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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Roger M. Young, Circuit Court Judge

THE STATE

Respondent

vs.

VASHAUN RAVENEL

Appellant

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The defendant says there was only evidence the gunman pointed a firearm at the victim, pulled the trigger, and fled. There was then no evidence of any attempt to take goods from the victim, and the court should have granted his motion for directed verdict on attempted armed robbery. (Appellant's Statement of Issue on Appeal).

STATEMENT OF THE CASE

The Charleston County Grand Jury charged assault with intent to kill (2008-GS-10-02081), pointing and presenting a firearm (2008-GS-10-09736), and attempted armed robbery (2008-GS-10-09734). The defendant and his counsel came to trial July 27-28, 2009 before the Honorable Roger M. Young, Sr., Judge, and a jury. The jury found the defendant guilty. The court sentenced him to consecutive sentences of imprisonment for ten years for assault with intent to kill, five years for pointing and presenting a firearm, and twenty years for attempted armed robbery. The defendant served opposing counsel a timely notice of appeal.

-ARGUMENT

The court soundly denied the directed verdict motion for attempted armed robbery.

The defendant says there was evidence that he tried either to assault or to shoot the victim, but there was no evidence that he attempted to take goods with the intent to steal. There was no verbal directive to surrender any goods. Rather, the defendant only tried to shoot or to assault the victim, and his effort to open the car door and his pulling on the car door were for aiming his gun at the victim. (IBOA, p. 6).

The victim was a manager of Ryan's Family Steakhouse. His duties included supervision and money management - taking care of all the money in the place. (ROA. pp. 10-12, line 7). One night he closed the business after securing the money and turning off lights. Other employees were outside. When he got to his car in the "completely illuminated" parking lot, he saw an assailant in a white hooded shirt, camouflage ski mask, and dark pants had a black, rusty revolver pointed at him. The victim jumped into his car. The assailant yelled "hey" - perhaps to express surprise or disappointment or to elicit the victim's attention and cooperation. After failing to stop or even to intimidate his prize, the masked assailant came to the victim's driver's window with his gun - close enough to reveal his eyes - and pulled the trigger in the victim's face. The gun did not discharge. The defendant hit the pistol with the palm of his hand, put it back into the victim's face, and tried to shoot him again. Still, the gun did not discharge. Amid struggling for control of the car and the victim's attempting to drive off in reverse, the victim fled, and his assailant pursued. While the car was in reverse, the assailant pointed the gun. The victim shifted into first gear to go forward, and the assailant tried - again - to get into the car. Finally, the assailant saw people - in view of his heinous escapade - and ran away. (ROA. p. 12, line 8 - p. 17, line 5; pp. 30-

36). When the assailant grabbed the car door, the victim thought the assailant wanted either to kill him or to take the car after he killed him. (ROA. pp. 29-30).

A co-worker saw the struggle and telephoned the police before the defendant fled the scene. (ROA. pp. 89-94). About fifteen minutes after dispatch, police found the defendant a couple hundred yards away from the restaurant - matching their description, wearing no shirt at about midnight in December, and sweating profusely with "steam rising off of him." When approached, the defendant reached toward his pocket containing his ski mask and his black, rusty revolver. (ROA. pp. 45-49). The victim made a show-up identification some fifteen to twenty minutes after the incident, and he identified the camouflage ski mask and the old, rusty black revolver. (ROA. p. 17, line 6 - p. 22, line 13).

The defendant moved for a directed verdict on attempted robbery on the ground there was no evidence "either verbal or with actions." There "is no assumption that [the defendant] knew this guy was coming out with money." The state's evidence required an assumption that the defendant was trying to rob the victim. "There is no evidence to show that he was trying to rob this person, that they [sic] were trying to do anything but kill this person." The court found there was substantial circumstantial evidence - the defendant's using the gun and the ski mask and opening the car door, and the case should go to the jury. (ROA. p. 106, line 24 - p. 114, line 21).

The court's denial of the motion for directed verdict cannot be seriously challenged. Attempted armed robbery requires evidence that the accused intended to complete the offense of robbery while armed with a deadly weapon, and his intent was accompanied by an overt act in furtherance of that intent. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001).

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted). The defendant hooded and masked himself, armed himself with his pistol, and confronted the restaurant's money manager at gun point - after the manager had closed the business and approached his car. The defendant's confronting the money manager at gun point in the nighttime - after hooding and masking himself - is an overt act toward the furtherance of an armed robbery. While one could find another inference, the defendant was free to find it and to argue it to the jury. Moreover, the victim testified his assailant was armed with a pistol and possibly wanted to kill him and to take the car. Also, the victim's struggle for control of the vehicle - at gunpoint - with his hooded and masked assailant raises evidence of attempted armed robbery.

The judgment of the trial court - on all three convictions and three consecutive sentences - should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 25, 2010

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PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

Wanda H. Carter, Esquire
South Carolina Commission of Indigent Defense
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I further certify that all parties required by Rule to be served have been served.

This 25th day of May, 2010.


HAROLD M. COOMBS, JR.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b),

SCACR.

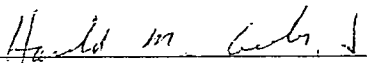
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