The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Comply with Continuing Legal Education Requirements

---

O R D E R

The South Carolina Commission on Continuing Legal Education and Specialization has furnished the attached list of lawyers who have failed to file reports showing compliance with continuing legal education requirements, or who have failed to pay the filing fee or any penalty required for the report of compliance, for the reporting year ending in February 2022. Pursuant to Rule 419(d)(2), SCACR, these lawyers are hereby suspended from the practice of law. They shall surrender their certificates to practice law in this State to the Clerk of this Court by May 28, 2022.

Any petition for reinstatement must be made in the manner specified by Rule 419(e), SCACR. Additionally, if they have not verified their information in the Attorney Information System, they shall do so prior to seeking reinstatement.

These lawyers are warned that any continuation of the practice of law in this State after being suspended by this order is the unauthorized practice of law, and will subject them to disciplinary action under Rule 413, SCACR, and could result in a finding of criminal or civil contempt by this Court. Further, any lawyer who is aware of any violation of this suspension shall report the matter to the Office of Disciplinary Counsel. Rule 8.3, Rules of Professional Conduct for Lawyers, Rule 407, SCACR.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

April 28, 2022

LAWYERS NON-COMPLIANT
WITH THE MCLE REQUIREMENTS
FOR THE 2021-2022 REPORTING YEAR
AS OF APRIL 26, 2022

Scott Cameron Armstrong
Venable, LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21224
ADMINISTRATIVE SUSPENSION (2/24/22)

Christopher Paul Becker, Sr.
2828 Waterpointe Circle
Mount Pleasant, SC 29466

Drelton "D.J." A. Carson, Jr.
The Carson Law Firm, LLC
PO Box 1494
Columbia, SC 29202
INTERIM SUSPENSION (6/18/21)

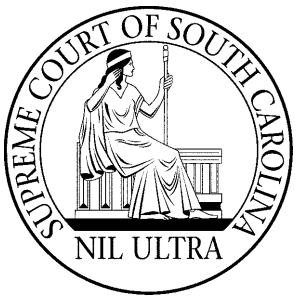
Cory Howerton Fleming
Moss Kuhn & Fleming, PA
PO Drawer 507
Beaufort, SC 29901
INTERIM SUSPENSION (10/8/21)

Aaron Cole Mayer
Mayer Law Practice, LLC
PO Box 21931
Charleston, SC 29413
INTERIM SUSPENSION (2/24/18)

Richard Alexander Murdaugh
Peters Murdaugh Parker Eltzroth & Detrick, PA
PO Box 457
Hampton, SC 29924-0457
INTERIM SUSPENSION (9/8/21)

Manisha G. Shah
The Shah Law Firm

27 English Oak Road
Simpsonville, SC 29681



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 16
May 4, 2022
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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2021-UP-437 – State v. Malik J. Singleton Pending

2021-UP-447 – Jakarta Young #276572 v. SCDC Pending

2022-UP-003 – Kevin Granatino v. Calvin Williams Pending

2022-UP-022 – H. Hughes Andrews v. Quentin S. Broom, Jr. Pending

2022-UP-028 – Demetrius Mack v. Leon Lott (2) Pending

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The Supreme Court of South Carolina

In the Matter of James Marshall Biddle, Petitioner.

Appellate Case No. 2021-000618

ORDER

This Court suspended Petitioner from the practice of law for a period of three years and imposed certain conditions on Petitioner's future practice should he be reinstated to the practice of law. *In re Biddle*, 412 S.C. 630, 773 S.E.2d 590 (2015). On June 16, 2021, Petitioner filed a petition for reinstatement pursuant to Rule 33, RLDE, Rule 413, SCACR. After referral to the Committee on Character and Fitness (Committee), the Committee has filed a report and recommendation recommending the Court reinstate Petitioner to the practice of law.

We find Petitioner has met the requirements of Rule 33(f), RLDE. Therefore, we grant the petition for reinstatement upon the following conditions:

1) Within thirty days, Petitioner shall:

    a. hire a law office management advisor approved by the Commission on Lawyer Conduct (Advisor);

    b. obtain a mentor approved by the Commission on Lawyer Conduct (Mentor); and

    c. submit to the Commission on Lawyer Conduct proof that his 2022 annual license fees have been paid to the South Carolina Bar.

2) Within thirty days of retaining the Advisor, Petitioner shall meet with the Advisor to conduct a thorough review of his law office management practices.

3) Within thirty days of the date of the review, the Advisor shall file a report concerning Petitioner's law office management practices with the Commission on Lawyer Conduct; the report shall include a review, analysis, and recommendations concerning Petitioner's practice.

4) Petitioner shall meet with the Mentor and the Advisor at least once every three months for a period of two years.

5) The Mentor and the Advisor shall file a complete report with the Commission on Lawyer Conduct within thirty days of each meeting.

6) Petitioner shall be responsible for payment of the Advisor and Mentor, if applicable, and Petitioner shall be responsible for timely submission of the Advisor's and Mentor's reports.

7) Within one year, Petitioner shall complete the Legal Ethics and Practice Program Ethics School and submit proof of completion to the Commission on Lawyer Conduct within thirty days of completion.

Petitioner's failure to comply with any of these conditions or with the Advisor's recommendations shall constitute grounds for further discipline.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Hearn, J., not participating.

Columbia, South Carolina
April 29, 2022

The Supreme Court of South Carolina

In the Matter of the Application of Frederick Shearouse Bergen, Jr., Respondent.

Appellate Case No. 2021-000510

ORDER

On July 7, 2021, this Court authorized Respondent to be admitted to practice law subject to certain conditions.

By order dated April 28, 2022, this Court suspended Respondent from the practice of law in this state pursuant to Rule 17, RLDE, Rule 413, SCACR, until further order of this Court. This order is to provide the bench, bar, and public with notice of this suspension.

s\ Kaye G. Hearn A.C.J.
FOR THE COURT

Columbia, South Carolina
April 28, 2022

The Supreme Court of South Carolina

Re: Rule Amendments

Appellate Case Nos. 2022-000029, 2021-001054, 2021-001056, and 2021-001035

ORDER

On February 1, 2022, the following orders were submitted to the General Assembly pursuant to Article V, §4A of the South Carolina Constitution:

(1) An order adopting Rule 613 of the South Carolina Appellate Court Rules.

(2) An order adopting Rule 614 of the South Carolina Appellate Court Rules and amending Rule 11 of the South Carolina Rules of Civil Procedure.

(3) An order amending Rule 4 and adopting new Rule 4.1 of the South Carolina Rules of Civil Procedure.

(4) An order amending Rule 43(k) of the South Carolina Rules of Civil Procedure.

(5) An order amending Rule 14(e) of the South Carolina Rules of Family Court.

(6) An order adopting Rule 28 of the South Carolina Rules of Family Court.

Since ninety days have passed since submission without rejection by the General Assembly, the amendments contained in the above orders are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
May 2, 2022

The Supreme Court of South Carolina

RE: Amendment to the South Carolina Appellate Court Rules—Rule 613

Appellate Case No. 2022-000029

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, the South Carolina Appellate Court Rules are amended to add Rule 613 as indicated in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

The South Carolina Appellate Court Rules are amended to add new Rule 613, which provides:

RULE 613
SERVICE BY ELECTRONIC MEANS IN THE TRIAL COURTS

In addition to the methods of service provided for in the rules governing service of pleadings and other papers in the various trial courts of this State, the Supreme Court of South Carolina may, by order, set forth the means of allowing for service by electronic means, including by e-mail. Electronic service under this rule may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served.

The Supreme Court of South Carolina

RE: Amendment to the South Carolina Appellate Court Rules—Rule 614; Amendments to South Carolina Rules of Civil Procedure—Rule 11

Appellate Case No. 2022-000029

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, the South Carolina Appellate Court Rules are amended to add Rule 614, as shown in the attachment to this order. Further, Rule 11 of the South Carolina Rules of Civil Procedure is amended as set forth in the attachment to this order. These amendments shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

The South Carolina Appellate Court Rules are amended to add Rule 614, which provides:

RULE 614
ELECTRONIC SIGNATURES

Where a rule of court requires that a pleading, motion, or other paper be signed by the party or the party's attorney, the document may be signed using "s/ [typed name of person]," a signature stamp, or a scanned or other electronic version of the person's signature, except in cases where an original signature is required by law, such as an affidavit. Regardless of form, the signature shall act as a certificate that the person has read the document; that to the best of the person's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

Rule 11(a) of the South Carolina Rules of Civil Procedure is amended to delete the provision stating "An attorney or party may only utilize an electronic signature in pleadings, motions or other papers that are E-Filed in the SCE-File electronic filing system." The following Note is added to the rule:

Note to 2022 Amendment

Based on the adoption of Rule 614 of the South Carolina Appellate Court Rules, which permits a party to sign a pleading using an electronic signature, the provision restricting the use of electronic signatures to E-Filed pleadings has been deleted from the rule.

The Supreme Court of South Carolina

Re: Amendments to the South Carolina Rules of Civil Procedure

Appellate Case No. 2021-001054

ORDER

Pursuant to Article V, § 4A of the South Carolina Constitution, the South Carolina Rules of Civil Procedure are amended as set forth in the attachment to this order. These amendments shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

Rule 4 of the South Carolina Rules of Civil Procedure is amended to delete paragraph (h)(5) and add the following Note:

Note to 2022 Amendment:

Based on the adoption of new Rule 4.1, paragraph (h)(5) of this rule, which specified the method of proof of service if made outside the United States, has been deleted.

The South Carolina Rules of Civil Procedure are amended to adopt new Rule 4.1, which provides:

RULE 4.1
SERVICE OF PROCESS IN FOREIGN COUNTRIES

(a) Serving an Individual in a Foreign Country. Unless otherwise provided by law, an individual—other than a minor or an incompetent person—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(b) Serving a Corporation or Partnership in a Foreign Country. Unless otherwise provided by law, a corporation, partnership or association may be served at a place not within any judicial district of the United States, in any manner prescribed by paragraph (a) for serving an individual, except personal delivery under (a)(2)(C)(i).

(c) Proof and Return.

(1) Service not within any judicial district of the United States must be proved as follows:

(A) if made under paragraph (a)(1) of this rule, as provided in the applicable treaty or convention; or

(B) if made under paragraph (a)(2) or (a)(3) of this rule, by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(2) Failure to make proof of service does not affect the validity of the service.

(d) Amendment. At any time in its discretion and upon terms as it deems just, the court may, by written order, allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(e) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service. The acknowledgement shall state the place and date service is accepted.

Note:

Rule 4.1 adopts provisions of the federal rule with respect to service of process in foreign countries. This new rule is intended to provide guidance as to the proper methods of service and proof of service in foreign countries, and is not intended to amend or supplant the provisions of existing Rule 4 with respect to the issuance or form of the summons.

The Supreme Court of South Carolina

Re: Amendment to Rule 43(k), South Carolina Rules of Civil Procedure

Appellate Case No. 2021-001056

ORDER

Pursuant to Article V, § 4A of the South Carolina Constitution, Rule 43(k) of the South Carolina Rules of Civil Procedure is amended as set forth in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

Rule 43(k) of the South Carolina Rules of Civil Procedure is amended to provide:

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. However, where the parties reach a settlement agreement during a mediation governed by the South Carolina Court-Annexed Alternative Dispute Resolution Rules and the settlement agreement involves payment by an insurer, the signature of counsel retained by an insurer on behalf of the Defendant(s) or third party administrator shall suffice in place of the signature of the insured party. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

Note to 2022 Amendment

The amendment to Rule 43(k) clarifies the existing practice in cases where the parties have waived the presence of the actual named defendant at a mediation settlement conference and allows for more efficient enforcement of mediated settlements.

The Supreme Court of South Carolina

Re: Amendments to Rule 14(e), South Carolina Rules of Family Court

Appellate Case No. 2021-001035

ORDER

Pursuant to Article V, § 4A of the South Carolina Constitution, Rule 14(e) of the South Carolina Rules of Family Court is amended as set forth in the attachment to this order. These amendments shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

Rule 14(e) of the South Carolina Rules of Family Court is amended to provide:

(e) Service; Proof of Service.

(1) Personal Service. The rule to show cause shall be served with the supporting affidavit or verified petition by personal delivery of a duly filed copy thereof to the responding party by the Sheriff, his deputy or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. If served by the sheriff or his deputy, he shall make proof of service by his certificate. If served by any other person, he shall make affidavit thereof.

(2) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service. The acknowledgement shall state the place and date service is accepted.

Note to 2022 Amendment:

This amendment specifies the manner of proof of personal service, which is consistent with the requirements of Rule 4(g), SCRCP. The amendment also permits a person to accept service of a rule to show cause in a manner consistent with Rule 4(j), SCRCP, in which case no other proof of service is required.

The Supreme Court of South Carolina

Re: Amendments to the South Carolina Rules of Family Court

Appellate Case No. 2022-000029

ORDER

Pursuant to Article V, § 4A of the South Carolina Constitution, the South Carolina Rules of Family Court are amended to add Rule 28, as set forth in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, §4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2022

The South Carolina Rules of Family Court are amended to add Rule 28, which provides:

RULE 28
GRANTING CERTAIN RELIEF WITHOUT A HEARING

(a) Granting of Uncontested Divorces Based on Separation for One Year Without a Hearing. The family court may grant an uncontested divorce based on separation for one year without holding a hearing, including granting any requested name change, if:

(1) The relief sought is limited to a divorce and any related change of name. If other relief is sought, including but not limited to, child support, child custody or visitation, alimony, property distribution, or fees for attorneys or guardians ad litem, the divorce may not be granted without a hearing.

(2) The parties submit written testimony in the form of affidavits of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, and the impossibility of reconciliation.

(3) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(4) Any decree submitted by an attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(5) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the family court in the form of an affidavit addressing the appropriate questions for the name change and the name which he or she wishes to resume. This relief shall be included in any proposed order submitted to the

Court for approval at the time of the submission of the documents related to the relief requested.

(b) Approval of Agreements and Consent Orders Regarding Temporary Relief Without a Hearing. Based on the consent of the parties, temporary orders, including but not limited to those relating to child custody, child support, visitation, and alimony, may, in the discretion of the family court judge, be issued without a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the guardian ad litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations, or written testimony.

(c) Consent Orders Regarding Procedural Matters. With the consent of the parties, a consent order relating to discovery, the appointment of counsel or a guardian ad litem (including the fees for, or the relief of, counsel or a guardian ad litem) or any other procedural matter may, in the discretion of the family court judge, be issued without requiring a hearing.

(d) Submission of Additional Information. Nothing in this order shall be construed as preventing a family court judge from requiring additional information or documents to be submitted before making a determination that the order can be issued without a hearing or from holding a hearing where the judge finds a hearing is appropriate.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Matthew J. Hayduk, Appellant,

v.

Emily Rudisill Hayduk, Respondent.

Appellate Case No. 2018-001833

Appeal from Greenville County
Tarita A. Dunbar, Family Court Judge

Opinion No. 5889
Heard June 16, 2021 – Filed January 12, 2022
Withdrawn, Substituted, and Refiled May 4, 2022

AFFIRMED

David Alan Wilson, of Wilson & Englebardt, LLC, of Greenville, for Appellant.

J. Falkner Wilkes, of Greenville, for Respondent.

LOCKEMY, A.J.: Matthew Hayduk (Husband) appeals the family court's order dismissing his action for divorce based on his failure to meet the residency requirements of section 20-3-30 of the South Carolina Code (2014) and awarding attorney's fees to Emily Hayduk (Wife). We affirm.

FACTS

Husband and Wife married in Maine on June 25, 2011. They had two children: Child 1, born in August 2011 and Child 2, born in October 2014 (collectively, Children). On June 23, 2017, Husband filed a complaint for divorce on grounds of adultery and sought separate support and maintenance, child support, child custody, and visitation. He alleged he and Wife separated on September 10, 2016. In addition, Husband asserted he was a resident of Greenville County, South Carolina.[1]

After Wife failed to answer, Husband filed an affidavit of default on August 2, 2017. On August 7, 2017, Wife moved to dismiss Husband's complaint for lack of personal jurisdiction. Wife argued Husband failed to meet the residency requirements of section 20-3-30 and the court lacked jurisdiction of the issues pertaining to Children under section 63-15-330 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).[2] The family court held a hearing on April 3, 2018, and April 13, 2018, to address these jurisdictional issues. At the outset, Wife conceded Husband served her in South Carolina.

From the time the couple married in June 2011 until early 2014, they lived with Wife's parents—the Rudisills—in Eden, North Carolina. For a short period from early to late 2014, Wife, Husband, and Child 1 lived in a home on East Meadow Road in Eden; Wife's friend had inherited the home and allowed them to live there rent-free provided they paid the taxes and maintained the property. However, Wife and Husband had to move out sooner than expected when the homeowner decided to rent to a paying tenant instead. At that point, they moved back in with the Rudisills.

Wife explained that in 2011, while she was pregnant with Child 1, she and Husband began looking at homes in Eden and planned to purchase one. Wife stated she and Husband found a home on Center Church Road in Eden and made

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[1] Wife filed a separate action in North Carolina on July 7, 2017, seeking emergency ex parte custody of Children.

[2] *See generally* S.C. Code Ann. §§ 63-15-300 to -394 (2010). Section 63-15-330 sets forth the circumstances under which a South Carolina family court has jurisdiction in a child custody proceeding.

an arrangement with the homeowner that if they paid the back taxes, the home would belong to them. She stated they obtained an ownership interest in the home when they paid the back taxes in cash at the Rockingham County Courthouse in 2011 and the owner of record allowed them to renovate and live in the property; however, Wife acknowledged this interest was not recorded. Wife explained the home needed renovation to make it "livable," and the renovation process took longer than expected.

Child 2 was born in October 2014. Wife explained that in December of 2014, she, Husband and Children traveled to South Carolina to visit Husband's parents at their home on Ansley Court in Greer and they stayed there until the spring of 2015. They then returned to Eden and moved into the home on Center Church Road. Wife explained that although the home needed more work, enough had been done to make the home habitable. She testified they moved all of their belongings and furniture into the house on Center Church Road, the four of them stayed there regularly, and Husband kept all of his vehicles there.

Wife testified Husband's mother eventually came to own the home and deeded the home to Wife on October 5, 2015. Wife acknowledged, however, that there was no recorded deed showing this. Wife stated that when they originally acquired the Center Church Road home, her understanding was that she, Husband, and Child 1 would live there "for a couple [of] years, flip and sell [it] and move closer to Greensboro." Wife explained Greensboro was about a forty-five-minute drive from Eden. She stated she and Husband "had always talked about wanting to be closer to Greensboro" because it was a larger city, was where Children went to school, and where Husband would have to fly out of for his work with Delta.

Wife testified she enrolled Child 1 in preschool in Eden for the 2015–2016 school year. During the summer of 2016, Wife went to training in Charlotte for a Montessori teaching position and continued to live at the Center Church Road home. Wife began teaching at the Greensboro Montessori School in the fall of 2016 and Children were both enrolled there. Wife testified she and Husband separated in September 2016 and she moved all of her things out of the home and moved back to the Rudisills' with Children. She stated all of Husband's belongings were still in the home after she moved out and that Husband's visitation with Children always occurred at the home on Center Church Road. She averred Husband gave her no indication that his home was actually not with Wife but with his parents in South Carolina.

Wife testified that through 2016, she and Husband were heavily involved in Rockingham County politics. She stated Husband encouraged her to run for the Rockingham County School Board in 2014. Wife testified Husband was on a committee for the Rockingham County Republican Party and accompanied her to all of the Republican Party events in Rockingham County. She stated he donated to the campaigns of several North Carolina politicians and was "extremely involved in Rockingham County and North Carolina politics."

Regarding Wife's tax returns, she testified Husband controlled their financial life and she was "not privy to any kind of tax returns, other than the ones that he filed for [her] when [she] was working in Eden." She stated those were North Carolina tax returns. Wife acknowledged she signed a South Carolina tax return for Children after she and Husband separated, but she stated he told her to sign it and she felt she had no choice but to do so.

Rinda Rudisill, Wife's mother, testified that from June 2011 until 2014 Wife, Husband, and Child 1 lived at the Rudisills' home in Eden, North Carolina. Rudisill testified that in December of 2014, Wife, Husband, and Children left to visit his parents in South Carolina for Christmas. According to Rudisill, they extended their stay in Greer because Husband "got mad at" Wife's father and they did not return until about June of 2015. She testified that when they left, they took only suitcases with what they would need for the trip and nothing indicated they were leaving for a long time. Rudisill stated Wife's father replaced the wiring and plumbing in the Center Church Road home and Wife, Husband, and Children moved into the home when they returned to Eden. Rudisill averred Wife and Husband's long-term plan was to stay at that home. Rudisill testified Husband never gave her the impression he considered the Center Church Road home to be his second home. She recalled Wife, Husband, and Children lived at the home until September 2016 when Wife and Children moved back with the Rudisills.

Additionally, Mary Tabor, a friend of Husband and Wife, testified she met Husband and Wife in Eden in 2014 and that Husband regularly attended political events in Rockingham County in Eden. Tabor recalled that when she visited the Center Church Road home in May 2016 and in the fall of 2016, Husband was present and appeared to be living there.

Husband testified his "flag was planted" in Greenville, South Carolina in 2011 and had never moved from there. Husband testified that he had always considered his parent's home on Ansley Court in Greer, South Carolina, to be his permanent residence. He stated he and Wife intended to "end up back in Greenville" until they found a place to put their "flagpole." Husband noted Wife's military ID card and DEERS enrollment listed the Ansley Court home as her address. He stated the last time he, Wife, and Children were together in South Carolina was in August 2015 for a family vacation in Edisto.

Husband testified he had worked as an airline pilot for Endeavor Air, a Delta Airlines subsidiary, since November 2015. Husband explained his crew was based in LaGuardia in New York City and he commuted by traveling from the airport of his choosing. Husband testified he was also a commissioned officer in the United States Army Corps of Engineers. He stated he joined the Army in September 1999 and never had a break in service but, at times, he was on inactive reserve status. Husband was on inactive reserve status at the time of the hearing, and his unit assignment was in Pennsylvania. Husband testified that during his marriage, he had two long tour assignments and several shorter tours of forty-five days or less. From June of 2012 to August of 2013, Husband was stationed in Enid, Oklahoma, and from May of 2016 until November of 2016, he was stationed in Harrisburg, Pennsylvania. Prior to leaving for training in Oklahoma, Husband was staying with Wife at the Rudisills' home in Eden. Husband stated that after completing training in Oklahoma, he "bounced back and forth" between the Rudisills' and his home unit in Pittsburgh. Husband stated he was fully released from active duty in December of 2013, at which point he returned to Eden with Wife and Child 1, and began looking for work. He explained he took security assignments and instructor positions during that time.

In June or July of 2015, Husband was notified that he was to be placed on active military duty and deployed to the Republic of Kosovo in January of 2016; however, the deployment never took place. In August 2015, Husband accepted a job with Delta and received orders from the U.S. Army National Guard unit in Pennsylvania. He stated he spent some days of the week flying for Delta and some days working for the Army. Husband testified that during this time, Wife and Children lived with the Rudisills in Eden. Husband agreed he supported Wife when she ran for the school board, and he admitted he contributed funds to the campaign of a North Carolina congressional representative.

When asked whether he lived at the Center Church Road home, Husband stated he never disputed he "laid his head there." He testified his mother purchased the Center Church road home in 2012 or 2013 because the investment required to pay the back taxes on the home was more than he had available. He stated his mother still owned the home and he still had personal items there. However, he denied owning an interest in the property.

The family court admitted a copy of two Rockingham County voter profiles in Husband's name. The first document reflected a "register date" of March 12, 2012, and showed the East Meadow Road address in Eden, North Carolina; the second reflected a register date of October 12, 2016, and listed the Center Church Road address in Eden, North Carolina as his home. This voting record showed Husband voted in the primaries and general elections in 2012 and 2014 and in the general election in 2016 in Eden, North Carolina. Husband stated he did not recall voting in the 2012 and 2016 general elections in Eden. A copy of a "request to cancel voter registration" was included with the exhibit, and the reason selected on the form was "I no longer live in North Carolina." This request showed a filing date of May 8, 2017.

The family court issued an order dismissing the complaint, finding Husband failed to show he resided in South Carolina for at least one year prior to filing the divorce action. The family court characterized the issue as a question of personal jurisdiction in its order and concluded it "d[id] not have jurisdiction over the parties in this action" pursuant to section 20-3-30. The family court noted, "Husband was argumentative during cross-examination, which caused the [c]ourt to doubt [his] credibility," and "evasive" when answering questions about the home on Center Church Road and the date of the parties' separation. The family court further opined that although Husband seemed able to recall "intricate details of his life and employment," when questioned about his voting record, he could not recall. The family court found "the testimony and evidence presented by Wife indicate[d] both parties intended for North Carolina to be their marital home" and found "Wife's testimony more credible than Husband's in regard to intent of domicile." The court found Husband "intended to come back home and lay his head down with his wife and children, not his parents, when he was not deployed." In addition, the family court concluded Husband's voting records provided "clear evidence" that he considered North Carolina his domicile until May 2017. The family court determined Wife was entitled to attorney's fees and costs in the

requested amount of $7,241.04. Finally, the family court concluded it lacked jurisdiction over the minor children under the UCCJEA.

Husband moved to reconsider, arguing the family court erred by finding it lacked jurisdiction over the divorce and by awarding attorney's fees to Wife. He argued the family court erred by placing significant emphasis on his purported North Carolina voting record and ignored exhibits showing the parties intended South Carolina to be their home. Husband argued Wife failed to produce a financial declaration and the family court could not properly assess her financial condition or the other required factors for an award of attorney's fees.

The family court denied the motion, clarifying it had "considered all of the evidence and put more weight on the evidence presented by [Wife] and . . . the testimony of her witnesses[, s]pecifically, [Wife's] evidence regarding [Husband's] public North Carolina voting record." The court noted the record showed Husband voted in North Carolina until November 2016 and found that under North Carolina law, a voter must be domiciled in the specific North Carolina precinct where he is registered. This appeal followed.[3]

ISSUES ON APPEAL

1. Did the family court err by finding Husband failed to satisfy the residency requirement of section 20-3-30?

2. Did the family court err by awarding Wife attorney's fees and costs?

STANDARD OF REVIEW

This court reviews family court matters de novo. *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011); *Stoney v. Stoney*, 422 S.C. 593, 594, 813 S.E.2d 486, 486 (2018). Notwithstanding this broad scope of review, we recognize the family court is "in a superior position to assess the demeanor and credibility of witnesses." *Lewis*, 392 S.C. at 390, 709 S.E.2d at 654. Further, the appellant maintains the burden of showing "that the preponderance of the evidence is against the finding of the [family] court." *Id.* at 388, 709 S.E.2d at 653.

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[3] Husband did not appeal the family court's determination that it did not have jurisdiction over the minor children under the UCCJEA.

LAW/ANALYSIS

I. Jurisdiction

Husband first contends Wife couched her motion only as a motion to dismiss under Rule 12(b)(2), SCRCP, for lack of personal jurisdiction and the inquiry should have ended when the family court determined it had personal jurisdiction. He asserts the issue of residency implicated *in rem* or subject matter jurisdiction and Wife did not contest that issue specifically. Husband argues the preponderance of the evidence did not support the family court's finding that he had not resided in South Carolina for at least one year prior to filing the divorce action. He contends the family court relied heavily on his North Carolina voting record and erred by finding he could not maintain his domicile in South Carolina if he voted in North Carolina.[4] We disagree.

"Before the family court can exercise subject matter jurisdiction over a marriage and grant a divorce, the plaintiff or defendant must have been a domiciliary of South Carolina." *Roesler v. Roesler*, 396 S.C. 100, 106, 719 S.E.2d 275, 279 (Ct. App. 2011).

> In order to institute an action for divorce from the bonds of matrimony the plaintiff *must have resided in this State at least one year prior to the commencement of the action* or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action.

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[4] Although Husband referenced the Servicemembers Civil Relief Act, 50 U.S.C. § 3901–4043, in his reply brief, we find this issue is unpreserved for our review because he failed to raise this argument to the family court. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [family] court.").

§ 20-3-30 (emphasis added); *cf.* Roy T. Stuckey, *Marital Litigation in South Carolina* § 1.C. (5th ed. 2020) (interpreting the residency requirement of section 20-3-30 as an issue of in rem jurisdiction); *id.* ("In rem jurisdiction refers to the court's power over the subject of the litigation, for example, the marriage . . . . The family court acquires jurisdiction over the marriage, and the power to grant a divorce, when one or both parties meet the statutory requirements to become residents of South Carolina."). "The term 'reside' as used in the foregoing statute is equivalent in substance to 'domicile.'" *Gasque v. Gasque*, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965). "Domicile 'means the place where a person has his true, fixed[,] and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.' The true basis and foundation of domicile is the intention, the *quo animo*, of residence." *Roesler*, 396 S.C. at 107, 719 S.E.2d at 279 (citation omitted) (quoting *Gasque*, 246 S.C. at 426, 143 S.E.2d at 812).

"The question of domicile is largely one of intent to be determined under the facts and circumstances of each case." *Gasque*, 246 S.C. at 427, 143 S.E.2d at 812. Generally, "temporary absence from one's domiciliary state *solely* because of government work or employment does not effect a change of domicile within the meaning of the divorce laws, in the absence of clear proof of an intent to abandon the old domicile and acquire a new one." *Id.* (emphasis added).

Initially, although the family court's order characterized the question of residence under section 20-3-30 as one of personal jurisdiction, both parties agreed prior to the hearing that the court would determine whether Husband established residency pursuant to section 20-3-30 and whether "jurisdiction for divorce [wa]s proper here as well." Husband does not dispute he was required to satisfy the prerequisites of section 20-3-30 to maintain a divorce action in South Carolina. Therefore, Husband waived any objection to the family court's consideration of the issue.

We find the family court did not err in concluding Husband established Eden as his domicile. Husband and Wife provided conflicting testimony as to Husband's residence. We recognize the family court was in a better position to assess the witnesses' credibility and weigh their testimonies. *See Brown v. Brown*, 379 S.C. 271, 277, 665 S.E.2d 174, 178 (Ct. App. 2008) ("When reviewing decisions of the family court, we are cognizant of the fact the family court had the opportunity to see the witnesses, hear 'the testimony delivered from the stand, and had the benefit of that personal observance of and contact with the parties . . . .'" (quoting *DuBose*

v. DuBose, 259 S.C. 418, 423, 192 S.E.2d 329, 331 (1972))). Applying the credibility findings of the family court to the evidence, we find the preponderance of the evidence shows Husband failed to establish he resided in South Carolina for at least one year prior to filing his complaint. We acknowledge Husband introduced several forms of documentation indicating his address as Ansley Court in Greer, South Carolina—principally his 2016 and 2017 tax returns, his driver's license, several bank account and credit card statements, and his pilot's certification. He also testified he provided the Ansley Court address to the Army when he enlisted and never changed it. This evidence, however, is not conclusive of Husband's intent. Husband's parents owned and resided in the Ansley Court home, and no evidence showed Husband owned property in South Carolina. Husband agreed that in late 2011, he and Wife discussed a desire to become established somewhere. Although Husband did not state they discussed finding a permanent home in North Carolina, Wife said they did and that they looked for a home to purchase in Eden. Although they never actually purchased the Center Church Road home, Husband's mother purchased it in 2012 or 2013 and Husband, Wife, and Children moved in after initial renovations on the home were completed around August of 2015. Wife stated they moved in the home with the intent to remain there for several years and then move to another area of North Carolina that was closer to the airport and Children's schools. With the exception of the period in winter and spring of 2015, Wife remained in Eden, North Carolina, whenever Husband was away on a military assignment, and when Husband was not away for employment or on military orders, he stayed in Eden with Wife. Even by Husband's account, neither he nor Wife lived in South Carolina for the first three-and-a-half years of their marriage. Wife, whose testimony the family court found to be more credible than Husband's, testified they intended for their stay in Greer to be temporary and they only lived there from December 2014 until May of 2015. Furthermore, Wife and Rudisill testified Husband was still living at the Center Church Road home when Wife moved out in September of 2016.[5]

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[5] Notwithstanding Husband's testimony that he and Wife separated in May of 2016, Husband's complaint, which stated the couple separated in September of 2016, is conclusive as to the date of separation. *See Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("[P]arties are judicially bound by their pleadings unless withdrawn, altered[,] or stricken by amendment or otherwise. The allegations . . . in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings . . . .").

Next, we find the facts of this case are distinguishable from those presented in *Gasque*. In *Gasque v. Gasque*, our supreme court found the husband, a native of South Carolina who resided in Washington, D.C., for fourteen years in connection with his employment with the United States Government, never abandoned his domicile in South Carolina. 246 S.C. at 427, 143 S.E.2d at 812. There, the husband "steadfastly maintained at all times that his legal residence was in the State of South Carolina where he was born, reared, and continuously resided until his acceptance of government employment." *Id.* at 428, 143 S.E.2d at 812. The court found the husband's testimony that he considered himself a resident of South Carolina and never intended to become a resident of any other state was "substantiated by documentary evidence showing repeated and consistent declarations" that he resided in South Carolina. *Id.* Our supreme court concluded the husband's domicile of origin was South Carolina and no evidence showed he ever intended to abandon it while "temporarily serving in the employ of the United States Government in Washington, D.C." *Id.* at 428, 143 S.E.2d at 813. Unlike *Gasque*, here, Husband did not live in North Carolina because of government employment or work. Husband served in the military throughout his marriage, but his military service never required him to reside in North Carolina. The military fully released Husband from active duty in December of 2013, at which point he returned to Eden with Wife and Child 1, and began looking for work. Husband did not specifically seek employment in South Carolina at that time. He eventually obtained employment with Delta in late 2015. Delta permitted him to commute from the airport of his choosing and his unit assignment with the military was in Pennsylvania. Thus, neither his employment nor his military duties required his presence in North Carolina. Instead, he testified he lived in Eden because that was where his Wife and Children were. Therefore, we find this case is distinguishable from *Gasque* because Husband did not reside in Eden due to his military service or any other government employment.

Finally, we conclude the family court did not err in considering Husband's North Carolina voting record and did not give the records undue weight in reaching its decision. Notwithstanding our de novo standard of review, "an appellant is not relieved of his burden to demonstrate error in the family court's findings of fact." *Lewis*, 392 S.C. at 392, 709 S.E.2d at 655; *see also Bailey v. Bailey*, 293 S.C. 451, 453, 361 S.E.2d 348, 350 (Ct. App. 1987) ("The weight to be given evidence lies within the province of the fact finder, here the family court."). We find the fact Husband was registered to vote in North Carolina is particularly significant.

Husband's voting record demonstrated he voted in two primary elections and the general election in Rockingham County, North Carolina in 2014 and in the general election in 2016. The records indicated Husband was registered to vote in North Carolina and did not file his request to cancel his North Carolina registration until May 8, 2017, which was only a few weeks before he filed this divorce action. In our view, regardless of North Carolina voting law, these records were highly probative of Husband's domicile and demonstrated his intent to abandon his parents' home in South Carolina and to reside and remain in Eden, North Carolina. The family court found Husband's testimony that he did not recall voting in North Carolina was not credible given his ability to recall other aspects of his life and employment in detail. Indeed, Husband gave detailed accounts of when and where he traveled on military assignments during the parties' marriage. Thus, the record supports the family court's credibility findings. Moreover, in 2014, Husband encouraged Wife to run in the Rockingham County School Board election and Wife stated he attended all Republican Party political events with her. In addition, Husband served on a committee for the Rockingham County Republican Party and contributed to several North Carolina political campaigns. He admitted he was actively involved with the Republican Party in Eden and participated in political activities there. Husband's actions, including registering to vote and voting several times in North Carolina, demonstrated he did not simply reside in Eden but rather, he intended to establish Eden as his home and become part of its community.

Based on the foregoing, we find the preponderance of the evidence shows Husband abandoned his parents' South Carolina home when he began living with his Wife and Children in North Carolina. By registering to vote, becoming involved in local politics, residing with his Wife and Children in their home in Eden whenever he was not away for military assignments or his work with Delta, Husband demonstrated an intent to remain in North Carolina indefinitely. After abandoning South Carolina as his domicile, he did not return there with the intent to remain until September 2016 at the earliest, which was less than one year before he filed this action for divorce. Accordingly, we affirm the family court's finding that Husband failed to satisfy the residency requirement of section 20-3-30 to maintain an action for divorce in South Carolina.

II. Attorney's Fees

Husband argues the family court erred by awarding Wife attorney's fees and costs of $7,241.04. Husband contends Wife was not entitled to an award of attorney's

fees as a matter of law because she was in default. He next asserts the family court failed to address all relevant factors in deciding whether and how much to award in attorney's fees and the preponderance of the evidence did not support its findings. He further argues that because Wife failed to file a financial declaration pursuant to Rule 20, SCRFC, the family court could not have considered her financial condition. We disagree.

"[T]his [c]ourt reviews a family court's award of attorney's fees de novo." *Stone v. Thompson*, 428 S.C. 79, 92, 833 S.E.2d 266, 272 (2019).

> The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.

S.C. Code Ann. § 20-3-130(H) (2014). In awarding attorney's fees to Wife, the family court noted each party requested attorney's fees pursuant to section 63-3-530(A)(38) of the South Carolina Code (2010) (providing the family court has exclusive jurisdiction "to hear and determine an action whe[n] either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and permanently. In this action the court shall allow a reasonable sum for the claim if it appears well-founded. Suit money, including attorney's fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court."). Although we note section 63-3-530(A)(38) provides another vehicle for the family court to award attorney's fees, Husband raised no challenge to the family court's application of this statute on appeal. Rather, both parties referenced only section 20-3-130(H) in their appellate briefs.

When deciding whether to award attorney's fees, the family court considers the following factors: "(1) the party's ability to pay his[or]her own attorney's fee;

(2) beneficial results obtained by the attorney; (3) the parties' respective financial conditions; [and] (4) effect of the attorney's fee on each party's standard of living." *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). When determining a reasonable attorney's fee, the family court considers "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services." *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

As an initial matter, although we acknowledge Rule 20, SCRFC, requires the parties to file a financial declaration, and Wife does not dispute she failed to do so, Wife's failure to comply with the rule did not preclude the family court from granting her request for attorney's fees. *See* Rule 20(a), SCRFC ("In any domestic relations action in which the financial condition of a party is relevant or is an issue to be considered by the court, a current financial declaration in the form prescribed by the Supreme Court shall be served and filed by all parties."); Rule 20(d), SCRFC ("Reasonable sanctions may be imposed upon an attorney or a party for willful noncompliance with this rule."). During the hearing, Wife introduced an attorney's fee affidavit and requested an award of attorney's fees. Wife testified she was unemployed and had no income. Husband raised no objection and did not dispute Wife's testimony. Both parties testified they currently lived with their respective parents, and Wife testified Children lived with her. This was sufficient for the family court to consider Wife's financial condition and standard of living compared to Husband's even though she did not file a financial declaration.

Next, we find the family court did not err in awarding Wife attorney's fees. The family court listed the *E.D.M.* factors and noted *Glasscock* set forth the factors for determining reasonable attorney's fees. The court stated it considered all of the factors and found it was appropriate for Husband to pay Wife's attorney's fees and costs of $7,241.04. As to Wife's ability to pay her own attorney's fee, the record shows she had no source of income, she lived with Children in her parents' home, and there was no evidence she had any other assets. As to beneficial results obtained by the attorney, Wife prevailed on the jurisdiction issue, which we now affirm. Therefore, Wife's counsel obtained beneficial results. As to the parties' respective financial conditions, Wife earned no income, and Husband earned $877 per month from his National Guard drill pay, which was his only source of income at the time. Husband testified he was not "medically cleared to return to fly" for Endeavor at the time of the 2018 hearing because in 2016 he suffered an

aggravation to a preexisting back injury, for which he received treatment and physical therapy. Husband stated that when he was able to return to flying, Endeavor guaranteed him a base pay of $2,000 per month. The foregoing shows that as to the parties' respective ability to pay, the parties' respective financial conditions, and the beneficial results obtained, these factors weighed in favor of awarding attorney's fees to Wife. Finally, as to the effect of the attorney's fee on each party's standard of living, we find this factor weighed in Wife's favor. Although both parties were living in their respective parents' homes at the time, Wife earned no income and was also caring for Children; Husband had no formal child support obligation and no testimony showed he had paid for any of Children's expenses since he filed this action for divorce. Therefore, this factor weighed in Wife's favor. Based on the foregoing, the preponderance of the evidence shows Wife was entitled to attorney's fees and we find the family court did not err in awarding attorney's fees to Wife.

Husband further argues that after deciding to award Wife attorney's fees, the family court should have then considered the *Glasscock* factors in determining how much to award in fees and costs. Husband raises this argument for the first time on appeal. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Regardless, we find $7,241.04 was a reasonable fee. *See Glasscock*, 304 S.C. at 161, 403 S.E.2d at 315 (providing that courts should consider the following factors in determining a reasonable attorney's fee: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services"). In the attorney's fee affidavit, Wife's attorney attested she was an active member of the South Carolina bar, ninety percent of her practice involved family law, the time she and her office spent was necessary to defend Wife in this action, and her fees were "comparable to fees customarily charged in th[e] area for similar legal services." Wife's attorney additionally attested she charged an hourly rate of $200 per hour for attorney tasks and $100 per hour for paralegal tasks. The billing statement shows Wife's attorney billed for 21.8 hours at the $200 rate and 25.4 hours at the $100 rate. The attorney's fee affidavit therefore established the time necessarily devoted to the case, the professional standing of counsel, and customary legal fees for similar services. *See id.* As to the nature, extent, and difficulty of the case, the only issue litigated between the parties was the narrow question of jurisdiction.

Wife incurred a total of $7,241.04 in attorney's fees and Husband incurred $12,000 in attorney's fees. Husband testified his attorney billed $350 per hour for attorney tasks and $85 per hour for paralegal tasks. It is unclear from the record how many hours Husband's attorney devoted to the case; however, given Husband incurred almost $5,000 more in fees for litigating the same issue, we find Wife's attorney's fees were reasonable based upon the nature, extent, and difficulty of the case.

As to the remaining factors of contingency of compensation—*i.e.*, each party's ability to pay their own attorney's fees—and beneficial results obtained, as we stated above, these factors weigh in favor of awarding fees to Wife. *See id.* at 161 n.1, 403 S.E.2d at 315 n.1 ("'[C]ontingency of compensation' and 'beneficial results obtained' are to be considered in determining *whether* an award should be made."); *id.* at 161, 403 S.E.2d at 315 ("[T]he contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if an award is not made."); *id.* ("[T]he factor 'beneficial results obtained' merely aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result.").

Finally, we decline to address Husband's argument that Wife was not entitled to attorney's fees because she was in default. Husband raised this argument for the first time on appeal. Therefore, it is unpreserved for our review. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Based on the foregoing, we find the family court did not err in awarding attorney's fees to Wife.

CONCLUSION

For the foregoing reasons, we affirm the family court's order finding Husband failed to satisfy the residency requirement of section 20-3-30, which was a perquisite to maintaining an action for divorce in South Carolina, and awarding attorney's fees to Wife. Thus, the ruling of the family court is

AFFIRMED.

HEWITT, J., and HUFF, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Sherwin Alfonzo Green, Appellant.

Appellate Case No. 2019-000441

Appeal From Kershaw County
L. Casey Manning, Circuit Court Judge

Opinion No. 5907
Submitted February 1, 2022 – Filed May 4, 2022

AFFIRMED

Appellate Defender Victor R. Seeger, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Mark Reynolds Farthing, both of Columbia, for Respondent.

HILL, J.: Sherwin A. Green appeals his convictions for kidnapping, second-degree burglary, and two firearm offenses. Green contends the State violated his right to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 14 of the South Carolina Constitution. We affirm.

I. FACTS

Green was arrested on various charges in December 2012 and indicted in May 2013. He made several speedy trial motions thereafter. He contended the State was delaying his trial to pressure him into cooperating and testifying in a capital murder case. The State claimed Green had consented to the delays and moved for continuances on his own. In September 2018, Judge L. Casey Manning denied Green's third speedy trial motion. The next day, Green pled guilty pursuant to a negotiated plea agreement, which provided he would not receive more than twenty years' imprisonment. Judge Manning accepted the guilty pleas and sentenced Green to concurrent sentences of twenty years' imprisonment for kidnapping, fifteen years' imprisonment for the burglary charge, and five years' imprisonment on each of the firearms charges.

Green moved for reconsideration of his sentence based on his assistance to the State and argued the circuit court never ruled on the merits of his speedy trial motion. Following a hearing, Judge Manning denied Green's speedy trial motion but granted Green's motion to reconsider his sentence, reducing Green's sentence to an aggregate term of twelve years' imprisonment. This appeal follows.

II. DISCUSSION

Our standard of review in criminal cases is limited to correcting errors of law. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). We are bound by the facts as the trial court found them, unless they are clearly erroneous. *Id*.

Green argues the State denied him his right to a speedy trial by purposefully delaying his case for thirty-three months, causing him actual prejudice. Green claims he never waived his right to appeal the violation of his right to a speedy trial, and his appeal concerns the State's right to prosecute him. We disagree.

"Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea 'constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.'" *State v. Sims*, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (quoting *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485 (2013)); *see Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999) ("A defendant who pleads guilty usually may not later raise independent claims of constitutional violations."); *Vogel v. City of*

Myrtle Beach, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987) ("A plea of guilty constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea. It conclusively disposes of all prior issues including independent claims of deprivations of constitutional rights." (citations omitted)); *accord Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981); *State v. Snowdon*, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006).

South Carolina does not appear to have specifically addressed whether a defendant waives a speedy trial claim when he pleads guilty. Other jurisdictions have found the right to a speedy trial is non-jurisdictional and is waived by a defendant's guilty plea. *See, e.g.*, *Davis v. State*, 554 S.E.2d 583, 583–84 (Ga. Ct. App. 2001); *Anderson v. State*, 577 So. 2d 390, 391–92 (Miss. 1991) ("[A] valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial. We have generally included in this class 'those [rights] secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States . . . .' We take this opportunity to specifically include in that class of waivable or forfeitable rights the right to a speedy trial, whether of constitutional or statutory origin." (citations omitted) (second alteration in original) (quoting *Sanders v. State*, 440 So.2d 278, 283 (Miss. 1983))); *Smith v. State*, 871 P.2d 186, 188 (Wyo. 1994) ("A guilty plea waives non-jurisdictional defenses. . . . Constitutional challenges to pretrial proceedings, including speedy trial violations, are non-jurisdictional defenses." (citations omitted)); *Village of Montpelier v. Greeno*, 495 N.E.2d 581, 581–83 (Ohio 1986); *see also Washington v. Sobina*, 475 F.3d 162, 165–66 (3d Cir. 2007) (a guilty plea waives defendant's constitutional speedy trial claim) (collecting cases).

Green's speedy trial defense is not a jurisdictional claim or other claim that would have prevented the State from prosecuting him in the first place. *Cf. Sims*, 423 S.C. at 400–02, 814 S.E.2d at 633–34 (discussing criminal court's "jurisdictional power"). Therefore, we hold Green waived his constitutional right to a speedy trial when he voluntarily pled guilty. *See State v. Tucker*, 376 S.C. 412, 418, 656 S.E.2d 403, 406–07 (Ct. App. 2008) (defendant's statutory right to dismissal for violation of the Interstate Agreement on Detainers is nonjurisdictional and therefore waived by a guilty plea); *Snowdon*, 371 S.C. at 333, 638 S.E.2d at 92–93 (finding defendant waived his argument his warrantless arrest was without probable cause and violated his constitutional rights by pleading guilty); *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 709 (Ct. App. 2000) (holding defendant waived his double jeopardy claims by pleading guilty). Because Green's guilty plea waived his speedy trial

defense, we need not address the speedy trial issue on the merits. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (appellate court need not address remaining issues when the disposition of another issue is dispositive). Accordingly, Green's convictions and sentences are

AFFIRMED.[1]

GEATHERS, J., and LOCKEMY, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Gabrielle Oliva Lashane Davis-Kocsis, Appellant.

Appellate Case No. 2019-000687

Appeal From Berkeley County
Maite Murphy, Circuit Court Judge

Opinion No. 5908
Heard February 16, 2022 – Filed May 4, 2022

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia, and Jason Scott Luck, of Luck VI Ltd. Co. d/b/a Jason Scott Luck, Attorney at Law, of Bennettsville, both for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Julianna E. Battenfield, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, all for Respondent.

LOCKEMY, A.J.: Gabrielle Oliva Lashane Davis-Kocsis (Kocsis) appeals her convictions for murder, first-degree burglary, criminal conspiracy, and two counts of kidnapping and aggregate fifty-year sentence. On appeal, Kocsis argues the trial

court erred in (1) failing to charge the current law of burglary, (2) failing to direct verdicts on the burglary and kidnapping charges, (3) sentencing her for kidnapping in light of her murder sentence, and (4) admitting a 911 call. We affirm.

FACTS

In 2016, a Berkley County grand jury indicted Kocsis for the murder of Mark Connor (Victim), first-degree burglary involving Rosemary Hoffberg and her home, criminal conspiracy, and the kidnappings of Alexis Nicole Murray and Whitney Renee Chance.

Pretrial, Kocsis moved to suppress State's Exhibit 1, which is a recording of a 911 call that consisted of Murray requesting emergency services to respond quickly, telling Victim not to die from his gunshot wound, describing that she and others had been pepper sprayed and Victim was shot, identifying Kocsis as a perpetrator, and stating they were asleep when Kocsis and the others came into the home. Chance can also be heard on the recording. Relying on Rule 403, SCRE, Kocsis argued the 911 call would "stir up the passions and prejudices of the jury via using emotion rather than facts." The State asserted all 911 calls are emotional, this call was not substantially prejudicial, and the 911 call provided a "real time" account immediately after the shooting. The trial court found State's Exhibit 1 admissible for "corroborative purposes and establishing the elements of the offense[s]" and stated "although [State's Exhibit 1] may be prejudicial, the probative value outweigh[ed] the prejudicial effects."[1]

In her opening statement, Kocsis asserted many of the witnesses, including herself, used methamphetamine, and she urged the jury to consider the credibility of the witnesses, their motives in testifying she was responsible for organizing how Victim was killed, and if she were "some drug leader."

During the first witness's testimony, the trial court admitted State's Exhibit 1 over Kocsis's renewed Rule 403 objection. Thereafter, the State presented evidence that Kocsis was a drug dealer, Victim stole over a thousand dollars and a motorcycle from her, and Kocsis "put a hit on" Victim.

[1] The court had not listened to State's Exhibit 1 at the time of the pretrial ruling.

On the day of Victim's death, Victim was staying at "Ms. Rose's" home, and there were several other people there, including Murray, Chance, Richard Curtis, Nick Varner, and Ms. Rose. Witnesses described Ms. Rose's home as a drug or "trap house." The trial court admitted photographs of Ms. Rose's home, which depicted a house that someone was living in—there was a beer can, cleaning supplies, furniture, and a calendar flipped to the correct month on the day of the incident. Two witnesses testified Ms. Rose slept in the home, including on the night in issue.

According to the State's witnesses, Kocsis, Matt Grainger, Grayson Griffin, and others broke into Ms. Rose's home in the early morning hours by breaking a window and kicking a door in[2] while they were looking for Victim. These witnesses detailed Kocsis sprayed bear mace, or pepper spray, inside the home and indicated to Grainger to shoot Victim. Thereafter, a gun went off, and Kocsis and the other intruders fled Ms. Rose's home.[3]

According to Varner, he told Chance to call 911—although Murray was the one who actually called 911 on State's Exhibit 1. Varner testified he told Chance to tell law enforcement that they were at Ms. Rose's home and stated law enforcement would know the location. Deputy Kimberly Vandiver, of the Berkeley County Sherriff's Office, testified she was one of the first responders and she spoke with "[t]he owner of the residence."

Murray testified that during the break-in, she was in a bedroom and did not feel free to leave because one of the men Kocsis was with was pointing a gun at her face. Chance, who was in the living room, also testified she did not feel free to leave during the incident; Chance emphasized the mace caused her pain and she had difficulty breathing because of it.

Melissa Freeman, who was with the intruders, testified Kocsis "orchestrated" the incident, and Freeman believed Kocsis and the others were only going to scare Victim. Griffin testified he sold drugs to Kocsis and did not know that someone was going to be killed when they went to Ms. Rose's home. However, Curtis testified he overheard a phone call between Griffin and Kocsis in which Griffin

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[2] Griffin explained someone may have opened the door when Grainger was kicking the door.

[3] Grainger pled guilty to murder.

told Kocsis that "they [could not] let stuff like this happen and [let] people get away with it."

During cross-examination of many of the State's witnesses, Kocsis questioned the witnesses about their credibility, focusing on their drug usage, criminal records, possible benefits from testifying, and their recollections of what occurred.

At the close of the State's case, Kocsis moved for a directed verdict. Specifically, she argued (1) "Rosemary Hoffberg" had not testified, her ownership and identity remained unknown, and witnesses broadly identified "Miss Rose"; (2) burglary required "proof of a possessory interest" and an "expectation of peace and security"; and (3) the State failed to present evidence that Kocsis knew Murray and Chance would be in the home. The trial court denied Kocsis's motion, finding there was evidence that this was a dwelling where Ms. Rose slept, Kocsis and the others broke into the dwelling, and Murray and Chance testified they did not feel free to leave.

Kocsis testified in her own defense and confirmed Victim took her money and motorcycle. According to Kocsis, the money that Victim stole actually belonged to Griffin because Griffin sold her drugs on credit. Kocsis asserted Griffin threatened that if she could not obtain the money from Victim, he "was going to take it out on [her]." Kocsis testified Griffin took out the hit on Victim, but Kocsis later acknowledged she shared information about the hit. According to Kocsis, she received a text message that Victim was at Ms. Rose's home, and Griffin wanted her to tell him where the home was located. She stated Griffin gave her a pistol to give to Grainger, which she later gave to Grainger, and Griffin tried to give her a gun to use personally, but she declined to take it. Kocsis testified that upon arriving to Ms. Rose's home, Griffin told her that he planned to smash a window to cause everyone to run out. Kocsis stated Griffin broke a window and Grainger attempted to kick the door in. Kocsis explained the door started coming open, and Ms. "Rose Hoffberg" was "standing behind the door." Kocsis identified Ms. Rose as the "owner of the house" and admitted she had "heard" about "Miss Rose's house"; Murray previously testified she saw Kocsis at Ms. Rose's home on several occasions over a period of three years.

Kocsis stated she entered the home and looked for Victim, and upon seeing Victim in the backroom, she sprayed him with the mace. According to Kocsis, Grainger believed Victim was "rushing at him"; Grainger fell in a hole in the floor, and the

gun went off. Kocsis denied telling Grainger to shoot Victim. Kocsis asserted it was Griffin's idea to find Victim, she did not want Victim dead, and she did not have a choice about going to the home. Kocsis acknowledged the purpose of going to Ms. Rose's home was to obtain the stolen money. Kocsis denied the intention was to kill Victim and asserted the incident was not planned.

Curtis Jamison also testified in Kocsis's defense and asserted Kocsis was afraid of Griffin. The defense rested, and the trial court instructed the parties to send it jury instructions. In a memorandum, Kocsis requested the trial court charge Judge Ralph King Anderson's proposed jury charge[4] defining "without consent" after our supreme court issued *State v. Singley*[5] and an additional paragraph about an expectation of being safe and secure. The memorandum did not state any reasoning beyond that it was the "current South Carolina law." The requested charge stated the following:

> The entry must have been without consent. "Enters a dwelling without consent" means to enter "without the consent of the person in lawful possession." In addition to the normal meaning of entry without consent, the phrase also includes entering by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession.
>
> A person in "lawful possession" has custody and control of, and the right and expectation to be safe and secure in, the dwelling in question.

The trial court held an off-the-record charge conference, and when on the record, Kocsis referenced her proposed burglary charge and only stated "we would object based on that." The trial court denied Kocsis's request, stating it thought the "[c]ourt's [standard] charge cover[ed her] concerns." Additionally, Kocsis renewed her directed verdict motion, which the trial court denied.

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[4] Ralph King Anderson, Jr., *South Carolina Request to Charge—Criminal*, § 2-13 (2d ed. 2012).

[5] 392 S.C. 270, 709 S.E.2d 603 (2011).

In her closing argument, Kocsis emphasized many of the State's witnesses were drug addicts, asserted they were liars, attacked their credibility, and contended their memories were faulty. Kocsis specifically went witness by witness in her closing argument and highlighted aspects about the individuals.

The trial court issued the following first-degree burglary charge:

> The defendant is charged with burglary in the first degree. The State must prove beyond a reasonable doubt that the defendant entered a dwelling without consent.
>
> A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary. But a building is a dwelling even if the residents are temporarily absent from the building.
>
> In order to prove that the defendant entered the building, the State does not have to show that the defendant's entire body entered the building. The smallest entry is sufficient. It may be any part of the body, such as a hand or a foot, or even an instrument, such as a hook or other instrument.
>
> In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick, or misrepresentation to get consent to enter, this is an entry without consent.
>
> Next, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or a misdemeanor, at the time of entry. Mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary.

> On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed.
>
> Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Additionally, the trial court charged the jury on the applicable aggravating circumstances. It also charged accomplice liability and instructed the jury to consider each offense separately:

> Each indictment charges separate and distinct offenses. You must decide each indictment separately on the evidence and law applicable, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged.
>
> You will be asked to write a separate verdict of guilty or not guilty for each indictment.

After the trial court charged the jury, Kocsis "reiterate[d her] previous exceptions," which the trial court denied.

During its deliberations, the jury requested to listen to State's Exhibit 1 again, which the trial court permitted. The jury found Kocsis guilty as indicted, and the trial court sentenced Kocsis to an aggregate sentence of fifty years' imprisonment, including for the murder of Victim and the kidnappings of Murray and Chance.

Thereafter, Kocsis moved for a new trial, asserting (1) "there was not [the] requisite evidence to prove any sort of legal possession necessary to prove a burglary charge"; (2) "there was [not] sufficient evidence to support a mens rea aspect of the kidnapping charge[s]"; (3) *State v. East*[6] implied for a jury to "convict a defendant of kidnapping that is incident to another crime, . . . there need[ed] to be

[6] 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003).

a specific charge telling them that there must be requisite intent to commit two separate offenses"; and (4) she "would like . . . like to reincorporate" her prior objection to the jury charge.

The trial court denied her motion, finding there was sufficient evidence for the jury to return the verdicts it did, the jury was charged to consider each element of each offense separately, and it charged all of Kocsis's requested charges except for the burglary charge. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in charging the jury on the law of burglary?

2. Did the trial court err in failing to grant directed verdicts on the burglary and kidnapping charges?

3. Did the trial court err in sentencing Kocsis for kidnapping in light of her murder sentence?

4. Did the trial court err in admitting State's Exhibit 1 in violation of Rule 403?

LAW/ANALYSIS

I. Burglary Jury Charge

Kocsis argues the trial court erred in not issuing her requested burglary charge because the trial court's charge did not comply with Judge Anderson's interpretation of *Singley*. She further avers the issues of an "expectation to be safe and secure" and whether the home could have been burglarized were integral to her case. We disagree.

"[T]he trial court is required to charge only the current and correct law of South Carolina." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (alteration in original)). "The law to be charged must be determined from the evidence presented at trial." *Id.* (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603). "An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion." *Id.* (quoting *State v. Mattison*, 388 S.C. 469, 479,

697 S.E.2d 578, 584 (2010)). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *Id.* (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603). "The substance of the law is what must be instructed to the jury, not any particular verbiage." *Id.* (quoting *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994)). "To warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (quoting *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583).

Section 16-11-311(A) of the South Carolina Code (2015) provides the statutory crime of first-degree burglary. In pertinent part, the statute states: "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling . . . ." *Id.* "'Dwelling' means its definition found in [s]ection 16-11-10 [of the South Carolina Code (2015)] and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person." S.C. Code Ann. § 16-11-310(2) (2015). Section 16-11-10 defines dwelling as "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house . . . ." "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." S.C. Code Ann. § 16-11-310(3) (2015).

"The law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime when peace, solitude and safety are most desired and expected." *State v. Brooks*, 277 S.C. 111, 112, 283 S.E.2d 830, 831 (1981). *See generally* 4 William Blackstone, *Commentaries* *223 (Wilfrid Prest ed. 2016) ("Burglary, or nocturnal housebreaking, *burgi latrocinium* [robbery of the castle], which by our antient law was called *hamesecken*, as it is in Scotland to this day, has always been looked upon as a very heinous offense: not only because of the abundant terror that it naturally carries with it, but also as it is a forcible invasion and disturbance of that right of habitation . . . ." (first alteration in original)).

In *Singley*, our supreme court was presented with the issue of whether a defendant who owned a legal interest in a house was precluded from being convicted of burglary of that home as a matter of law. 392 S.C. at 273, 709 S.E.2d at 605. Our

supreme court found the defendant could be convicted because "the proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right and expectation to be safe and secure in, the dwelling burglarized." *Id.* at 277-78, 709 S.E. 2d at 606-07.

Initially, we acknowledge the State emphasizes in its appellate brief that Kocsis failed to provide a justification on the record for why she wanted the specific jury charge for first-degree burglary. *See generally Gilchrist v. State*, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) (finding "trial counsel's submission of the request to charge, without any further explanation of his point, was insufficient to preserve for review the trial court's failure to charge the specific language"). However, we are mindful that issue preservation is not meant to be a "gotcha game" and recognize Kocsis submitted a proposed jury charge to the trial court, the trial court held an off-the-record charge conference, and Kocsis renewed her objection on the record, which the trial court denied. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (stating preservation is not a "'gotcha' game"); *cf. State v. Kromah*, 401 S.C. 340, 353, 737 S.E.2d 490, 497 (2013) ("Although the full grounds for the exception were not articulated on the record at the time of the objection, as would have been advisable to avoid a question in this regard, it nevertheless appears from the transcript and the context of the proceedings that Kromah's reference to the parties' earlier discussion sufficiently apprised the trial court of the nature of the objection."). Thus, we reach the merits of Kocsis's issue.

The trial court did not err as to the jury charge. *See Marin*, 415 S.C. at 482, 783 S.E.2d at 812 ("[T]he trial court is required to charge only the current and correct law of South Carolina." (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603 (alteration in original))); *id.* ("The law to be charged must be determined from the evidence presented at trial." (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603)). Here, the trial court charged the definition of a dwelling and stated it was "any building or portion of a building which a person ordinarily sleeps"; it also stated that the defendant had to enter without consent. *See* § 16-11-310(2) ("'Dwelling' means its definition found in [s]ection 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person."). Although Kocsis's proposed jury charge raises an issue about lawful possession and consent, there was no evidence of a legal ownership dispute as existed in *Singley*. *See* 392 S.C. at 273, 709 S.E.2d at 604-05 (discussing whether a defendant who owned a legal interest in a home was precluded from being

convicted of burglary of that home as a matter of law). There was no contention that Kocsis had an interest in the home. Rather, the witnesses consistently identified the home as belonging to Ms. Rose or Ms. Rose Hoffberg and that Ms. Rose lived in the home. Moreover, Kocsis and her coconspirators broke a window and kicked the door to gain access to Ms. Rose's home to find Victim. Kocsis even testified Ms. "Rose Hoffberg . . . was standing behind the door" when the door was kicked and Ms. Rose was "the owner of the house."

Further, we acknowledge witnesses testified Ms. Rose's home was a drug or "trap house," and thus, Kocsis contends Ms. Rose's overall home could not be burglarized. However, Kocsis has not cited to any authority, nor have we found any, that supports this specific contention. During oral arguments, Kocsis argued this court should limit Ms. Rose's dwelling to her bedroom and urged the court to consider the other rooms in Ms. Rose's home—the kitchen, living room, guest bedrooms, and hall bathroom—not to be part of Ms. Rose's dwelling. We view this limitation to be illogical when considering Ms. Rose's dwelling was a residential home that Ms. Rose lived in, including on the night of the incident. Ms. Rose and her "castle," deserve the same protections under the law of first-degree burglary as any other home that meets the statutory requirements. *See* 4 William Blackstone, *Commentaries* *223 ("Burglary, or nocturnal housebreaking, *burgi latrocinium* [robbery of the castle], which by our antient law was called *hamesecken*, as it is in Scotland to this day, has always been looked upon as a very heinous offense: not only because of the abundant terror that it naturally carries with it, but also as it is a forcible invasion and disturbance of that right of habitation . . . ." (first alteration in original)). Thus, we hold the trial court did not err in issuing its jury charge. Accordingly, we affirm on this issue.

II. Directed Verdict

Kocsis argues the trial court erred in not granting directed verdicts on her burglary and kidnapping charges. We disagree.

"When ruling on a motion for a directed verdict, the trial [court] is concerned with the existence of evidence, not its weight." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (quoting *State v. Wiggins*, 330 S.C. 538, 544-45, 500 S.E.2d 489, 492-93 (1998)). "On appeal from the denial of a directed verdict, [the appellate court] views the evidence and all reasonable inferences in the light most favorable to the State." *Id.* "If there is any direct evidence or any substantial

circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006).

A. Burglary

Kocsis argues the trial court erred in failing to direct a verdict on the burglary charge because (1) the State did not establish "the entry was without the consent of the person in lawful possession" and (2) the home "was not a structure that could be burglarized." We disagree.

Section 16-11-311(A) provides the statutory crime of first-degree burglary. In pertinent part, the statute states: "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling . . . ." "'Dwelling' means its definition found in [s]ection 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person." § 16-11-310(2); *see also* § 16-11-10 (defining "dwelling" as "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house"). "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." § 16-11-310(3).

We disagree with Kocsis's arguments that the trial court erred in denying her directed verdict motion on the burglary charge because (1) the State did not establish "the entry was without the consent of the person in lawful possession" and (2) the home "was not a structure that could be burglarized." *See Butler*, 407 S.C. at 381, 755 S.E.2d at 460 ("When ruling on a motion for a directed verdict, the trial [court] is concerned with the existence of evidence, not its weight." (quoting *Wiggins*, 330 S.C. at 544-45, 500 S.E.2d at 492-93)); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury."). As discussed above, there was not a dispute like *Singley* in this case. Rather, Kocsis's argument is focused on the fact that the witnesses did not specifically identify Rosemary Hoffberg as Ms. Rose. This argument is meritless because Kocsis

specifically testified Ms. "Rose Hoffberg" was behind the door when she and the others broke into the home and Ms. Rose was "the owner of the house." Additionally, Varner instructed Chance to call 911 and to identify the home as Ms. Rose's, and Deputy Vandiver testified she spoke to the homeowner upon arriving at the scene. Accordingly, this evidence supports that Ms. Rose was in possession of the home and did not consent to Kocsis and the others breaking into her home.

Moreover, as discussed above, we disagree with Kocsis's argument that Ms. Rose's home was not one that could be burglarized. Two witnesses specifically testified that Ms. Rose slept in the home, including on the night of the incident. Additionally, the trial court admitted photographs of the home that depicted a home that someone was living in—there was a beer can, cleaning supplies, furniture, and a calendar flipped to the correct month. We disagree that because Ms. Rose's house may have been a "trap house," Ms. Rose did not deserve the protections of the law. Accordingly, we affirm on this issue.

B. Kidnapping

Kocsis argues the trial court erred in failing to direct a verdict on the kidnapping charges because the State did not establish the necessary mens rea. We disagree.

"Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony . . . ." S.C. Code Ann. § 16-3-910 (2015).

"Under the 'hand of one is the hand of all' theory [of accomplice liability], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002); *see also Butler v. State*, 435 S.C. 96, 97-98, 866 S.E.2d 347, 348 (2021). Under accomplice liability, it does not matter if the defendant knows whether his codefendant is going to undertake a particular criminal act. *See State v. Longworth*, 313 S.C. 360, 372, 438 S.E.2d 219, 225 (1993) ("Under a theory of accomplice liability, it is immaterial whether appellant knew beforehand that [a codefendant] was going to shoot [a victim]."). In *State v. Crowe*, our supreme court held a murder was the natural and probable consequence of a mutual plan to commit a robbery. 258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972); *see also State*

v. Cannon, 49 S.C. 550, 555, 27 S.E. 526, 530 (1897) ("The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in, and steal, and in the execution of this common purpose a homicide is committed by one, as a probable or natural consequence of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer.").

The trial court did not err in denying Kocsis's directed verdict motion as to the kidnapping charges. *See Butler*, 407 S.C. at 381, 755 S.E.2d at 460 ("When ruling on a motion for a directed verdict, the trial [court] is concerned with the existence of evidence, not its weight." (quoting *Wiggins*, 330 S.C. at 544-45, 500 S.E.2d at 492-93)); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury."). Here, the State presented direct evidence that Kocsis participated in a plan with others to break into Ms. Rose's home to retrieve her money. Although Kocsis claims she did not know Chance and Murray were in the home, we find this argument unavailing under the theory of accomplice liability. *See Condrey*, 349 S.C. at 194, 562 S.E.2d at 324 ("Under the 'hand of one is the hand of all' theory [of accomplice liability], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."). Both Murray and Chance testified they felt they were not free to leave during the incident, and the kidnappings were a natural and probable consequence of breaking into Ms. Rose's home. *Cf. Crowe*, 258 S.C. at 265, 188 S.E.2d at 381-82 (stating murder was a natural and probable consequence of a mutual plan to commit a robbery). Moreover, Kocsis's argument is inconsistent about not knowing there could be people in Ms. Rose's home when compared to her burglary arguments—that Ms. Rose could not have an expectation to be safe and secure because there were so many other people in the home. Additionally, Murray testified she saw Kocsis at Ms. Rose's home "over a period of three years," and even Kocsis testified she "heard" about Ms. Rose's house before. Accordingly, we affirm on this issue.

III. Kidnapping Sentences

Kocsis argues the trial court erred in sentencing her for her kidnapping convictions in light of her murder sentence. Citing *East*, Kocsis additionally contends the trial

court erred in not sufficiently charging the jury about the requisite mens rea that was required to convict her of the separate offenses. We disagree.

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Section 16-3-910 provides:

> Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in [s]ection 16-3-20.

"Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated." *State v. Vick*, 384 S.C. 189, 201, 682 S.E.2d 275, 281 (Ct. App. 2009). In *Vick*, this court noted the defendant failed to object to his sentences for murdering and kidnapping the same victim, but it vacated the kidnapping sentence for judicial economy. *Id.* at 201-03, 682 S.E.2d at 281-82.

In *State v. Vazsquez*, 364 S.C. 293, 302, 613 S.E.2d 359, 363 (2005), the criminal defendant was sentenced on four counts of kidnapping and two counts of murder for two of the kidnapping victims. Our supreme court vacated the kidnapping sentences as to the two murder victims but stated the sentences for the other two kidnapping convictions were proper. *Id.*

In *East*, the defendant argued the trial court erred in denying his directed verdict motion because "the brief confinement of the employees during the course of the armed robbery was not sufficient to constitute the separate crime of kidnapping." 353 S.C. at 636, 578 S.E.2d at 750. Our court noted South Carolina may be in the minority of jurisdictions in which "confinement can constitute the separate offense of kidnapping when it is incidental to the commission of another crime." *Id.* at 637-38, 578 S.E.2d at 750. Our court further stated the trial court emphasized to the jury it had to find the defendant possessed the requisite intent to commit both crimes—armed robbery and kidnapping; thus, our court affirmed. *See id.* at 638, 578 S.E.2d at 751.

Initially, we note Kocsis never specifically raised to the trial court that she could not be *sentenced* for the kidnappings of Murray and Chance in light of her murder sentence for Victim, and thus, this argument would traditionally be unpreserved. *See generally State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."). However, in light of *Vick*, we reach the merits. *See Vick*, 384 S.C. at 201-03, 682 S.E.2d at 281-82 (vacating a kidnapping sentence when the defendant was also sentenced for murdering the same victim but failed to object).

Based on *Vazsquez*, we find the trial court properly sentenced Kocsis for the kidnappings of Murray and Chance because Kocsis was only sentenced for murdering Victim—not Murray and Chance—and thus, the prohibition found in section 16-3-910 does not apply. *See Vazquez*, 364 S.C. at 302, 613 S.E.2d at 363 (stating kidnapping sentences related to victims who were not murdered were proper); *see also Vick*, 384 S.C. at 201, 682 S.E.2d at 281 ("Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence *for kidnapping of that victim*, and any such sentence should be vacated." (emphasis added)). We acknowledge Kocsis cites two opinions from our supreme court from 1984 to support her position. *See State v. Livingston*, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984); *State v. Stroman*, 281 S.C. 508, 514, 316 S.E.2d 395, 400 (1984). However, we are bound by *Vazquez* because it is the more recent opinion on this issue. *See State v. Phillips*, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016) ("[I]t is incumbent upon the court of appeals to apply [the South Carolina Supreme Court's] precedent."); *id.* (emphasizing the court of appeals should generally consider recent case law from our supreme court when ruling on petitions for rehearing).

Moreover, as to Kocsis's argument that there was an issue with these jury instructions and the necessary mens rea for the separate offenses, this issue is unpreserved because Kocsis did not timely state a specific objection on the record until her new trial motion. *See generally State v. Avery*, 333 S.C. 284, 296, 509 S.E.2d 476, 483 (1998) (finding an objection to a jury instruction was unpreserved when the defendant "did not object to the trial [court's] initial or supplemental instructions"). We note Kocsis's argument about the separate offenses did not appear in her jury charge memorandum to the trial court, and the trial court expressly stated in its denial of Kocsis's new trial motion that it issued all of Kocsis's requested charges except for the burglary language. Thus, based on our

review of the record, Kocsis did not make an objection on this ground during the off-the-record charge conference.

Nevertheless, even if this issue were preserved, we find this case is similar to *East* because the trial court instructed the jury: "Each indictment charges separate and distinct offenses. You must decide each indictment separately on the evidence and law applicable, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged." *See East*, 353 S.C. at 636-38, 578 S.E.2d at 750-51 (emphasizing the trial court instructed the jury to find whether the defendant possessed the requisite intent to commit both crimes—armed robbery and kidnapping). Accordingly, we affirm on this issue.

IV. State's Exhibit 1: 911 Call

Kocsis argues the trial court erred in admitting State's Exhibit 1 in violation of Rule 403, SCRE, because the call was "raw and emotional." She contends the admission of the call was cumulative because the individuals speaking on the call testified at trial. We disagree.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* at 429-30, 632 S.E.2d at 848. "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." *State v. Green*, 412 S.C. 65, 79, 770 S.E.2d 424, 432 (Ct. App. 2015) (quoting *State v. Lyles*, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008)).

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Rule 403, SCRE. "[E]ven where the evidence is shown to be relevant, if its probative value is substantially outweighed by the danger of unfair prejudice, the

evidence must be excluded." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Id.* "[T]he determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." *State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009).

In *State v. Stephens*, 398 S.C. 314, 319-22, 728 S.E.2d 68, 71-73 (Ct. App. 2012), our court held the trial court did not abuse its discretion in admitting a second photographic line up pursuant to Rule 403 because "[t]he central theme of [the] defense was discrediting [a witness's] identification of him in the second photographic line up."

The trial court did not abuse its discretion in admitting State's Exhibit 1 for "corroborative purposes and establishing the elements of the offense[s]." *See Douglas*, 369 S.C. at 429, 632 S.E.2d at 847-48 ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); *Green*, 412 S.C. at 79, 770 S.E.2d at 432 ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." (quoting *Lyles*, 379 S.C. at 338, 665 S.E.2d at 207)). Here, State's Exhibit 1 was the first piece of evidence that was admitted at trial, and Kocsis already raised in her opening statements that the witnesses were drug addicts and emphasized the jury needed to consider their credibility. State's Exhibit 1 supported the State's version of events by providing an account of what happened in "real time," and the recording identified Kocsis as being part of the group that broke into Ms. Rose's home and killed Victim. Additionally, during cross-examination of many of the State's witnesses, Kocsis questioned the witnesses about their credibility, their drug usage, criminal records, possible benefits from testifying, and the quality of their recollections of what occurred. In her closing argument, Kocsis emphasized the State's witnesses were drug addicts, asserted they were liars, attacked their credibility, and contended their memories were faulty. Kocsis's case is similar to *Stephens* because in light of the whole trial, Kocsis attempted to discredit the State's witnesses like the defendant attempted to discredit the witness's identification in *Stephens*. *See* 398 S.C. at 319-22, 728 S.E.2d at 71-73 (holding the trial court did not abuse its discretion in admitting second photo line pursuant to Rule 403 because "[t]he central theme of [the defendant's] defense was discrediting [a witness's]

identification of him in the second photographic line up). Thus, the trial court did not abuse its discretion in admitting State's Exhibit 1.

Finally, as to Kocsis's argument that State's Exhibit 1 was needlessly cumulative, this argument is unpreserved because Kocsis only argued at trial that State's Exhibit 1 would "stir up the passions and prejudices of the jury via using emotion rather than facts." *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."). Accordingly, we affirm on this issue.

CONCLUSION

Based on the foregoing, Kocsis's convictions and sentences are

AFFIRMED.

GEATHERS and HILL, JJ., concur.