

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001445

STATE OF SOUTH CAROLINA Respondent,

v.

WILLIAM JAMELL THOMAS, JR. Appellant

APPELLANT'S REPLY BRIEF

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 I. Respondent’s argument that attempted murder does not require a specific intent to kill disregards the plain language of the statute, and, if accepted by the Court, would render the legislature’s enactment of the law superfluous since attempted murder would simply mean the same thing as common law assault with intent to kill . . . 1

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ARGUMENT

I. Respondent’s argument that attempted murder does not require a specific intent to kill disregards the plain language of the statute, and, if accepted by the Court, would render the legislature’s enactment of the law superfluous since attempted murder would simply mean the same thing as common law assault with intent to kill.

In 2010, the South Carolina legislature adopted S.C. Code Ann. § 16-3-29, South Carolina’s new attempted murder statute.

A person who, **with intent to kill**, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted (emphasis added).

By the plain language of the statute, the State must prove that a defendant has an intent to kill the victim. The Attorney General argues that the legislature intended to incorporate the common law definition of “intent to kill” which, it argues, is only a general intent concept, but that argument disregards the fact that the General Assembly purposefully enacted a statute distinct from what existed as common law and, in fact, explicitly abolished the common law for this crime. The Attorney General did not cite the pertinent part of the Act No. 273 which states:

Repealed sections, common law assault and battery offenses repealed

SECTION 7.

A. Sections 16-3-612, 16-3-620, 16-3-630, and 16-3-635 of the 1976 Code are repealed.

B. The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault **are abolished for offenses occurring on or after the effective date of this act.**

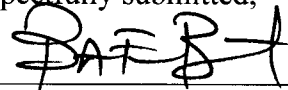
assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29.

Because the State did not prove, nor attempt to prove that William Thomas specifically intended to kill the victim, as required by the statute, the trial court judge erred when he did not grant his motion for a directed verdict. This error cannot be harmless. *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *In re Winship*, 397 U.S. 358 (1970).

Conclusion

Appellant, William Thomas, respectfully asks this Court to reverse his convictions based on the three arguments presented in his Initial Brief and for the additional argument provided in this Reply Brief.

Respectfully submitted,



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APPEAL FROM FLORENCE COUNTY
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The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001445

William Jamell Thomas, Jr.

Appellant,

The State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Reply Brief was served by first class United States mail, postage prepaid, this 9th day of October, 2014, upon the following:

Christina Catoe
Assistant Attorney General
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Jill A. Rider

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October 9, 2014

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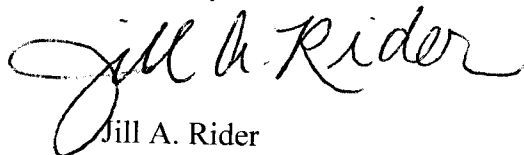
Re: *William Jamell Thomas v. The State of South Carolina*

Dear Ms. Kitchings:

Please find enclosed for filing, along with certificate of service, the original and one copy of Appellant's Reply Brief. If you could please clock in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact our office.

Sincerely,



Jill A. Rider
Paralegal

Enclosure

cc: Christina Catoe, Esq.
William Jamell Thomas

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