

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2012-212989

THE STATE,

Respondent,

vs.

JEFFREY E. MORTON,

Appellant,

SUPPLEMENTAL RECORD ON APPEAL

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1 send you back to your jury room. Get a cup of coffee and
2 we'll be back with you shortly.

3 Again, do not discuss this case, ladies and gentlemen,
4 it wouldn't be appropriate to do so at this time, and we'll
5 be right back with you.

6 All right. Thank you.

7 (Jury out at 10:43 a.m.)

8 THE COURT: All right. Any motions?

9 MR. MELLARD: Yes, ma'am. At this time we move for a
10 directed verdict. It's our position that the State has
11 failed to prove the attempted murder charge. The evidence
12 in this case is that the defendant was at this scene. He
13 was seen by the alleged victim. The victim left the safety
14 of his house to go try to apprehend the defendant. At that
15 point, there was a struggle that occurred. The defendant
16 got flipped over -- the victim's back. At some point there
17 was a cut. There was also a cut to the front of him. It's
18 also our position that there was no intent to kill, there is
19 no malice aforethought and that the action does not rise to
20 attempted murder, Your Honor.

21 THE COURT: Mr. Sorenson?

22 MR. SORENSON: May it please the Court, Your Honor. I
23 guess I object a little bit to Mr. Mellard's
24 characterization of how the facts played out. I think when
25 you're looking at things in the light most favorable to the

1 State as the standard is, the victim didn't attempt to
2 apprehend the defendant. I mean, we went out of his house
3 and basically got attacked by a masked, armed person that I
4 submit to you was lying in wait outside of his apartment.
5 He was stabbed once in the abdomen and once in the back. I
6 think the jury could clearly infer malice from the
7 defendant's actions. Could infer it from the use of the
8 knife that Your Honor seen. Not to mention the express
9 malice that, I think we've proven through the acts and
10 preparation. I mean, you know, basically, he had been
11 stalking this guy, you know, lying in wait outside at 4:30
12 in the morning.

13 THE COURT: And he said he was going to kill him, he
14 didn't come to slash his tires.

15 MR. SORENSON: Right. Then he's made threats in the
16 past and I submit to you he told law enforcement what he was
17 there to do. I think that satisfies the malice and also the
18 intent to kill under the attempted murder.

19 THE COURT: All right. Respectfully, I'm going to deny
20 your motion, Mr. Mellard. I do think there's evidence from
21 which this jury can certainly find that malice occurred.
22 That there were preparation and acts beforehand and
23 certainly he actually expressed it as well by, I didn't come
24 to slash your tires, I came to kill you. Of course, taking
25 the evidence in the light most favorable to the State, I

1 understand you have two different versions. One is that he
2 came out and challenged him. The other is that he got
3 attacked, by the State. I'm going to deny your motion,
4 respectfully.

5 MR. MELLARD: Thank you.

6 THE COURT: At this time Mr. Mellard would you like me
7 to go over your client's rights and whether or not he wishes
8 to testify.

9 MR. MELLARD: We would like for you to go over the
10 rights, but we'd also like to have a change to --

11 THE COURT: Absolutely.

12 Sir, if you would please stand. I want to go over a
13 couple of things with you.

14 Would you go ahead and put Mr. Morton under oath for
15 me.

16 THE CLERK: Please raise your right hand.

17 (WHEREUPON, Jeffrey Morton was
18 sworn to tell the truth.)

19 THE COURT: Mr. Morton, right now, sir, I'm going to go
20 over some of the rights you have, sir, and I just want to
21 make sure you understand. If there's anything that I say
22 that you don't understand, please tell me to stop. I'll
23 repeat it, rephrase it. I'll change how I'm saying it so
24 you can better understand what is going on, okay.

25 Sir, we've reached the stage in the trial where you are

1 lawyers, I will charge you on the law, and it's my
 2 understanding from the clerk's office if we go into the
 3 lunch hour, which would typically be about 1:00 they can
 4 order something for us.

5 So that is what our hope is rather than breaking right
 6 now and prolonging it. So as long as that is not a problem
 7 for anyone and everyone is okay that is what I intend on
 8 doing.

9 Again, ladies and gentlemen, I need to send you back to
 10 your jury room. Do not discuss this case. It would not be
 11 appropriate to do so at this time. I'm going to bring you
 12 back out very shortly and we'll go ahead and hear the
 13 arguments from the lawyers and I'll charge you on the law,
 14 and we'll send this case to you. Okay.

15 Thank you.

16 (Jury out at 11:59 a.m.)

17 THE COURT: All right. Any motions?

18 MR. MELLARD: At this time the defense would renew our
 19 Motion for a Directed Verdict, Your Honor. We believe there
 20 is no evidence of intent to kill, malice and that the act
 21 does not rise to attempted murder.

22 THE COURT: Mr. Sorenson?

23 MR. SORENSON: I don't see how anything has changed. I
 24 mean, looking at it in the light most favorable to the
 25 state, I don't see how -- it's no different than we were 20

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minutes ago.

THE COURT: Again, looking at it in the light most favorable to the State, certainly there can be express malice found. So as a result we are going to go forward and send it to the jury.

My law clerk is printing the verdict form right now, as well as the jury charge. I just want to go through with you all what I intend on charging. I know we spoke about it back in chambers yesterday. I think we all had an opportunity to go sleep on it and look and see, as far as the lesser included offenses of ABHAN, assault and battery first, second and third. So she's going to bring it out.

What I intend on charging is obviously the elements of attempted murder, assault and batter of a high and aggravated nature and then assault and battery, third degree. I think those fit the facts of this case and I think the jury could find, certainly one of those three. So that's what I intend on charging.

I do think I'm going to send back the actual jury charge in this case, just the complexity, just the variations of the different charges. So to that end, we'll wait on Alison to come back with it and I'll go through exactly what I'm going to charge.

It's my understanding Mr. Sorenson is going to open on the law very briefly. Is that correct, sir?

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Supplemental Record on Appeal contains all material requested to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 13, 2015



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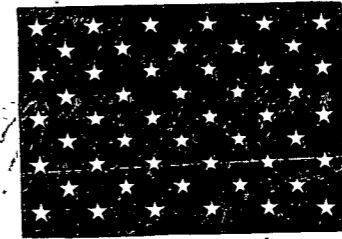
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