

SUPREME COURT OF ARKANSAS

Frank Wheeler v. State of Arkansas

Wheeler, 2025 Ark. 197 (Ark. 2025) · No. CR-24-606 · Decided December 4, 2025

SUMMARY

This document is a dissenting opinion from the denial of a petition for review in Frank Wheeler’s Arkansas criminal appeal. Associate Justice Rhonda K. Wood would have granted review to consider Wheeler’s double-jeopardy claim and to clarify the preservation of constitutional issues on appeal in light of *Evans v. Harrison*.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Rhonda K. Wood, Associate Justice
JURISDICTION	Supreme Court of Arkansas
DECIDED	December 4, 2025
DOCKET	CR-24-606
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Dissent from the denial of Wheeler's petition for review following the court of appeals' rejection of his double-jeopardy argument as unpreserved.
PRECEDENTIAL VALUE	Published dissenting opinion; nonbinding
PARTIES	Frank Wheeler v. State of Arkansas

TOPICS

- appellate procedure
- preservation of error
- double jeopardy
- constitutional law
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure
- constitutional criminal procedure

QUESTIONS PRESENTED

- Whether Wheeler should be permitted to raise his double-jeopardy claim on appeal despite the preservation ruling applied by the court of appeals.

2. Whether the Arkansas Supreme Court's decision in *Evans v. Harrison* changed or called into question the court's longstanding rule against considering constitutional arguments not preserved in the trial court.

KEY QUOTATIONS

“After the majority’s decision in Evans v. Harrison, 2025 Ark. 164, at 5, where it sua sponte raised a constitutional issue, how can we not allow a defendant to raise a constitutional issue on appeal?” (at 2)

“This decision appears to contradict or call into question our long-held precedent that we do not consider arguments (constitutional or otherwise) that were not preserved and raised at the trial court.” (at 2)

FACTUAL BACKGROUND

The opinion contains little underlying factual detail. Wheeler asserted a double-jeopardy claim, attempted to raise it at trial, and later presented it on appeal. The dissent focuses on whether the claim should be considered despite preservation concerns.

PROCEDURAL HISTORY

Wheeler's attorney attempted to raise a double-jeopardy claim prematurely at trial and later raised it on appeal. The court of appeals rejected the claim on preservation grounds. The Arkansas Supreme Court denied Wheeler's petition for review; Justice Wood dissented, stating that review should be granted to consider the claim and clarify the effect of *Evans v. Harrison* on constitutional-claim preservation.

DISPOSITION

writ_denied

CASES CITED

- *Evans v. Harrison*, 2025 Ark. 164

OPINION

PER CURIAM.

Cite as 2025 Ark. 197 SUPREME COURT OF ARKANSAS No. CR-24-606 Opinion Delivered: December 4, 2025 FRANK WHEELER APPELLANT APPEAL FROM THE BOONE COUNTY CIRCUIT COURT V. [NO. 05CR-20-240] STATE OF ARKANSAS HONORABLE JOHN R. PUTMAN, APPELLEE JUDGE DISSENTING OPINION FROM DENIAL OF PETITION FOR REVIEW. RHONDA K. WOOD, Associate Justice I would grant the petition for review on the basis that I believe we must now allow Wheeler to raise his double jeopardy claim on appeal.

After the majority’s decision in *Evans v. Harrison*, 2025 Ark. 164, at 5, where it sua sponte raised a constitutional issue, how can we not allow a defendant to raise a constitutional issue on appeal? 1 Wheeler’s attorney attempted to raise it prematurely at trial and later raised it on appeal. While the

court of appeals was correct at the time of its opinion, I believe our court has moved the needle on 1 In Evans, the majority held that that Ark.

Code §§ 14-14-915(b)(1) and 14-14- 915(b)(3) are unconstitutional even though this issue was never argued below. 2025 Ark. 164, at 5. The Evans majority noted that the constitutional issue was first raised on appeal at oral argument but then justified the court's consideration of the question because the parties were given the opportunity to submit supplemental briefing and present an additional oral argument.

2025 Ark. 164, at 8. This decision appears to contradict or call into question our long-held precedent that we do not consider arguments (constitutional or otherwise) that were not preserved and raised at the trial court. issues of constitutional claim preservation.

For this reason, I would grant the review and consider Wheeler's double jeopardy argument and allow our court an opportunity to clarify preservation issues. 2