

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Cherokee County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2019-000123

The State,

Respondent,

v.

Allen Charron Williams, Jr.,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant failed to preserve any issue related to the sufficiency of the State's circumstantial evidence regarding the shooter's identity; but even if such an issue was preserved, the circuit court properly denied Appellant's directed verdict motion because there was sufficient evidence in the record to submit the case to the jury.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On November 16, 2017, the Cherokee County Grand Jury indicted Appellant Allen Charron Williams, Jr., on three counts of attempted murder, and three counts of possession of a weapon during the commission of a crime of violence, in connection with a shooting incident on May 9, 2017. The matter was called for a jury trial on January 15, 2019, before the Honorable R. Keith Kelly, Circuit Court Judge.

Victim 1 (“Caleb”)¹ testified he was working on a truck with his brother and stepfather on May 9, 2017, and they started driving the truck around their neighborhood to burn off some gas in it. Caleb was riding in the truck bed. While they were riding around, they drive down Evans Street approximately four times. Caleb stated there were no cars driving on the road, and there were not a lot of people walking around the area, (Trial Transcript [TT], pp. 54-59; Record on Appeal [R., pp. 12-17).

The last time they drove the truck down Evans Street, someone yelled “why y’all keep driving by,” and when Caleb’s stepfather stopped to tell the person why they were driving around, they heard a gunshot. Caleb was hit on the face, scalp and chest. He jumped out of the truck, and his brother pulled him through the window into the cab of the truck. They immediately drove home to wash the blood off Caleb, and then drove to the emergency room. (TT, pp. 58-60; R., pp. 16-18).

At the emergency room, the doctors used tweezers to pull one of the pellets out of Caleb’s chest. Caleb was then taken to Spartanburg Memorial Hospital by ambulance, where he had surgery to remove more of the pellets from his body. He testified he was shot in the cheek,

¹Caleb was eleven years old at the time of trial, so he was approximately 9 years old when the shooting occurred on May 9, 2017.

right above his eye, on his eye, his right ear, and his little finger. He was also shot twice in the lower abdomen, and twice in the chest area. (TT, pp. 60-62; R., pp.18-20).

Victim 2 (“Austin”) testified he was Caleb’s brother, and he was riding in the truck cab with their step-father when the shooting occurred. They were driving the truck around the neighborhood on May 9, 2017, because they had been working on the truck, and thought it might have some bad gas in it that needed to be run off. The last time they drove down Evans Street, a woman called out asking why they were driving around. Austin’s stepfather yelled they were working on the truck, and started to go back to the house in reverse when they heard a gunshot. Austin saw Caleb jump out of the truck bed, noticed Caleb was bleeding, and pulled Caleb through the window into the truck cab. He stated there was no other traffic on the street, and the only people he saw on the street were the woman who yelled at them from her porch and a man walking down the road right before they got to Evans Street, but he never saw anyone with a gun. (TT, pp. 75; R., pp. 33).

Sierra McKinney testified she had known Appellant since 2012, and he lived on Evans Street, right behind her sister’s house.² On the evening of May 9, 2017, McKinney was visiting her sister and brother-in-law, and they were sitting outside on the porch. They noticed a truck driving around the block multiple times, which was not ordinary because the streets were not well traveled. (TT, pp. 78-82; R., pp.36-40).

McKinney saw Appellant, who looked “aggravated,” and worried about the truck because he thought the people in it might be trying to start trouble. At one point, Appellant put some broken bricks in the street, and walked past McKinney’s sister’s house carrying a “long gun.”

²Appellant’s house faced Evans Street and McKinney’s sister’s house faced Rita Street, but the way the houses sat on the streets, Appellant’s house was behind and to the side of the sister’s house. (TT, pp. 79-81; R., pp. 37-39).

Shortly after Appellant walked past the house, McKinney heard a “loud boom” from the direction Appellant was walking. McKinney never saw anyone else with a gun that night, and testified she did not see who fired the shot. (TT, pp. 81-86; R., pp. 39-44).

Christa Hall testified Appellant lived behind her sister’s house, and she was visiting her sister the evening of May 9, 2017. They were sitting on the porch when they saw a truck driving around the block multiple times. She stated they were curious about what was going on, but they learned “they was just testing their truck.” (TT, pp. 104-105; R., pp. 62-63).

Hall saw Appellant that night while the truck was driving around, and he looked “jittery, nervous, sweaty.” She testified Appellant was nervous about the truck, and kept asking Hall and the others sitting on the porch “who are these people.” He then threw some broken brick pieces across the road, but “not a big pile.” When Appellant went to get the bricks, he came back with a long barreled gun. When the truck came back around, Appellant “took off running behind my sister’s house,” carrying the gun, and seconds later, Hall heard a gunshot. She did not see who shot the gun, but Appellant was the only person she saw with a gun that night. (TT, pp. 105-119; R., pp. 63-77).

Deputy Billy Anthony, a crime scene investigator with the Cherokee County Sheriff’s Office, testified he was called to the scene of a shooting incident on Evans Street in Gaffney the night of May 9, 2017. He performed a gunshot residue test on Appellant at the scene. Officers also conducted a search for the gun, but did not find it. After reviewing photographs of Caleb taken at the hospital, Deputy Anthony testified Caleb’s wounds were consistent with birdshot from a shotgun, which is generally a long gun. (TT, pp. 120-131; R., pp 78-89).

Dr. Keith Webb was qualified as an expert in pediatric surgery, and testified he conducted surgery on Caleb to remove multiple projectiles from his body which were consistent

with a shotgun injury. There were eighteen projectiles in Caleb's body, located in the head, neck and face regions, but Dr. Webb was only able to remove ten and the remaining eight projectiles remain in Caleb's body. (TT, pp. 151-158; R., pp. 100-107).

Agent Megan Fletcher of the State Law Enforcement Division testified she analyzed the gunshot residue kit from Appellant's hand submitted by Deputy Anthony in connection with the May 9, 2017, shooting incident. Her analysis revealed one particle that was "characteristic of gunshot primer residue. She testified she could not identify the type of gun the residue came from, or how it got on Appellant's hand. (TT, pp. 160-181; R., pp. 109-130).

After the State rested its case, Appellant moved for a directed verdict on the attempted murder indictments on the ground the State presented "no evidence" Appellant had "the specific intent to murder or kill anybody in this situation." The circuit court denied the motion, finding "[t]here is a question of fact as to what his criminal intent was," which "is a question for the finders of fact." (TT, pp. 184-186; R., pp. 133-135).

The jury found Appellant not guilty on the attempted murder charges, but guilty of assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during commission of a violent crime as to Caleb, and guilty of assault and battery in the first degree as to Austin and the stepfather. (TT, pp. 240-242; R., pp. 136-138). The circuit court sentenced Appellant to twenty years incarceration on the ABHAN conviction, five years concurrent on the possession conviction, and five years consecutive on each of the two assault and battery in the first degree convictions. (TT, pp. 249-250; R., pp. 145-146). This appeal followed.

STANDARD OF REVIEW

“On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 353 (2016) (quoting State v. Butler, 407 S.C. 376, 755 S.E.2d 457, 460 [2014]). The Court's review is limited to considering the existence or nonexistence of evidence, not its weight. *Id.* (citing State v. Cherry, 361 S.C. 588, 606 S.E.2d 475, 478–79 [2004]); see also State v. Larmand, 415 S.C. 23, 780 S.E.2d 892, 895 (2015) (same).

The appellate court must find the case was properly submitted to the jury if there is sufficient direct and/or substantial circumstantial evidence reasonably tending to prove guilt. State v. Lane, 410 S.C. 505, 765 S.E.2d 557, 558 (2014); State v. Davis, 422 S.C. 472, 812 S.E.2d 423, 429 (Ct. App. 2018) (same); State v. Lynch, 412 S.C. 156, 771 S.E.2d 346, 354 (Ct. App. 2015) (same). “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” State v. Arnold, 361 S.C. 386, 605 S.E.2d 529, 531 (2004); State v. Bennett, 408 S.C. 302, 758 S.E.2d 743, 745 (Ct. App. 2014) (same). When the State relies on circumstantial evidence, the appellate court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. Davis, 812 S.E.2d at 429.

ARGUMENT

Appellant failed to preserve any issue related to the sufficiency of the State's circumstantial evidence regarding the shooter's identity; but even if such an issue was preserved, the circuit court properly denied Appellant's directed verdict motion because there was sufficient evidence in the record to submit the case to the jury.

Appellant contends the circuit court erred in denying his directed verdict motion because the State failed to produce substantial circumstantial evidence "that Appellant was the shooter." This issue is not preserved for appellate review, but even if preserved, there was sufficient evidence regarding Appellant's identity as the shooter to submit the case to the jury.

A. Issue Preservation

In order to be preserved for appellate review, an issue must have been raised to and ruled upon by the trial court, and issues not raised and ruled upon in the trial court will not be considered on appeal. State v. King, 424 S.C. 188, 818 S.E.2d 204, 209-210 (2018). While the party does not need to use the exact name of a legal doctrine in order to preserve it, it must be clear the argument has been presented **on that ground**, and the issue must have been raised with **sufficient specificity** to bring into focus the **precise** nature of the alleged error so it can be reasonably understood by the court. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691, 694 (2003); State v. Daise, 421 S.C. 442, 807 S.E.2d 710, 714 (Ct. App. 2017); State v. Passmore, 363 S.C. 568, 611 S.E.2d 273, 281 (Ct. App. 2005). Further, a party may not argue one ground before the trial court, and argue a different ground on appeal. State v. Byram, 326 S.C. 107, 485 S.E.2d 360, 363 (1997).

The only basis for Appellant's directed verdict motion in the circuit court was the lack of evidence of "specific intent" necessary for the attempted murder charges. He never moved for a directed verdict on the ground the State failed to present sufficient circumstantial evidence to

prove Appellant was the shooter. Indeed, the directed verdict motion as stated essentially conceded Appellant was the shooter, but did not have the specific intent to kill anyone in the truck. Therefore, the issue raised on appeal is very different from the issue raised to and ruled on by the circuit court, and it is not preserved for appellate review. Even if preserved, however, Appellant's argument fails on the merits.

B. Directed Verdict

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The trial court's task is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

"It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant." State v. Brown, 360 S.C. 581, 602 S.E.2d 392, 397 (2004). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable

inferences from basic facts to ultimate facts.

Jackson, at 319 (emphasis in original).

In the instant case, it was undisputed Appellant was the **only** person seen in the vicinity of the shooting who was carrying a long gun, and he appeared nervous and agitated by the truck driving around the block several times, to the extent he threw broken bricks on the road in an effort to slow down or stop the truck. It was also undisputed the gunshot was heard within seconds after Appellant, with the long gun in his hands, ran in the truck's direction the last time it drove around the block. Based on those undisputed facts, a reasonable juror could easily find Appellant was the "shooter," even though no one actually saw him pull the trigger.

An illustration frequently used by trial judges to explain circumstantial evidence is instructive. If all outside surfaces are dry when a person goes to bed at night, but they are wet when the person goes outside the next morning, people can reasonably find it rained at some point between the time the person went to bed and the time the person got up. Similarly, if Appellant was the only person carrying a long gun the evening of May 9, 2017, and a gunshot rang out seconds after he was seen running toward the area from which the gunshot came, people can reasonably find Appellant was the person who fired the shot.

The sufficiency of the circumstantial evidence to prove Appellant was the person who fired the gunshot that lead to Caleb's injuries was not preserved for appellate review. As demonstrated above, however, even if the issue was preserved, the evidence in the record was more than sufficient to send the case to the jury.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the circuit court's ruling and Appellant's convictions should be affirmed.

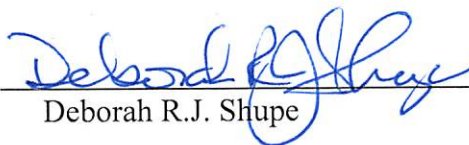
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CERTIFICATE OF COUNSEL

The undersigned certifies that Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Findings."

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