2012-209546

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

Opinion No. 2011-UP-425 (S.C. Ct. App. filed 9/20/2011)

08-GS-10-2081, 9734, 9736

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 14, 2012.

QUESTION PRESENTED

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the attempted armed robbery charge where the gunman simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled because these actions did not constitute substantial circumstantial evidence reasonably tending to prove guilt in the case

STATEMENT OF THE CASE

Petitioner Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill and pointing and presenting a firearm during the July 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young. Petitioner was sentenced to imprisonment for a period of thirty-five years.

Petitioner appealed his convictions and sentences, and on February 1, 2011, pursuant to an oral argument held on September 1, 2011, the Court of Appeals issued an opinion affirming petitioner's convictions and sentences. App. 1-2. See State v. Ravenel, Unpublished Opinion No. 2011-UP-425 (Ct. App. September 30, 2011). App. 1-2. A petition for rehearing was filed on October 5, 2011. App. 3-7. The petition for rehearing was denied on February 14, 2012. App. 8-9. This is the petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the attempted armed robbery charge where the gunman simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled because these actions did not constitute substantial circumstantial evidence reasonably tending to prove guilt in the case.

At trial, Michael Simmons testified that he was leaving his job at Ryan's Steak House around 11:45 p.m. on December 29, 2007, headed toward his car when a black male wearing a white hoody and ski mask approached him in the parking lot. As Simmons jumped in his car, the perpetrator came closer, held a gun to Simmons' face, and pulled the trigger twice, but the gun did not fire. The perpetrator spoke one word (that word being "hey") during the incident. At the end of a tug of war between Simmons and the perpetrator over the car door via opening and shutting it, Simmons managed to escape by driving off. Later, police officers found a suspect in the Summit Place Apartments nearby and conducted a show up identification. Simmons positively identified the suspect, i.e. petitioner, as the perpetrator from the incident. R. p. 10, line 4 – p. 30, line 7. Fellow employer Ginger Cass witnessed this event and testified that she saw the perpetrator "rapping the gun a little bit into the car [as Simmons] was still trying to go forward" and that the perpetrator fled when Simmons drove off. R. p. 89, line 15 – p. 94, line 21. The remainder of the case included the testimony of the two police officers who described how petitioner was apprehended, and a ballistics expert who attempted to explain why the gun (old gun) did not fire on that night. R. p. 97, line 1 – p. 106, line 3.

At the close of the state's case, the defense moved for a directed verdict on the attempted armed robbery charge on the ground that there was no evidence verbally or non-verbally in support

of the attempted armed robbery charge. The facts of the case included a perpetrator who grabbed Simmons' car door, said "hey," and then pointed a gun and pulled the trigger. At best, the facts revealed that a gunman was trying to assault or shoot to kill Simmons. R. p. 106, line 24 – p. 107, line 11; R. p. 111, line 17 – p. 112, line 16. The state argued that the perpetrator was trying to get in Simmons' car and take the car. R. p. 109, line 13 – p. 111, line 11. The court denied the motion. R. p. 114, lines 18 – 21.

Robbery is larceny by force, i.e., larceny from the person or immediate presence of another by violence or intimidation. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966). Armed robbery is robbery while armed. S.C. Code Ann. § 16-11-350-370 (2003). Larceny is the felonious taking and carrying away of the goods of another which must be accomplished against the will or without the consent of the victim. State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979). The element of taking the goods with the intent to steal, or in this case, the attempt to take the goods with the intent to steal, was not present per these facts See State v. Brown, supra. Here, the perpetrator never verbally ordered Simmons to surrender his wallet, car, or any item whatsoever. Furthermore, the word "hey" uttered by the perpetrator cannot be translated as a verbal command for the surrender of goods. Also, the perpetrator's non-verbal cues or actions were not tantamount to a request for goods, money, or the car. Rather, the perpetrator's actions via pointing the gun and pulling the trigger indicated that he was trying to assault or shoot Simmons. The fact that the perpetrator tried to open the door and continued to pull on the door also indicated he was trying to get to get good gun aim at Simmons. It is untenable to contend that the perpetrators pull on the car and saying "hey" meant that he was attempting to steal the car. Had that been the case, the state would have charged him with carjacking.

On appeal, the Court of Appeals held that:

> Here, Ravenel's victim testified that Ravenel wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the victim's car door twice. We find this testimony was substantial circumstantial evidence when, in a light most favorable to the State, the jury could reasonably infer that Ravenel was guilty of attempted armed robbery. Accordingly, the decision of the circuit court is AFFIRMED.

App. 2.

The Court of Appeals held that because petitioner "wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the car door twice...[then]...this was substantial circumstantial evidence when in a light most favorable to the state, the jury could reasonably infer that [petitioner] was guilty of attempted armed robbery." However, attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (S.C. Ct. App. 2001). Cleary, there was no intent here based on the circumstances establishing that petitioner intended to commit armed robbery. Petitioner pointed a gun and twice pulled the trigger at the car driver during the incident, and at that time petitioner issued no command, neither verbally nor nonverbally, ordering the surrender of goods or money during the incident. Intent is proved by the circumstances (State v. Tuckness[1]), and based on this fact, as reviewed in conjunction with the other facts of the case, it was clear that petitioner approached the witness not with the intent to rob, but with the intent to kill.[2] Note that the witness himself interpreted petitioner's actions as an intent to kill via his testimony regarding the reliability of his identification as follows:

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[1] 257 S.C. 295, 185 S.E.2d 607 (1971)

[2] At trial, petitioner was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm.

> Q. You said earlier he was wearing a face mask. How did you know this was the person if he had a face mask on?
> A. When someone has got a gun in your face and they're looking in your eyes trying to kill you, you kind of remember that.

R. 19, lines 16-21.

Also, the witness gave the following testimony regarding an interpretation of petitioner's actions in the case as follows:

> Q. You stated earlier that this individual put a gun to the window next to your head and pulled the trigger twice.
> A. Yes, sir.
> Q. What were your thinking?
> A. There was a lot of things, I think. One, I was try [sic] to get away so I don't get killed; and, two, was this guy is trying to kill me. I thought - - I couldn't get the fact of why the gun didn't go off, because I saw him pulling the trigger.

R. 29, lines 14-23.

Second, the word "hey" uttered to the witness cannot be translated as a verbal command or order for the surrender of goods. Additionally, there were no non-verbal actions coming from petitioner that were tantamount to a request for goods, money, or the car. Rather, petitioner's actions via the pointing of the gun and the pulling of the trigger indicated that he was trying to assault or shoot the witness.

Additionally, the fact that the perpetrator tried to open the witness' car door also indicated his intent to get a good aim at the witness in order to shoot him. It is untenable to contend that petitioner's pull on the car door and saying "hey" meant only that he was attempting to steal the witness' car. Had that been true, then the state would have charged petitioner with the offense of carjacking in the case.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt

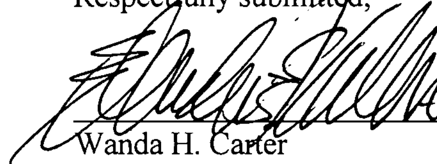
may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. At best, there was only suspicion of attempted armed robbery in this case. In conclusion, there was insufficient evidence presented in support of the attempted armed robbery charge, and there was no substantial circumstantial evidence in the case establishing sufficient proof on the offense of attempted armed robbery in this case.

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the charge of attempted armed robbery because there was no substantial circumstantial evidence reasonable tending to prove guilt on the charge.

CONCLUSION

Based on the foregoing argument, petitioner requests that the court grant the petition for writ of certiorari.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 16th day of May, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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THE STATE,

RESPONDENT,

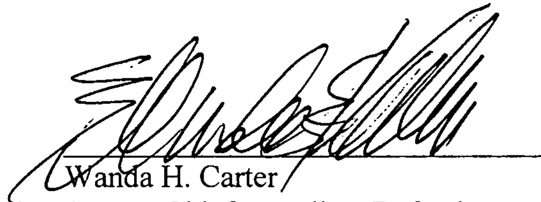
V.

VASHAUN RAVENEL,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals this 16th day of May, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of May, 2012.

_____________________________(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013