STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2015-001282

THE STATE,

Respondent,

v.

CHRISTOPHER ERIC MEJEAN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly denied Appellant's directed verdict motion because there was direct and substantial circumstantial evidence from which the jury could find Appellant intended to commit murder, or acted with reckless disregard for human life when he fired shots into an occupied residence at night.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On June 18, 2013, the Greenville County Grand Jury indicted Appellant Christopher Mejean on three counts of attempted murder arising from an incident on July 2, 2012, when multiple shotgun blasts were fired into an occupied dwelling with three people inside. The matter was called for a jury trial on June 2, 2015, before the Honorable R. Keith Kelly, Circuit Court Judge.

Tee Smith testified he, and his wife and their daughter lived at a trailer park in Pelzer, South Carolina. Appellant and his family moved next door a couple of years after the Smiths moved there, and the families became friends. Mr. Smith stated he hung out with Appellant almost every day, their wives became friends, and their children played together. (TT, pp. 51-56; R. pp. 51-56)

Mr. Smith and his wife worked at the same grocery store, and on Juy 1, 2013, his wife worked the morning shift, and he worked the evening shift until 8:00 p.m. Their daughter went over to Appellant's trailer until Mrs. Smith got home. Mrs. Smith and their daughter were home when Mr. Smith got home from work, and after eating dinner, they all went to bed. (TT. pp. 56-58; R. pp. 56-58)

Later that night, the Smiths woke up when shots were fired into their trailer. Mr. Smith testified he saw bullet marks on the walls, and he had wood all over his head. When he and his wife checked the remaining rooms, they found evidence of gun shots in the kitchen and in the living room where their daughter slept. Mr. Smith got his gun, went outside and fired two warning shots into the air, and when he came back inside, he told his wife to call 911. (TT. pp. 58-59; R. pp. 58-59)

While they waited for authorities to arrive, Mrs. Smith called Appellant's wife because she was worried about the family. Mr. Smith went back outside and saw Appellant coming out of his house and going toward his shed. Appellant then approached Mr. Smith, who asked him if he had shot up the Smith home. Appellant replied: "where's my f**king bitch." Mr. Smith saw something long in Appellant' hand, which Appellant was holding down by his side. Mr. Smith testified it reminded him of a shotgun, and he knew Appellant had one. He also testified Appellant's truck was not there. (TT. pp. 63-66; R. pp. 63-66)

Mr. Smith stated Appellant was enraged and yelling at him when Mr. Smith asked if he shot at the Smith home, Appellant never asked Mr. Smith what had happened, and showed no concern about the fact someone had shot the Smith home. He further stated Appellant had been inside the Smith home and knew the lay-out.

Mrs. Smith testified she and her daughter went swimming with Appellant and his family the afternoon of July 1, 2012, but about an hour later, Appellant decided he did not want to stay so he left to go to a friend's house. After a couple of hours, Appellant's wife called him to come pick her and the children up, but he refused. Mrs. Smith took Appellant's wife and children to Appellant's friend's house, and then she and her daughter went home. (TT. pp. 68-71; R. pp. 68-71)

Mrs. Smith fell asleep after eating dinner and woke up when she heard a loud noise. She woke Mr. Smith, and when they checked the rest of the residence, they realized someone had shot at the trailer. Mrs. Smith was concerned about Appellant's family and called Appellant's wife, who told her she and the children were not home. (TT. pp. 71-73; R. pp. 71-73)

Mrs. Smith testified Appellant and his wife had problems, and Appellant's wife actually moved out of the trailer and lived with her parents for a couple of weeks. She further testified Appellant had been to the Smith home and knew the lay-out. (TT. pp. 78-80; R. pp. 78-80)

Appellant's wife (Mrs. Mejean) confirmed Mrs. Smith's testimony about the events of that afternoon, as well as Mrs. Smith's telephone call to her that night. She stated Appellant was drinking, and they were arguing that evening, and she "decided that it was probably best for [her] just to let him cool off," so she went home and got some clothes for her and the children, and went to spend the night at her cousins. (TT. pp. 82-87; R. pp. 82-87)

At some point during the evening Mrs. Mejean received a call from the phone at their house, but all she could hear was "a bunch of muffled yelling." She subsequently received another call from their house and all she heard was "really loud" yelling before the line went dead. Approximately thirty minutes later, the police called and asked her to return home. When she went inside the home, it was "demolished," and one of Appellant's guns was missing. (TT. pp. 88-93; R. pp. 88-93)

A forensic investigator testified about the evidence recovered from the scene that night, and the photographs he took there. He found three shell casings in the Smith's front yard, and testified about the casings and shot patterns in the Smith trailer. One shot penetrated the bedroom wall above the Smith's heads. Another shot passed through a kitchen chair. A third shot penetrated the side of the livingroom wall and exited through the roof. (TT. pp. 100-137; State's Exhibits 8- 53; R. pp. 100-137)[1]

Appellant moved for a directed verdict, arguing the State failed to present sufficient evidence he had a specific intent to murder the Smiths. The State argued the use of a deadly

[1] The photograph exhibits will be transported to the Court for consideration

weapon implied a specific intent to kill. The circuit court denied the motion. (TT. pp. 143-144; R. pp. 143-144)

Appellant testified that when he got home from his friend's house that night, his front door was partially open, and he found a man he previously purchased marijuana from inside holding one of Appellant's shotguns. After the man shot at him and ran out of the trailer, Appellant stated he chased the man, and when he asked Mr. Smith about his "f**king bitch," he was talking about his shotgun rather than his wife. On cross-examination, however, Appellant admitted he did not normally refer to his shotgun as his "f**king bitch," but he had "probably called [his wife] every name in the book. (TT. pp. 157-178; R. pp. 157-178)

The circuit court charged the jury on the law of general criminal intent, the elements of attempted murder, malice, express or implied malice aforethought, and the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN), and first degree assault and battery. (TT. pp. 205-210; R. pp. 205-210) The jury convicted Appellant of attempted murder as to Mrs. Smith, and first degree assault and battery Mr. Smith as to Mr. smith and the minor daughter. (TT. pp 226-227; R. pp. 226-227). The court sentenced him to concurrent prison terms of fifteen years on the attempted murder conviction and ten years each on the assault and battery convictions. This appeal followed.

ARGUMENT

The circuit court properly denied Appellant's directed verdict motion because there was direct and substantial circumstantial evidence from which the jury could find Appellant intended to commit murder, or he acted with reckless disregard for human life when he fired shots into a occupied residence at night.

Appellant contends the circuit court erred in denying his directed verdict motion on the attempted murder charges because "the State put forward no direct or substantial circumstantial evidence that Appellant had the specific intent to kill necessary to sustain an attempted murder charge." (Brief of Appellant, p, 9). Appellant's argument presumes a specific intent to kill is mandated by the attempted murder statute.[2] It also ignores the fact the circuit court treated the attempted murder charge as a **specific** intent crime, and found the State had presented sufficient circumstantial evidence of intent to warrant submitting the case to the jury.

A. Standard of Review

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Walker, 349 S.C. 49, 562 S.E.2d 313, 315 (2002). In reviewing a defendant's motion for a directed verdict, the trial judge is only concerned with the existence of evidence, not with its weight. State v. Butler, 407 S.C. 376, 755 S.E.2d 457, 460 (2014) (citation omitted).

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216, 220 (2006). On appeal from the denial of a directed verdict, appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. *Id.* If there is either any direct evidence or any substantial circumstantial evidence reasonable tending to prove the defendant's guilt, appellate courts must find that the trial judge properly

[2]The court and parties proceeded under the assumption attempted murder is a specific intent crime in this case, which is an unresolved issue in South Carolina at this point.

submitted the case to the jury. State v. Cherry, 361 S.C. 588, 606 S.E.2d 475, 478 (2004); *see also* State v. Larmand, 415 S.C. 23, 780 S.E.2d 892, 895 (2015); Walker, 349 S.C. at 53, 562 S.E.2d at 315 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.") (citation omitted).

B. Evidence of Attempted Murder

In 2010, as part of an omnibus crime bill, the South Carolina Legislature enacted the attempted murder statute, and expressly abolished the common law offense of ABWIK. South Carolina Code §16-3-29 provides "[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." S.C. Code §16-3-29 (2015) (emphasis added).

As a threshold matter, Appellant's entire argument is premised on his contention attempted murder is a specific intent crime. To the contrary, the question of whether attempted murder under §16-3-29 is a general or specific intent crime is very much in debate. This Court held it was a specific intent crime in State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), but the South Carolina Supreme Court granted the State's petition for a writ of certiorari on that issue, and heard oral argument on September 7, 2016. If the Supreme Court reverses and holds attempted murder is a general intent crime, Appellant's contention falls, particularly in light of concessions reflected in his brief to this Court.[3]

[3] Appellant's reliance on State v. Sutton, 340 S.C. 393, 532 S.E.2nd 283 (2000) is misplaced. In Sutton, the Supreme Court discussed the common law crime of attempted murder, not the interpretation of a statute enacted in 2010, so Sutton does not apply. While common law "attempt" requires a specific intent to commit a particular crime, the legislature was not bound by the common law "attempt" definition.

Appellant concedes his "use of a shotgun may infer malice, 'a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.'" Brief of Appellant, pp. 11-12 (*quoting* State v. Heyward, 197 S.C. 371, 15 S.E.2d 669 [1941]). He argues, however, an attempted murder charge requires **more** than an inference of malice; rather, he asserts the State must present evidence "of some conduct on the part of the defendant or other circumstances indicating an actual, specific intent to bring about the death of a particular person." Brief of Appellant, p. 12. Appellant's argument turns the concept of implied malice aforethought on its head, and essentially nullifies a significant portion of the attempted murder statute.

While the popular meaning of the term malice is hatred, ill-will, or hostility toward another, the legal meaning, as it relates to murder, does not necessarily require ill-will toward the victim. Heyward, 15 S.E.2d at 671. Thus, by logical extension, the law does not require ill-will toward the particular person a defendant injured, but did not kill. Indeed, as Appellant acknowledges, in comparing assault and battery with intent to kill (ABWIK) to murder, the courts of this state have traditionally concluded the primary difference between the two offenses is whether the victim dies (murder), or does not die (ABWIK), and a specific intent to kill is not required for either offense. State v. Foust, 325 S.C. 12, 479 S.E.2d 50, 51 (1996) (a specific intent to kill is not required for murder, and the logical inference is specific intent in not required for ABWIK).

The attempted murder statute incorporates the ABWIK language "with intent to kill," and "malice aforethought, either express or implied." §16-3-29 (emphasis added). [4] "[M]alice may be implied where the evidence reveals **a disregard of the consequences** of an injurious act,

[4] The Legislature clearly intended to codify the common law ABWIK offense via § 16-3-29 because the statute uses the exact language of the abolished ABWIK offense.

without reference to any special injury that may be inflicted on another person." Huffman v. Sunshine Recycling, LLC, ___ S.C. ___ 790 S.E. 2d 401, 410 (Ct. App. 2016) (*quoting* Law v. S.C. Dep't of Corr., 368 S.C. 424, 629 S.E.2d 642, 649 [2006]) (emphasis added).

Appellant also concedes he "at most, acted with reckless disregard of human life," but in the face of that concession, he argues the State failed to present direct or substantial circumstantial evidence tending to show he "specifically intended to murder the Smiths." Brief of Appellant, p. 12. Again, whether specific intent is required for an attempted murder charge is an unresolved issue, but accepting Appellant's argument essentially nullifies the "implied malice"portion of the attempted murder statute.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature, and the statutory language must be construed in light of the statute's intended purpose. Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 727 S.E.2d 418, 420 (2012). The courts cannot construe a statute in a way which leads to an absurd result, or renders it meaningless. *Id.*; *see also* Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct.App.2004) (the Court should seek a construction giving effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

If firing a shotgun into a dwelling multiple times in the middle of the night, which is **at a minimum** acting with reckless disregard for human life, is insufficient circumstantial evidence to warrant submitting an attempted murder case to the jury, it is difficult to imagine what evidence would suffice to show implied malice aforethought. Interpreting the attempted murder statute to require more renders the implied malice portion of the statute meaningless.

Finally, there was ample evidence in addition to the use of a deadly weapon from which the jury could find Appellant acted with both specific and general criminal intent. Mrs. Mejean testified Appellant was drinking and they were arguing that day, to the extent she felt it necessary to stay at her cousin's home and give Appellant an opportunity to "cool off." Appellant knew Mrs. Smith had been with his wife that afternoon. When he returned home to find his wife and children were not there, it is certainly inferable he believed Mrs. Smith had helped hide his family from him, and went into a rage with the Smiths right next door. After the shooting and being confronted by Mr. Smith, the Appellant fled the scene and evaded authorities until the next day, which can also lead to a ieference of guilty intent. Smalls v. State, 415 S.C. 490, 783 S.E.2d 817, 823 (Ct. App. 2016) (flight has long been considered some evidence of guilt).

Even assuming attempted murder is a specific intent crime, which the State strenuously disputes, there was sufficient direct and circumstantial evidence in this case to support the circuit court's denial of Appellant's directed verdict motion. Accordingly, the circuit court did not abuse its discretion, and its ruling should be affirmed.

CONCLUSION

Based on the foregoing, Respondent submits the circuit court's denial of Appellant's directed verdict motion should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Iinformation in Appellate Court Filings."

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