STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Edward B. Cottingham, Circuit Court Judge

Appellate Case No: 2013-000197

THE STATE,

Respondent,

v.

MARQUIS T. EVANS,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General
S.C. Bar No: 79818

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

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly denied Appellant's motion for directed verdict and motion for a new trial because sufficient evidence existed to establish he had knowledge the property was stolen.

II.

Appellant's argument that the trial court erred in admitting improper hearsay testimony through witness Dayne Dukes that caused unfair prejudice to Appellant is not preserved as to some of the evidence Appellant argues was unfairly admitted. As to the evidence Appellant did object to, some of his objections were sustained and, thus, he cannot now complain.

III.

Appellant's argument that the trial court erred when it charged the jury with a reasonable person standard for the knowledge element of receiving stolen goods is not preserved, but even if preserved, the trial court properly charged the jury.

STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant for receiving stolen goods value more than $2000 but less than $10,000. (R.* Indictment.) On January 10, 2013, Appellant proceeded to trial before a jury. G. Scott Bellamy represented Appellant, and Bradley C. Richardson represented the State. The jury found Appellant guilty, and the Honorable Edward B. Cottingham sentenced him to three years' imprisonment. (Tr. 161, 167.)

On January 16, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On July 1, 2011, Steven Marinelli, Division President of Airgas National Welders (Airgas), reported a burglary at the company's Wilson, North Carolina location to Dayne Dukes, a loss prevention specialist with the company. (Tr. 40, lines 1-14.) The burglary occurred on the night of June 24 or the morning of June 25, 2011. (Tr. 42, lines 22-25; Tr. 43, lines 1-3.) Dukes obtained a list of missing inventory which listed approximately $13,000 worth of assets. (Tr. 43, lines 4-8.) As part of his investigation, Dukes conducted a search for the missing items on Craig's List, an online classified advertisement section. (Tr. 44, lines 8-20.) He discovered an advertisement for some equipment similar to the stolen equipment that was posted on June 26, 2011. (Tr. 45, lines 14-20; Tr. 47, lines 4-7.) He obtained the contact information from that advertisement. (Tr. 46, lines 12-17.) When he attempted to contact that seller, he discovered the ad had been removed from Craig's List. (Tr. 49, lines 17-21.) However, another ad appeared on Craig's List for the same equipment, with the same contact information. (Tr. 52, lines 7-21.)

Dukes arranged contact with the Craig's List seller, Danny Miller, and planned to meet in the Myrtle Beach area to exchange the items for cash. (Tr. 55, lines 16-19; Tr. 56, lines 12-24; Tr. 57; lines 3-Tr. 59, line 20.) Dukes investigated the phone number of the Craig's List seller and discovered it belonged to Appellant. (Tr. 59, line 23-Tr. 60, line 12.) At that point, Dukes met with the Horry County Police Department and informed the department of his arranged meeting. (Tr. 62, lines 1-15.) Officers from the Horry County Police Department agreed to assist in his meeting to buy the items. (Tr. 62, lines 17-25.) Captain Dale Buchanan agreed to play the part of Mike, the buyer. (Tr. 63, lines 4-15.) Dukes found out Danny Miller would be driving a gold Lexus to the

meeting place and reported this information to the police. (Tr. 64, lines 7-12.) At the prearranged time, Appellant arrived at the meeting place in a gold Lexus. (Tr. 66, lines 2-19.) Officers arrived on the scene, and Appellant consented to a search of his vehicle. (Tr. 66, lines 24-25; Tr. 104, lines 2-11; Tr. 105, lines 6-9.) The police took photographs of the equipment and completed a vehicle inventory tow sheet. (Tr. 105, line 18-Tr. 106, line 25.)

The serial numbers had been removed from most of the items found in Appellant's vehicle; however, one machine had a serial number that matched the exact machine taken during the break-in at Airgas. (Tr. 71, lines 2-21.) All the other equipment matched the descriptions of what had been stolen, and it was returned to Airgas. (Tr. 73, lines 7-25.) Dukes estimated its value at approximately $5,000. (Tr. 74, lines 1-7.) Appellant was placed into custody at the scene and later indicted for receiving stolen goods value more than $2000 but less than $10,000. (Tr. 119, lines 13-14; R* Indictment.)

At trial, the State called Dayne Dukes. (Tr. 36, lines 24-25.) He testified that he obtained a police report regarding the break-in at the Wilson, NC location of Airgas, which listed the inventory that was removed. (Tr. 40, lines 6-16.) The State inquired, "And that's a report that would be part of the public record, correct?" and Dukes answered, "That is correct, sir." (Tr. 40, lines 17-19.) At that point, the following exchange took place:

> [Appellant]: "Your Honor, I'm not sure if he's intending to introduce it[;] this is a police report not prepared by him. We would object to it."
>
> The Court: I'm not gonna [sic] permit a police report to be introduced.

> [Appellant]: We would object, Your Honor.
>
> The Court: Sustained.
>
> [The State]: Your Honor, as far as a public record it's under the public record rule.
>
> The Court: He, of course - - he can testify from it. It's a matter - - it's a business record but it will not be introduced by statute as you understand.
>
> [The State]: Yes, sir, Your Honor.

(Tr. 40, line 20-Tr. 41, line 7.) The State then marked the police report as an identification exhibit. (Tr. 41, lines 11-25.)

Later, Dukes testified that his investigators traced the phone number listed on the Craig's List ad to Appellant. (Tr. 60, lines 1-12.) The State then asked, "Did you learn anything else with regard to where [Appellant] resided?" and Dukes answered, "Yes, sir, I did." (Tr. 60, lines 13-15.) At that point, the following exchange took place:

> [Appellant]: Judge, now - - and I let it go before but what other people had told him, I think is hearsay. What he knows of his own knowledge I don't have [a] problem with that.
>
> The Court: Sure, I understand that.
>
> [Appellant]: But not what other people told him.

(Tr. 60, lines 16-20.) Further along in its direct examination, the State asked Dukes, "And out of that equipment, did there ever come a time when you were able to specifically identify that equipment?" to which he began to answer, "Yes, we, with one of the other officers that was - - -." (Tr. 70, lines 7-9.) Appellant objected then, but the trial court allowed Dukes to finish his answer, which was, "Myself and Jay Richards and a detective went through all the inventory." (Tr. 70, lines 10-14.) The trial court stated, "I will permit that. He says he did it. Go ahead." (Tr. 70, lines 15-16.)

During cross-examination, Appellant asked Dukes about the piece of equipment that matched the serial number of one of the stolen items. (Tr. 76, lines 3-6.) Appellant asked Dukes what the serial number was, and he said he did not have that information available. (Tr. 77, lines 23-25.) The trial court allowed Dukes to look at his records to refresh his memory. (Tr. 78, lines 2-3.) Dukes located the information outside the presence of the jury and told the trial court the name of the equipment and the serial number. (Tr. 80, lines 1-7.) Dukes then began answering the question in front of the jury and the following occurred:

> [Dukes]: Okay, It is - - it's called a Caddy MIG welder and I have the serial number.
>
> [Appellant]: What are you reading from, Mr. Dukes?
>
> [Dukes]: I'm reading from the report that was prepared by Jonathon Rabon, a detective for Horry County PD.
>
> [Appellant]: So, this is not your report?
>
> [Dukes]: I was there when this report was put together, this - - the inventory or Return of Assets sheet.
>
> [Appellant]: Could I see that report?
>
> [Dukes]: There's [sic] some other notes on it.
>
> The Court: You didn't let him finish answering the question, first, as to - - -
>
> [Appellant]: Go ahead.
>
> The Court: Answer the question first as to the serial number, please.
>
> [Dukes]: It is a 11110491 for this Caddy MIG welder.
>
> The Court: Now you're entitled to look at the report.
>
> [Appellant]: Can you give me just a second, Judge?

The Court: Surely.

(Tr. 82, lines 2-20.) Appellant then told the trial court he did not think he had received the document Dukes used to recall the serial number, and the State advised the trial court that the document was listed in the evidence log that went out with discovery. (Tr. 83, lines 5-24.) The trial court accepted the State's position that the document was mailed to Appellant and determined it was admissible. (Tr. 83, line 25-Tr. 84, line 5.)

Appellant then questioned Dukes about where he got the serial number, and Dukes testified, "I got it from - - we were all together with the police department here in Horry County PD, okay, we were there when they went through all the equipment and made notations of what serial numbers they could find, okay, and this is one that came back . . . and then we cross referenced, got on the phone and we were notified by Airgas . . . that that in fact was our equipment from the manufacturer." (Tr. 85, lines 13-23.)

The State introduced six photographs, Identification Exhibits 4-9, while Dukes was on the stand. (Tr. 67, lines 17-19.) The State asked whether he recognized the photographs, what the photographs were, and whether they fairly and accurately depicted everything he saw at the scene. (Tr. 67, line 20-Tr. 68, line 17.) Appellant did not object. All the photographs, and also a photograph of Appellant's license plate, were then admitted into evidence without objection. (Tr. 69, line 19-Tr. 70, line 2.) Later, the State showed the photographs to Detective Michael Kathman, who also testified the photographs fairly and accurately depicted the property he saw that day, without objection. (Tr. 105, line 22-Tr. 106, line 4.)

After the State rested, Appellant moved for a directed verdict, arguing the State had not made a sufficient case that he knew or should have known the items were stolen and only circumstantial evidence existed as to the issue of knowledge. (Tr. 127, lines 9-

16.) The trial court denied the motion based on the evidence that showed Appellant had one item in his possession that was identified by product number and other items that were in original packaging. (Tr. 128, lines 5-17.) The trial court then discussed jury charges with the attorneys. (Tr. 128, line 18-Tr. 129, line 19.) The trial court gave the jury the following instruction in regards to receiving stolen goods:

> The Defendant is charged with receiving stolen goods. The State must prove beyond a reasonable doubt that the Defendant bought, received or possessed goods, chattels or other property and that the Defendant knew or had reason to believe that the property was stolen. Whether the Defendant knew or had reason to believe that the property was stolen may be shown by direct or circumstantial evidence. The State may prove that the Defendant knew or had reason to believe that the property was stolen by showing that the Defendant knew facts that would make a reasonable person believe that the property was stolen.

(Tr. 138, lines 2-12.) After instructing the jury, the trial court noted that the charges were previously agreed to but asked whether either attorney had any exceptions or additions. (Tr. 158, lines 19-21.) Appellant stated no exceptions or additions to the charges.

After the jury found Appellant guilty, he renewed all previous motions and moved for a new trial, arguing the verdict was not supported by the evidence. (Tr. 164, lines 8-21.) The trial court denied the motions, explaining that sufficient evidence existed to cause the jury to infer the property was stolen and to substantiate the verdict. (Tr. 165, lines 8-14.) The trial court sentenced Appellant to three years' imprisonment. (Tr. 167, lines 8-10.)

ARGUMENTS

I.

The trial court correctly denied Appellant's motion for directed verdict and motion for a new trial because sufficient evidence existed to establish he had knowledge the property was stolen.[1]

Appellant argues the trial court erred in denying Appellant's motion for directed verdict and motion for a new trial on the ground that there was insufficient evidence Appellant had knowledge the property was stolen. Specifically, he argues the only evidence presented that the items were stolen was hearsay and the State did not present evidence Appellant knew the property was stolen. Additionally, Appellant argues the evidence relied upon by the State to prove Appellant's knowledge was entirely circumstantial. Furthermore, Appellant contends the State failed to present evidence regarding the circumstances under which he was transferred possession of the property. Also, Appellant argues the trial court's statement that "the jury could've easily found him not guilty based on the evidence in the case" establishes that the evidence raised only a suspicion of guilt. Finally, Appellant claims that Dayne Dukes, the loss prevention specialist for Airgas, had no firsthand knowledge of the stolen property and, thus, his testimony was hearsay.

On the contrary, sufficient evidence existed for the trial court to deny the directed verdict motion and allow the case to be submitted to the jury. Sufficient evidence also existed to support the denial of Appellant's motion for a new trial. As presented more thoroughly in Argument II, the evidence Appellant asserts is hearsay was properly

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[1] In his brief, Appellant listed the motion for directed verdict and the motion for a new trial as separate issues, I and III, but addressed them both under Issue I. The State has combined them into one issue and will address them together.

admitted. As for the argument that the evidence relied upon by the State to prove Appellant's knowledge was entirely circumstantial, "[g]uilty knowledge is seldom susceptible of proof by direct evidence and may be proved by circumstances from which such knowledge may be inferred." State v. Atkins, 244 S.C. 213, 216, 136 S.E.2d 298, 299 (1964). Moreover, "if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

In response to Appellant's argument that the State did not present evidence of the transfer of the property to Appellant, that is not an element of the crime and need not be proven. In regards to the fact that the trial court stated the jury could have easily found Appellant not guilty based on the evidence, the trial court said the statement in response to Appellant's statement: "There's a wide range of sentencing here, Judge. This - - and let me say this, Judge, and you heard the case, this was not a case that we went into and said, you know, the evidence is so overwhelming nobody would ever find us not guilty. We believe it was a legitimate issue to be litigated." The trial court was simply agreeing with Appellant's statement. Finally, Appellant's argument that Dayne Dukes had no firsthand knowledge of the stolen items because he worked at a private company that was hired by Airgas to handle loss prevention is disputed by his testimony. During his testimony, Dukes described working with police on parts of the investigation and on comparing the stolen item list to what was found in Appellant's car. (Tr. 70, lines 13-18; Tr. 85, lines 13-23.) Thus, the trial court properly denied Appellant's directed verdict motion and his motion for a new trial.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); see also State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990) (noting that when reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State). An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648.

"It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial judge." State v. Taylor, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2002). A new trial should be granted only if there is no evidence to support the conviction. Id. "However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." Id. "It is the province of [the jury] to weigh the evidence and decide on its sufficiency in reaching a verdict." State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975). "Where there is any evidence tending to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced, the refusal to direct a verdict or grant a new trial is not error." State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255-56 (1993).

Section 16-13-180 of the South Carolina Code provides: "It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen." When the trial court denied Appellant's directed verdict motion, it denied the motion based on evidence that showed Appellant had one item in his possession that was identified by product

number and matched the serial number of a stolen item and other items that were in original packaging. The trial court specifically stated:

> I would respectfully disagree with you in that there is testimony that this Defendant had in his possession numerous recently stolen items identified by product number. As to one specific item, it was identified by the exact number on the plates. There is an additional inference that the jury well may derive and that is that there is testimony that some of this stuff was still in its original packaging indicating it was brand new. Obviously, we know that brand new merchandise is generally not sold. I would think there is an inference to be derived by the jury -- it is a circumstantial evidence case and I'll charge circumstantial evidence but I would respectfully deny your motion and think it's a question for the jury.

(Tr. 128, lines 5-17.) Our courts have held that in a prosecution for receiving stolen goods, guilty knowledge can be proved by showing a person was found in possession of recently stolen goods. Furthermore, in State v. Hamilton, our Supreme Court stated:

> [I]n the trial of a person on the charge of receiving stolen goods and in determining whether or not such person knew that the goods were stolen, which is a necessary fact to be proven, and proven beyond a reasonable doubt, before there can be a lawful conviction on such charge, it is not necessary that the person from whom the goods were received should state that the goods were stolen, but the jury may reach such conclusion, that the person receiving the goods knew the same were stolen, from the surrounding circumstances under which they were received, and it is proper for the jury, in passing upon such issue, to take into consideration the surrounding circumstances under which the goods were received.

166 S.C. 274, 164 S.E. 639, 640 (1932). See also State v. Williams, 350 S.C. 172, 175-76, 564 S.E.2d 688, 690-91 (Ct. App. 2002) (possession of stolen vehicle was circumstantial evidence that defendant knew the vehicle was stolen). Because substantial circumstantial evidence existed tending to prove Appellant's guilt, the trial court correctly denied the directed verdict motion and submitted the case to the jury for its

resolution. Additionally, sufficient evidence existed to support the trial court's denial of Appellant's motion for a new trial.

II.

Appellant's argument that the trial court erred in admitting improper hearsay testimony through witness Dayne Dukes that caused unfair prejudice to Appellant is not preserved as to some of the evidence Appellant argues was unfairly admitted. As to the evidence Appellant did object to, some of his objections were sustained and, thus, he cannot now complain.

Appellant argues the trial court admitted hearsay evidence that unfairly prejudiced him and constitutes reversible error. Specifically, he argues Dayne Dukes was allowed to testify about a police report he did not generate, a phone number that was tracked to Appellant, a serial number that came from a police report, and photographs he did not take. However, the trial court correctly allowed Dukes to testify without admitting any hearsay evidence. Furthermore, Appellant did not object to some of the testimony he now argues on appeal was hearsay. Additionally, the trial court actually sustained some of Appellant's objection and, thus, he cannot now be heard to complain.

One of the pieces of evidence Appellant argues was hearsay was a police report Dukes referred to regarding the break-in at the Wilson, NC Airgas location. When Appellant mentioned this report during his testimony, Appellant objected and the trial court sustained the objection. Thus, Appellant cannot now complain. See State v. Parris, 387 S.C. 460, 465, 692 S.E.2d 207, 209 (Ct. App. 2010) ("When the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide."). While the trial court did allow Dukes to testify from the police report, it did not admit the report into evidence.

Another piece of evidence Appellant calls inadmissible hearsay was the testimony that Dukes' investigators traced the phone number listed on the Craig's List ad to Appellant. However, Appellant did not object to this testimony. He merely told the trial

court that what other people told Dukes was hearsay but that he did not have a problem with what Dukes knew of his own knowledge, and the trial court agreed. (Tr. 60, lines 16-20.) There was no issue raised to or ruled upon by the trial court; thus, this is not preserved for review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."). Furthermore, to the extent any objection could be considered made, the trial court agreed with Appellant and, therefore, Appellant received the relief he requested. See Parris, 387 S.C. at 465, 692 S.E.2d at 209 ("When the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide.").

The next part of Dukes' testimony Appellant argues was hearsay involved the State's asking Dukes about how he specifically identified the equipment after it was recovered from Appellant's car. Appellant objected when Dukes mentioned other officers, but the trial court allowed him to finish his answer and permitted the testimony because Dukes conducted the inventory investigation with two others. (Tr. 70, lines 7-16.) According to Rule 602, SCRE, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony." Here, the exchange between Dukes and the trial court demonstrates Dukes' personal knowledge of the matter:

> [Dukes]: Myself [sic] and Jay Richards and a detective went through all the inventory.
>
> The Court: I will permit that. He says he did it. Go ahead.

[Dukes]: I was there.

The Court: All right, sir.

(Tr. 70, lines 13-18.) Additionally, this testimony could not be considered hearsay because it is not an out-of-court statement.

Appellant further argues Dukes' testimony about matching the serial number of a piece of found equipment with one that was stolen was hearsay because he relied on a report generated by a police officer. However, Appellant asked him what the serial number was during his cross-examination and the trial court allowed Appellant to take time to search his records before answering, without objection from Appellant. Outside the presence of the jury, Dukes located the information and read the name of the equipment and the serial number. At that point, Appellant could have objected to where the information came from, but he did not. After the jury returned, Appellant questioned Dukes about the report and whether it was his. Appellant then told the trial court he did not think he had received the document in discovery, and the State advised the trial court that the document was listed in the evidence log that went out with discovery. At no point did Appellant object to the report on the basis of hearsay; he merely argued he did not receive a copy. Thus, this particular argument is not preserved for review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693-94 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal. . . . A party may not argue one ground at trial and an alternate ground on appeal.").

Finally, Appellant argues the State introduced photographs through Dukes even though he did not take the pictures. "Normally it is sufficient to justify admittance of

photographs into evidence if a person familiar with the scene can say that the pictures truly represent the scene involved." State v. Campbell, 259 S.C. 339, 344, 191 S.E.2d 770, 773 (1972). According to Rule 901, SCRE, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." By questioning Dukes and Kathman about whether the photographs were a fair and accurate depiction of what was in them, the State satisfied Rule 901. Furthermore, the general rule is:

> For photographs to be admissible, the individual who took the photographs need not be the person who verifies them at trial, and the verifying witness is not required to have been present when the photographs were taken, provided that he or she can attest that the photographs accurately portray the scene or object depicted. Thus, any witness with knowledge that a photograph is a fair and accurate representation may lay the necessary foundation for admission of a photograph.

29A Am. Jur. *Evidence* § 981. When the State introduced six photographs, Identification Exhibits 4-9, it asked Dukes if he recognized the pictures, what the photographs were, and whether they fairly and accurately depicted everything he saw at the scene. Appellant did not object. All the photographs, and also a photograph of Appellant's license plate, were then admitted into evidence without objection. (Tr. 69, line 19-Tr. 70, line 2.) Later, the State showed the photographs to Detective Michael Kathman, who also testified the photographs fairly and accurately depicted the property he saw that day, without objection. (Tr. 105, line 22-Tr. 106, line 4.) Therefore, the trial court properly admitted the photographs.

Accordingly, the trial court did not admit any improper hearsay evidence that caused unfair prejudice to Appellant. Thus, the trial court's rulings should be affirmed.

III.

Appellant's argument that the trial court erred when it charged the jury with a reasonable person standard for the knowledge element of receiving stolen goods is not preserved, but even if preserved, the trial court properly charged the jury.

Appellant argues the trial court erred in charging the jury that a reasonable person standard was sufficient to prove knowledge for the charge of receiving stolen goods. He argues the jury should have been charged with determining what effects the facts of this case had upon Appellant himself. Furthermore, he argues a "reasonable man" approach attempts to integrate a civil negligence standard into criminal law, lessening the State's burden of proving guilt beyond a reasonable doubt. Finally, Appellant contends that because the trial court's reference to a reasonable person standard likely misled the jury and shifted the State's burden of proof, it undoubtedly had a prejudicial effect on Appellant. However, because Appellant did not raise this issue at trial, it is not preserved for appellate review.

Error in jury instructions is not preserved for review if the defendant fails to object. See Rule 20(b), SCRCrimP (stating failure to object to the giving or failure to give a jury instruction shall constitute waiver of the objection); State v. Whipple, 324 S.C. 43, 52, 476 S.E.2d 683, 688 (1996) (noting the failure to object to a charge as given, or to request an additional charge when given an opportunity to do so, constitutes a waiver of the right to complain on appeal).

Here, Appellant did not object to the jury instructions after the trial court charged the jury that it could find Appellant knew or had reason to believe the property was stolen based on what a reasonable person would believe. By not objecting to the charge as

given, Appellant waived his right to complain on appeal. Accordingly, this issue is not preserved for appellate review.

Appellant's argument also fails on the merits. "Generally, the trial judge is required to charge only the current and correct law of South Carolina." State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Id.

Section 16-13-180 of the South Carolina Code provides: "It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen." (emphasis added).

> The law states the defendant must know or have reason to believe the property is stolen. This requirement is satisfied by either a subjective or an objective state of mind. One who knows or believes the property is stolen meets the subjective standard. One who neither knows nor believes the property to be stolen but who ought to have so known or believed meets the alternative objective standard and is equally guilty. The phrase "or has reason to believe" refers to the objective, reasonable person standard.

Ralph King Anderson, Jr., *South Carolina Requests to Charge-Criminal* 158, § 2-34 (2007) (emphasis added). Because the reasonable person standard is built into the statutory language, it was not error for the trial court to instruct the jury in this manner.[2]

While Appellant cited some very old cases that seem to indicate that the reasonable person standard is not a correct statement of the law, the current law in South Carolina indicates a reasonable person charge is correct. The three cases cited by

[2] Furthermore, the trial court's charge came directly from the current version of the Criminal Charges Bench Book, which the judicial department updates each year and distributes to judges.

Appellant are from 1908, 1932, and 1954. After investigating the history of the Receiving Stolen Goods statute, it appears the language present in today's statute was introduced some time after 1985. According to the 1954 and 1962 versions of the Code, the Receiving Stolen Goods statute, which was § 16-362, provided:

> In all cases whatever when any goods or chattels or other property of which larceny may be committed shall have been feloniously taken or stolen by any person every person who shall buy or receive any such goods or chattels or other property **knowing the same to have been stolen** shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment, although the principal felon be not previously convicted and whether he is amenable to justice or not[.]

S.C. Code Ann. § 16-362 (1954, 1962). The 1985 version also still contained the language, "knowing the same to have been stolen." However, by the time Appellant committed his crime in 2011, the statute had been changed to include the phrase "or has reason to believe," which refers to the objective, reasonable person standard. Thus, the older cases cited by Appellant have no bearing on what the proper jury charge is today.

Additionally, Appellant's argument that the "reasonable man" approach attempts to integrate a civil negligence standard into criminal law, thus lessening the State's burden of proving guilt beyond a reasonable doubt and shifting the State's burden of proof, is without merit. In its jury instructions, the trial court charged:

> The Defendant is charged with receiving stolen goods. The State must prove beyond a reasonable doubt that the Defendant bought, received or possessed goods, chattels or other property and that the Defendant knew or had reason to believe that the property was stolen. Whether the Defendant knew or had reason to believe that the property was stolen may be shown by direct or circumstantial evidence. The State may prove that the Defendant knew or had reason to believe that the property was stolen by showing that the Defendant knew facts that would make a reasonable person believe that the property was stolen.

(Tr. 138, lines 2-12.) (emphasis added.) Therefore, the trial court made clear the State's burden of proof was beyond a reasonable doubt.

The trial court gave the jury a charge that reflected the current and correct law in South Carolina, based on the language of the statute under which Appellant was charged. Thus, it properly instructed the jury and should be affirmed.

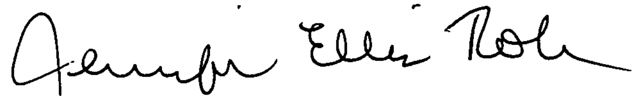
CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 

Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

April 26, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
APR 26 2013
Court of Appeals

Appeal from Horry County
Honorable Edward B. Cottingham, Circuit Court Judge

Appellate Case No: 2013-000197

THE STATE,

Respondent,

v.

MARQUIS T. EVANS,

Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

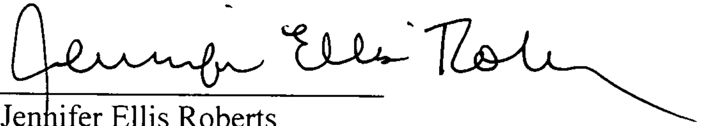
Respondent proposes the same Designation of Matter to be Included in Record on Appeal as Appellant.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 

Jennifer Ellis Roberts
Bar # 79818

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

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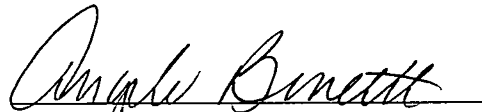
PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Russell W. Mace, III, Esquire
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, SC 29577

I further certify that all parties required by Rule to be served have been served.
This 26th day of April, 2013.



ANGELA BENNETT
Legal Assistant

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