

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ALLEN CHARRON WILLIAMS, JR.

APPELLANT.

APPELLATE CASE NO. 2019-000123

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

Opinion No. 2021-UP-204

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Allen Charron Williams, Jr. respectfully petitions the Court for rehearing of its Opinion No. 2021-UP-204 issued on June 9, 2021, based upon a misapprehension of the rules of issue preservation.

In affirming appellant's convictions and sentences, this Court cited *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003) for the proposition that "[i]n order for an issue to be preserved for appellate review it must have been raised to and ruled upon by the trial [court]." Issues not raised and ruled upon in the trial court will not be considered on appeal. Additionally, this Court cited *Dunbar* for the proposition "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” and “a party may not argue one ground at trial and an alternate ground on appeal.” *State v. Williams*, 2019-UP-204 (S.C. Ct. App. filed June 9, 2021). Thus, this Court held the issue not preserved for appellate review because appellant raised a differing argument on appeal than the argument raised to the lower court.

Issue preservation

“Imposing ... preservation requirement[s] on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). “Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” *Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). “The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve – intentionally or by chance – in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” Toal, Walker, Baker, Appellate Practice in South Carolina (2016) 184. “However, [the error preservation requirement] is not a ‘gotcha’ game aimed at embarrassing attorneys or harming litigants.” *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012).

“There are four basic requirements to preserving issues at trial for appellate review. ... In order to preserve an issue for appellate review, the issue must have been (1) raised to and ruled upon by the lower court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the lower court with sufficient specificity.” Toal, *supra* at 184. The issue on appeal is

whether the trial court erred as a matter of law in denying appellant's motion for directed verdict where there was insubstantial circumstantial evidence that appellant was the shooter. The record demonstrates this issue was raised by appellant and ruled upon by the trial judge.

At trial, appellant made a motion for directed verdict as to all three counts of attempted murder asserting the state did not put forth evidence that showed "the defendant had the specific intent to murder" anyone. Appellant also argued that there was no testimony or evidence regarding two of the alleged victim's injuries and that there was no evidence presented by the state to satisfy an element of the crime. R. 133, ll. 1-20. The court denied the motion. R. 186, ll. 2-7. Although appellant did not use the specific phrase "substantial circumstantial evidence" in his motion for a directed verdict he argued there was insufficient evidence to support one of the elements, specific intent, of the charge of attempted murder. *See State v. James*, 362 S.C. 557, 562-63, 608 S.E.2d 455, 457-58 (Ct. App. 2004); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (holding argument that defendant was entitled to a directed verdict on the ground that state failed to establish the *corpus delicti* of DUI was preserved even though the defendant did not use the exact words where the ground for the motion was apparent from a review of the record).

Appellant's argument on appeal that there was insubstantial circumstantial evidence showing he was the shooter where he was charged with attempted murder, includes the argument made at trial, that the state did not put forth any evidence that appellant had the specific intent to murder the alleged victims. Specific intent is an element of attempted murder and the state's failure to put forth evidence of that element, any direct evidence, or substantial circumstantial evidence should have resulted in a directed verdict in favor of appellant.

Appellant respectfully requests this Court rehear his appeal based upon this Court's misapprehension of the applicable rules governing error preservation.

Merits

At trial, the state offered scant circumstantial evidence that appellant was the perpetrator of this crime. The evidence showed appellant was present, in the neighborhood where he lived, at the time the incident occurred, and appellant was seen with a gun at some point before the gunshot was heard. However, the evidence did not show who shot at the truck that night.

In *State v. Mitchell*, 341 S.C. 134, 535 S.E.2d 126 (2000), the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against defendant was his fingerprint at the scene of the burglary. Similarly, in *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state presented no direct evidence that defendant was involved in setting fire to his home. The circumstantial evidence against defendant was that his wife admitted to the arson, defendant had placed valuables in storage prior to the fire, defendant possessed a key to the storage unit, and defendant allegedly had financial troubles. In that case the court found the evidence insufficient. *Lollis*, at 585, 541 S.E.2d at 257.

In *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state failed to meet the "any substantial evidence" standard. In that case the state presented evidence that a car resembling the one defendant was driving was seen parked at the victim's apartment complex on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. The state also presented evidence defendant and co-defendant were late picking up defendant's girlfriend from work and when his girlfriend asked

why they were late defendant replied, “some shit happened” and co-defendant added “somebody may have died tonight.” *Id.*

In *State v. Odems*, 395 S.C 582, 720 S.E.2d 48 (2012), the South Carolina Supreme Court held defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that defendant was involved in the burglary. Although defendant was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that defendant was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. *Odems*, at 584, 720 S.E.2d at 49. Fingerprints collected from the stolen goods did not match defendant’s but matched the other individuals in the car. *Id.* at 588, 720 S.E.2d at 51. One of the individuals who admitted his involvement claimed defendant was picked up after the burglary at a gas station. *Id.*

In *State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the South Carolina Supreme Court held the state failed to present substantial circumstantial evidence of defendant’s guilt. Rather, the state’s evidence could produce only a suspicion of defendant’s guilt. *Id.* Although the police found items belonging to the victim in a burn pile behind the home of defendant’s mother, the court held no evidence linked defendant to the evidence in the burn pile and the prosecution presented no testimony that defendant had control over the burn pile. *Id.* at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against defendant was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim’s home, and DNA from blood on defendant’s jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. *Id.* at 142, 708 S.E.2d at 778.

The case at bar has less circumstantial evidence than the cases mentioned above where the Court found the lower court should have directed a verdict in defendants' favor. In *Martin*, there was evidence presented that could be construed as an admission of guilt, as well as a car matching the description of the car defendant was driving seen at victim's apartment on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. In *Bostick*, the victim's belongings were found in a burn pile behind defendant's mother's home and defendant had blood on his jeans.

Here, when the state closed its case, only the following pieces of circumstantial evidence had been presented, Sierra and Christa claimed they saw appellant with a gun and one particle of GSR was found on Appellant's hand.

Conversely, the state offered no evidence that anyone saw appellant shoot at the truck and police did not find a gun or shells during their search of appellant's home or the surrounding area. Certainly, appellant was in the area at the time of the incident but so were the two neighborhood witnesses that testified at trial. Police did no investigation into either Sierra or Christa, who claim they saw appellant with a gun before the gunshot. Sierra and Christa are the same individuals Caleb and Wesley heard yelling at them right before their truck was shot at. Christa gave a written statement the night of the incident and then changed it when she testified at trial. Additionally, police did not search Sierra's residence where she, admittedly, had guns and police did not perform GSR testing on anyone other than appellant. R. 53, l. 20-R. 54, l. 4.

Perhaps, had there been additional investigation into the incident, more would be known about exactly what happened that night. All that is known is Sierra and Christa were out on the porch and noticed a truck kept driving by, they both claim they saw appellant with a gun, either Sierra or Christa yelled at the truck, the truck stopped, and someone shot at the truck injuring Caleb. The state presented zero direct evidence and insubstantial circumstantial evidence that

appellant committed this crime. Thus, the trial judge should have directed a verdict in appellant's favor because the evidence presented only raised a suspicion of guilt. The judge's error requires reversal.

In conclusion, appellant respectfully requests this Court rehear the matter due to its misapprehension of the rules governing error preservation. After determining the issue is properly preserved for appellate review, appellant respectfully requests this Court consider the merits of his issue on appeal and reverse the trial court and grant his motion for directed verdict.

Respectfully Submitted,



SARAH E. SHIPE
Appellate Defender

This 24th day of June, 2021.

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IN THE COURT OF APPEALS

RECEIVED

Jun 24 2021

SC Court of Appeals

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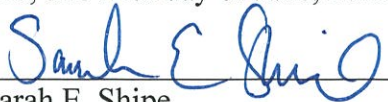
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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of June, 2021; and Allen Charron Williams, #365344, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 24th day of June, 2021.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT