STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ERIC MEJEAN,

APPELLANT

APPELLATE CASE NO. 2015-001282

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF ISSUE ON APPEAL

The trial court erred reversibly in refusing to grant a directed verdict of acquittal on the charges of attempted murder where the State failed to present any direct or substantial circumstantial evidence that Appellant had the specific intent to kill Tee Smith, Regina Smith, or their daughter.

STATEMENT OF THE CASE

On June 18, 2013, the Greenville County Grand Jury indicted Appellant Christopher Mejean for three counts of attempted murder. R. 238 - 243.

On June 2-4, 2015, Appellant proceeded to trial before the Honorable R. Keith Kelly and a jury. Timothy Sullivan represented Appellant, and Assistant Solicitor Kris Hodge represented the State.

The jury found Appellant guilty of two counts of assault and battery in the first degree and one count of attempted murder. R. 226, l. 6 - 227, l. 13. The trial court sentenced Appellant to fifteen years imprisonment for attempted murder and two terms of ten years imprisonment for the two counts of assault and battery in the first degree. R. 237, l. 20 - 237, l. 8. All sentences were ordered to be served concurrently. *Id.*

STATEMENT OF FACTS

Relevant Facts

On the night of July 1, 2012, Tee Smith his wife, Regina, were asleep in the bedroom of their trailer outside of Pelzer in Greenville County. R. 58, l. 14 - 60, l. 25. At around ten thirty that night, Regina woke up after hearing a loud noise outside. R. 71, l. 13 - 73, l. 11. She then woke up her husband. Tee Smith initially believed that an on-going thunderstorm had simply made his wife nervous. R. 58, l. 14 - 60, l. 25. However, seconds after he woke up, the Smiths hear another loud booming sound. *Id.*

Wooden splinters from the trailer's wall then exploded on to their bed and a nearby picture fell off the wall. Tee Smith then ran into the trailer's living room and saw wood splinters all over the floor in that room as well. *Id.* Fearing that someone was shooting into his trailer, Smith ushered Regina and their daughter into a bathroom and retrieved his pistol. *Id.*

Once in the bathroom, Regina called the police and then called her neighbor, Melissa Mejean. *Id.* Melissa answered the phone and stated that she was at her cousin's house, but that Appellant, her husband might be home. R. 88, l. 11 - 89, l. 23. Smith, armed with the pistol, cracked the front door of his trailer and fired a warning shot into the air. After again checking on his family, Smith left the trailer to assess the damage. R. 59, ll. 8-16. Through the heavy rain and poorly lit rural yard, Smith saw Appellant walking out of his trailer. R. 60, ll. 12-21.

Appellant was walking towards an adjacent storage shed. At trial, Smith claimed that Appellant had "something long" in his hands, "it reminded me of a shotgun." R. 61, l. 23-25. Smith then told Appellant that his trailer had been shot and asked Appellant if he had shot into his trailer. *Id.* Appellant responded, "where my mother fucking bitch at?" R. 60, ll. 12-16. At

his wife's urging, Smith returned to his trailer and waited for the Greenville County Sheriff's deputies to arrive. *Id.* at ll. 17-25.

Approximately hour later, sheriff deputies arrived at the Smith residence. Appellant was not home. R. 64, l. 20 - 65, l. 4. At law enforcement's request, Melissa Mejean returned home and gave police permission to search their trailer. R. 89, l. 6 - 91, l. 16. Melissa explained to police that she did not know where Appellant was and that she had unsuccessfully attempted to contact him after speaking with Regina Smith. *Id.* Melissa also reported to the police that a rifle and shotgun were missing from their trailer. R. 91, l. 4 - 92, l. 20.

Inside the trailer, police found the residence in complete disarray. R. 131, ll. 4-22. While searching, law enforcement found an empty shotgun case and several boxes of shotgun and rifle ammunition. R. 133, l. 18 - 134, l. 18. A search of the yard between Appellant's trailer and the Smith trailer, uncovered three spent shotgun shells matching the brand and type of the boxes found in Appellant's trailer. *Id.*

However, because of the heavy rains, it was impossible for police to determine how long the empty casings had been on the ground. R. 113, l. 1 - 121, l. 5. Appellant returned to his trailer the next morning and was placed under arrest by Sheriff's deputies. R. 164, l. 20-23.

Trial

Both Tee and Regina Smith testified at trial, as did Appellant and Melissa Mejean. Each one testified that their families were friends at the time of the incident and that there was no conceivable reason for Appellant to want to kill any of the Smiths. R. 55, ll. 12-24; R. 66, ll. 1-11; R. 83, l. 22 - 84, l. 24.

Their children regularly played together. Tee Smith and Appellant had hunted together. The families had celebrated Easter together. R. 79, ll. 7-16. Both sets of parents babysat the

others' children on occasion. In fact on the day of the incident, Melissa had taken the Smith's daughter with her to go swimming at Appellant's mother's house. R. 84, ll. 5-24. Melissa Mejean also testified that her family's trailer had gunshot holes above the back door. R. 95, ll. 6-16.

At the close of State's evidence, Appellant moved for a directed verdict on the grounds that the State had failed to present any direct or substantial circumstantial evidence that Appellant had the specific intent to kill any of the Smiths. R. 143, l. 24 - 144, l. 7. The defense also noted that the State had not put forth any evidence suggesting that Appellant was aware that the Smiths were home at the time of the incident or that Appellant had deliberately targeted them. *Id.*

The State countered that the specific intent to kill could be inferred by Appellant using a shotgun, "why would someone fire shotgun slugs into the home of another person if they didn't intend to kill that person?" R. 144, ll. 9-18. Without elaborating on its reasoning, the trial court summarily denied the motion. Defense counsel did not renew the motion for a directed verdict after Appellant's testimony. R. 179, l. 6 - 181, l. 7.

Appellant testified that, on the night of the incident, he returned home from a friend's house to find a man he knew as "Frog" burglarizing his residence. R. 159, l. 12 - 161, l. 23. Appellant stated that he used to buy marijuana from Frog, but stopped when Frog began "messing around with other drugs." *Id.*

When Appellant confronted Frog, Frog armed himself with Appellant's shotgun and ran out of the trailer. Frog fired several shots at Appellant as he escaped through their yard. Appellant gave chase, but was briefly held up when Tee Smith questioned him. *Id.*

Appellant testified that he called his shotgun "my fucking bitch." R. 162, ll. 4-24. Preoccupied with catching Frog, Appellant brushed off Smith and continued pursuit. R. 163, ll. 2-16. Appellant was unable to locate Frog after several hours of searching and returned home to discover that the police were looking for him. R. 164, ll. 5-24.

Despite Tee Smith lying in bed next to his wife when one of the shots entered their bedroom, the jury found Appellant guilty only of the attempted murder of Regina Smith. The jury convicted Appellant of the lesser included offenses of assault and battery in the first degree with respect to Tee Smith and the Smith's daughter. *Id.*

ARGUMENT

The trial court erred reversibly in refusing to grant a directed verdict of acquittal where the State failed to present any direct or substantial circumstantial evidence that Appellant had the specific intent to kill Tee Smith, Regina Smith, or their daughter.

The State put forward no evidence tending to show that Appellant had the specific intent to kill the Smith family. During their testimony, Tee and Regina Smith described their friendship with Appellant and his family. R. 68, l. 20 - 69, l. 11. Beyond the State's allegation that Appellant had shot into the Smith's trailer, 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. R. 144, ll. 9-18.

Directed Verdict

The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *see also State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011). When the State fails to produce ***substantial circumstantial evidence*** that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (*emphasis added*).

The trial court "should grant a directed verdict motion when the evidence *merely raises a suspicion* that the accused is guilty." *Id.* at 586, 720 S.E.2d at 50 (emphasis added) (citation omitted). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *State v. Lollis,* 343 S.C. 580, 541 S.E.2d 254 (2001)).

Specific Intent to Kill

Attempted murder, as defined by statute, requires a specific intent to kill: "[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 Ann. § 16-3-29 (*emphasis added*); *see State v. King*, 412 S.C. 403, 772 S.E.2d 189, 191-193 (2015) ([l]egislature intended the State to prove specific intent to commit murder as an element of attempted murder).

Prior to the passage of statutory attempted murder in 2010, the South Carolina recognized the crime of assault and battery with intent to kill (ABIK) when the defendant was accused of "an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied." *State v. Wilds*, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003). ABIK comprised all of the elements of murder except the death of the victim. *State v. Foust*, 325 S.C. 12, 14, 479 S.E.2d 50, 51 (1996).

ABIK only required a "general intent to kill, which the jury may infer from the use of a dangerous or deadly weapon." *State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27-28 (Ct. App. 2013). By comparison the South Carolina Supreme, while declining to recognize the offense of attempted murder in common law, noted that 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. . . ***Attempted murder would require the specific intent to kill and conduct towards that end.***

State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000) (footnote omitted) (*emphasis added*).

The commission of an act that creates a probability of death or great bodily injury does not, without more, necessarily allow the inference that the actor had the intent to kill. *See* Wharton's Criminal Law Attempt §§ 694-695 (1996) ("to constitute an attempt, there must be an intent to commit a particular crime").[1] As attempted murder is a specific intent crime, to survive a directed verdict the State must present direct or substantial circumstantial evidence that Appellant had the specific intent "to effect the particular criminal consequence which constitutes the completed crime." *Id.* In sum, Appellant had to have the specific intent to kill the Smiths, and evidence that he was acting with reckless disregard for other people's lives was not sufficient.

In opposing the directed verdict motion, the State argued that the use of the shotgun evidenced the intent to kill, this contention misconstrues the evidentiary inference that may be drawn by the use of a deadly weapon. R. 144, ll. 9-18. Appellant's use of the shotgun may infer malice, "a general malignant recklessness of the lives and safety of others, or a condition of the

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[1] Requiring a specific intent to kill precludes a defendant from being guilty of attempted manslaughter as it would require "proof that a defendant *intended* to perpetrate an *unintentional* killing—which is logically impossible." *Com. v. Griffin*, 456 A.2d 171 (Pa. Sup. Ct. 1983)(*emphasis original*).

"Some crimes, such as murder, are defined in terms of acts causing a particular result plus some mental state which need not be an intent to bring about that result. Thus, if A, B, and C have each taken the life of another, ***A acting with intent to kill, B with an intent to do serious bodily injury, and C with a reckless disregard of human life, all three are guilty of murder because the crime of murder is defined in such a way that any one of these mental states will suffice. However, if the victims do not die from their injuries, then only A is guilty of attempted murder; on a charge of attempted murder it is not sufficient to show that the defendant intended to do serious bodily harm or that he acted in reckless disregard for human life.*** Again, this is because intent is needed for the crime of attempt, so that attempted murder requires an intent to bring about that result described by the crime of murder (*i.e.,* the death of another)." *Id.* at 177 *citing*: LaFave and Scott, *Handbook on Criminal Law,* § 59 at 428–29 (1972) (footnotes omitted) (*emphasis added*).

mind which shows a heart regardless of social duty and fatally bent on mischief." *State v. Heyward*, 197 S. C. 371, 15 S. E. 2d 669 (1941).

However, the use of a deadly weapon cannot sustain an attempted murder charge without proof 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. LaFave and Scott, *Handbook on Criminal Law,* § 59 at 428–29 (1972) (footnotes omitted); *cf: Foust*, 325 S.C. 12, 479 S.E.2d 50 (in charging the law of ABIK, court should instruct jurors that "intent may be shown by acts and conduct from which a jury may naturally and reasonably infer intent."); *see also Dennis*, 402 S.C. 638-639, 742 S.E.2d at 27-28.

Appellant, at most, acted with reckless disregard of human life. There was no direct or substantial circumstantial evidence tending to show that Appellant, either by his conduct or the circumstances of the incident, specifically intended to murder the Smiths. There was no testimony that Appellant knew the Smiths were home at the time of the incident. Similarly, there was no testimony or evidence that Appellant bore any ill will or hatred for the Smith family. R. 66, ll. 1-11.

The lack of evidence that Appellant had the specific intent to kill the Smiths was partially reflected in the verdict. The jury found Appellant guilty of assault and battery in the first degree with respect to Tee Smith and the Smith's daughter. R. 226, l. 11 - 227, l. 13; S.C. Code Ann. § 16-3-600(C). Yet, inexplicably, the jury found Appellant guilty of the attempted murder of Regina Smith, despite her being identically situated to her daughter and her husband. R. 226, l. 11 - 227, l. 13.

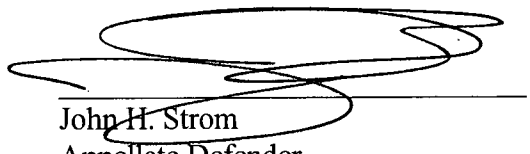
The evidence relied upon by the State does not amount to substantial circumstantial evidence reasonably tending to prove Appellant's guilt, or from which his guilt may be fairly and logically deduced. *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777. Accordingly, the trial court

erred reversibly in refusing to grant a directed verdict of acquittal where the State failed to present any direct or substantial circumstantial evidence that Appellant had the specific intent to kill Tee Smith, Regina Smith, or their daughter.

CONCLUSION

Based on the foregoing reason, Appellant Christopher Mejean respectfully requests that this Court issue an Order of Acquittal on his conviction for attempted murder.

Respectfully submitted,



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This 20th day of October, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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 Information in Appellate Court Filings."

October 20, 2016

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