

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2025-001295

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**SC Court of Appeals**

THE STATE,

Respondent,

v.

CARLES BRANDON SCRUGGS,

Appellant.

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

### Appellant's Issue Statements

- I. "Did the trial court err in failing to direct a verdict of not guilty when the testimony and exhibits showed that the alleged sawed-off shotgun did not fit the definition of a sawed-off shotgun and had been purchased legally by the wife of [Appellant]?" (App. Br. 1).
- II. "Did the trial court err in failing to direct a verdict when the State failed to produce substantial circumstantial evidence that [Appellant] possessed any of the weapons named in the indictment that were found in the residence owned by his father and where he was staying?" (App. Br. 1).
- III. "Did the trial court err in granting a permanent restraining order for Misty Poole when Ms. Poole was not in the courtroom and did not on record request such a restraining order?" (App. Br. 1).

## **STATEMENT OF THE CASE**

In August 2022, an Anderson County grand jury indicted Appellant for 37 counts of possession of a firearm by a person convicted of a violent offense. (R. 472-508). Before trial, 12 of these 37 counts were dismissed. In September 2022, an Anderson County grand jury indicted Appellant for unlawful possession of a machine gun or sawed-off shotgun or rifle. (R. 509-11). Finally, in November 2024, an Anderson County grand jury indicted Appellant for possession of ammunition by a person convicted of certain crimes. (R. 512-17). On June 16-18, 2025, Appellant proceeded to a jury trial before the Honorable R. Lawton McIntosh. (R. 1, 137, 280).

At trial, Misty Poole testified that Appellant, Appellant's father, and Christy Bryant had lived next door to her for around 15 years. (R. 68). Poole initially tried to be friendly to her neighbors but that changed when she started hearing gunshots. (R. 69). She did not know where the gunshots were coming from at first, so she called law enforcement. (R. 69). She later observed Appellant with a gun. (R. 69). Poole testified that she asked her neighbors to be more careful and stop shooting guns because her grandchildren played outside. (R. 70).

Poole stated she saw Appellant with a gun multiple times, including once when she saw him leave his back porch with a gun before hearing gunfire. (R. 71). Poole stated she observed Appellant shoot a crow in her front yard with a rifle. (R. 71). She also saw Appellant shoot birds and other things multiple times. (R. 96). According to Poole, when she would call law enforcement about Appellant's gun use, he could cuss and scream at her to the point she was afraid for her safety and her family's safety if they went outside. (R. 72). Poole testified the gunfire was a daily occurrence and got worse over time. (R. 72). She also stated that the gunfire harmed her business across the street because people were afraid of the gunfire. (R. 72).

Poole testified she installed cameras around her house and business around the end of October or beginning of November 2020. (R. 73). She identified a video from one of her cameras, which was admitted as State's Exhibit 2. (R. 77). In this video, Poole identified Appellant from his "very distinguished walk." (R. 81). She stated she watched him go into his backyard where he was obscured, heard gunshots, and saw him return. (R. 81). Poole testified this behavior occurred "[e]very day, night." (R. 81).

Jonathan Velez, a sergeant with Anderson County Sheriff's Office, testified that Appellant was a convicted felon at the time Poole complained. (R. 98, 103). He procured and executed a search warrant for Appellant's residence. (R. 104). According to Velez, he recovered a "lot of guns and ammunition" from Appellant's residence. (R. 108). He stated that some of the guns were found in a safe in Appellant's father's bedroom but a "large amount" were found in a back building resembling a garage or shop. (R. 108). Velez testified that the guns seized by law enforcement were all locked in safes or otherwise locked up when law enforcement arrived. (R. 116). Velez stated law enforcement also found a black powder rifle in plain view in Appellant's bedroom near the bed. (R. 116-17).

Christopher Beusse, a forensics division lieutenant with Anderson County Sheriff's Office, testified that State's Exhibit 6 is a consent order under which some of the seized firearms were returned to Appellant's father and Christy Bryant. (R. 145-50).

Michael Campbell, a detective with Anderson County Sheriff's Office, testified that he collected evidence at Appellant's residence, primarily from the garage where two safes were located. (R. 166). Campbell stated that a lady on scene gave him the code to one of the safes, which contained the code for the other. (R. 167). He discussed the firearms he found. (R. 168-207). Campbell identified a gun marked as F-15 on his inventory sheet as a black

Remington 870 twelve-gauge shotgun. (R. 198-99). Campbell specifically identified the weapon as a "[t]welve-gauge shotgun" without objection. (R. 199). Appellant objected to a photograph of the firearm being admitted. (R. 200). The photograph showed a short barrel firearm with a handheld handle and included a tape measure in the frame. While the photograph was not admitted,<sup>1</sup> the chain of custody and the firearm itself were admitted as State's Exhibit 19 and State's Exhibit 19-A, respectfully. (R. 200). This gun is the subject of Appellant's sawed-off shotgun arguments.

James Lindsey, an officer with Anderson County Sheriff's Office, testified that he assisted Campbell with the firearms. (R. 208-09). He testified that State's Exhibit 23 is another Remington 870 twelve-gauge shotgun, a picture of which was admitted into evidence. (R. 210-11; State's Ex. 23). However, as this gun appears to have a shoulder stock on it, this is not the firearm related to Appellant's sawed-off shotgun argument. (State's Ex. 23).

After the State rested, Appellant made a motion for directed verdict. (R. 259-60). Appellant argued that both Poole's testimony and the video from Poole's surveillance camera did not show that he was in possession of a firearm he was not allowed to have. (R. 260). He asserted that the State presented no evidence that any firearm Poole thought he possessed was not his black powder pistol that he was legally allowed to possess. (R. 261). Appellant contended that the guns and ammunition were locked away and in the possession of Christy Bryant rather than himself. (R. 261).

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<sup>1</sup> The State designated this picture as it was before the trial court despite not being admitted as a State's Exhibit or marked as a Court's Exhibit. (R. 199-200). *See* Rule 210(c), SCACR ("The Record on Appeal shall include all matter designated to be included by any party . . . . The Record shall not, however, include matter which was not presented to the lower court or tribunal."). Should this Court want the physical firearm, State's Exhibit 19-A, the State can arrange for the firearm's transportation to the Court.

The State asserted that the relevant statute was based on possession rather than ownership and that Appellant was in both actual and constructive possession of the firearms and ammunition found at his residence. (R. 262). The State argued that even if some of the guns and ammunition were locked away, Appellant still had dominion and control over them. (R. 262). The State contended that the shots heard on Poole's surveillance camera recording were not from a black powder gun based on the rapid nature of the gunfire. (R. 262-63). The State also noted Poole's testimony that she had seen Appellant with guns on various occasions and that Appellant had pointed a long gun at her before. (R. 263).

The trial court determined a jury question existed due to Poole's testimony and the repetitive nature of the gunfire that did not sound like black powder gunfire. (R. 264). The trial court also noted that Poole and Appellant came to a truce when Poole's daughter was pregnant and that the truce did not last after the baby was born, which the court determined could be an indication that Appellant was in control of what occurred in his backyard regardless of who owned the guns. (R. 264). The trial court concluded that the record contained sufficient evidence to support submitting the case to the jury. (R. 264-65).

Christy Bryant, Appellant's wife, testified that she knew Appellant had a criminal record when she moved in with him. (R. 288). She stated that all the guns at the residence were either hers or Appellant's father's guns and that all the guns were locked in safes due to Appellant's criminal record. (R. 288-89). According to Christy, she and Appellant had an antagonistic relationship with Poole. (R. 292). Christy testified that at the time law enforcement searched the residence, Appellant was living with his mother at a different location. (R. 297). Christy confirmed she provided law enforcement with the combination of one of the gun safes located in a building outside of the main residence. (R. 298-300). She claimed ownership of everything in

both safes as well as claiming Appellant did not have access to either safe. (R. 299, 309). Christy testified that Appellant never tried to obtain access to the safes. (R. 310). However, Christy also stated that the safes were in the same shed that was Appellant's primary workspace. (R. 311).

When the State asked Christy about the shorter Remington shotgun, the State mentioned it looked like a 12-gauge sawed-off shotgun. (R. 321). Christy responded that this specific weapon belonged to her but stated that it was not classified as a sawed-off shotgun "[b]ecause it's had a stock put on it where it could be fired from the shoulder." (R. 321-22). Christy stated she did not know the length of the barrel on this weapon. (R. 322). She testified she purchased the shotgun as it appeared from FFL with the stock handle as is. (R. 322). Christy continued, "Now, if the handle were removed and a stock was put on it to be fired from the shoulder, and then say I went to put the original handle back on it, that would still be considered a sawed-off shotgun. But it's never had that grip removed." (R. 322). Christy stated that a barrel being sawed off was what made a sawed-off shotgun into a sawed-off weapon. (R. 322). She claimed the barrel of this weapon had not been sawed off. (R. 322). Christy stated a shotgun barrel is supposed to be 18 inches with an overall length of 26 inches. (R. 323).

Appellant testified that he did not own any of the firearms confiscated from his residence. (R. 331). Further, he denied that any of the guns found at his residence were ever outside of the safes when he was around. (R. 331). He denied that his wife allowed him to possess any of the guns. (R. 331). Appellant stated that upon being released from prison for previous crimes, he told his father, whom he lived with, that he could not be around firearms. (R. 337). According to Appellant, his father ensured all firearms at the residence were secured in a safe, which is where the guns had been ever since. (R. 337). Appellant confirmed he owned two black powder guns, which he would shoot in his backyard. (R. 338). However, Appellant claimed he was not

responsible for the gunfire heard in Poole's surveillance video. (R. 340-41). Appellant denied ever threatening Poole with a gun or pointing a gun at her. (R. 341).

After he rested, Appellant renewed his earlier directed verdict motion, arguing that the State produced no evidence as to whether the short barrel shotgun fit into the statutory definition of a sawed-off shotgun. (R. 399). He contended that the only way for the jury to determine if the weapon met the statutory definition would be for the jury to measure the weapon or its component parts themselves or to simply guess, neither of which he felt were permissible. (R. 399). The State responded that it had a picture of the shotgun in question with a tape measure in the picture and noted that Appellant objected to that picture's admission. (R. 399). The State argued that the jury could determine from the shotgun's appearance if it fit into the statutory definition and that the jury was well within its ability to make such a determination. (R. 400). Appellant argued that such a determination would concern a fact and an element of the crime that the State did not present. (R. 400). The trial court noted that no testimony presented discussed the length of that weapon but allowed the charge to go to the jury. (R. 400).

During its charge, the trial court stated that a sawed-off shotgun "means a gun having a barrel or barrels of less than 16 inches in length or a weapon made from a rifle which was modified which has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length." (R. 424).

After the jury charge, Appellant renewed his objection to the sawed-off shotgun charge because he did not know what evidence the jury could consider about it. (R. 429). This issue was resolved by allowing the jury to physically view the weapons during their deliberations. (R. 429-30).

During its deliberations, the jury asked for a tape measure and for a measurement of the sawed-off shotgun. (R. 432). Appellant objected to giving the jury a tape measure because it would allow the jury to let their own measurement take the place of evidence from the stand. (R. 433). The trial court indicated that the jury could figure out how to measure the firearm without a measuring device. (R. 433). The State noted that a standard size piece of paper was 8.5x11 inches and the jury could simply use a piece of paper. (R. 433). Both parties agreed to a response that all the facts that were to be considered were already in evidence so the jury would not be given a tape measure. (R. 434).

While the jury was deliberating, Appellant made an argument that the sawed-off shotgun was a legal weapon because it did not comply with the statutory definition of shotgun. (R. 452). This argument appeared to be in the context of a belated jury charge argument. (R. 451-52). The State responded that the ATF trace report stated it was a shotgun. (R. 452, 519).

The jury found Appellant guilty as indicted. (R. 453-54). For the 26 charges of possession of a weapon by a person convicted of a violent offense and for the charge of possession of ammunition by a person convicted of certain crimes, the trial court sentenced Appellant to five years suspended to 18 months incarceration followed by 5 years on probation for each charge. (R. 469). For the charge of unlawful possession of a sawed-off shotgun, the trial court sentenced Appellant to ten years' imprisonment suspended on 18 months incarceration followed by 42 months in the home incarceration program followed by 5 years' probation. (R. 468). The trial court indicated that all sentences were to run concurrently. (R. 468).

The State requested a permanent restraining order against Appellant for Misty Poole and her business across the street from her and Appellant's residences, which the trial court immediately granted. (R. 466-68). The State indicated that Poole was not present when the

restraining order was requested. (R. 466). Appellant did not object to the permanent restraining order. (R. 466-68).

This appeal followed.

## STANDARD OF REVIEW

An appellate court "review[s] the denial of a directed verdict motion in a criminal case under the any evidence standard of review." *State v. Cain*, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017). "When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt 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).

In criminal cases, the appellate court sits to review errors of law only. *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. *Id.*

## ARGUMENT

- I. In the light most favorable to the State, some evidence existed tending to show that State's Exhibit 19-A was a sawed-off shotgun, meaning that the trial court properly denied Appellant's request for a directed verdict on the charge of unlawful possession of a sawed-off shotgun.**

Appellant argues that the trial court erred by denying his request for a directed verdict regarding his charge of illegal possession of a sawed-off shotgun because, according to him, no direct or substantial circumstantial evidence existed tending to prove his guilt. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury."). Appellant's argument is unavailing.

Direct evidence "is based on personal knowledge or observation and . . . , if true, proves a fact without inference or presumption." *Black's Law Dictionary* 636 (9th ed. 2009). The presentation of direct evidence "immediately establishes the main fact to be proved." *State v. Salisbury*, 343 S.C. 520, 524 n.1, 541 S.E.2d 247, 249 n.1 (2001). "Circumstantial evidence is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013); *see also State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004). Circumstantial evidence is "based on inference and not on personal knowledge or observation," *Black's Law Dictionary* 636 (9th ed. 2009), and establishes "collateral facts from which the main fact may be inferred." *Salisbury*, 343 S.C. at 524 n.1, 541 S.E.2d at 249 n.1.

*[continued on following page]*

### **A. Definition of "Shotgun"**

Appellant begins by asserting that the State "simply did not understand the definition of shotgun as used in the South Carolina Code." (App. Br. 4). That misses the point. This is not a statutory interpretation case. This is merely a question of whether evidence existed.

The relevant question is whether, in the light most favorable to the State, evidence existed reasonably tending to show that State's Exhibit 19-A was, in fact, a shotgun. Here, the State provided such evidence. Campbell, one of the officers who secured the large quantity of firearms and ammunition found at Appellant's residence, identified State's Exhibit 19-A as a "[t]welve-gauge shotgun." (R. 199). Therefore, direct testimony concerning the firearm at question tends to show it was, indeed, a shotgun.

### **B. Preservation of Definition of "Shotgun"**

Moreover, Appellant's argument concerning the definition of "shotgun" as it relates to his directed verdict argument is not preserved for appellate review. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) ("The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))).

Both of Appellant's directed verdict motions—the one at the close of the State's case and the one at the close of his own case—failed to include any mention of an argument about the definition of "shotgun." (R. 260-65, 399-400). Instead, Appellant's mentions of the definition of "shotgun" came (1) in his charge requests and (2) after a jury question had been answered where it also appeared in the context of a belated charge request. (R. 429, 452). Therefore, because Appellant failed to raise his "shotgun" definition argument that he now sets forth on appeal in his

directed verdict motions at trial, any argument that the trial court erred in denying his requests for directed verdict based on the statutory definition of "shotgun" is not preserved. *See generally State v. Adams*, 332 S.C. 139, 144-45, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (noting that a party cannot argue one ground for directed verdict at trial and then argue a different ground on appeal).

### **C. Definition of "Sawed-off" Shotgun**

Because the State presented some evidence that State's Exhibit 19-A was a shotgun, the second relevant question is whether, in the light most favorable to the State, evidence existed reasonably tending to show that State's Exhibit 19-A was a *sawed-off* shotgun. *See* S.C. Code Ann. § 16-23-210(b) (defining sawed-off shotgun as "a shotgun having a barrel or barrels of less than eighteen inches in length or *a weapon made from a shotgun* which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than eighteen inches in length"). While the State did not present testimony concerning the exact measurements of State's Exhibit 19-A, the physical firearm itself was entered into evidence and was readily available for the jury's inspection during deliberations. (R. 199-200, 429-30). Therefore, because the State presented the actual weapon and because the actual weapon was made available for the jury's inspection during deliberations, some evidence existed from which the jury could determine whether the weapon was a sawed-off shotgun.

Based on the foregoing and in the light most favorable to the State, some direct and substantial circumstantial evidence exists reasonably tending to prove Appellant's guilt. Thus, the trial court properly allowed Appellant's charge for illegal possession of a sawed-off shotgun to go to the jury.

*[continued on following page]*

**II. In the light most favorable to the State, some evidence existed tending to show Appellant had *at least* constructive possession of all weapons and ammunition for which he was charged, meaning the trial court properly denied Appellant's request for a directed verdict on all remaining possession of firearm or ammunition charges.**

Much like in Issue I, Appellant argues that the trial court erred by denying his request for a directed verdict regarding his numerous charges for possession of a firearm by a person convicted of a violent offense and his charge of possession of ammunition by a person convicted of certain crimes because, according to him, no direct or substantial circumstantial evidence existed tending to prove his guilt. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury."). Appellant's argument focuses solely on the possession aspect of these crimes. (App. Br. 8-17). *See* S.C. Code Ann. § 16-23-500(A) ("[I]t is unlawful for a person who has been convicted of a crime punishable by a maximum term of imprisonment of more than one year to possess a firearm or ammunition within this State."). However, just as in Issue I, Appellant's argument is unavailing.

Direct evidence "is based on personal knowledge or observation and . . . , if true, proves a fact without inference or presumption." *Black's Law Dictionary* 636 (9th ed. 2009). The presentation of direct evidence "immediately establishes the main fact to be proved." *State v. Salisbury*, 343 S.C. 520, 524 n.1, 541 S.E.2d 247, 249 n.1 (2001). "Circumstantial evidence is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013); *see also State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004). Circumstantial evidence is "based on inference and not on personal knowledge or observation," *Black's Law Dictionary* 636 (9th ed.

2009), and establishes "collateral facts from which the main fact may be inferred." *Salisbury*, 343 S.C. at 524 n.1, 541 S.E.2d at 249 n.1. If there is substantial circumstantial evidence "reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *see also State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010) (affirming denial of directed verdict because the State offered substantial circumstantial evidence of the defendant's guilt).

Moreover, while directed verdict is appropriate when evidence merely raises a suspicion of a defendant's guilt, circumstantial evidence "gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." *Rogers*, 405 S.C. at 567, 748 S.E.2d at 272; *see also Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (stating directed verdict appropriate when the evidence merely raises a suspicion of defendant's guilt); *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984) (stating a "trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty"); *Frazier*, 386 S.C. at 532, 533, 689 S.E.2d at 613, 614 (viewing circumstantial evidence "collectively" and "as a whole" to hold directed verdict properly denied); *Cherry*, 361 S.C. at 595, 606 S.E.2d at 478 (finding the circumstantial evidence, when combined, was "sufficient for the jury to infer [guilt]").

Therefore, the relevant question is whether evidence was presented at trial that Appellant either had actual possession or constructive possession of the various firearms and ammunition found at his residence. Mere presence is insufficient to prove constructive possession; however, the State need only show a defendant had dominion and control, or the *right to exercise* dominion and control, over the weapons and ammunition. *See generally State v. Heath*, 370 S.C. 326, 329-30, 635 S.E.2d 18, 19 (2006) (stating mere presence is not enough to show constructive

possession and the State need only prove a defendant had or had the right to exercise dominion and control over an illegal substance to show constructive possession). Moreover, a "defendant's knowledge and possession may be inferred if the substance was found on premises and under his *control*." *Id.* (emphasis original).

Here, substantial circumstantial evidence exists in the record tending to show Appellant was in constructive possession of the firearms and ammunition at his residence because Appellant had, at least, the ability to exercise dominion and control over the firearms and ammunition. Christy testified that all weapons and ammunition kept at the residence were secured in safes that, according to her, Appellant did not have access to and to which she never provided him access. (R. 288-289, 299, 309-310.) However, Christy also testified that the safes containing all the firearms and the ammunition were in the same outbuilding that was Appellant's primary workspace and where he spent a couple of hours every day. (R. 311-12). Campbell, one of the sheriff's deputies who collected the weapons, testified that a lady (later confirmed by Christy to be herself) provided him with the combination to one of the safes, which contained the combination to the other. (R. 167, 298).

Poole, the next door neighbor, testified that she saw Appellant with a gun multiple times. (R. 69-71). She specifically stated she observed Appellant shoot a crow in her front yard with a rifle. (R. 71). Poole also saw Appellant with a handgun in the front of his pants. (R. 71). Poole testified she saw Appellant shooting birds and other things multiple times. (R. 71). According to Poole, Appellant's gun use was a daily occurrence and got worse over time. (R. 72). Poole testified that State's Exhibit 2 shows Appellant leave his back porch, where it is not readily discernable whether he had a weapon on his person, before gunshots can be heard followed by Appellant

quickly reappearing on the video. (R. 77-81, State's Ex. 2). Poole stated that the behavior exhibited by Appellant in State's Exhibit 2 occurred "[e]very day, night." (R. 81).

This evidence, when taken together, raises more than a mere suspicion of Appellant's guilt. Poole's testimony indicates that Appellant had access to the firearms and ammunition in the safes to which both Christy and Appellant contend Appellant did not have access because Poole herself saw Appellant with a rifle and other guns and watched Appellant use regularly them.

Appellant contends that because Poole did not specifically identify any of the weapons she saw him use, the State cannot show that the firearms Poole observed Appellant using were the same firearms for which the State charged him with possession. (App. Br. 12). However, the State is not required to show that Appellant *used* any specific firearm. The State was only required to show that Appellant *could exercise dominion and control* over the firearms and ammunition found at his residence. Poole's testimony that Appellant had access to the rifle he used to shoot a crow and that Appellant also had access to a handgun she saw in the front of his pants is evidence tending to show he had sufficient access to the safes in the outbuilding to retrieve and use those firearms and ammunition—a direct result of his dominion and control over the firearms and ammunition found in the safes despite his and Christy's assertions that he did not have such access, dominion, or control. (R. 69-72). State's Exhibit 2 is also evidence of the same.

Therefore, in the light most favorable to the State, significant circumstantial evidence exists in the record tending to show Appellant had at least constructive possession of the firearms and ammunition found at his residence. Thus, the trial court properly submitted these charges to the jury.

*[continued on following page]*

**III. Appellant failed to object to the permanent restraining order at sentencing; thus, any argument about the permanent restraining order is not preserved for appellate review.**

As part of Appellant's sentence, the trial court issued a permanent restraining order against him concerning his neighbor, Poole. (R. 466-68). At no point did Appellant object to the imposition of the permanent restraining order nor did he argue that the trial court could not impose it because Poole was not present to personally request it. Therefore, Appellant's argument was not raised to or ruled upon by the trial court and is now being impermissibly raised for the first time on appeal. *See First Carolina Corp. of S.C.*, 372 S.C. at 302, 641 S.E.2d at 907 ("The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))); *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (stating appellate courts "ha[ve] consistently held that a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review"); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *State v. Shumate*, 276 S.C. 46, 47, 275 S.E.2d 288, 288 (1981) ("A defendant's failure to timely object or to seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal.").

*[conclusion and signature block on following page]*

## CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's multiple convictions for possession of a firearm by a person convicted of a violent offense, his conviction for unlawful possession of a sawed-off shotgun, and his conviction for possession of ammunition by a person convicted of certain crimes, as well as his associated sentences.

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