

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal From Kershaw County
James Barber, Circuit Court Judge

FEB 24 2016
SC Court of Appeals

Case No. 2014-000165

The StateAppellee

V.

Ernest Allen.....Appellant

**APPELLANT'S MOTION TO SUPPLEMENT FINAL BRIEF OF APPELLANT
BASED ON RECENTLY DECIDED CASE LAW.**

NOW COMES the Appellant, who moves this Honorable Court for leave to supplement the Final Brief of Appellant. Appellant's request is based on the fact that this Court's decision in State v. King (S.C. App. 2015), having been decided after the initial filing of Appellant's brief and having recently come to the attention of Appellant's counsel, presents a new legal issue which was not available at the time Appellants Brief was filed. Appellant seeks leave to include the following as a third point of argument:

III. Did the trial Court commit reversible error when the Court instructed the jury that specific intent to kill was not an element of attempted murder statute S.C. Code §16-3-29?

Appellant further contends that this issue has otherwise been preserved for appeal, is likely to be dispositive, and the interest of justice so requires.

PROCEDURAL BACKGROUND

The initial brief of Appellant was timely filed on January 8th, 2015. Thereafter, on April 22, 2015 this Court's ruling in State v. King was handed down. That decision deals squarely with the intent required for conviction under S.C. Code § 16-3-29. Oral arguments were held in this case on February 2nd, 2016. Thereafter the decision came to the attention of Appellant's counsel. As of the date of this motion, the Court has not rendered its decision.

ADDITIONAL ARGUMENT REQUESTED

Appellant seeks to include, as an additional argument, that the trial Court committed reversible error when it instructed the jury that:

"a specific intent to kill is not an element or attempt of attempted murder, but there must be a general intent to commit serious bodily injury". Tr. tr. p. 268.

The record also reveals that Defense counsel timely objected to the instruction at trial:

"Your honor did read from what you told us you would. I would disagree that specific intent is not an element of attempted murder. I'd ask you to correct that but I understand the court's position on that. **I just make my objection noted**". Tr. tr. p. 278.

As such the issue is otherwise preserved for review by this Court.

In King, this Court ruled for the first time that S.C. Code §16-3-29, which was enacted in 2010, was a specific intent crime requiring a finding that the Defendant acted with the specific intent to kill. In the Case, the trial Court charged the jury that:

"A Specific intent to kill is not an element of attempted murder but it must be a general intent to commit serious bodily harm." Id.

This instruction is the exact same instruction given in this case. This Court's decision in King makes clear that the record likely contains a reversible error of law for which Appellant requests the opportunity to be heard. Appellant further contends that given the seriousness of the charges for which the Appellant is facing, the fact that King was decided after submission of Appellant's initial brief, and that no decision has yet been reached by this Court, justice so requires that Appellant's motion be granted, and as such Appellant request fourteen (14) days in which to submit an amended brief.

Respectfully Submitted,

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ATTORNEYS FOR APPELLANT

This 24th day of February 2016.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the "Appellants Motion to Supplement Final Brief of Appellant Based on Recently Decided Case Law" has been served upon the following parties this 23rd day of February , 2016

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By: 

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