

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County
The Honorable R. Keith Kelly, Circuit Court Judge
Court of Appeals Appellate Case No. 2019-000123
Op. No. 2021-UP-204

Appellate Case No. 2021-000806

The State,

Respondent,

v.

Allen Charron Williams, Jr.,

Petitioner.

**RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS**

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STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals properly conclude Petitioner failed to preserve the issue raised on appeal because he raised a different issue in the circuit court?

STATEMENT OF THE CASE

On November 16, 2017, the Cherokee County Grand Jury indicted Petitioner 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. (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. (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, 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. (R., pp.18-20).

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.

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. (R., pp. 33).

Sierra McKinney testified she had known Petitioner 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. (R., pp.36-40).

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

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

direction Petitioner was walking. McKinney never saw anyone else with a gun that night and testified she did not see who fired the shot. (R., pp. 39-44).

Christa Hall testified Petitioner 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." (R., pp. 62-63).

Hall saw Petitioner that night while the truck was driving around, and he looked "jittery, nervous, sweaty." She testified Petitioner 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 Petitioner went to get the bricks, he came back with a long barreled gun. When the truck came back around, Petitioner "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 Petitioner was the only person she saw with a gun that night. (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 Petitioner 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. (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. (R., pp. 100-107).

Agent Megan Fletcher of the State Law Enforcement Division testified she analyzed the gunshot residue kit from Petitioner'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 Petitioner's hand. (R., pp. 109-130).

After the State rested its case, Petitioner moved for a directed verdict on the attempted murder indictments on the ground the State presented "no evidence" Petitioner 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." (R., pp. 133-135).

The jury found Petitioner 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. (R., pp. 136-138). The circuit court sentenced Petitioner 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. (R., pp. 145-146). This appeal followed.

By unpublished opinion filed June 9, 2021, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences, finding Petitioner failed to preserve the issue he raised on appeal because he argued a different issue before the circuit court. State v. Williams, Op. No. 2021-UP-204 (Ct. App., filed June 9, 2021). By Order filed June 29, 2021, the Court of Appeals

denied Petitioner's Petition for Rehearing. On July 29, 2021, Petitioner filed a Petition for Writ of Certiorari to the Court of Appeals, seeking review of the Court of Appeals opinion.

ARGUMENT

The Court of Appeals properly found Petitioner failed to preserve any issue related to the sufficiency of the State's circumstantial evidence regarding the shooter's identity.

Petitioner contends the Court of Appeals erred in finding he failed to preserve the issue regarding sufficiency of evidence that he was the “shooter,” arguing the mere fact he made a directed verdict motion was sufficient to preserve the issue. Petitioner’s argument ignores well-established issue preservation law and is meritless on its face.

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).

At trial, Petitioner moved for a directed verdict as follows:

At this time the defendant would move for a directed verdict regarding the indictment he’s currently before the court. The basis for the defendant’s motion is the fact that there was **no evidence presented by the State that showed the defendant had the specific intent to murder or kill anybody in this situation.**

You know, even when viewed in the light most favorable to the State, there was no testimony regarding injuries to Douglas Rising. This is no - - he didn't even testify in the case, wasn't even present for the trial.

There is no information regarding injuries to (REDACTED) resulting from this incident.

And particularly there was **no evidence from the State that Mr. Williams ever intended to kill (REDACTED)**.

So the defendant's motion for directed verdict is based on the fact even once you look at the evidence they have presented, there is **no evidence that he had the specific intent to commit the murder of those three individuals**.

(R., p. 133) (emphasis added). In denying the motion, the circuit court stated:

The court does not weigh the evidence. The court considers whether there is any evidence, and the court denies the motion for **directed verdict on all three of the attempted murders**. There is a question of fact as to **what his criminal intent was**. That, as we know, is a question for the finders of fact.

(R., p. 135) (emphasis added).

Thus, according to the record, the **only** basis for Petitioner's directed verdict motion went **only** to the attempted murder charges, and **only** to whether there was evidence of specific intent to kill, and that was the **only** issue on which the circuit court ruled. Petitioner **never** moved for directed verdict on the ground the State failed to present sufficient circumstantial evidence to prove Petitioner was the shooter. Indeed, the directed verdict motion **as stated** essentially conceded Petitioner was the shooter, but he did not have the required specific intent to kill necessary to prove attempted murder.

The jury acquitted Petitioner on the attempted murder charges. Having prevailed on the attempted murder charges, however, on appeal Petitioner asserts a completely different basis for his directed verdict motion than the one he argued in the circuit court. In an effort to distract from his failure to raise in the circuit court the issue of whether there was sufficient evidence he was the shooter, Petitioner discusses cases in which this Court found a directed verdict was

warranted because there was insufficient evidence the accused was **involved** in the crime. Issue preservation was not an issue before the appellate courts in the cited cases, and the appellate courts' discussion of the evidence in those cases is absolutely irrelevant to this case. Obviously, arguing a person did not have the required specific intent to kill is not the same as arguing the person was not even involved in the crime.

In essence, Petitioner argues the mere fact he made a directed verdict necessarily encompassed **any** possible grounds, even those he failed to present to the circuit court for a ruling. This argument flies in the face of well-established law regarding issue preservation, and in accordance with that law, the Court of Appeals properly concluded the issue Petitioner raised on appeal was not preserved for appellate review.³ Accordingly, the Petition for Writ of Certiorari to the Court of Appeals should be denied.

³As set forth in the Final Brief of Respondent, even if the ground Petitioner now asserts as a basis for his directed verdict motion was preserved, it fails on the merits. (FBOR, pp. 9-10).

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Court of Appeals' decision in this case was proper, and the Petition for Writ of Certiorari seeking review of that decision should be denied.

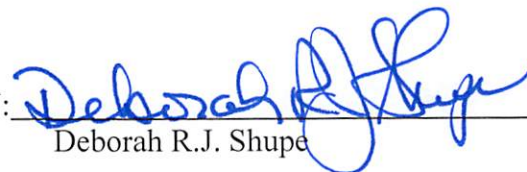
Respectfully submitted,

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