STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Colleton County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURIO DAETREL RIVERS,

APPELLANT,

CASE NO. 2011-GS-15-00549

APPELLATE CASE NO. 2012-213729

PETITION FOR WRIT OF CERTIORARI

Maurio D. Rivers #232669
Pro'Se Petitioner
B.R.C.I. Marion 265
4460 Broad River Road
Columbia, S.C. 29210

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on APRIL 16TH, 2015

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Question Presented

1. Did the Court of Appeals err in holding that the Trial Court did not err in failing to instruct the jury that they could not convict Appellant of attempted murder unless they found that Appellant had a specific intent to kill.

2. Did the Court of Appeals err in holding the Trial Court was correct indenying the Appellants Motion for a Direct Verdict on the charge of Attempted Murder where (A) The State failed to present any evidence of a common scheme or plan between Appellant and his passenger the person who fired the gunshots to commit the homicide and (B) The State failed to establish that the Appellant had the requiste specific intent to kill as required by S.C. CODE ANN §16-3-29.

Argument

I. The Trial Court erred in failing to instruct the jury that they could not convict Appellant of attempted murder unless they found that Appellant had a specific intent to kill.

Appellant requested that the Trial Court charge the jury that attempted murder requires a specific intent to kill. R. [Memorandum on Specific Intent to kill.] The Trial Court did not instruct the jury that attempted murder requires a specific intent to kill.

TR. P. 196 Line 19- TR. P. 200 Line 5

Defense counsel objected to the Trial Court's failure to charge the jury that they must find Appellant specifically intended to kill Lt. Burnette before the jury could convict him of attempted murder.

TR. P. 207 Lines 24-25

The Trial Court noted his exception for the record.

TR. P. 208 Lines 1-3

As set forth above, attempted murder, as defined by statute, requires a specific intent to kill. § 16-3-29.

" To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). " A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues." State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). A trial court commits reversible error where it fails to give a requested charge on an issue raised by the evidence. Id. at 406, 649 S.E.2d at 50.

Appellant was prejudiced by the Trial Court's failure to charge the jury that attempted murder requires a specific intent to kill where Appellant was not the person who fired the shots at Lt. Burnette. It cannot be said, beyond a reasonable doubt, that a charge that Appellant must have specifically intended to kill Lt. Burnette would not have made a difference in the outcome of the case. The Trial Court's failure to charge the jury that attempted murder requires a specific intent to kill requires reversal.

II. The Trial Court erred in failing to grant Appellant's motion for a directed verdict on the charge of attempted murder.

Argument - B : The State failed to establish that the Appellant had the requisite specific intent to kill as required by S.C. CODE ANN § 16-3-29.

Assuming arguendo that there was sufficient evidence that Appellant and a passenger in his vehicle were acting together to flee of elude law enforcement, Appellant is nevertheless entitled to a direct verdict on the charge of attempted murder where there is no evidence that Appellant possessed the requisite specific intent to kill as required by S.C.CODE ANN. § 16-3-29.

Attempted murder is denied by statute as: "A person who, with intent to kill, attempt to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." § 16-3-29 (emphasis added). The statute became effective on June 2, 2010 and replaced the former common law statute of assault and battery with intent to kill, formerly S.C.CODE 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:

> In general, "[a]ttempt is a specific intent crime." 21 Am.Jur.2d Criminal Law § 176(1998). " The act constituting the attempt must be done with the intent to commit that particular crime." Id. See also Wharton's Criminal Law Attempt § § 694-695 (1996) (" To constitute an attempt, there must be an intent to commit a particular crime... Although a murder may be committed without an intent to kill, an attempt to commit murder requires a specific intent to kill.") 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. United States v. Calloway, 116 F.3d 1129 (6th Cir.1997). Attempted murder would require the specific intent to kill and conduct towards that end. ABIK requires an unlawful act of violence to the person of another with malice. Clearly, each offense has an element the other does not. However, simply because convictions for both offenses would not violate double jeopardy, we are not constrained to recognize the offense of attempted murder.

Sutton, 340 S.C. at 397, 532 S.E.2d at 285 (footnote omitted) (emphasis added).

For a jury to convict Appellant of attempted murder, the State must present evidence that Appellant possessed a specific intent to kill. State v. Brown, 360 S.C. 581 586, 602 S.E.2d 392, 395 (2004). The State failed to prove that material element of attempted murder.

The State did not prove that Appellant used a deadly weapon. The State at most has shown that Appellant and a passenger were in a vehicle together fleeing police. Even if Appellant and his passenger acted in concert to flee the police, the State must still prove that Appellant shared his passengers intention to kill Lt. Burnette. "But where the purpose established is less in degree than such an intention, and where the record shows merely a spontaneous act of [attempted murder] by one, the other is not, Without a greater showing of a personal designed to kill, guilty of [attempted murder.]" People v. Hayes, 117 A.D.2d 621, 622 (N.Y.Sup.Ct.1986) (internal citations omitted); see also State v. Adams, 319 S.C. 509, 511, 462, S.E.2d 308, 209 (Ct. App. 1995) ("[W]hile conspirators are responsible for all incidental and consequential acts growing out of a general design, conspirators are not responsible for the independent acts of any one conspirator.")

The record is lacking of any evidence that Appellant shared his passengers specific intent to kill. That Appellant was driving a vehicle in which the two were fleeing police is not sufficient to support a conviction for attempted murder when Appellant did not fire the shots at Lt. Burnette.

There were three guns recovered from the wreck scene. One gun was found on the ground after the vehicle was rolled upright.

TR. P. 106 Lines 9-18

Another gun was found lying in plain view while the vehicle was still upside down.

TR. P. 109 Lines 1-4

The last gun was found inside the glove box of the black vehicle.

TR. P. 111 Lines 22-24

By the Appellant not attempting to possess or fire any of the three guns found on the scene; it is clear the Appellant did not share the passengers intent to kill Lt. Burnette.

Argument - A : The State failed to present any evidence of a common scheme or plan between Appellant and his passenger (the person who fired the gunshots) to commit the homicide.

The State argues the Appellant and a passenger in the vehicle he was driving participated in a common scheme or plan to elude law enforcement.

Furthermore, the State argues the passenger, in the Appellants vehicle, assisted in the escape effort by firing a gun at the officer in pursuit.

As an initial matter there is no evidence in the record that the Appellant knew his passenger would fire shots.

The State argues that because the Appellants passengers actions were visible to the pursuing officers they must have been known to the Appellant, however according to pursuing officer (Lt. Burnette) the Appellant was driving right around 90 MPH to 100 MPH when the shots were fired,

TR. P. 67 Lines 14-15
TR. P. 86 Lines 24-25
TR. P. 87 Lines 1-2

Furthermore in review of the video (States exhibit no. 13) the Appellant is driving on a two lane highway at the time the shots are fired. Therefore it cannot be said beyond a reasonable doubt that the Appellant was aware of the passengers movements in the vehicle while driving at such a high rate of speed on a two lane highway.

The State argues the Appellant continued his dangerous flight after the shots were fired.

The record shows the first shots are fired at 19:08:44 then sixteen seconds later the Appellants car is hit by the pursuing officers patrol car at 19:09:00. The Appellant then looses control of the Acura crashes and rolls over. Therefore, this dangerous flight the state claims that the Appellant continued lasted exactly sixteen seconds. (TR. P. 177 Lines 19-22) Furthermore by the Appellant driving at such a high rate of speed it logically would have taken a reasonable amount of time to slow the vehicle to a stop and the Appellants brake lights are seen after the shots and before the car is hit by the pursuing officers vehicle (initial brief of respondent Pg. 8) . Further more the record shows two minutes and sixteen seconds after the first shots are fire the Appellant is in handcuffs at 19:11:00. (States Exhibits 13).

The State argues after the Appellants vehicle was disabled that the Appellant fled along with his passenger indicating his continued concert however, according to the record the Appellant ran away from his passenger as well as the pursuing officer.

TR. P. 70 Lines 17-24
TR. P. 73 Lines 18-21
TR. P. 174 Lines 20-25

Furthermore the record shows that after the Appellants vehicle had overturned, a second volley of gunshots was fired.

TR. P. 85 Lines 8-11

According to the record Officer Burnette testified that there was one shooter, the passenger.

TR. P. 97 Lines 4-15

The Appellant was found not guilty of possessing a weapon.
TR. P. 216 Lines 18-20 Therefore the Appellant was unarmed.

By the Appellant being unarmed with gunshots being fired so close to him; it is not unreasonable to conclude the Appellant would have been afraid enough to run away from the overturned vehicle in an attempt to avoid being shot.

Therefore the Appellants flight absent any act which one can infer the Appellant intended to harm, injure, or point a firearm is insufficient to support a conviction for attempted murder under a theory of accomplice liability.

CONCLUSION

This Court should grant the petitioner for rehearing.

Respectfully submitted,

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Maurio D. Rivers, Pro'Se

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellate proposes the following be included in the Record on Appeal:

(1) True-billed indictment;
(2) Memorandum regarding specific intent to kill;
(3) Transcript of Trial held December 12-13, 2012
(4) Sentencing Sheet.
(5) Initial brief of Appellant;
(6) Initial brief of Respondent

I certify that this designation contains no matter which is irrelevant to this appeal.

Mauric Rivers

Maurio D. Rivers
Pro'Se Petitioner

STATE OF SOUTH CAROLINA

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CASE NO: 2011-GS-15-00549

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MAURIO DAETREL RIVERS,

Appellant,

V.

THE STATE,

Respondent,

CERTIFICATE OF SERVICE

I, Maurio D. Rivers, certify that I have served the Petition For Writ Of Certiorari and Designation of Matter on Respondent by depositing two copies of the same in the United States Mail, postage prepaid, addressed to:

ALAN WILSON

MARY S. WILLIAMS

Office of the Attorney General
Post Office Box 11549
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I further certify that all parties required by Rule to be served have been served. This 30th day of April, 2015

S/ _____
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SUBSCRIBED AND SWORN TO before me

this 23RD of APRIL, 2015.

_____
Notary Public for South Carolina

My Commission Expires: NOV 14 2024