STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Charleston County
Honorable Roger M. Young, Circuit Court Judge
Appellate Case No. 2012-209546

THE STATE,

Respondent,

vs.

VASHAUN RAVENEL,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

DID THE COURT OF APPEALS PROPERLY AFFIRM THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTION FOR DIRECTED VERDICT WHERE THE STATE PRESENTED SUFFICIENT EVIDENCE THAT PETITIONER IS GUILTY OF ATTEMPTED ARMED ROBBERY?

STATEMENT OF THE CASE

In 2009, Petitioner Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm. The case was tried before Judge Roger M. Young of the Charleston County General Sessions Court, and Petitioner was sentenced to thirty-five years in prison.

Petitioner appealed his conviction of attempted armed robbery. On February 1, 2011, the Court of Appeals affirmed his conviction. App. 1-2. State v. Ravenel, Unpublished Opinion No. 2011-UP-425 (Ct. App. September 30, 2011). On October 5, 2011, Petitioner filed a petition for rehearing. App. 3-7. The petition was denied on February 14, 2012. App. 8-9.

On May 16, 2012, Petitioner filed a petition for writ of certiorari with the South Carolina Supreme Court. On May 18, 2012, the State filed a return to the petition for writ of certiorari. On March 20, 2013, this Court granted the petition for writ of certiorari. On May 20, 2013, Petitioner filed his initial brief with this Court.

This brief in response follows.

STATEMENT OF FACTS

On December 29, 2007 at around 11:45 PM, Mike Simmons, the assistant general manager and money manager of Ryan's Steakhouse in Charleston, closed up for the night and headed to his car. R. 11- 12. His car was parked to the left of the building where he always parks it. R. 14. The parking lot was very illuminated. R. 35. After walking next to his car and unlocking the car door with the automatic door lock feature on his key as he approached the car, Simmons noticed Petitioner approximately six feet away, wearing a white hoodie and a camouflage ski mask and holding a rusty revolver. R. 14-17, R. 32. Petitioner came from behind dumpsters. R. 24; 28. Simmons tried to jump into his car. R. 14. Petitioner called out "Hey" to Simmons and confronted him. R. 14-17; 24; 33.

Simmons immediately jumped in his car as Petitioner came up to the side window. R. 14; 24. As he did so, Petitioner put the revolver up toward the window near Simmons' face, approximately six inches from the glass. R. 14-15. Petitioner pulled the trigger, but the gun did not fire. R. 14. Petitioner rapped the gun with his hand, put it back into Simmons' face, and attempted to fire again. The gun still did not fire. R. 14.

Petitioner tried to force open the car door and enter the car, but Simmons pulled the door shut. R. 14; 24; 26. Simmons threw the car into reverse and backed away taking Petitioner with him until Petitioner "let go" of Simmons' car. R. 14. Petitioner followed still pointing the gun at Simmons, and attempted to get into the car again. R. 16; 26. Simmons shifted into first gear to drive away while Petitioner attempted to enter the car for a second time. R 16-17; 36. Simmons testified that when Petitioner's gun was pointed at him, Simmons thought a lot of things," including that Petitioner was trying to kill him. R. 29-30. When Petitioner pulled on the door handle of the car, Simmons

thought Petitioner wanted to either kill him or take the car. R. 30. When Petitioner noticed that there were a number of people standing in front of the restaurant he ran from the scene, towards a cell phone tower. R. 17, R. 93. The entire incident lasted thirty to forty seconds. R. 24.

A co-worker saw the struggle and telephoned the police before Petitioner fled the scene. R. 89-94. About fifteen minutes after dispatch, police found Petitioner in a nearby apartment complex[1]. Petitioner had removed the white hoodie, but the police discovered him with the revolver in his pocket and the ski mask in his hand[2]. R. 47, R. 59. Even thought it was midnight in December, Petitioner was shirtless when he was arrested. Also, Petitioner was "sweating profusely and had steam rising off of him". R. 19, R. 45. Simmons identified Petitioner as the robber fifteen to twenty minutes after the incident. He also identified the camouflage ski mask and the revolver. R. 17-22. There was no uncertainty in his identification. R. 20-22, R. 68-69.

At trial, The State presented Mr. Simmons' testimony, along with testimony from the responding officers, an employee who called the police and a ballistics expert who analyzed the gun. The State also presented the revolver, the bullets, the ski mask, several photos of the parking lot and surrounding area, and a surveillance video of the incident. R. 22-27.

As to the revolver and Petitioner's actions with the revolver, responding Officer Darin Cobb testified that while the revolver could hold up to six bullets, it was only loaded with two. R. 60. The two bullets were in the 12:00 position (the firing position) and the 1:00 position in the cylinder of the revolver. R. 61. The bullet at the 12:00

[1] Petitioner did not live in that apartment complex: he lived four miles away. R. 67.
[2] The white hoodie was never recovered. R. 48.

position had been struck by the gun's firing pin, and there was a dent in the primer—the part of the ammunition that the firing pin strikes to create a spark to let the powder ignite and send the bullet forward. R. 61, R. 102. As Petitioner pulled the trigger, the cylinder rotated to the left. R. 61-62. Knowing that Petitioner had shot twice, Cobb deduced that the first time the trigger was pulled, the firing pin came down in an empty slot on the cylinder. R. 62. Cobb also deduced that the second time the trigger was pulled, the firing pin actually struck the primer of the bullet, but the revolver still did not fire. R. 62. Also, the ballistics expert testified that the gun itself functioned fine. R. 101-103. He had no explanation for why the gun did not fire, but theorized that the primer was faulty. R. 104.

At the close of the State's case, Petitioner moved for a directed verdict on the attempted armed robbery charge, alleging there was no evidence of either verbal or physical acts committed by Petitioner that demonstrated an attempt to rob Simmons, that the facts do not fit the characteristics of an attempted armed robbery, and that the facts only raised a "mere suspicion" of attempted armed robbery R. 106-107. The State responded that Petitioner attempted to steal the car, and that once Petitioner realized the gun was not working, he attempted to remove Simmons from the car. Significantly, the State further noted that Petitioner approached the victim and his car while wearing a camouflage ski mask, a white hoodie, and armed with a pistol. R. 112-113. After considering the arguments of counsel, the trial judge denied the motion for directed verdict, but noted that it was "troubling." R. 113.

Petitioner did not present any witnesses. R. 118-119. In closing argument, defense counsel asserted that intent to steal was not proven beyond a reasonable doubt,

and that a person trying to steal the car would hold the driver at gunpoint and try to get him out of the car. R. 138. The jury found Petitioner guilty of all three charges. R. 154.

ARGUMENT

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict where the State presented sufficient evidence that Petitioner is guilty of attempted armed robbery.

Petitioner alleges that the State failed to present evidence of attempted armed robbery, and offers State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991), as support. Cert Pet. 3 and 7-8. The State submits that sufficient evidence was presented to withstand the directed verdict motion and that the North Carolina decision upon which Petitioner relies is not controlling and is distinguishable.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362–63 (2006). "On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Cherry, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004).

"Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct.

App. 2007). Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or the representation of a deadly weapon. State v. Mitchell, 382 S.C.1, 675 S.E.2d 435 (2009); State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 614 (2010); S.C. Code §16-3-330 (2003). "Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. In the context of an 'attempt' crime, specific intent means that the defendant consciously intended the completion of acts comprising the Choate offense. In other words, the completion of such acts is the defendant's purpose." State v. Nesbitt, 346 S.C. 226, 230, 550 S.E.2d 864, 866 (Ct. App. 2001) citing State v. Sutton, 340 S.C. 393, 396 n. 3, 532 S.E.2d 283, 285 n. 3 (2000)). "A person is guilty of attempted armed robbery if the person has the specific intent to commit armed robbery." State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007). The State must also prove that "the defendant's specific intent was accompanied by some overt act, beyond mere preparation, in furtherance of the intent, and there must be an actual or present ability to complete the crime. Id. The attempt or overt act is defined as "the direct movement toward the commission, after preparations are made." Id. To find Petitioner guilty of the common law crime of attempted armed robbery, the State needed to prove specific intent, use or representation of a deadly weapon and overt act. See State v. Reid, 383 S.C. at 285, 679 S.E.2d at198.

It is well-established that matters of intent are for the jury to consider. McCormick v. United States, 500 U.S. 257 (1991); Morisette v. United States, 342 U.S. 246 (1952) (where intent of accused is ingredient of crime charges, its existence is a question of fact which must be submitted to the jury); State v. Tuckness, 257 S.C. 295,

299, 185 S.E.2d 607, 608 (1971) (the question of criminal intent is one of fact and is ordinarily for jury determination except in extreme cases). The issue of whether a defendant possessed the requisite intent at the time a crime was committed is typically a question for jury determination because, without a statement of intent by an actor, proof of intent must be determined by inferences from conduct. State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971); State v. Tuckness, 257 S.C. at 299, 185 S.E.2d at 608 (intent is seldom susceptible to proof by direct evidence and must be proven by facts and circumstances from which intent may be inferred.).

In support of his motion for directed verdict, Petitioner argued that there was no evidence of verbal or physical acts committed to demonstrate his intent to commit armed robbery but that the evidence raised only a "mere suspicion" of armed robbery. The State disagrees. The evidence taken in the light most favorable to the State was sufficient to withstand the motion for directed verdict and that the Court of Appeals properly affirmed the trial court's denial of the motion.

First, the evidence reflects that the victim, the money manager of the restaurant, locked the restaurant for the night and walked around to the left of the building where he always parks his vehicle. The evidence shows Petitioner was hidden from the victim behind nearby dumpsters and was disguised in a hoodie and mask. Petitioner was also armed with a revolver. Petitioner remained hidden as the victim approached his vehicle and unlocked the vehicle door using the remote control device on his key. Petitioner stepped out from behind the dumpsters but did not immediately shoot at the victim. Instead, Petitioner called out to the victim to direct the victim's attention to Petitioner. Petitioner displayed the revolver to the victim and Petitioner's appearance was disguised.

The victim resisted Petitioner by escaping into his vehicle. The evidence shows that Petitioner pointed the revolver near the victim's face and pulled the trigger twice as the victim resisted but the weapon did not fire. Petitioner also struggled with the victim more than once to gain entry into or to open the door of the victim's vehicle but the victim continued to resist Petitioner's efforts.

The State submits that Petitioner engaged in overt acts toward armed robbery, either of taking the victim's car or other possessions, thus unlawfully attempting to take personal property by force. When a person approaches a car, a home, or a bank with a covered face and with gun in hand, an overt step towards armed robbery has clearly occurred. See, e.g., United States v. Moore, 921 F.2d 207, 209 (9th Cir. 1990) (Evidence was sufficient to deny a motion for directed verdict on attempted bank robbery where defendant was arrested walking toward the bank, wearing a ski mask and carrying a concealed, loaded gun.); United States v. Johnson, 962 F.2d 1308, 1312 (8th Cir. 1992) ("By driving to the bank with disguises and weapons, slowly circling the bank three times, and stopping once to open the doors of the vehicle, the three crossed the 'shadowy line' from mere preparation to attempt."); United States v. Rodriguez, 10 F.App'x. 378, 379-380 (7th Cir. 2001) (Evidence was sufficient where defendant entered the bank on the Fourth of July wearing a mask over his face, wore gloves, and carried a revolver); New v. State, 606 S.E.2d 865, 867-68 (Ga. Ct.App. 2004) (Evidence of intent was sufficient where defendant was discovered by police outside McDonalds with a mask and with a BB gun in his pocket); People v. Terrell, 443 N.E.2d 742, 743 (Ill. App. Ct. 1982) (Evidence sufficient where two men found near gas station ran away from police officers, black stockings were discovered in their pockets, and a handgun was discovered nearby);

Womack v. State, 29 So.3d 58, 60, 64 (Miss. Ct. App. 2009) (Evidence sufficient where police officer discovered defendants wearing masks, carrying a shotgun and about to enter a truck stop); Rogers v. Commonwealth, 683 S.E.2d 311, 314 (Va. Ct. App. 2009) (Evidence was sufficient where victims in their apartment noticed through the door peephole that several men were at their door with bandanas over their faces, and one had a gun.) Here, Petitioner clearly approached the car with a gun and a ski mask covering his face, which showed Petitioner's intent to commit an armed robbery without revealing his identity to the victim. R. 14-17. Second, Petitioner approached the victim but not until the victim was unlocking the vehicle door. R. 14, 32. It was only after the victim began to resist that Petitioner attempted to shoot. See R. 14-17. Clearly, an inference was created for the jury that Petitioner used the weapon to intimidate the victim to increase the success of the robbery. Finally, Petitioner attempted to open the car door twice in an effort to remove or gain access to the vehicle and/or its contents. R. 14-17. As defense counsel correctly argued in closing, a person trying to steal a car would hold the driver at gunpoint and try to get him out. R. 138. These acts constitute evidence of an attempt to deprive the victim of the vehicle or other goods by unlawful force and deadly weapon.

Additionally, the victim testified that he believed Petitioner was trying to either get in to kill him **or take his car.** R. 30. The State submits that the evidence shows that Petitioner waited until the victim unlocked the door to the vehicle before approaching. R. 14, 32. It may be inferred from the evidence that Petitioner did so because he wished to steal the vehicle and/or its contents and items in the victim's possession and did not want to risk losing access. Furthermore, Petitioner attempted to open the car door twice. It is

inferable from these actions that he wished to gain control of the vehicle, what was inside the vehicle or in the victim's possession. This is not the "mere suspicion" that Petitioner claims. As the State presented sufficient evidence of attempted armed robbery, the Court of Appeals properly affirmed the denial of the directed verdict motion.

Not only did the State present sufficient evidence of the necessary elements, it also presented evidence that refutes Petitioner's theory that he only wanted to kill the victim. First, Petitioner waited for Simmons to unlock the car door before approaching. .

> Simmons: I was probably unlocking my door as I was walking up.
>
> Defense: And, in fact, you got almost all the way to your car before the person in the white hoody and the black jeans appears; is that correct?
>
> Simmons: Correct.

R. 32. If Petitioner wished to murder the victim, it would have been far simpler to shoot the victim before he reached his vehicle. The wait only makes sense if Petitioner had another goal instead of killing the victim: stealing his car or items in the victim's possession. Petitioner only shot at the victim after the victim resisted the robbery. Also, Petitioner only loaded two bullets into his gun, and the firing pin was not over a live round when Petitioner fired it the first time. R. 60-62. If Petitioner had wished to only murder the victim, he would have loaded six rounds, or at least positioned the firing pin over one of the bullets. As defense counsel correctly argued in closing, a person trying to steal a car would hold the driver at gunpoint and try to get him out. R. 138. That is precisely what Petitioner attempted to do, but the victim resisted.

Taken in the light most favorable to the State, the sufficient evidence supports the inference that Petitioner intended to deprive the victim of the victim of the vehicle, the

vehicle contents or other possessions by gaining control of the vehicle and the victim and that he used a deadly weapon to do so. While there is sufficient evidence to support the State's theory that Petitioner attempted to murder the victim and take the victim's vehicle, the theory that Petitioner wished to kill Simmons for no known reason is less convincing. The question of intent was a question for the jury and sufficient evidence was presented from which intent to commit armed robbery could be inferred.

State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991) is distinguishable. In McDowell, the defendant's intent was shown through his conversations with his friends. The court in McDowell specifically cited his intent to "burn" somebody, noting that he did not mention robbery. McDowell at 390, 407 S.E.2d at 215. No such conversations exist in this case, and thus there is no evidence supporting Petitioner's theory. Also, in McDowell, the victim's purse and valuables were left behind in the car after the murder when the defendant had free access to the items, which disproved the theory of robbery. Id. Here, there is evidence that Petitioner attempted to steal the victim's vehicle. Petitioner attempted to open the car door and force his way in twice. R. 14-17. There is evidence Petitioner held onto the vehicle and was actually pulled along with it before releasing the door. Also, Petitioner waited until after the victim unlocked the vehicle door before attacking. R. 14, 32. This is very different from the scenario in McDowell. McDowell at 390, 407 S.E.2d 214-215. Here, Petitioner committed overt acts in an attempt to steal the car or its contents. The two cases are distinct and should not be analogized, because of the evidentiary differences between the two.

The motion for directed verdict was properly denied. The State asks this Court to affirm the Court of Appeals.

CONCLUSION

For the reasons stated, this Court should affirm the Court of Appeals.

Respectfully submitted,

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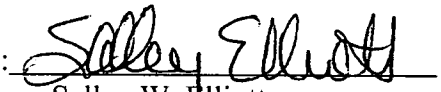
BY: 
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July 19, 2013

STATE OF SOUTH CAROLINA

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Certiorari to Charleston County
Honorable Roger M. Young, Circuit Court Judge
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THE STATE,

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VASHAUN RAVENEL

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 19th day of July, 2013.

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