

James R. Rose,)
 Petitioner,)
 v.)
 South Carolina,)
 Respondant.)

RECEIVED

JAN 06 2020

SC Court of Appeals

Appellate Case No.: 2017-002052

MEMORANDUM FOR PETITION TO
 AMEND SUBJECT MATTER JURISDICTION
 TO WRIT OF CERTIORARI PROPRIA PERSONA

It is well settled that issues related to subject matter jurisdiction may be raised at any time on appeal in this Court. Carter v. State, 495 S.E. 2d 713 (1998). The jurisdiction of Court over the subject matter of a proceeding is fundamental. Anderson v. Anderson, 382 S.E. 2d 897, 900 (1989).

ARGUMENT

Petitioner argues; (1) the trial court lacked subject matter jurisdiction where the indictment failed to charge ~~to~~ him with the offense allegedly proven at trial; and (2) the trial court abused its discretion refusing to direct a verdict where a material variance existed between the evidence offered at trial and the allegations presented in the indictment. The indictment clearly alleged that Petitioner killed and murdered the victim by means of shooting the victim. The indictment against Petitioner read as follows:

MURDER

That in Charleston County on or about January 24, 2012, with malice aforethought, JAMES R. ROSE did kill and murder Leland Shannon by means of shooting the victim, and that Leland Shannon did die in Charleston County as a proximate result thereof on January 24, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

At trial, Detective J. Perkins testified that he testified at Petitioner's preliminary hearing that he was advised that Petitioner shot and killed the victim and admitted that Petitioner did not shoot and kill the victim. Id. at Appendix page 416, line 25.

Here, the indictment charging Petitioner with murder specifically alleged that Petitioner "did kill and murder Leland Shannon by means of shooting the victim..." By its express terms, the indictment alleged that Petitioner's "act" resulted in victim's death. Significantly, it did not allege that the victim's death was the result of a "conspiracy" orchestrated by Petitioner. Thus, the indictment apprised Petitioner that he had to defend only against the allegation that he shot and killed the victim. See Evans v. State, 313 S.C. 495, 508, 611 S.E.2d 510, 517 (2005).

It is evident from the colloquy during the motion for a directed verdict that the trial court denied the motion based on proof of a murder and the alternative "Petitioner conspired and orchestrated the alleged indicted offense." The indictment charged Petitioner only with committing the murder by shooting the victim, causing the victim's death. The proof at trial is of variance with the indictment, and the failure to grant a directed verdict was error. See State v. Evans, 322 S.C. 78, 470 S.E. 2d 97 (1996); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910).

CONCLUSION

The trial court lacked subject matter jurisdiction to convict and sentence Petitioner for murder by "alleging he conspired and orchestrated the offense" when there was no indictment charging him with that offense when the jury was sworn. See State v. Munn, 292 S.C. 497, 499, 357 S.E. 2d 461, 463 (1987) (citing State v. Beachum, 288 S.C. 325, 342 S.E. 591 (1986)).

For the reasons stated, Petitioner's petition should be granted.

Respectfully submitted,

James R. Rose
James R. Rose, #293938
386 Redemption Way
McCormick, SC 29899

ENCLOSURES

cc:

Robert Michael Dudek, Esquire
Samuel Leonard Key, Esquire

James R. Rose

Sworn before me this 31st day of December 2019

[Signature]

Notary Public

My commission Expires 8/5/2024

Appellate Case No.: 2017-002052

James R. Rose,)
 Petitioner,)
 v.)
 South Carolina,)
 Respondent.)

CERTIFICATE OF SERVICE

I hereby swear that the below named address was served a true copy of Petitioner's Memorandum and Petition to Amend Subject Matter Jurisdiction To Writ of Certiorari Propria Persona, on this 3rd day of JANUARY, 2020, by placing the same in the U.S. Postal mail.

Sincerely,

James R. Rose
 JAMES R. ROSE, #293938
 386 Redemption Way
 McCormick, SC 29899

Samuel Leonard Key, Esquire
 Assistant Attorney General
 Post Office Box 11549
 Columbia, SC 29211

RECEIVED

JAN 06 2020

SC Court of Appeals

Mr. JAMES R. ROSE, #293938

386 Redemption Way

McCormick, SC 29899



THE SOUTH CAROLINA COURT OF APPEALS

Jenny Abbott Kitchings
CLERK

PO Box 11629

Columbia, South Carolina 29211

RECEIVED
JAN 06 2020
SC Court of Appeals

