

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Honorable Diane Goodstein, Circuit Court Judge

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SC Court of Appeals

Case No. 2011-GS-15-00549
Appellant Case No. 2012-213729

Maurio D. Rivers,

Petitioner

v.

Allan McCrory,

Respondent

PETITION FOR REHEARING
AND
PETITION FOR REHEARING EN BANC

Maurio D. Rivers
#232669
Broad River
Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210
s/ Prose Petitioner

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QUESTIONS PRESENTED

1. Did the court correctly find trial court judge Diane Goodstein's action of giving an example of the term "Hand of One Hand of All" rather than the law definition alone appropriate or was her action overlooked? As it relates to her not instructing the jury as to the required specific intent to kill for an attempted murder conviction; did the court of appeals consider that Goodstein's example was given as a personal interpretation of the law, in which the jury was convinced of Maurio D. River's guilt still without proper understanding of the law itself but now having a proper understanding of the trial judge's personal opinion of Rivers' guilt expressed through her example?
2. Is it appropriate to conclude that the definition of the law given is correct when there are examples provided directly following the definition that could be easily misinterpreted or subconsciously sway the jury?

STATEMENT OF THE CASE

On August 25, 2011 Appellant Maurio Daetrel Rivers was indicted by the Colleton County Grand Jury for (1) one count of attempted murder of Deputy J. Burnette; (2) one count of attempted murder of Deputy J. Eaches; (3) one count of possession of a weapon during the commission of a violent offense. Tr. 8,11. 8-12; 9,1'16-10, 1.2;R*.

Appellant was tried before the Honorable Diane S. Goodstein and a jury on December 12-13, 2012. Tr.1 Appellant represented by John D. Bryan, and the state was represented by Assistant Solicitor Steven Knight. Id.

On December 13, 2012, the jury found Appellant not guilty of attempted murder of Deputy J. Eaches and not guilty of the possession charge. Tr. 216,11.13-21. The jury found appellant guilty of attempted murder of Deputy J. Burnette, Tr. 216,11. 13-17;R*

Appellant timely filed and served his Notice of Appeal on December 17, 2012.

Petitioner petitions the Court for a re-hearing in this case on the following grounds:

- 1. The State failed to establish that Appellant had the required specific intent to kill as required by S.C. Code ANN 16-3-29.**

Assuming arguendo that there was sufficient evidence that Appellant and Shelly were acting together to flee or elude law enforcement, Appellant is nevertheless entitled to a directed verdict on the charge of attempted murder, where there is no evidence that possessed the requisite specific intent to kill as required by S.C. Code ANN16-3-29.

Attempted murder is defined by statute as: "A person who, *with intent to kill*, Attempts to kill another person with malice a forethought, either expressed or implied, commits the offense of attempted murder." 16-3-29 (emphasis added). This statute became effective on June 2, 2010 and replaced the former common law statute of assault and battery with intent to kill, former S.C. CODA ANN. 16-3-620.

The statute defining attempted murder requires a specific intent to kill. In State v. Sutton, 340 S.C.393,532 S.E.2d 283 (2000), the South Carolina Supreme Court declined to recognize the offense of attempted murder, which had not yet been codified. The court, in its reasoning, observed that an attempt to commit murder requires a specific intent to kill. There were three guns recovered from the wreck scene. One gun was found on the ground after the vehicle was rolled up right. Tr. 106, 11. 9-18. Another gun was found lying in plain view while the vehicle was still upside down. Tr.109,11. 1-4. The last gun was found inside the glove box of the black vehicle. Tr.111,11.22-24.

It is clear that the appellant did not intend to murder anyone because he did not attempt to retrieve a weapon. The record shows that his only intention was to evade capture. The record also reflects that he ran in the opposite direction away from his passenger. Tr.70, 11.17-24. The State argued that appellant fled along with his passenger indicating his continued concert with his passenger. However, the record reflects that he ran away from the passenger as well as the pursuing officers.

CONCLUSION

For the above reasons the petitioner requests that the court grants this petition for rehearing.

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PROOF OF SERVICE OF A PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appellate Case No. 2012-213729

The State, Respondent

v.

Maurio Daetrel Rivers, Appellant

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SC Court of Appeals

I certify that I have served the notice of A Petition for Rehearing on the Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2014 addressed to Jenny Abbott Kitchings Clerk of Court P.O. Box 11629 Columbia, SC 29211

I certify that I have served the notice of A Petition for Rehearing on the The State by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2014 addressed to Alan McCrory Wilson and Mary Shannon Williams P.O. Box 11549 Columbia, SC 29211-1549.

I certify that I have served the notice of A Petition for Rehearing on the former attorney for appellant by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2014 addressed to Carmen V. Ganjehsani PO Box 11433 Columbia, SC 29211-1433

December 17, 2014

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