as Nabors's employer by virtue of being the sheriff—threatening to negatively alter her job if she was unwilling to engage in a sexual relationship with him, which led to Nabors resigning from her position.[12] (Trl. Tr. p. 419; pp. 552-553; p. 778; p. 856; p. 859; p. 861; Rec. # 2 Tr. p. 2; p. 6; pp. 8-9; State's Ex. # 12).

Following the presentation of that testimony and evidence, the trial judge presented thorough jury instructions that included a detailed explanation of the elements of misconduct of a public officer, and Appellant's case was submitted to the jury.[13] (Trl. Tr. pp. 1062-1080; p. 1084; p. 1088). After deliberating on the matter, the jury unanimously convicted Appellant of the charged count of misconduct of a public officer. (Trl. Tr. p. 1092). Appellant was then sentenced to a one-year term of imprisonment for his conviction. (Trl. Tr. p. 1136).

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[12] Relatedly, testimony and evidence was presented establishing Appellant's office had a sexual harassment policy stating harassment became unlawful when enduring offensive conduct became a condition of continuing employment or when conduct was sufficiently severe or pervasive to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. (Trl. Tr. pp. 856-858). By his own admission, Appellant's actions towards Nabors violated that policy. (Trl. Tr. p. 866).

[13] As to the explanation provided regarding the elements of misconduct of a public officer, the trial judge provided the jury with the statutory description of the offense and generally defined various terms from that description using their commonly-understood meanings. (Trl. Tr. pp. 1074-1078). In doing so, the trial judge defined "corruption" as "an act done with intent to gain an advantage not consistent with official duty and the rights of others." (Trl. Tr. p. 1075). Similarly, the trial judge explained "misconduct" included "any act or any omission in breach of duty of public concern by persons in public office provided it is done willfully, corruptly, and dishonestly." (Trl. Tr. p. 1076). Beyond that, the trial judge explained a criminal or immoral act committed by a public officer would not support a conviction unless the act was committed in violation of the duties of the office held since "[m]isconduct in office relates only to the duties of public concern." (Trl. Tr. p. 1075). Furthermore, the trial judge explained the State was required to prove Appellant breached a duty owed to the public willfully and dishonestly in bad faith and with corrupt intent in order to establish his guilt for the offense. (Trl. Tr. pp. 1076-1078).

ARGUMENT

I.

Any issue concerning the constitutionality of Section 8-1-80 of the South Carolina Code of Laws was not properly preserved for appellate review because the trial judge did not analyze or rule upon the constitutionality of the statute during trial. Additionally, regardless of any issue preservation concerns, Appellant lacked any standing to raise a vagueness challenge to the statute due to the fact his conduct was clearly proscribed by it. Furthermore, the statute is neither unconstitutionally vague nor overbroad, which means there are no proper grounds upon which to invalidate it on appeal.

Appellant contends the trial judge erred by failing to declare Section 8-1-80 unconstitutionally vague. In support of that contention, Appellant maintains the terms of the statute are too vague to: (1) provide any guidance as to what constitutes a crime; and (2) to establish a proper standard for enforcement that is not arbitrary and discriminatory. Likewise, Appellant contends the statute was unconstitutionally overbroad because it could be interpreted in a manner that would infringe upon constitutionally-protected rights. Appellant's contentions should be rejected for several different reasons. Initially, any issue regarding the statute's constitutionality was not properly preserved for appeal because defense counsel never actually obtained a ruling from the trial judge on that particular matter, which was fundamentally necessary in order for proper appellate review to be possible. However, notwithstanding any issue preservation concerns, Appellant lacked standing to raise a valid vagueness challenge to Section 8-1-80 because the statute was clearly applicable to his conduct. Furthermore, the statute is not unconstitutionally vague because its terms provide a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, and the statute is not unconstitutionally overbroad because it is not applicable to constitutionally-protected speech or conduct in light of the fact it does not apply to the private conduct of public officers. Therefore, Appellant cannot meet his heavy burden of establishing the misconduct of a public

officer statute is unconstitutional, and there are no proper grounds upon which the statute can be invalidated on appeal. Appellant's conviction should be affirmed.

Relevant Facts

Prior to trial, defense counsel moved to quash all the charges, including every single indicted count of misconduct of a public officer. (All Seven Motions to Quash). As support for the challenge to the misconduct of a public officer count for which Appellant was eventually tried, defense counsel—in part—appeared to argue the statutory terms "official misconduct," "habitual negligence," "corruption," "fraud," and "oppression" from the charged offense were unconstitutionally vague due to the fact those terms were not statutorily defined. (Motion to Quash Indictment # 2019-GS-23-001146A-F). In rebuttal, the solicitor asserted the terms of the nearly-two-hundred-year-old misconduct of a public officer statute were not unconstitutionally vague and, instead, possessed commonly-understood and long-recognized legal meanings in American jurisprudence. (State's Combined Response, pp. 6-9). Additionally, the solicitor contended the statutory language was adequate to convey a sufficiently definite warning as to the conduct proscribed by the provision. (State's Combined Response, p. 8). Furthermore, even if the terms of the statute could somehow be construed as improperly vague, the solicitor noted Appellant nonetheless had no standing to raise a void-for-vagueness challenge because the statute clearly applied to his particular conduct. (State's Combined Response, pp. 8-9).

After considering the arguments presented, the trial judge issued an order denying the motion to quash the pertinent count of misconduct of a public officer. (Order on Motion to Quash, pp. 1-3). In doing so, the trial judge found the specifications and allegations contained in the indictment were not vague or overly broad, were specific to time and place, and were alleged to be in violation of the relevant statutory provision. (Order on Motion to Quash, p. 2).

However, to the extent defense counsel's motion could be construed as a contention the statute itself was unconstitutionally vague, the trial judge did not expressly rule upon that particular matter.[14] (Order on Motion to Quash, pp. 1-3).

Towards the outset of the ensuing trial, defense counsel again raised a vagueness challenge to the terms of the misconduct of a public officer statute. (Trl. Tr. p. 79). In renewing his challenge, defense counsel maintained no reasonable person would have any idea what conduct would get them in trouble based on any of the statute's terms aside from the term "fraud." (Trl. Tr. p. 79). In response, the trial judge noted he had already rejected a vagueness challenge after finding the indictments were sufficiently informative "under the rule governing indictments" and sought clarification from defense counsel as to whether he was again seeking for him to quash the indictment. (Trl. Tr. p. 79). At that point, defense counsel confirmed he was doing so without further argument, and the trial judge denied the motion. (Trl. Tr. p. 80).

As the trial continued forward, defense counsel continued to intermix arguments related to the misconduct of a public officer statute purportedly being unconstitutionally vague or overbroad with the various motions he raised. (Trl. Tr. p. 583; p. 928; p. 933; p. 959; p. 1083). Specifically, he included such arguments as part of his directed verdict motion, during a discussion of the intended jury instructions, and when objecting to the jury instructions as presented. (Trl. Tr. p. 583; p. 928; p. 933; p. 959; p. 1083). Although the trial judge repeatedly denied Appellant's motions, the trial judge neither expressly ruled on the constitutionality of the statutory language when doing so nor conducted an analysis of the constitutionality of the statute

[14] Following the issuance of the trial judge's order, defense counsel moved for the trial judge to reconsider his ruling. (Motion to Reconsider, pp. 1-3). However, in doing so, defense counsel did *not* expressly allege the trial judge had failed to rule on his constitutional challenge to the misconduct of a public officer statute. (Motion to Reconsider, pp. 1-3).

and, instead, ruled solely on the merits of the various motions in which the constitutional challenges were interlaced. (Trl. Tr. p. 585; p. 1083).

Standard of Review

In reviewing a challenge to the constitutionality of a statute, an appellate court has a "very limited" scope of review. State v. Harrison, 402 S.C. 288, 292, 741 S.E.2d 727, 729 (2013). All statutes are presumed to be constitutional and, if possible, will be construed in such a way to render them valid. State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009); see Powell v. Hargrove, 136 S.C. 345, 350, 134 S.E. 380, 382 (1926) ("[An appellate court] must sustain the validity of the legislative enactment, if it is possible to do so by any reasonable construction of the Constitution, even though the Court might differ with the Legislature as to the propriety of the legislation."). "Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation." Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331, 333-334 (1997). Importantly, a statute "will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt[,]" and the party challenging the validity of the statute has the heavy burden of proving its unconstitutionality. In re Care & Treatment of Lasure, 379 S.C. 144, 147, 666 S.E.2d 228, 229 (2008); see State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) ("Appellants have the burden of proving the statute unconstitutional.").

Analysis

A. Absence of Proper Issue Preservation

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004).

Amongst the requirements for preserving an issue for appeal in our state, the most basic and fundamental one is an issue must be raised to *and* ruled upon by a trial judge before it can properly be presented for appellate review. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 185 (3d ed. 2016) (explaining an issue—in order to be properly preserved for appellate review—must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity). Significantly, unless an error is both presented to *and* ruled upon by the trial judge, it cannot be raised to the appellate court to be ruled upon for the first time on appeal. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

In the case sub judice, defense counsel certainly raised a constitutional challenge to the purported vagueness of the terms of the misconduct of a public officer statute at various points during the circuit court proceedings. However, in doing so, defense counsel blended that constitutional challenge with other analogous but nonetheless distinct arguments, such as a highly-similar argument predicated on the vagueness of the specifications contained in the indictment. Critically, due to the commingled nature of the manner in which the constitutional challenge was raised, the trial judge did not appear to clearly understand it was an independent argument requiring its own ruling, which was demonstrated by his failure to explicitly address the constitutionality of the statute in his pre-trial order on the motions to quash and by his attempt to seek clarity during trial when confronted with a vagueness argument he believed he had already addressed through his earlier ruling issued pursuant to "the rule governing indictments." See State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A]n

objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge.").

When the trial judge failed to rule on specific argument related to the constitutionality of the statute, it was incumbent upon defense counsel to clearly bring that failure to the trial judge's attention so a ruling could be obtained, and defense counsel had multiple opportunities to do so, including when the trial judge sought clarity as to what was being sought by the repeated vagueness arguments. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (recognizing a party is *required* to seek a ruling "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review"). However, defense counsel did not do so, and, as a result, the trial judge never actually issued a ruling addressing or analyzing whether the misconduct of public officer statute was constitutionally sufficient. Under such circumstances, Appellant's appellate challenge to the constitutionality of the statute is not properly preserved for appellate review and, therefore, should not be addressed for the first time on appeal. See State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised *but not ruled on*, it is not preserved for appeal." (emphasis added)); see also In re Care & Treatment of McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (declining to address a constitutional challenge to a legislative act that was not sufficiently preserved for appellate review based on the "firm policy to decline to rule on constitutional issues unless such a ruling is required"). Appellant's conviction should be affirmed.

B. Constitutionality of Section 8-1-80

In order to withstand a constitutional vagueness challenge, a penal statute defining a criminal offense must be sufficiently specific such that: (1) ordinary people have fair notice as to

what conduct is prohibited by it; and (2) its language does not encourage arbitrary or discriminatory enforcement without any fixed standards. Kolender v. Lawson, 461 U.S. 352, 357 (1983); see Johnson v. United States, 576 U.S. 591, 595 (2015) (instructing due process is violated by "taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement"); Connally v. General Const. Co., 269 U.S. 385, 393 (1926) ("The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue."). Importantly though, the prohibition against vagueness does not mean a statute is unconstitutionally vague whenever it "could have been drafted with greater precision" since many statutes will necessarily have "inherent vagueness" due to the uncertainty that exists in regard to virtually all terms and phrases. Rose v. Locke, 423 U.S. 48, 49-50 (1975); see Broadrick v. Oklahoma, 413 U.S. 601, 608 (1973) ("Words inevitably contain germs of uncertainty[.]"); Grayned v. City of Rockford, 408 U.S. 104, 110 (1972) ("Condemned to the use of words, we can never expect mathematical certainty from our language.").

The pertinent test for evaluating a vagueness challenge is purely an objective one and involves looking to whether the statute's language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."[15] Jordan v. De George, 341 U.S. 223, 231-232 (1951); S.C. Dep't of Soc. Servs. v. Michelle G., 407 S.C. 499, 507, 757 S.E.2d 388, 393 (2014). Critically, all that is constitutionally required of a statute

[15] Since the test is an objective one, an examination of possible ways in which a statute could be violated in some theoretical case is irrelevant to a properly-conducted vagueness analysis. See Broadrick, 413 U.S. at 610 ("[A] person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court.").

is it must provide a "sufficient warning" that would allow people to "conduct themselves so as to avoid that which is forbidden." Locke, 423 U.S. at 50; see Curtis v. State, 345 S.C. 557, 572, 549 S.E.2d 591, 599 (2001) ("[A]ll the Constitution requires is that the language convey sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices."). So long as a person of common intelligence would not have to guess at what is prohibited by its language, the statute will not be deemed unconstitutionally vague. See State v. Green, 397 S.C. 268, 280, 724 S.E.2d 664, 670 (2012) (recognizing all the terms of penal statute do not have to be expressly defined in order to survive a vagueness challenge to the constitutionality of the statute so long as "a person of common intelligence would not have to guess at what conduct is prohibited by the statute"); see also Colten v. Kentucky, 407 U.S. 104, 110 (1972) ("The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.").

Relatedly, in order to withstand a constitutional overbreadth challenge, a statute must not prohibit a "substantial" amount of constitutionally-protected speech or conduct. United States v. Williams, 553 U.S. 285, 292 (2008); see Coates v. City of Cincinnati, 402 U.S. 611, 616 (1971) (finding an ordinance to be unconstitutionally overbroad where it made "a crime out of what under the Constitution cannot be a crime" and was "aimed directly at activity protected by the Constitution"); see also State v. Short, 483 So. 2d 10, 11 (Fla. Dist. Ct. App. 1985) ("[A]lthough lawyers and courts frequently interchange the terms 'vague' and 'overbroad,' the doctrines of vagueness and overbreadth are separate and distinct."). The overbreadth doctrine is "predicated

on the sensitive nature of protected expression: persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression." New York v. Ferber, 458 U.S. 747, 768 (1982) (citation and internal quotations omitted). Therefore, the overbreadth doctrine is only applicable when constitutionally-protected speech or conduct is involved. Schall v. Martin, 467 U.S. 253, 268, n. 18 (1984). Pursuant to it, a court will invalidate a statute "only when the terms are so broad that they punish a substantial amount of protected free speech in relation to the statute's otherwise plainly legitimate sweep—until and unless a limiting construction or partial invalidation narrows it so as to remove the threat or deterrence to constitutionally protected expression." In re Amir X.S., 371 S.C. 380, 385, 639 S.E.2d 144, 146-147 (2006). Furthermore, since the invalidation of a statute based on the overbreadth doctrine is "strong medicine," a court will only employ the doctrine hesitantly and as a last resort. Ferber, 458 U.S. at 769 (citation and internal quotations omitted).

When the constitutionality of a statute has been challenged, the standing of the party raising the challenge must first be considered since it serves as the foundation of the inquiry. Michelle G., 407 S.C. at 506, 757 S.E.2d at 392. For purposes of an overbreadth challenge, the traditional rule of standing is relaxed "because the very existence of overly broad statutes may have a deterrent effect on constitutionally protected expression[.]" Amir X.S., 371 S.C. at 384, 639 S.E.2d at 146. Pursuant to that relaxed standard, the party raising the challenge "must demonstrate that the statute could cause someone else—anyone else—to refrain from constitutionally protected expression." Id. Meanwhile, for purposes of a vagueness challenge, the party challenging the statute must demonstrate it "is vague *as applied to his own conduct*, regardless of its potentially vague application to others." Michelle G., 407 S.C. at 506, 757

S.E.2d at 392. Thus, if the challenged statute clearly applies to the party's conduct, that party simply does not have standing to raise a vagueness challenge. See Curtis, 345 S.C. at 572, 549 S.E.2d at 598 ("One to whose conduct the law clearly applies does not have standing to challenge it for vagueness.").

In the case at bar, the statute at issue is Section 8-1-80, which criminalizes misconduct of a public officer through the following language:

> Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and, upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.

S.C. Code Ann. § 8-1-80. Based on its wording, the purpose of that statutory provision is obvious—to ensure public officers in the state faithfully carry out their duties and to prevent them from abusing the power and authority of their offices in the diverse ways such abuse can be accomplished. See Donnelley v. United States, 276 U.S. 505, 516 (1928) ("It always has been deemed necessary to enact laws to compel performance of duty and to prevent corruption on the part of public officers."); State v. Sellers, 41 S.C.L. (7 Rich.) 368, 371 (1854) ("Great scandal to the district and great inconvenience to the community may result from such negligent or drunken habits, dishonesty, abuse of power, or other misconduct in a district officer, as are subjected to punishment in the mode provided.").

In light of the statute's language and clear purpose, it unmistakably applied to and prohibited Appellant's conduct, which involved the use of the authority and resources of his public office in an attempt to obtain sexual favors from a young female and culminated with him threatening his subordinate employee with job consequences—which he could only do by virtue of the authority he held over her through his office—when she would not agree to sexually

gratify him.[16] Cf. Leopold v. State, 88 A.3d 860, 873 (Md. Ct. Spec. App. 2014) ("The person of ordinary intelligence would know that it is a violation of law to . . . oppressively and willfully abuse his or her authority to require an employee to perform offensive and unnecessary tasks wholly beyond their job descriptions."). Sadly, that particular form of abuse of public office has been recognized to exist long before South Carolina became a state. See People v. Camacho, 103 F.3d 863, 867 (9th Cir. 1996) ("Official misconduct can be criminal when advantages other than money accrue to the public servant in the wrongful exercise of office. That sexual gratification should be prominent among these other advantages is not merely characteristic of our society; it reflects a long tradition in the misuse of authority. The most famous play in English on the subject, Shakespeare's *Measure for Measure*, turns on officeholder Angelo's attempt to secure the seduction of the innocent Isabella. Angelo's feigned use of his power to pardon Isabella's brother in order to get her consent is official misconduct."). Moreover, in South Carolina, it has specifically been recognized as a form of official misconduct that is sufficiently wrongful to constitute a crime of moral turpitude, and, notably, that in-state recognition existed several decades *before* Appellant embarked on his patently improper scheme. See In re Lee, 313 S.C. 142, 144, 437 S.E.2d 85, 86 (1993) (explaining Lee's acts of using his public office in an attempt to obtain sexual favors from others "demonstrate a vileness and baseness which are sufficient to make them crimes of moral turpitude"). Therefore, since the

[16] Perhaps tellingly, in arguing the misconduct of a public officer statute did not clearly apply to his conduct, Appellant seeks to reframe his actions without acknowledging he—while being recorded—threatened a subordinate employee with job consequences when she would not agree to share a room with him on a trip. (App. Br. pp. 1-26). Specifically, Appellant asserts "all" that was proven at trial was he "had an affair while out of town conducting legitimate county business[,]" and he further maintains his actions related to the Reno trip "simply" involved him "asking" Nabors to go on it with him. (App. Br. pp. 11-12; p. 20). However, as shown by the record, those characterizations omit some *very* important details about Appellant's actions as sheriff, and the omitted details matter. (Trl. Tr. p. 861; Rec. # 2 Tr. pp. 8-9; State's Ex. # 12).

terms of the misconduct of a public officer statute were plainly applicable to his conduct, Appellant lacks standing to validly assert a void-for-vagueness challenge to it.[17] Curtis, 345 S.C. at 572, 549 S.E.2d at 598; see Bodman v. State, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013) (recognizing a court faced with a constitutional challenge to a statute should be careful to enforce standing rules); State v. Gambrell, 274 S.C. 587, 589, 266 S.E.2d 78, 80 (1980) ("A penal statute which is arguably unconstitutional in some of its applications will not be overturned where it is clearly applicable to the accused.").

However, even assuming Appellant somehow could properly raise a challenge to the statute, Section 8-1-80 is nonetheless not unconstitutionally vague. Unquestionably, the statute's language applies to a broad variety of conduct, but that breadth is a matter of necessity and practicality since the statute is designed to protect against misconduct that could be committed by a diverse range of public officers with many varying duties and roles. See Smith v. Goguen, 415 U.S. 566, 581 (1974) ("There are areas of human conduct where, by nature of the problems

[17] On appeal, Appellant seeks to refute any suggestion he did not have standing to challenge the vagueness of the misconduct of a public officer statute by pointing to the United States Supreme Court's decision in Musser v. Utah, 333 U.S. 95 (1948), as an example of a case in which a statute was found to be unconstitutionally vague even though the defendant's conduct clearly violated the statute's terms. (App. Br. p. 10). There are two big problems with that particular argument. First, in Musser, the United States Supreme Court did not actually find the statute to be unconstitutionally vague and, instead, simply remanded the matter to the Utah Supreme Court for further consideration. See Musser v. Utah, 333 U.S. 95, 98 (1948) ("We believe we should not pass upon the questions raised here until the Supreme Court of Utah has had opportunity to deal with this ultimate issue of federal law and with any state law questions relevant to it. . . . In order that the controversy may be restored to the control of the Supreme Court of Utah, its present judgment is vacated and the cause is remanded for proceedings not inconsistent herewith."). Second, the United States Supreme Court in Musser did not analyze or even passingly mention the issue of constitutional standing in reaching its limited decision to remand the matter. Id.; see Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion." (citation and internal quotations omitted)). Therefore, the decision in Musser does not actually support a conclusion Appellant's constitutional vagueness challenge can properly be addressed even if his conduct clearly fell within the terms of the statute.

presented, legislatures simply cannot establish standards with great precision."); State v. Andersen, 370 N.W.2d 653, 663 (Minn. Ct. App. 1985) ("[G]eneralizations . . . are constitutional when greater specificity is impractical. Sometimes generalizations must be used in regulations which apply to an array of public employees because of the impracticality and difficulty of phrasing regulations more precisely." (citations omitted)). Thus, to achieve its desired purposes, the statute necessarily had to be broad enough to cover the many ways a public officer can abuse the power of a public office, and, in doing so, it employed terms with well-established and commonly-understood meanings in the law.[18] See Perrin v. United States, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."); cf. Curtis, 345 S.C. at 572, 549 S.E.2d at 599 ("[A]ll of these terms have common, ordinary meanings sufficient to proscribe conduct, and do not need to be specifically defined.").

Critically, since the terms employed have recognized legal meanings, the statute as written sets out a sufficient standard for enforcement and ensures a person of common intelligence exercising ordinary common sense would not have to simply guess at what conduct

[18] Notably, the primary terms used by the statute all have explicit and well-established legal definitions. See BLACK'S LAW DICTIONARY 397 (9th ed. 2009) (defining "corruption" as "[t]he act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others"); BLACK'S LAW DICTIONARY 731 (9th ed. 2009) (defining "fraud" as "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment"); BLACK'S LAW DICTIONARY 1089 (9th ed. 2009) (defining "official misconduct" as "[a] public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance"); BLACK'S LAW DICTIONARY 1203 (9th ed. 2009) (defining "oppression" as "[t]he act or an instance of unjustly exercising authority or power" or "[a]n offense consisting in the abuse of discretionary authority by a public officer who has an improper motive, as a result of which a person is injured"); cf. United States v. Thompson, 76 F.3d 442, 452 (2d Cir. 1996) (recognizing to act corruptly means to act while motivated by an improper purpose and rejecting a contention the term "corruptly" was unconstitutionally vague).

is proscribed.[19] See State v. Michau, 355 S.C. 73, 78, 583 S.E.2d 756, 759 (2003) (recognizing penal statutes can survive a constitutional vagueness challenge "even though the statutes do not define with specificity the conduct which is prohibited"); State v. Hardee, 279 S.C. 409, 412-413, 308 S.E.2d 521, 524 (1983) (rejecting a contention the terms of a statute were too vague and overbroad to provide notice of the conduct required to avoid the statute's penalty because the terms Hardee argued should have been defined were "commonplace terms which are easily found in dictionaries and other source books"); see also Town of Mount Pleasant v. Chimento, 401 S.C. 522, 535, n. 6, 737 S.E.2d 830, 838, n. 6 (2012) (plurality opinion) ("[I]n many cases, it is up to the police to determine just where a statutory line is drawn, for example, where the issue is obscenity, loitering, disturbing the peace, or driving under the influence. The fact that an officer must make a judgment call does not render a statute unconstitutionally vague, any more than does the fact that a determination of guilt ultimately turns on the evidence (i.e., facts and circumstances) adduced at trial." (internal quotations, original brackets, and ellipsis omitted)). In fact, countless public officers in South Carolina have had no difficulties understanding—and avoiding—the conduct prohibited by it for nearly *two centuries*, which strongly demonstrates the statute is sufficiently definite to be fairly understood by both ordinary people and the specific people to which it was designed to apply. See State v. Solomon, 245 S.C. 550, 571, 141 S.E.2d 818, 829 (1965) (finding the "long history" of the challenged provisions coupled with the common understanding and practices regarding the prohibited conduct ensured "reasonable men seeking to obey the law will know and are sufficiently warned of what conduct the statute makes

[19] Significantly, construing the terms of the statute in a manner consistent with their commonly-understood meaning also in no way constitutes an affront to lenity principles. See Donnelley, 276 U.S. at 512 ("The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment.").

criminal"); see also Johnson, 576 U.S. at 601 ("It has been said that the life of the law is experience."). Under such circumstances, the long-standing misconduct of a public office statute is not unconstitutionally vague. Cf. United States v. Petrillo, 332 U.S. 1, 7-8 (1947) ("[T]he Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more.").

Likewise, in addition to not being unconstitutionally vague, the statutory provision is also not unconstitutionally overbroad. That is true because—in order to fall within the scope of the statute—the prohibited "official" conduct must necessarily relate to the public officer's duties, authority, or office. See State v. Hess, 279 S.C. 14, 20, 301 S.E.2d 547, 550-551 (1983) (recognizing criminal offenses involving official misconduct do not apply to "private misconduct of one who happens to be an official"); see also State v. Weleck, 91 A.2d 751, 756 (N.J. 1952) ("Misconduct in office, or official misconduct, means . . . any unlawful behavior in relation to official duties by an officer intrusted in any way with the administration of law and justice, or, as otherwise defined, any act or omission in breach of a duty of public concern, by one who has accepted public office." (citation and internal quotations omitted)). Therefore, since the private conduct of public officers is not implicated by the statute, the statute does not tread upon constitutionally-protected speech or conduct. See Garcetti v. Ceballos, 547 U.S. 410, 421 (2006) ("[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes[.]"). Based on that key constraint, the misconduct of a public officer statute cannot be and is not unconstitutionally overbroad. See Schall, 467 U.S. at 268, n. 18 ("[O]utside the limited First Amendment context, a criminal statute may not be attacked as overbroad."); cf. Andersen, 370 N.W.2d at 662 (rejecting a constitutional

overbreadth argument because "[t]he requirement of [the challenge statute] that the penalized act be either in excess of a public official's lawful authority or be illegal to do in a public official's capacity renders the statute inapplicable to constitutionally protected conduct").

Accordingly, since Appellant lacks standing to properly raise a vagueness challenge and cannot meet his heavy burden of showing the statute is unconstitutionally vague or overbroad beyond a reasonable doubt, there is no proper basis upon which South Carolina's deep-rooted misconduct of a public office statute can be struck down on appeal. See State v. Ross, 185 S.C. 472, 477, 194 S.E. 439, 441 (1937) ("A Court should not declare a statute unconstitutional unless its invalidity is manifest beyond a reasonable doubt, and the burden to show its unconstitutionality rests upon the one making the attack."); cf. Michau, 355 S.C. at 78, 583 S.E.2d at 758-759 (rejecting a constitutional challenge to a statute due to a lack of standing and because the phrase "endangering the morals or health" was not too vague for a person of ordinary intelligence to understand what conduct was prohibited by it). Appellant's conviction should be affirmed.

II.

The trial judge properly denied Appellant's motion to quash the pertinent count of the misconduct of a public officer indictment because it fully provided Appellant with all the required notice by including sufficient language and information identifying the crime for which he was charged and detailing the specific manner by which his conduct—which involved his use of the resources and authority of his office in pursuit of obtaining a personal benefit for himself in the form of an adulterous affair—violated the applicable statute such that the trial judge was able to know what judgment to pronounce in the event of a conviction, Appellant was able to know what he was called upon to answer, Appellant was apprised of the elements of the offense charged, and Appellant was protected against a subsequent prosecution for the same offense.

Appellant contends the trial judge reversibly erred by refusing to quash the pertinent count of the misconduct of a public officer indictment. In support of that contention, Appellant maintains the indictment was too vague to provide the required notice because the allegations were purportedly not sufficiently specific as to what was being alleged to adequately advise him of the charge against him. To the contrary, the indictment as drafted contained language and information identifying the offense for which Appellant was charged and detailing the specific manner in which Appellant's conduct violated the applicable statute. Specifically, the indictment made clear Appellant was being criminally charged for using the resources and authority of his office in a scheme to obtain a personal benefit for himself in the form of an adulterous affair, which was something obviously violative of the inherent duties of any public officeholder. As a result, the indictment was sufficient to provide fair notice such that the trial judge was able to know what judgment to pronounce in the event of a conviction, Appellant was able to know what he was called upon to answer, Appellant was apprised of the elements of the offense charged, and Appellant was protected against a subsequent prosecution for the same offense. Furthermore, the indictment made sufficiently clear exactly how Appellant's conduct constituted the charged offense such that Appellant was neither incapable of combating the charge raised against him nor taken by surprise. Accordingly, the indictment was facially sufficient, and the

trial judge properly denied Appellant's motion to quash it. Appellant's conviction should be affirmed.

Relevant Facts

During the course of the circuit court proceedings, defense counsel filed numerous motions to quash, including one seeking to quash the pertinent count—along with all the other charged counts—of misconduct of a public officer. (All Seven Motions to Quash). In challenging the pertinent count, defense counsel argued the language used in indictment was vague and overly broad because it failed to: (1) specifically allege in what manner and to what extent public resources were misused to facilitate an adulterous affair; (2) explain whether the offense was committed by the misuse of public resources, the adulterous affair, or both; and (3) allege how an adulterous affair would establish Appellant engaged in conduct prohibited by the misconduct of a public officer statute's terms. (Pre-Trl. Tr. p. 5; p. 9; Motion to Quash Indictment # 2019-GS-23-001146A-F, pp. 1-3; Motion to Reconsider, pp. 2). Furthermore, defense counsel conceded the defense had received substantial discovery detailing more specifically what the State's evidence showed, but he nonetheless asserted the indictments were still too vague to be proper since Appellant purportedly could have been indicted under a theory different than the one for which he might ultimately be convicted. (Pre-Trl. Tr. pp. 12-13).

In rebuttal, the solicitor asserted the indictment's language was sufficient to provide Appellant with all the notice required by law. (State's Combined Response, pp. 9-11). As support for that assertion, the solicitor argued the indictment as drafted was sufficient to enable the court to know what judgment to pronounce, inform Appellant of what he was called upon to answer, and apprise Appellant of the charged offense's elements. (State's Combined Response, p. 9). Moreover, the solicitor noted the indictment specified the place where the offense was

committed, included the time period in which it occurred, explained Appellant was a public officer who fell within the statute's terms, and enumerated the particular conduct Appellant engaged in that amounted to official misconduct, corruption, fraud, or oppression. (State's Combined Response, p. 10). Furthermore, the solicitor pointed out the charged offense had been recognized as a versatile one that could properly consist of one act or a series of acts while still being treated as a single offense. (Pre-Trl. Tr. p. 22; State's Combined Response, p. 10). As a result, the solicitor argued the indictment satisfied its purpose as a notice document and any issue as to whether it could have potentially been more specific would not render it defective under South Carolina law. (Pre-Trl. Tr. pp. 15-16; pp. 27-28; State's Combined Response, pp. 9-11).

Upon considering the matter, the trial judge declined to quash the pertinent count of the indictment. (Pre-Trl. Tr. pp. 28-29; Trl. Tr. p. 80; Order Denying Motions to Quash, p. 2). In doing so, the trial judge recognized an indictment is a notice document and looked to the relevant sufficiency standard, including as set out by Section 17-19-20 of the South Carolina Code of Laws. (Order Denying Motion to Quash, pp. 1-2). Applying that standard to the indictment as drafted, the trial judge found it indicated Appellant committed the offense by committing certain specific acts of misconduct, contained specifications that were not too vague or overly broad, included sufficient details as to time and place, and alleged Appellant violated the applicable statutory provision—Section 8-1-80. (Order Denying Motion to Quash, p. 2). As a result, the trial judge concluded the count was sufficient pursuant to the relevant standard and declined to quash it. (Trl. Tr. p. 80; Order Denying Motion to Quash, p. 2).

Standard of Review

"In appeals of pretrial rulings, [the appellate court] is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly

wrong or controlled by error of law.' " Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge's ruling on a matter "will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

Analysis

In South Carolina, an indictment issued by a grand jury is generally required before an individual can be held to answer in any court for a criminal offense. See S.C. Const. art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger."); see also S.C. Code Ann. § 17-19-10 ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except [under certain circumstances]."). Generally speaking, an indictment is a notice document, and its "primary purpose" is "to put the defendant on notice of what he is called upon to answer, i.e., to [apprise] him of the elements of the offense and to allow him to decide whether to ple[a]d guilty or stand trial." State v. Smalls, 364 S.C. 343, 346-347, 613 S.E.2d 754, 756 (2005) (citation and internal quotations omitted); see State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document.").

When evaluating an indictment, one shall be considered sufficient if "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to

pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction." State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980); see S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."). Importantly, "the true test of an indictment's validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." State v. Smalls, 336 S.C. 301, 307, 519 S.E.2d 793, 796 (Ct. App. 1999); see Gentry, 363 S.C. at 103, 610 S.E.2d at 500 ("[W]hether the indictment could be more definite or certain *is irrelevant*." (emphasis added)).

When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: (1) whether the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce upon conviction and the defendant to know what he is called upon to answer and be able to make a decision as to whether to plead guilty or stand trial; and (2) whether the defendant is apprised of the elements of the offense intended to be charged. State v. Tumbleston, 376 S.C. 90, 96-97, 654 S.E.2d 849, 852 (Ct. App. 2007). In making such a determination, the trial judge must look to the indictment with a practical eye and examine the circumstances that existed prior to trial in order to determine whether the defendant was prejudiced in the sense that defendant was taken by surprise and unable to combat the charges against him due to the indictment. State v. Wade,

306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991). If an indictment satisfies the requisite conditions and, thus, is facially valid, the trial judge should deny the defendant's motion to quash. State v. Williams, 301 S.C. 369, 371, 392 S.E.2d 181, 182 (1990).

In the case sub judice, Appellant was charged with, tried for, and convicted of the offense of misconduct of a public officer. By its nature, that offense is a "versatile" one and "may consist of one act or a series of acts." State v. Sharpe, 132 S.C. 236, __, 128 S.E. 722, 723 (1925); cf. State v. Hess, 279 S.C. 525, 528, 309 S.E.2d 741, 743 (1983) (recognizing a versatile nature that allows for the offense to consist of one or more acts is a feature of misconduct in office). Significantly, its versatility allows for a continuous scheme involving multiple distinct acts to be charged as a lone count of the offense without rendering the charge duplicitous or multifarious. Sharpe, 132 S.C. at __, 128 S.E. at 723; see State v. Sheppard, 248 S.C. 464, 467, 150 S.E.2d 916, 917 (1966) ("[I]t is well settled that an indictment is not duplicitous for charging the accused in conjunctive terms with having committed the offense by more than one of the means specified by the statute."). Beyond that, the offense's nature must necessarily factor into an analysis of the facial sufficiency of a misconduct of a public officer indictment since such analyses are grounded in practicality. Wade, 306 S.C. at 86, 409 S.E.2d at 784.

Viewing the misconduct of a public officer indictment in Appellant's case with practicality in mind, it both directly named Appellant's offense and identified the relevant statutory provision—Section 8-1-80—to unmistakably delineate the exact crime being charged. Crenshaw, 274 S.C. at 477, 266 S.E.2d at 62. Likewise, it expressly used the terms contained in the applicable statute to identify the elements of the charged offense. See State v. Jacobs, 238 S.C. 234, 243, 119 S.E.2d 735, 739-740 (1961) ("An indictment is ordinarily sufficient if it is in the language of the statute."). Therefore, through its language, the indictment identified the

indicted offense with sufficient certainty and particularity to alert Appellant and the trial judge of the exact offense for which Appellant was charged—misconduct of a public officer. Cf. Crenshaw, 274 S.C. at 477, 266 S.E.2d at 62 ("As the indictment bears the specific code section on its face and there was lengthy discussion concerning that code section throughout the trial, appellants obviously knew for what crime they were being prosecuted."). By doing so, the indictment was sufficient to enable the court to know what judgment to pronounce in the event of conviction and to make Appellant aware of the offense's statutory elements and terms. See Solomon, 245 S.C. at 562, 141 S.E.2d at 825 ("The indictment was phrased in substantially the language of [the pertinent statute], which created and defined the offense, and an indictment so phrased is ordinarily sufficient.").

Similarly, the indictment included specifics as to the Greenville County office Appellant held at the time of the crime while also identifying the roughly-four-month window in which Appellant engaged in the unlawful scheme that gave rise to the charge. See United States v. Kimberlin, 18 F.3d 1156, 1159 (4th Cir. 1994) ("Where a particular date is not a substantive element of the crime charged, strict chronological specificity or accuracy is not required." (citation and internal quotations omitted)). It also provided specific details as to how Appellant carried out the unified scheme for which he was charged by including language stating Appellant misused public resources and abused the power and authority of his office for the corrupt purpose of pursuing or facilitating an adulterous relationship. See State v. Johnson, 314 S.C. 161, 166, 442 S.E.2d 191, 194 (Ct. App. 1994) ("An indictment is sufficient if . . . the crime is so plainly stated that the *nature* of the offense charged may be easily understood." (emphasis added)). And, obviously, it is beyond rational dispute misusing official authority and public resources in pursuit of a purely personal benefit—like sexual gratification—is something all

public officers are necessarily prohibited from doing as part of the inherent duties of any public office. See Weleck, 91 A.2d at 757 (instructing the source of duties arising out of "the very nature of the office" need not be alleged in the indictment in order for a misconduct in office indictment to be sufficient). Under such circumstances, the indictment made clear to Appellant the precise criminal basis for his charge and left no question as to the criminality of his offense in light of the details provided. Cf. Russell v. United States, 369 U.S. 749, 767-768 (1962) (finding several indictments to be fatally insufficient because they did *not* make clear what criminal behavior the defendants engaged in due to the fact the indictments omitted the subject under congressional investigation, which had to be included in order to establish a crime had even occurred since the defendants' refusal to answer questions was only criminal *if* it pertained to a subject under congressional investigation).

Therefore, through its inclusion of both the terms of the statute *and* the identifying information about the particular unlawful scheme involved, the indictment fairly alerted Appellant of exactly how he was alleged to have violated the statute, which ensured he had fair notice of what he was being called upon to answer. See Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853 ("[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood."); cf. State v. Magana, 159 P.3d 1163, 1168 (Or. Ct. App. 2007) (concluding broadly-worded official misconduct indictments were facially sufficient where they charged the offense in the words of the statute and noting the discovery presented would have cured any imprecision). As a result, the indictment provided all the required notice, and any further specifics or details about the exact means by which Appellant misused the authority and resources of his office to carry out the delineated scheme were not necessary in order for the

indictment to be facially valid. Smalls, 336 S.C. at 307, 519 S.E.2d at 796; see United States v. Resendiz-Ponce, 549 U.S. 102, 109 (2007) (rejecting the contention an indictment could only be sufficient if it specifically identified all the overt acts performed in commission of the charged offense and instructing: "Individually and cumulatively, those acts tend to prove the charged attempt—but none was essential to the finding of guilt in this case. All three acts were rather part of a single course of conduct culminating in the charged attempt. As Justice Holmes explained . . . , the unity of the plan embraces all the parts." (citation, brackets, and internal quotations omitted)); Richardson v. United States, 526 U.S. 813, 817 (1999) (recognizing a jury does not always have to unanimously decide "which of several possible sets of underlying brute facts make up a particular element" or "which of several possible means the defendant used to commit an element of the crime"); State v. Hammonds, 30 S.W.3d 294, 300 (Tenn. 2000) ("[A]n indictment need not allege the specific theory or means by which the State intends to prove each element of an offense to achieve the overriding purpose of notice to the accused.").

Finally, the language included in the pertinent count of the indictment was sufficient to protect Appellant from twice being placed in jeopardy for a violation of Section 8-1-80 involving the same unlawful scheme for which he has already once been tried and convicted. See State v. Guthrie, 352 S.C. 103, 108, 572 S.E.2d 309, 312 (Ct. App. 2002) (instructing an indictment "should be sufficiently specific to protect the accused against double jeopardy"). Critically, as written, the misconduct of a public officer indictment identified the relevant time period of the offense along with the specific type of unlawful scheme involved, which was described as one in which Appellant used the power and authority of his office along with public resources to pursue a personal benefit in the form of an adulterous relationship. See United States v. Shorter, 874 F.3d 969, 977 (7th Cir. 2017) ("As the government points out, broadly-worded indictments

charging the defendant with fraudulent billings during a specified time period *would* bar later prosecution for *any* billings during those time periods."). By doing so, the indictment ensured Appellant could not subsequently be prosecuted for any other violation of Section 8-1-80 stemming from such a scheme during the specified time period, and, therefore, its language was sufficiently specific to protect Appellant's constitutional rights. Cf. Solomon, 245 S.C. at 565, 141 S.E.2d at 826 (rejecting the contention a broadly-worded indictment deprived Solomon of the ability both to know what specific act or acts served as the basis for his prosecution and to plead the conviction in bar to any subsequent prosecution because the indictment being "general in character" ensured Solomon could not be prosecuted again for any acts committed on the date specified even if he "might have been guilty of several violations of the statute" on that date since the indictment's general terms covered any and all violations committed at that time).

For all those reasons, the indictment—when viewed with a practical eye as required—contained sufficient detail to comply with the requirements necessary for facial sufficiency, and, thus, it carried out its purpose as a "notice document" in Appellant's case. Gentry, 363 S.C. at 102, 610 S.E.2d at 500; see S.C. Code Ann. § 17-19-20 (identifying the information that must be included before an indictment "shall be deemed and judged sufficient and good in law"); United States v. Bates, 96 F.3d 964, 970 (7th Cir. 1996) ("Facial sufficiency is not a high hurdle."); State v. Shoemaker, 276 S.C. 86, 88, 275 S.E.2d 878, 879 (1981) (concluding an indictment was sufficient where it fulfilled its purpose under the circumstances of the case). Therefore, the trial judge properly denied Appellant's motion to quash the misconduct of a public officer indictment, and there is no proper basis upon which to disturb that ruling on appeal. See Williams, 301 S.C. at 371, 392 S.E.2d at 182 (recognizing a trial judge properly denies a motion to quash an indictment when it contains "no facial defect"). Appellant's conviction should be affirmed.

III.

Any issue regarding the trial judge's decision to deny the directed verdict motion was not properly preserved for appellate review because defense counsel did not challenge the sufficiency of the evidence after all of it was presented, which had to occur before such an issue could properly be raised or considered on appeal. Furthermore, notwithstanding any issue preservation concerns, the trial judge correctly denied the directed verdict motion because the evidence and testimony presented during trial established all that was needed to prove Appellant's guilt for misconduct of a public officer by showing he corruptly used the resources and authority of his public office in pursuit of obtaining a purely personal benefit for himself in the form of sexual gratification from a subordinate employee, which was conduct violative of the inherent duties of any public officeholder.

Appellant contends the trial judge erred by failing to *partially* grant a directed verdict of acquittal on the misconduct of a public officer charge. In support of that contention, Appellant *only* alleges the evidence was insufficient to establish his guilt for the charged offense under a theory of fraud. Meanwhile, Appellant has elected *not* to challenge the trial judge's ruling regarding the sufficiency of the evidence as to the other methods by which the charged offense could be—and was—established, such as through proof of acts constituting official misconduct, corruption, or oppression.[20] Initially, Appellant waived any issue regarding the sufficiency of the evidence during trial because defense counsel did not actually challenge the sufficiency of the evidence after all of it was presented, which was necessary in order for the evidence's sufficiency to validly be challenged on appeal. However, regardless of any issue preservation concerns, the trial judge correctly denied the directed verdict motion because the evidence and testimony presented during trial—when viewed in a light most favorable to the State as

[20] Critically, since Appellant has not challenged the entirety of the trial judge's ruling denying the directed verdict motion, the unappealed portion of that ruling—and, resultantly, the decision to submit the case to the jury itself—has become the law of the case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010) ("Where the ruling of a trial judge is based on more than one ground, an appellate court must affirm unless the appellant appeals all grounds upon which the ruling was based.").

required—established Appellant corruptly used the resources and authority of his public office in a concerted effort to obtain a purely personal benefit for himself in the form of sexual gratification from one of his young female employees and, thus, was guilty of misconduct of a public officer. Accordingly, there is no valid basis upon which to disturb the trial judge's decision to deny the directed verdict motion on appeal, and that is particularly true given the limited and partial manner in which Appellant has raised his appellate challenge to the sufficiency of the evidence. Appellant's conviction should be affirmed.

Relevant Facts

During the course of the State's case, testimony and evidence was presented detailing Appellant's acts after becoming sheriff that were undertaken in pursuit of obtaining sexual gratification from a subordinate employee. (Trl. Tr. pp. 133-141; p. 143-188; pp. 194-303; pp. 316-322; pp. 326-478; pp. 487-507; pp. 521-576; State's Ex. # 12). Significantly, that testimony and evidence demonstrated Appellant's improper scheme culminated with him threatening to mete out job consequences upon his subordinate employee if she would not acquiesce to his desires, which was something he could only do in his official capacity as her employer by virtue of being sheriff. (Trl. Tr. p. 419; pp. 552-553; State's Ex. # 12).

At the conclusion of the State's case, defense counsel moved for a directed verdict on the misconduct of a public officer charge. (Trl. Tr. pp. 578-579; p. 583). In raising that sufficiency-of-the-evidence challenge, defense counsel asserted he did not understand the applicable statute's terms. (Trl. Tr. p. 583). Likewise, he suggested there was "certainly" no evidence of habitual negligence, corruption, or fraud without further elaboration. (Trl. Tr. p. 583). Based on that, he argued there was no basis for the charge to be submitted to the jury. (Trl. Tr. p. 583). In rebuttal, the solicitor contended the evidence and testimony presented established Appellant used

his office for the corrupt purpose of obtaining a benefit for himself in the form of sexual gratification from a subordinate employee through his scheme directed at Nabors and, therefore, was guilty of misconduct of a public officer. (Trl. Tr. pp. 584-585). Upon considering the arguments of counsel, the trial judge concluded the evidence presented was sufficient to support the charge and denied the directed verdict motion. (Trl. Tr. p. 585).

Thereafter, as the trial proceeded forward, defense counsel presented the testimony of several witnesses, including Appellant himself. (Trl. Tr. p. 604; p. 624; p. 638; p. 653; p. 659). Through that testimony, additional evidence was presented establishing Appellant's guilt. (Trl. Tr. pp. 612-615; pp. 617-618; pp. 659-787; pp. 800-903). In particular, Appellant candidly acknowledged he sexually harassed Nabors in violation of his office's sexual harassment policy through his actions, affirmed he "obviously" pursued a sexual relationship with her while working as sheriff, agreed he provided perks to Nabors beyond those provided to others, and admitted he "[a]bsolutely" threatened to "readjust" her job duties when she made it clear she did not want to share a room with him on a trip. (Trl. Tr. p. 709; p. 760; pp. 763-765; pp. 777-779; p. 819; p. 825; pp. 858-858; p. 861; p. 866; pp. 889-890). At the conclusion of the presentation of that testimony, the defense rested. (Trl. Tr. p. 903). However, despite additional evidence being presented, defense counsel did not renew his earlier directed verdict motion or make a new one. (Trl. Tr. pp. 903-904).

Following that, the solicitor introduced some additional testimony in rebuttal of the defense's case. (Trl. Tr. p. 905; p. 913). After doing so, the State again rested, and defense counsel once again did not renew his directed verdict motion or make a new one. (Trl. Tr. pp. 919-920). Subsequently, the case was submitted to the jury without defense counsel ever challenging the sufficiency of *all* the evidence presented. (Trl. Tr. p. 1088).

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Analysis

A. Absence of Proper Issue Preservation

As is true with virtually all issues, an issue related to the alleged insufficiency of the evidence must be properly and contemporaneously raised to and ruled upon by the trial judge in order to be preserved for appellate review. See State v. Bailey, 298 S.C. 1, 6, 377 S.E.2d 581, 584 (1989) (recognizing any issue involving a directed verdict motion will be waived for purposes of appellate review unless properly raised during trial); State v. Todd, 264 S.C. 136, 139, 213 S.E.2d 99, 100 (1975) ("[I]f a defendant fails to challenge the sufficiency of the

evidence in the court below the issue may not be raised upon appeal for the first time. To hold otherwise would mean that the appellate court would be exercising original jurisdiction rather than serving as a reviewing court."). Analogously, in a case in which the defendant elects to introduce evidence after unsuccessfully seeking the grant of a directed verdict at the conclusion of the presentation of the State's case, the defendant *must* at the close of all evidence either make another directed verdict motion or—at a minimum—renew the motion previously raised in order to be able to properly challenge the sufficiency of the evidence on appeal. State v. Bailey, 368 S.C. 39, 43, 626 S.E.2d 898, 900 (Ct. App. 2006).

In the case sub judice, defense counsel moved for a directed verdict at the close of the State's case, and the trial judge denied that motion. Following that ruling, a substantial amount of additional testimony and evidence was presented through the defense's case and the State's response to it that was directly relevant to the issue of Appellant's guilt. However, despite additional testimony and evidence being introduced, defense counsel did not renew the earlier directed verdict motion or raise any new arguments regarding the sufficiency of the evidence. Based on that, the trial judge was never asked to rule upon the sufficiency of *all* the evidence presented. See State v. Hepburn, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013) (adopting the "waiver" rule, which requires a defendant to renew a directed verdict motion after all the evidence has been presented in order to challenge the sufficiency of the evidence on appeal since failing to do so results in the trial judge being denied an opportunity to pass upon the sufficiency of all the evidence that would be considered by the jury). As a result, any issue regarding the alleged insufficiency of the evidence was not properly preserved for appellate review. Cf. State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) ("[T]he record does not

reflect that Adams renewed the motion at the close of his case. Adams's argument, therefore, is not preserved for our review."). Appellant's conviction should be affirmed.

B. Propriety of the Trial Judge's Ruling Denying the Directed Verdict Motion

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he

should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

In the case at bar, the evidence and testimony presented during trial established Appellant—who was indisputably a public officer for purposes of Section 8-1-80—used the resources and authority of his office as sheriff in pursuit of a personal benefit for himself in the form of sexual gratification from a subordinate employee. See Commonwealth v. Checca, 491 A.2d 1358, 1366 (Pa. Super. Ct. 1985) (recognizing a public official using the official's position or office to receive sexual favors constitutes official oppression and was clearly intended to be proscribed by a broadly-drafted statute designed to cover all types of oppressive use of official power). In establishing that, it showed Appellant carried out his corrupt scheme from essentially the point he was sworn in as sheriff until the target of his affections was driven away from the office as a direct consequence of his harassing conduct. See State v. Gove, 875 P.2d 534, 537 (Or. Ct. App. 1994) (recognizing evidence of the existence and violation of an official sexual

harassment policy is relevant to the question of whether an act was an unauthorized exercise of a position and, thus, constituted official misconduct). Likewise, it showed Appellant lured Nabors to work for him as his personal assistant with delineated duties that included things typically associated with such a job, but—unbeknownst to her or anyone else—he did so while harboring "original expectations" for that role that included an expectation Nabors would engage in a sexual relationship with him. Lee, 313 S.C. at 144, 437 S.E.2d at 86; see Gove, 875 P.2d at 536 ("[I]t is the *intent* to obtain sexual gratification or another benefit, not the success of the attempt, that is the element of the crime [of official misconduct]."). Additionally, it showed Appellant used his authority over Nabors and his other employees in an effort to prevent Nabors from freely engaging in a relationship with anyone—other than him—from the office even outside of work. See Garcetti, 547 U.S. at 419 ("The First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens."). Furthermore, it showed Appellant used public funds that he could only access by virtue of being the sheriff to provide exciting perks, benefits, and other activities to Nabors beyond what was provided to his other subordinates, and his later conduct fully supported a conclusion his intent in doing so was to further his pursuit of his corrupt personal aim. See State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527-528 (2000) (recognizing a defendant's subsequent actions can constitute evidence of the defendant's intent at an earlier point). Finally, it showed Appellant's corrupt scheme climaxed with him threatening Nabors with adverse job consequences if she would not agree to share a room with him—for obvious purposes—on an out-of-town trip. See Bryson v. State, 807 S.W.2d 742, 745 (Tex. Crim. App. 1991) (concluding Bryson was guilty of criminally abusing his position as police chief by subjecting a subordinate employee to sexual harassment

and finding Bryson's acts occurred while he was acting in an official capacity because his position as police chief "was the means to accomplishing that harassment without fear of rejection").

Because Appellant was shown to have violated the most fundamental of his office's duties by misusing his official authority and public resources not for the public's good but for his own corrupt ends, the evidence and testimony presented—when viewed in a light most favorable to the State as required—was sufficient to establish Appellant engaged in corrupt and fraudulent actions that rose to the level of official misconduct and, thus, constituted the crime of misconduct of a public officer. Lee, 313 S.C. at 144, 437 S.E.2d at 86. Under such circumstances, the trial judge correctly denied the directed verdict motion and submitted the misconduct of a public officer charge to the jury, and his ruling was well supported by the evidence. Littlejohn, 228 S.C. at 329, 89 S.E.2d at 926. Accordingly, there is no proper basis upon which to disturb the trial judge's ruling on appeal, and that is particularly true given the limited nature of Appellant's appellate challenge to the sufficiency of the evidence, which is only focused on one of the multiple means by which his guilt for the charged offense could be proven. See Anderson v. West, 270 S.C. 184, 188, 241 S.E.2d 551, 553 (1978) ("We hold that where a jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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