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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013-000074

THE STATE,

Respondent,

vs.

DETRICK TIWAN WILLIAMS,

Appellant

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

DID APPELLANT'S PERFUNCTORY MOTION FOR DIRECTED VERDICT PRESERVE THE SPECIFIC ISSUE HE RAISES ON APPEAL, AND THE TRIAL COURT CORRECTLY DENY APPELLANT'S MOTION BECAUSE THE STATE PRESENTED EVIDENCE THAT, VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, REASONABLY TENDS TO PROVE THAT APPELLANT INDECENTLY EXPOSED HIS GENITALIA IN THE PLAIN VIEW OF THE PUBLIC.

STATEMENT OF THE CASE

Appellant was charged with indecent exposure pursuant to S.C. Code Ann. § 16-15-130 (Supp. 2012). On January 9, 2012, Appellant proceeded to trial before the Honorable John C. Hayes, III, and a jury. Appellant represented himself and Erin Joyner represented the State. R. p.2. The jury found Appellant guilty, and Judge Hayes sentenced him to three years imprisonment and registration as a sex offender. R. p.55. This appeal follows.

TABLE OF AUTHORITIES

State Cases:

Statutes:

Other Authorities

STATEMENT OF FACTS

At Appellant's trial,Tamikya Staley testified that at approximately 1:00 p.m. on December 25, 2011, she pulled into the parking lot of the South Wilson Street Apartments to visit her cousin who lived there. R.pp. 6-7; 18;22; 37. South Wilson Street Apartments is a small housing authority apartment complex. R.pp. 7 – 9; State's Exhibit 1. Staley described the apartment complex as small, consisting of four buildings with a small rectangular parking area. She also stated that the parking lot located at the apartment complex was one used by the many residents who lived there and that guests were also permitted to park there. R.p. 29. Staley had visited before and was familiar with the area and knew Appellant. She was travelling alone. R.pp. 18- 19; 25 - 26; 35. Staley testified that she pulled straight into an available parking space that was located in front of apartment 531. R.pp. 18; 20 - 21. As Staley exited her vehicle, she activated the remote door lock device on her key fob and her vehicle horn blew once in confirmation that the door locks were engaged. R.p.19; 33; When Staley's vehicle horn blew, she heard the inner door to apartment 531 open and saw Appellant peep his head outside of the exterior screen door. R.p.19; 22; 33. Staley was located on the sidewalk of the apartment complex and heard Appellant call out to her to catch her attention. R. pp. 21 – 23; 36. Staley testified that Appellant was standing in the doorway and was naked from his shoulders to his knees. R. p.23. Staley also testified that she could see Appellant's penis and that Appellant was masturbating. R.pp.22-23; 40; 42. Staley specifically stated that Appellant was standing behind the mesh screen door in the doorway of the apartment and that she "could see him actually in motion doing the act" of masturbation as he stood naked before her. R. pp.

22 – 23; 23, lines 9 – 23; p.24, lines 2-4; p.42. Staley testified that she was sufficiently close to Appellant and could clearly see that he was naked and that he was masturbating. She affirmed that nothing obstructed her view. R.pp.21 - 22; 24- 25; 28; 36, lines 4-14; p.38, lines 11-19. Staley stated, "I could see what he was doing so I turned my head and kept going." R. p.19; 22; 30. She also testified that Appellant specifically called out to her to draw her attention to him. R.pp. 36 -37, lines 1-2. As soon as Staley entered her cousin's apartment, she called the police to report Appellant. R. p.24; 26-27.

The responding police officers testified that Staley positively identified Appellant without any hesitation, as the person she saw. R. p.10, R. p.14; p.27. Staley also identified Appellant in court as the perpetrator. R. p.28. Officer Price described the South Wilson Street Apartments as one of the smaller housing authority rental apartments. R. p.8.

In addition to Staley's identification of Appellant as the perpetrator, Officer Beach stated that Staley reported to him that a man later identified as Appellant was masturbating and exposing his penis to her from the open door of an apartment. R. p.12. Staley provided the nickname by which she knew Appellant. R. p.13.

Appellant presented the testimony of his mother and sister. Both testified that they lived in Charlotte, North Carolina and that Appellant was in their home before they left at 11:00 a.m. to noon on Christmas Day and that he was there when they returned at 5:00 or 6:00 p.m. the same day. R. pp.45-46; p.49. Neither knew where Appellant was at the time of the incident but his sister testified that he had no transportation. R. p.49; p.51; p.53. Appellant's sister also testified that Appellant was staying with her in Charlotte at the time. R. pp.51-52.

ARGUMENT

APPELLANT'S PERFUNCTORY MOTION FOR DIRECTED VERDICT DID NOT PRESERVE THE SPECIFIC ISSUE HE RAISES ON APPEAL, AND THE TRIAL COURT CORRECTLY DENIED APPELLANT'S MOTION BECAUSE THE STATE PRESENTED EVIDENCE THAT, VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, REASONABLY TENDS TO PROVE THAT APPELLANT INDECENTLY EXPOSED HIS GENITALIA IN THE PLAIN VIEW OF THE PUBLIC.

Appellant challenges the trial court's denial of his motions for directed verdict on the charge of indecent exposure. He contends he was entitled to a directed verdict because there was no evidence presented that he exposed himself when standing behind the screen door of his own apartment. Brief of Appellant 4. Respondent submits, first, that the issue is not properly before this Court. Appellant is precluded from raising this issue on appeal because Appellant failed to present this or any other specific ground in support of the directed verdict motions at trial. Nevertheless, there is ample evidence to support the trial court's denial of the directed verdict motions.

Appellant represented himself at trial after his appointed counsel was relieved. R.p.2. At the close of the State's case-in-chief, Appellant moved for a directed verdict stating, "I make a direct verdict not guilty." R. p.43. The trial judge denied the motion, finding "there is ample evidence from which a jury could conclude that this happened and that you were the one who did it. R. pp.43 -44. At the close of presentation of evidence for the defense, Appellant renewed his previous directed verdict motion stating, "I renew the motion for a directed verdict." The trial court denied Appellant's motion concluding "there is ample evidence from which the jury could reach the conclusion . . . ." R. p.54.

1. Appellant failed to properly preserve this directed verdict ruling because his motion lacked specific grounds and because the issue he presents on appeal was not raised to and ruled upon by the trial court.

For an appellate court to consider a directed verdict ruling, the moving party must properly preserve it at trial. Town of Kingstree v. Chapman, 405 S.C. 282, 311, 747 S.E.2d 494, 509 (Ct. App. 2013) (citing Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004)) See State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) (noting the "plain error" rule does not apply in South Carolina and a party must make a contemporaneous and specific objection to preserve an issue for appellate review). To preserve an issue for appellate review, the issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellate, (3) raised in a timely manner, and (4) raised to the trial court *with sufficient specificity*." State v Greer, 391 S.C. 179, 193, 705 S.E.2d 441, 449 (Ct. App. 2010) (citing Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002) (emphasis added); In re MacCraken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (where the appellant made only a "general" directed verdict motion at trial, stating ""I think [the State has] failed to meet their burden of proof beyond a reasonable doubt,"" the motion preserved nothing for appellate review because it "stated *no specific ground*") (emphasis added); State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) (an issue for appellate review is not preserved where a defendant moves for a directed verdict without stating any specific grounds). A party cannot argue one ground for directed verdict and present an alternative ground on appeal. State v. Bailey, 298 S.C.1, 377 S.E.2d 581 (1989).

At the close of the State's case-in-chief, Appellant moved for a directed verdict, merely stating "I make a direct verdict not guilty." R. p.43. The trial court denied the motion, stating "[t]here is evidence from which a jury could conclude that this happened and that you were the one who did it." R. p.44. At the close the evidence, Appellant merely stated "I renew the motion for directed verdict." R. p.54. Appellant failed to argue or present a specific ground or basis in support of the directed verdict motions. He certainly never advanced the argument he now makes to this Court.

Thus, Appellant failed to preserve any directed verdict issue for appellate review because he failed to state a specific ground on which the directed verdict should have been granted. He certainly did not advance the argument to the trial court that he is now presenting on appeal. By failing to argue to the trial court the ground he now advances to this Court on appeal and failing to request a ruling thereon, he waived the ability to present the issue on appeal. State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) (a party cannot argue a ground on appeal that was not specifically presented to the trial court); see also State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)(stating appellant failed to preserve for review a claim that was not raised to or ruled upon by the trial court). Accordingly, this Court should decline to consider the issue presented on appeal and the circuit court ruling should be affirmed.

2. Assuming *arguendo* that Appellant properly preserved this issue, there was ample evidence from which a jury could find Appellant intentionally exposed himself in the view of the public.

In criminal cases, appellate courts only review errors of law. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the

State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for directed verdict, the trial court should only consider the existence or non-existence of evidence and not its weight. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). Further, if the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the trial court must deny a directed verdict motion and submit the case to the jury. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court must affirm the trial court "[i]f there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused[.]" State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004).

Appellant challenges the trial court's denial of his motion for directed verdict on the charge of indecent exposure. He contends he was entitled to a directed verdict because there was no evidence presented by the State that he exposed himself publically or in a place the public could view him when he was standing behind the screen door of his own apartment.

South Carolina Code Ann. § 16-15-130 provides that "[i]t is unlawful for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway." "Statutes of this nature are directed against acts committed openly and affecting the public, and in order to outrage public decadency openly, the act must be openly done in public instead of secretly with the public excluded from observing it." 67 C.J.S. Obscenity § 8. The intent of this statute is to protect the public from intentional displays that are meant to injure another. William Shepard McAninch et al., *The Criminal Law of South Carolina*, (5th ed. 2007).

A public place has been defined as:

> A place to which the general public has a right to resort; not necessarily a place devoted solely to the

> uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and for. (internal citations omitted).

State v. McGowan, 347 S.C. 618, 625, 557 S.E.2d 657, 661 (2001), citing State v. Williams, 280 S.C. 305, 312 S.E.2d 555 (1984).

In this case, when viewed in the light most favorable to the State, there was ample evidence from which the jury could find Appellant indecently exposed himself in a public place or in public view. Ms. Staley stated that after she parked and locked her vehicle in the government housing authority apartment complex and while standing on the sidewalk of the common area of the complex, she clearly saw Appellant appear naked behind the mesh screen door of the apartment, with his exposed penis in his hand. R. pp.22- 23, R.p. 33. Appellant called out to Staley to direct her attention to him to ensure she observed the display of his penis. Appellant argues that because he was inside the screen door of the apartment and because Ms. Staley was on the sidewalk of the complex, there was no evidence Appellant was visible to any person on a street or highway. However, the record is clear that Staley, a member of the "public" was near her vehicle, in an area accessible to and used by the public when she saw Appellant. R. p.21. It is equally clear from the record that if Staley could see the Appellant exposing himself a few feet from her vehicle, anyone who happened to be nearby could have seen him as well. R. p.33. Further, from her testimony a jury could reasonably infer that regardless of where Staley was standing, Appellant was exposing himself in the plain view of the public. Appellant's obvious

intent was to be seen. He called out to Staley and stuck his head out of the screen door to ensure she looked at him.

Moreover, the incident occurred within a multi-apartment complex and Appellant, although standing inside of an apartment, was located in the doorway behind the mesh screen door facing the common parking lot used by all of the residents and guests in the complex. Staley testified that the numerous residents and guests were permitted to and used the parking lot of the apartment complex and that she was standing on the sidewalk for the complex which was also intended for use by the residents and guests. The parking lot and sidewalks of the apartment complex were places to which the general public had a right to resort and therefore, was a public place. See State v. Williams, 280 S.C. 305, 312 S.E.2d 555 (1984) (stating the lobby or waiting area of the Alston Wilkes Society home is a public place and that it is common knowledge that the home receives charitable and government financial assistance); State v. Rouse, 262 S.C. 581, 206 S.E.2d 873 (1974) (stating Appellant's indecent sexual demonstration with exposed private parts to a co-worker while working at a business establishment was sufficient for indecent exposure); see also Fultz v. State, 473 N.W.2d 624 (Ind. 1985) (defendant's actions of standing naked and masturbating in front of a large window at night in a lighted room in an apartment of a multi-apartment complex and facing another multi-family complex was sufficient for a jury to infer defendant's intention was to be observed). It is not necessary for the place in question to be devoted solely to the use of the public. It is a public place if visited by many persons and usually accessible to the neighboring public. State v. Williams, 280 S.C. at 305, 312 S.E.2d at 555.

Appellant was located in a place situated such that he could be seen by any number of people using the parking lot or passing on the sidewalks of the complex had other individuals been present and happened to look. See In re Long, 392 S.C. 325, 327, 709 S.E.2d 632, 633 (2011) (defendant charged with indecent exposure for standing behind clear glass storm door of his office exposing his private parts in plain view of the public); People v. Legel, 321 N.E.2d 164 (Ill. 1974)(stating location was a public plance when defendant exposed his genetalia while in his home but before unveiled glass doors with a light overhead in plain view of the casual observer in his neighbor's living room); Atty. Gen. Ops. dated June 25, 1956 (1956 WL 10211); July 27,1970 (1970 WL 16899), and August 12, 1971 (1971 WL 17540). Appellant was located in a place in which the public had an interest in affecting the safety, health, morals, and welfare of the government supported community housing area and Ms. Staley was an unwilling victim of Appellant's intentional, offensive display.

Contrary to Appellant's argument, Staley testified that she could clearly see that Appellant was naked from shoulders to knees, that he held his penis in his hand, and that he was masturbating. R. p.23. Staley was in a public place and clearly saw Appellant intentionally expose his genitalia and engage in a sexual demonstration. This testimony constituted direct evidence reasonably tending to prove Appellant's guilt.

Viewing the evidence in a light most favorable to the State, there was substantial evidence supporting the denial of Appellant's directed verdict motion. The trial court correctly denied Appellant's motions and its ruling should be affirmed.

CONCLUSION

For the reasons stated above, this Court should affirm Appellant's conviction and sentence below.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certitifes that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent dated March 13, 2014 on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin J. Tripp, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 13th day of March, 2013.

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