STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2012-213729

THE STATE,

Respondent,

v.

MAURIO DAETREL RIVERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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I.

For purposes of directed verdict, there was evidence that: (1) Appellant could have fired upon law enforcement himself, though it was unnecessary to show that Appellant was the triggerman under a theory of accomplice liability; (2) Appellant and Shelley carried out a common scheme or plan; and (3) Appellant acted with the intention of encouraging and abetting Shelley's actions in firing upon law enforcement. Regardless of whether Shelley alone fired or Appellant fired the second volley, these actions as the two attempted to elude capture clearly constitute attempted murder. As such, the court correctly denied Appellant's request for a directed verdict and submitted the case to the jury.

II.

The trial court's charge thoroughly covered substance of the law regarding the intent to kill required for a finding of attempted murder. Any failure to charge specific verbiage was not error.

STATEMENT OF THE CASE

Appellant was indicted for two counts of attempted murder and one count of possession of a weapon during commission of a violent crime. Appellant was tried before a jury on December 12-13, 2012. The jury found him guilty of one count of attempted murder.[1] (R. p. 181, lines 7-21.) Appellant was sentenced by the Honorable Diane S. Goodstein to a term of thirty years imprisonment. (R. p. 193, lines 15-16.)

[1] The two counts of attempted murder involved two police officers, Deputy Eaches and Lieutenant Burnette. Appellant was found guilty of attempted murder as to Lieutenant Burnette.

STATEMENT OF FACTS

On July 12, 2011, Dorchester County Sheriff's Deputy Justin Eaches was working on I-95 Southbound, near mile marker 74. (R. p. 28, lines 10-14.) Around 7:00 pm, Deputy Eaches observed a black Acura enter "partially into the emergency lane from the number two lane, and then all the way over into the number one lane, failing to use a turn signal." (Tr. p. 28, lines 18-24; p. 30, line 23 – p. 66, line 6.) He decided to stop the vehicle due to this traffic infraction. Per procedure, he initially pulled alongside the vehicle to identify the occupants and check for seatbelts. (R. p. 29, lines 1-10.) Deputy Eaches observed two black males in the vehicle. Appellant, his hair in "some type of ponytail," was driving, and another man with twists in his hair, later identified as Bronson Shelley ("Shelley"), occupied the passenger seat. (R. p. 29, lines 13-25.)

Deputy Eaches first activated blue lights to initiate the traffic stop. (R. p. 31, line 25 – p. 32, line 4.) Appellant signaled and moved into the emergency lane but failed to stop. (R. p. 32, lines 4-6.) Appellant then changed lanes erratically, and Deputy Eaches activated the siren. (R. p. 32, lines 5-8.) Once back in traffic lanes, Appellant reached speeds in excess of 100 mph and proceeded a few miles on the interstate. (R. p. 32, lines 14-16; State's 11, in-car video.) Deputy Eaches was driving an older model vehicle, and due to the condition of his car and the extreme speed of the pursuit, another vehicle operated by Lieutenant Joseph Burnette took over lead of the pursuit. (R. p. 32, line 23 – p. 33, line 18; p. 43, lines 5-18.) A third officer, Deputy Paul Timothy Knight, left another traffic stop and fell third in line in the pursuit. (R. p. 114, line 24 – p. 115, line 17.) During the pursuit, Appellant exited I-95 onto Highway 61. (R. p. 115, lines 9-10.)

Appellant proceeded on Highway 61 at high rates of speed. (State's 11, in-car video; State's 13, in-car video.) As the chase proceeded, radio traffic indicates Burnette

observed movement on the passenger side of the vehicle. (State's 13, in-car video; 19:08:30-19:08:50.) Shortly thereafter, shots were fired from Appellant's vehicle. Lieutenant Burnette saw the passenger fire at him. (R. p. 50, lines 4-6; p. 58, lines 3-7.) The shots impacted Lieutenant Burnette's driver's side bumper. (R. p. 56, line 18 – p. 57, line 7.)

The chase ended when Burnette made contact with Appellant's vehicle, sending the Acura off the road. (State's 13.) After making contact with the vehicle, Burnette heard another loud noise and realized he was being fired upon again as the suspect vehicle turned and rolled. (R. p. 50, lines 8-11; R. p. 51, line 16 – p. 52, line 10; p. 52, lines 15-25; p. 61, lines 15-17; p. 62, line 8 – p. 63, line 20; State's 13.) The shot impacted the windshield near the VIN plate, right where Lieutenant Burnette was seated in the vehicle. (R. p. 55, line 19 – p. 56, line 12.) Appellant's vehicle ultimately landed on its roof. (R. p. 49, lines 13-15; State's 13.)

Lieutenant Burnette immediately exited his vehicle with his dog. (R. p. 49, line 16 – p. 50, line 3; p. 50, lines 12-18.) As Lieutenant Burnette neared the overturned vehicle, both Appellant and Shelley fled the overturned vehicle on foot. (R. p. 35, lines 16-17; p. 85, lines 15-21; State's 11.) Lieutenant Burnette testified "both of them ran in the same general direction and then veered into the woods." (R. p. 50, lines 21-24.) According to Deputy Eaches, one ran straight and the other veered at a 45-degree angle into the woods. (R. p. 35, lines 21-24.) Deputy Knight followed Lieutenant Burnette in the foot chase into the woods. (R. p. 115, lines 20-22.) Lieutenant Burnette released his dog in pursuit, and he and Deputy Knight ultimately apprehended Appellant in the woods. (R. p. 51, line 25 – p. 51, line 11; p. 115, line 23 – p. 116, line 4.)

Deputy Eaches secured the law enforcement vehicles. When Deputy Eaches approached the Appellant's car, he observed a handgun in plain view. (R. p. 36, lines 6-10.) The handgun, a Bursa Firestone .380, was found with the slide back, indicating all bullets had been fired from the weapon. (R. p. 74, lines 1-20; p. 98, lines 11-16.) Another handgun, a Taurus .38 special, was found on the ground when Appellant's vehicle was righted. (R. p. 70, line 21 – p. p. 71, line 18; p. 72, line 19 – p. 73, line 4.) A third weapon, a Colt .45, was found in Appellant's glovebox. (R. p. 76, line 9 – p. 77, line 3.) A box of ammunition was also in the car. (R. p. 86, line 21 – p. 87, line 3.) Five shell casings were recovered on Highway 61. (R. p. 81, lines 11-18; p. 81, line 24 – p. 117, line 4.) Bullet fragments were also collected in the vicinity of the crash. (R. p. 81, lines 19-23; p. 82, lines 6-11.) There were four holes in the windshield of Appellant's Acura where shots had been fired outward. (R. p. 89, line 1 – p. 92, line 1; p. 94, lines 11-12; State's Exhibits 8(a) – 8(f), photos of Acura windshield.) The holes in the windshield ranged from the passenger's side to the driver's side. (State's Exhibits 8(a) – 8(f).)

Fired cartridge casings collected matched the Bursa .380 pistol. (R. p. 110, lines 11-12.) A fired bullet fragment was fired by the Taurus .38. (R. p. 111, lines 2-3.) The firearms expert opined that the bullet could have been fragmented as a result of being fired through the windshield. (R. p. 112, lines 5-11.) Shelley had a holster in his pocket. (R. p. 38, lines 12-17.)

ARGUMENT

I.

For purposes of directed verdict, there was evidence that: (1) Appellant could have fired upon law enforcement himself, though it was unnecessary to show that Appellant was the triggerman under a theory of accomplice liability; (2) Appellant and Shelley carried out a common scheme or plan; and (3) Appellant acted with the intention of encouraging and abetting Shelley's actions in firing upon law enforcement. Regardless of whether Shelley alone fired or Appellant fired the second volley, these actions as the two attempted to elude capture clearly constitute attempted murder. As such, the court correctly denied Appellant's request for a directed verdict and submitted the case to the jury.

"If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "In reviewing the denial of a motion for a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003).

A. It is not necessary that the State present evidence that Appellant fired shots at Lt. Burnette in order for the matter to survive a directed verdict challenge. Nonetheless, evidence existed from which the jury could infer that Appellant had fired shots.

It is unnecessary that the State show that Appellant was the triggerman. As discussed in detail below, substantial evidence supports a finding of guilt pursuant to a theory of accomplice liability. However, evidence did exist in the record from which the jury could infer that Appellant fired a weapon. There were multiple guns found in the car, there were bullet fragments from two guns collected, Burnette could not tell who fired the second volley of shots, and the Acura's windshield had an array of outward bound bullet holes ranging from the passenger to the driver's side of the vehicle. While Shelley had a holster, multiple weapons were found in the car, indicating that either man could have

possessed a gun. Further, the jury's ultimate finding regarding possession of a weapon should not be considered in this court's evaluation of the failure to direct a verdict in Appellant's favor. A directed verdict rests upon whether there is *any* evidence to support the charge, and the jury must weigh this evidence against the reasonable doubt standard.

B. Substantial circumstantial evidence supports a finding of Appellant's guilt under a theory of accomplice liability.

As set forth in State v. Mattison, 388 S.C. 469, 479-480, 697 S.E.2d 578, 584 (2010):

> "Under accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)(quoting State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)).
>
> "In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987); *see* Wilson v. Wilson, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995)("Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime."). ...
>
> "Any person who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal, even though another does the killing." State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct. App. 2005).

Further,

> In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.

State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010). Under the hand of one is the hand of all theory of accomplice liability, acts committed by the

principal are imputed to the accused, making him guilty of any acts done incidental to the execution of the common design or scheme of the crime. State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007). Viewing the evidence in the light most favorable to the State, the trial judge properly denied Appellant's motion for a directed verdict on each charge and submitted the case to the jury.

The collusion between Appellant and Shelley is clear in Appellant's conduct and other circumstantial evidence. Appellant and Shelley clearly participated in a common scheme or plan to elude law enforcement. Appellant's participation was clear as he drove at a high rate of speed for several miles, putting the lives of officers, his passenger, and numerous civilians at risk. Shelley assisted in the escape effort by firing a gun at the officer in pursuit. As evidenced from radio traffic in Burnette's vehicle dashcam, several miles into the pursuit, Shelley began making furtive movements indicating to Burnette, the officer in pursuit, that he may be armed. As Burnette observed Shelley's movements, Appellant continued to drive without slowing. If Shelley's actions were visible to Burnette, they were certainly known to Appellant inside the car. Clearly, this was not a matter of a sudden, unforeseen act by Shelley. After the first volley was fired, Appellant continued his dangerous flight, braking only just before Burnette's car impacted his rear bumper. Further, after his vehicle was disabled, Appellant fled along with Shelley, indicating his continued concert with Shelley. Gibson v. State, supra. (finding, *inter alia*, appellant's flight along with triggerman to be evidence appropriate for consideration under theory of accomplice liability involving charge of murder); see also State v. Gilbert, 107 S.C. 443, 93, 93 S.E. 125 (1917) S.E.125, 125-126 (1917) ("If several persons in pursuance of a common design to commit an unlawful act, whether it be a felony or misdemeanor, set out together or in small parties, and each takes the part agreed

upon or assigned him, some to commit the act, others to watch at proper distances and stations to prevent interference or surprise or to encourage the commission of the unlawful act or to favor, if necessary, the escape of those immediately engaged in the commission of the unlawful act, under these circumstances, if the unlawful act is committed, the act of one is the act of all and all are presumed to be present and guilty; for this would be in pursuance of a common purpose in a common cause with them each operating in his station at one and the same instant to arrive at a common end. The act of each would tend to give countenance, encouragement, and protection to the whole gang and to insure the success of the common undertaking in the commission of the unlawful act.")

Additionally, there were at least three weapons in the vehicle, two immediately accessible in the passenger compartment and one in Appellant's glovebox. There was also a box of ammunition in the passenger compartment accessible to either party. While Shelley had a holster, the additional weapons and ammunition in the vehicle operated by Appellant support an inference that Appellant could have supplied ammunition and/or weaponry used.

Both Appellant and Shelley engaged in these actions with the common purpose of evading law enforcement. The attempt to murder the officer in pursuit was part and parcel of their flight. Therefore, they certainly were acting in concert as shots were fired.

C. Evidence exists that Appellant had the requisite intent to kill to support a charge of attempted murder.

In order to determine that the pair committed attempted murder, the jury would need to find intent to kill. Indeed, attempted murder requires, "[a] person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or

implied."S.C. Code Ann. § 16-3-29 S.C. Code Ann. § 16-3-29. There was evidence in the record that Appellant had the requisite intent to be found guilty of attempted murder as an accomplice.

Under accomplice liability, in order to establish the requisite intent, evidence would have to show that Appellant was either "acting with the intent to promote or assist the homicide, sharing the principal's specific intent to kill, acting with knowledge that his or her actions would promote or facilitate the murder, or entering into a conspiracy with the requisite specific intent." 41 C.J.S. Homicide § 510 (March 2014). Appellant's actions during the chase indicate that he certainly knew of Shelley's actions when Shelley armed himself in order to fire the first volley of shots. The murder attempt was part and parcel to the pair's attempt to escape police. Appellant's actions in maintaining speed and continuing on course as Shelley prepared to fire and ultimately did fire upon officers are evidence of his intent and support of Shelley's actions. Moreover, for purposes of directed verdict, there was evidence from which the jury could infer that Appellant himself fired during the second volley.

II.

The trial court's charge thoroughly covered substance of the law regarding the intent to kill required for a finding of attempted murder. Any failure to charge specific verbiage was not error.

With regard to intent, the trial court charged:

> Where two or more, acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

(R. p. 160, lines 8-12.) The trial court went on to charge mere presence. (R. p. 160, lines 13-18.) She then charged:

> Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably inferring intent. The state must prove these elements beyond a reasonable doubt.

(R. p. 160, line 19 – p. 196, line 3.) She added:

> Now, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proved by the state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.

(R. p. 161, lines 19-23.) She defined the intent required in an attempt crime:

> Intent means intending a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of defendant and other circumstances from which you may naturally and reasonably infer intent.

She then read the statutory definition of attempted murder pursuant to S.C. Code Ann. § 16-3-29, including the verbiage regarding intent to kill. (R. p 164, lines 1-5.)

Following the charge, defense counsel stated he had been concerned about specific intent and "[he] thought [the court] addressed that, but not in great detail." (R. p. 172, lines 24-25.) "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. A jury charge which is substantially correct and covers the law does not require reversal." Zeigler, 364 S.C. 94. The charge given by the court in this case clearly apprises the jury of the requisite intent

to kill and the necessity that it find such intent before finding guilt. Therefore, Appellant's conviction should not be reversed on this basis.[2]

It may also be noted that the jury was informed during arguments by the solicitor that the charge of attempted murder required a finding that "a person with intent to kill attempts to kill another person... ." (R. p. 24, lines 14-19.) The solicitor repeated this definition in his closing argument. (R. p. 133, lines 20-24.) The solicitor discussed intent to kill and how Appellant's actions evidenced that intent. (Tr. p. 170, line 18 – p. 173, line 19.) Defense counsel also discussed intent with the jury before describing the facts he believed illustrated that his client did not collude with Shelley in firing at officers. (R. p. 138, line 25 – p. 179, line 15.)

Finally, the jury's verdict wherein Appellant was found guilty of attempted murder only as to Burnette lends credence to the assertion that the jury understood the intent required. Only Burnette's car was fired upon according to the evidence, and the jury found Appellant not guilty of attempted murder of Eaches. (R. p. 181, lines 7-21.)

[2] To the extent that the referenced brief submitted by Appellant is considered as the substance of his objection, the section regarding felony murder is inapplicable. Appellant was not tried under a theory of felony murder.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 19, 2014

STATE OF SOUTH CAROLINA

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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June 19, 2014

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PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 19th day of June, 2014.

Ellen DuBois

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ALAN WILSON
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June 19, 2014

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RE: State v. Maurio Daetrel Rivers
Appellate Case No. 2012-213729

Dear Ms. Ganjhsani:

I am enclosing two (2) copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Mary S. Williams
Assistant Attorney General
Bar # 76192

MSW/erd
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services