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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of General Sessions

Appellate Case No. 2023-000408

The Honorable William H. Seals, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Isaac Kareem Hemingway……..……Appellant.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Appellant respectfully submits this very brief reply to Respondent's brief filed on September 30, 2024. In Respondent's last argument, they assert that Appellant's Issue V—that the trial court erred in overruling trial counsel's objection to improper burden shifting during the State's closing argument—is not preserved. Resp. Br. 46. This argument lacks merit.

ARGUMENT

I. Trial counsel's objection to the improper burden shifting by the State in their closing argument and the trial court's erroneous overruling of the objection is preserved for appellate review.

The core of Respondent's argument on this point seems to be because trial counsel did not specifically say "I object" to the State's impermissible burden shifting in their closing argument, such an issue is now unable to be reviewed by this Court. Respondent details in great length in their brief the exchange between trial counsel, the trial court, and the State regarding this issue. Resp. Br. 44-45. As can be seen from the excerpt provided by Respondent of the transcript in their brief, the State made the comments at issue, trial counsel interrupted and asked the trial court to be heard outside the presence of the jury, stated his issue—"a critical error" of burden shifting—and the trial court overruled the objection by saying, "I will charge them" in refence to the jury.

In general, "'when[n] the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.'" *State v. Franks*, 432 S.C. 58, 80, 849 S.E.2d 580, 592 (Ct. App. 2020) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 2828, 287 (2012)). Despite what seems to be Respondent's argument of rigid specificity when it comes to objections, "[e]xact phrasing of relevant legal doctrine is not necessary to preserve an issue when 'it is clear from the argument presented in the

record that the motion was made on this ground."' *Id.* at 80. (quoting *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001)). Further, simply, for this Court to adequately review the issue presented before it, "the appellant must provide the court with a sufficient record pertaining to that issue; otherwise, there is nothing for [an appellate] court to review." *Schultze v. Schultze*, 403 S.C. 1, 8, 741 S.E.2d 593, 597 (Ct. App. 2013).

There is clearly something for this Court to review on this issue. While trial counsel—and frankly, the trial court for that matter—did not use the exact phrasing of "I object" and "overruled"—the record reflects trial counsel's issue with the statements made by the State which he argued amounted to burden shifting. Before trial counsel was cut off by the State, trial counsel noted "I think he just made a critical error that you may have to instruct the jury. He can't say what they can't account for. Burden of proof is not on us." Tr. 873. The trial court noted that the State was "just replying to what you brought up" to which trial counsel again noted that the State was "basically saying…we have something to prove. We don't have to account for anything." Tr. 873. The Court then ended the conversation by saying he was going to "charge them", meaning the jury, and as Respondent remarks in their argument, the trial court "instructed the jury numerous times the burden of proof is on the State to prove the defendant beyond a reasonable doubt and the defendant does not have to prove anything." Resp. Br. 45. It is clear from the record that the trial court did not find trial counsel's issue that convincing and said he was going ahead with his regular jury instructions.

Respondent's argument that this issue is not persevered for appellate review is faulty and without merit. Appellant respectfully asks this Court to find this issue preserved for appellate review.

CONCLUSION

Appellant respectfully asks this Court to grant him a new trial on the issue raised in his Initial Brief.

October 2, 2024

Respectfully submitted,

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