

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Case No. 2017-GS-42-5423

**RECEIVED**

MAR 09 2020

SC Court of Appeals

The State,

Respondent,

v.

Lorenzo Guillermo Daniel Calderon,

Appellant

APPELLATE CASE NO. 2018-001707

REPLY BRIEF OF APPELLANT

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## ARGUMENT IN REPLY

I. Because the State did not present direct evidence or substantial circumstantial evidence to prove Appellant's guilt of all of the elements of the offense charged, the trial judge erred in failing to direct a verdict in favor of the Appellant.

### **Argument Preservation**

Respondent argues that the Appellant's argument that the trial judge erred in failing to direct a verdict in favor of the Appellant was not preserved for review because he did state any grounds in support of his motion for a directed verdict. Initial Brief of Respondent at 8. Respondent cites the relevant pages of the trial transcript but argues for an overly strict interpretation of the law on the issue, which would prohibit this Court from reviewing the trial judge's denial of Appellant's motion for a directed verdict.

Appellant's trial counsel moved for a directed verdict at the close of the State's case arguing "We believe in the light most favorable to the state they have not meet their burden to go before the jury." R. p. 381, ll. 11-13. It is apparent from a review of the record that the Appellant's grounds for the motion was the State presented insufficient evidence of the charge in order to meet their burden to send the case to the jury for a decision. In ruling on a directed verdict motion, the trial court "views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" State v. Pearson, 415 S.C. 463, 473, 783 S.E.2d 802, 807 (2016) (quoting State v. Bennett, 415 S.C. 232, 236, 780 S.E.2d 352, 354 (2016)). While the Appellant did not lay out all of the evidence from the trial and present arguments as to its insufficiency, he did cite the standard for granting a motion for directed verdict because of insufficient evidence. R. p. 381. There are no magic words that a party must state for an issue to be preserved for review. In State v. Russell,

345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) the Court of Appeals held that a motion for directed verdict on the grounds the State in that case failed to establish the *corpus delicti* of the criminal charge was preserved for review despite the Appellant in that case not using the exact phrasing. The Court of Appeals held “it is clear from the argument presented in the record that motion was made on this ground.” Id. at 132. The Court of Appeal also found in State v. James, 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004) that an Appellant had preserved a motion for directed verdict for review despite not using the term “substantial circumstantial evidence” in his motion. Id. at 562.

Finally, when an argument is neither clearly unpreserved nor clearly preserved a reviewing court should resolve the issue in favor of preservation. Johnson v. Roberts, 422 S.C. 406, 812 S.E.2d 207 (Ct. App. 2018). In Johnson the Court of Appeals held that where “error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it *clearly* is unpreserved.” Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012) (emphasis added).” The Court of Appeals in Johnson emphasizes clearly unpreserved arguments will not be reviewed on the merits. The record shows that Appellant’s motion for directed verdict was not *clearly* unpreserved. If there is any doubt this should be reserved in favor of finding the argument for the directed verdict motion was preserved.

This Court should find that although the Appellant’s motion for a directed verdict may have been succinct, it was made, ruled upon and preserved for appellate review.

II. Because evidence of prior wrongs or acts by the Appellant was (i) irrelevant and inconsequential to the probability of whether or not Appellant committed the offense of Accessory After the Fact to a Felony and (ii) if at all relevant, was unfairly prejudicial, confusing, and misleading, the trial judge erred in allowing the introduction of such evidence at trial.

### **Argument Preservation**

Respondent argues the Appellant's argument that the trial judge erred in admitting testimony about (1) the "Easter Incident" and (2) that the Appellant provided his co-defendant a gun, which was later used in the shooting of Dalton Moore, "just in case" (the "the source of the gun") was not preserved for review because Appellant did not object to the testimony. BOR at 15. Respondent cites pages of the transcript where this no objection by Appellant to the testimony, but does cite Appellant's objection in another section of Respondent's argument as to why the trial judge did not commit error in admitting the disputed testimony. BOR at 19.

Appellant objected to admission to any testimony regarding the Easter Incident and the source of the gun in a pre-trial motion, which the trial judge denied. R. p. 30 – 36. While the Appellant's co-defendant was testifying, Appellant's trial counsel did object to testimony elicited during examination of the co-defendant, acknowledging that the judge "previously ruled that he can bring up what Lorenzo was doing, where he was, . . . " R. p. 429, ll. 4-6. It is reasonable to conclude this prior ruling trial counsel referenced was the pre-trial motion. The trial judge at that time overruled the Appellant's renewed objection to the testimony, making a final judgment on the objection. R. p. 429, l. 21. In his objection Appellant did make reference to the State attempting to improperly suggest a scheme hatched between the Appellant and his co-defendant before the shooting. R. p. 429. Appellant's counsel may have characterized his objection slightly

differently than from the argument made in his pre-trial motion, but the testimony to which he objected was the same and it is reasonable to infer the objection raised during the co-defendant's testimony was the objection made prior to trial.

This Court should find that the Appellant objected to testimony regarding the Easter Incident and the source of the gun, the trial judge ruled upon those objections and the argument against their admission were preserved for appellate review.

### CONCLUSION

Appellant respectfully requests this Court reverse his conviction and remand for entry of a directed verdict or in the alternative an entry of an order granting Appellant immunity or a new trial.



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M. Claire Hall

ATTORNEY FOR APPELLANT

This 9<sup>th</sup> day of March, 2020.

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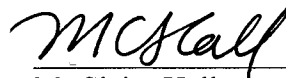
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CERTIFICATE OF COUNSEL IN FINAL BRIEF  
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The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.



\_\_\_\_\_  
M. Claire Hall  
ATTORNEY FOR APPELLANT