

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case NC 2015-000928

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S.C. Supreme Court

The State,

Respondent

V.

Maurio Daetrel Rivers

Petitioner

PETITION FOR WRIT OF CERTIORARI
RETURN OF PETITIONER

Maurio D. Rivers #232669

Pro Se Petitioner

Broad River Correctional Institution

4460 Broad River Rd

Columbia SC 29210

Other Counsel of Record:

Alan McCrory Wilson, Attorney General

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CERTIFICATE OF PETITIONER

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

Subscribed and sworn before me

This _____ of _____, 2015

Notary Public for South Carolina

My commission expires: _____

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S.C. CODE ANN§ 16-23-490(A)
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QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding the trial court was correct in denying the appellants motion for a directed verdict on the charge of attempted murder where (A) There was no evidence that the appellant fired any shots (B) The state failed to present any evidence of a common scheme or plan between appellant and the passenger in this vehicle (the person who fired the shots) to commit the murder and (C) 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
2. Did the Court of Appeals err in ruling the trial court did not abuse its discretion in failing to instruct the jury that they could not convict the appellant of attempted murder unless they found that the appellant had a specific intent to kill.

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; and (3) one count of possession of a weapon during the commission of a violent offense. Tr.8, ll. 8-12; 9, l.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 was 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, ll. 13-21. The jury found Appellant guilty of attempted murder of Deputy J. Burnette. Tr. 216, ll. 7-12. Judge Goodstein sentenced Appellant to thirty years imprisonment. Tr. 228, ll. 13-17; R.*.

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

The Court of Appeals affirmed the judgment of the circuit court. The State v. Maurio Daetrel Rivers, Op. No. 2014-UP-441.(S.C. Ct. App. filed Dec. 3, 2014) Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT- I

- 1. The Court of Appeals should have held that the Trial Court erred in failing to grant Appellant's motion for a directed verdict on the charge of attempted murder where: (A) there was no evidence that Appellant fired any gunshots; (B) 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 a homicide; and (C) the State failed to establish that Appellant had the requisite specific intent to kill as required by S.C. CODE ANN. § 16-3-29.**

The Trial Court erred in failing to direct a verdict for Appellant on the charge of attempted murder of Lt. Burnette where the evidence, taken in the light most favorable to the State, fails to establish that Appellant (A) fired any gunshots himself; (B) attempted to kill another person under the theory of accomplice liability; or (C) had the requisite specific intent to kill. Tr. 153, l. 11-155, 1.24; 165, l. 19-166, l. 5. S.C. CODE ANN. § 16-3-29 provides that a person commits the offense of attempted murder when the person "with intent to kill, attempts to kill another person with malice aforethought, either express or implied."

A defendant is entitled to a directed verdict at trial when the State fails to present evidence on a material element of the offense charge. *State v. Brown*, 360 S.C, 581, 586, 602 S.E.2d 392, 395 (2004). The grant of a directed verdict motion for acquittal by a defendant is proper if there is a failure of competent evidence tending to prove the charge.

State v. Jackson, 395 S.C. 250, 254, 717 S.E.2d 609, 611 (Ct. App. 2011)

If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court should submit the case to the jury. Otherwise, "a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Buckmon*, 347 S.C. 316, 321-22, 555 S.E.2d 402, 404-05 (2001); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *State v. James*, 362 S.C. A557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

A. The State failed to present any evidence that Appellant fired the shots at Lt. Burnette.

As an initial matter, there was no evidence presented at trial that the Appellant actually fired shots at Lt. Burnette. Lt. Burnette testified that it was the passenger Bronson Shelley that shot at him. Tr 92, ll. 19-93 Lt. Burnette further testified that while there were two different volleys of shootings that he heard, he only saw one person, Bronson Shelley, shoot. Tr. 97, ll. 4-15.

The jury found the Appellant not guilty on the charge of possession of a weapon during the commission of a violent offense. Tr. 216, ll. 18-21. By finding that Appellant was not in the possession of a firearm or visibly displayed what appears to be a firearm or visibly displayed what appears to be a firearm during the commission of a violent crime, the jury implicitly found that Appellant did not fire the shots at Lt. Burnette. See S.C. CODE ANN. § 16-23-490 (A).

Therefore, if the jury found Appellant guilty of attempted murder, it had to have done so under the theory of accomplice liability.

B. The evidence presented by the state was insufficient to support a conviction for attempted murder under the theory of accomplice liability.

The State also failed to present sufficient evidence that Appellant is guilty of attempted murder under an accomplice liability theory.

Under the “hand of one is the hand of all” theory of accomplice liability, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose....Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through some overt act.” State v. Mattision, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (internal citations omitted).

“In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal’s criminal conduct....Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime...Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” Id. At 480, 697 S.E.2d at 584 (internal citations omitted).

“To admit evidence under [the accomplice liability] theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown.” State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999).

The state argues the appellant and a passenger in a vehicle he was driving participated in a common scheme or plan to elude law enforcement; and his passenger 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 the appellant knew his passenger would fire shots
There is also no evidence that the appellant maneuvered the vehicle in any way to make it easier for the passenger in his vehicle to fire at LT. Burnette.
Accordingly the record lacks sufficient circumstantial evidence that the appellant agreed to and did act in concert with the passenger in his vehicle to attempt to murder Lt. Burnette.

The state argues that because the Appellant’s passenger’s 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 100MPH 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 (State's 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 passenger's 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 Appellant's car is hit by the pursuing officer's patrol car at 19:09:00. The Appellant then loses 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 Appellant's brake lights are seen after the shots and before the car is hit by the pursuing officers vehicle (initial brief of respondent Pg. 8). Furthermore the record shows two minutes and sixteen seconds after the first shots are fired the Appellant is in handcuffs at 19:11:00. (State's Exhibits No 13.)

It cannot be said beyond a reasonable doubt that firing a gun at Lt. Burnette was not a matter of a sudden unforeseen act by the appellant's passenger. The State's argues after the Appellant's 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 Appellant's 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 Appellant's flight absent any act which one can infer the Appellant intended to harm, injure, or point a firearm is insufficient to support a conviction under the theory of accomplice liability.

While conspirators are responsible for all incidental and consequential acts growing out of a general design, **conspirators are not responsible for independent acts of any one conspirator** (State v. Adams 462 S.E. 2d 308)

Appellant cannot be liable for acts spontaneously and independently committed by the passenger in his vehicle and therefore is not guilty of attempted murder.

Accordingly, the court of appeals should have ruled the trial court erred in failing to grant the appellants motion for a directed verdict on the charge of attempted murder.

The State's evidence only shows that Appellant and a passenger were traveling in a car together and that Appellant was driving at a high rate of speed and did not stop for a blue light. There is no evidence in the record of (A) how long Appellant and the passenger knew each other; (B) why the passenger was in the vehicle with the Appellant; (C) why Appellant was driving at a high rate of speed and did not stop for a blue light; or (D) that Appellant knew his passenger would fire shots at law enforcement. There is also no evidence that Appellant maneuvered the vehicle in any way to make it easier for the passenger to fire at Lt. Burnette. Accordingly, the record lacks sufficient circumstantial evidence that Appellant agreed to, and did act in concert with his passenger, to achieve a homicide. Where there is insufficient evidence to establish that Appellant joined with the passenger to accomplish a homicide through a common scheme or design; the Appellant cannot be liable for the acts spontaneously and independently committed by the passenger and therefore is not guilty of attempted murder. The Trial Court therefore erred in failing to grant Appellant's motion for a directed verdict on the charge of attempted murder.

C. The state failed to establish that 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 Shelley 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 the Appellant possessed the requisite specific intent to kill as required by S.C. CODE ANN § 16-3-29.

Attempted murder is defined by statute as: “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”. § 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, 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 the 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 the Appellant and his passenger acted in concert to flee the police, the State must still prove that Appellant shared his passenger’s 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 design to kill, guilty of [attempted murder].” People v. Hayes, 117 A.D.2d 621, 622 (N.Y. Sup. Ct. 1986) (internal citation 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 the passenger’s 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. Accordingly, Appellant is entitled to a directed verdict on the charge of attempted murder for the State’s failure to present any evidence of his specific intent to kill.

With this history of our courts requiring the State to prove specific intent as an element of attempt crimes, the Legislature chose to include the phrase “with intent to kill” in section 16-3-29. The Legislature is presumed to know how the terms and phrases it uses in a statute have been interpreted in the past. See State v. Bridgers, 329 S.C. 11,14, 495 S.E. 2d 196, 197-98 (1997) (“The General Assembly is presumed to be aware of the common law, and where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.” (citation omitted)), see also Sharley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 570, 743 S.E. 2d 778, 783(2013) (stating “ this Court must presume the legislature knew of and contemplated [existing legislation] in enacting [an act]”). Grier v. AMISUB of S.C. Inc, 397 S.C. 532, 536, 725 S.E. 2d 693, 696 (2012)(stating Congress presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind” (citation and internal quotation marks omitted)); Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 111, 580 S.E. 2d 100, 105 (2003) (“The Legislature is presumed to be aware of this Court’s interpretation of its statutes”), State v. McKnight, 352 S.C. 635, 648, 576 S.E. 2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”), see also Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 320 (2012) (“[W]ords undefined in a statute are to be interpreted and applied according to their common-law meanings”)

We find the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime.

State v. King Appellate Case 2012- 213405 (2015)

ARGUMENT- II

2. The Court of Appeals should have held that 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. 196, ll. 19-200, l. 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. 207, ll. 24-25. The Trial Court noted his exception for the record. Tr. 208, ll. 1-3.

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

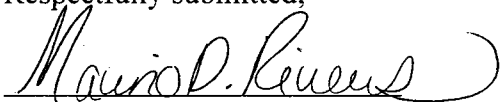
“To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010).” “A trial court has a duty to give a requested instruction that is supported by the evidence and correctly 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.

CONCLUSION

For the reasons set forth above, Appellant Maurio Daetrel Rivers requests that this Court issue an order of acquittal on the charge of attempted murder, or in the alternative, reverse Appellant's conviction and remand this case for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Maurio D. Rivers". The signature is written in black ink and is positioned above the typed name.

Maurio D. Rivers #232669

Pro Se Petitioner

Broad River Correctional Institution

4460 Broad River Rd

Columbia SC 29210

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,

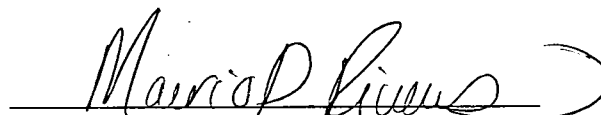
APPELLATE CASE NO. 2012-213729

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 of which is irrelevant to this appeal.


Maurio D. Rivers
Pro Se Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

CASE NO: 201-GS-15-00549
Appellate Case No: 2015-000928

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/Return of Petitioner 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
Columbia, S.C. 29211
803-734-3727

I further certify that all parties required by Rule to be served have been served. This 20
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