STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable George C. James, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAYMOND ANGELO SCOTT,

APPELLANT

APPELLATE CASE NO 2016-001560

ANDERS BRIEF OF APPELLANT

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err reversibly by instructing the jury that specific intent as an element of attempted murder "may be inferred when it is demonstrated the defendant voluntarily and willfully committed an act the natural tendency of which is to destroy another person's life?"

STATEMENT OF THE CASE

On May 12, 2016, the Sumter County Grand Jury indicted Appellant Raymond Scott for two counts of attempted murder, one count of armed robbery, one count of possession of a weapon during the commission of a violent crime, and one count of possession of a weapon by a person convicted of a violent crime . R. (Indictments).

On July 18-21, 2016, Appellant proceeded to trial before the Honorable George C. James, Jr. and a jury. R. 1. Timothy Murphy represented Appellant, and Assistant Solicitor John Meadors represented the State.

The jury found Appellant guilty of possession of a weapon during the commission of a violent crime, possession of a weapon by a person convicted of a violent crime, and one count of the lesser included offense of assault and battery of a high and aggravated nature. R. 696, l. 11 – 697, l. 11. The trial court sentenced Appellant to twenty five years imprisonment. R. 707, l. 2 – 708, l. 3.

ARGUMENT

Did the trial court err reversibly by instructing the jury that specific intent as an element of attempted murder "may be inferred when it is demonstrated the defendant voluntarily and willfully committed an act the natural tendency of which is to destroy another person's life?"

On December 29, 2015, Petitioner and Tyrone Williams arrived at Toumey Hospital in Sumter almost simultaneously. Both men sustained multiple gunshot wounds during a shooting at a bar and gambling den Williams owned, "The Manning Avenue Club." However, each man testified to dramatically different versions of the shootings.

Petitioner's Testimony

Petitioner testified that a friend of his named Alphonso Fitzgerald arranged to purchase a large amount of marijuana from Williams. R. 481, l. 17 – 484, l. 25. Fitzgerald also loaned Petitioner money so that Petitioner would be able to buy a pound of marijuana from Williams. *Id.* For unknown reasons, Fitzgerald did not inform Williams that Petitioner would be joining him for the drug purchase.

Petitioner and Fitzgerald set out from Charleston on the morning of December 29th. They stopped briefly at Petitioner's girlfriend's house in Clarendon County. *Id.* While there Fitzgerald called Williams to confirm the marijuana purchase. *Id.* Once the purchase was confirmed, Fitzgerald and Appellant drove to Williams' Manning Street Club.

Williams and his friend, Walter Brunson, were already at Williams' establishment when Fitzgerald and Appellant arrived. R. 486, l2 – 487, l. 15. Williams also had his five years old son, Minor, with him. After a brief introduction, Williams was visibly disturbed by Appellant's unanticipated presence at the drug deal. R. 488, l. 15 – 490, l. 2. Williams and Appellant had never met. Williams was immediately suspicious of Appellant, going so far as to accuse him of being a police officer. *Id.*

Williams started behaving with even more hostility when Appellant asked him why Williams thought it was suitable to bring his young son to a drug deal. *Id.* Appellant recalled at trial that this question, "[i]t changed the whole vibe. You feel me. Everything changed, the whole atmosphere, the whole vibe of this, you know, situation changed." R. 487, ll. 5-15.

In an effort to diffuse Williams, Appellant grabbed a Mistic soda from a nearby cooler and gave Williams, who was sitting in the middle of club between two pool tables, a five dollar bill. As Williams handed Appellant his change, he pulled out a pistol and shot Appellant in the chest without warning. R. 490, l. 6 – 495, l. 19. The force of the shot knocked Appellant to the floor. *Id.*

Fitzgerald, who had been standing behind and to Appellant's side talking to Brunson, returned fire with his pistol. *Id.* After falling on the floor Appellant began crawling to the door trying to flee Williams and get out of the gambling den. Appellant also pulled out a .38 revolver and began shooting at Williams. R. 469, l. 1 – 499, l. 24.

Fitzgerald helped Appellant out of the building and drove him to Toumey hospital. *Id.* Appellant declined to have Fitzgerald help him into the hospital as he did not want Fitzgerald to get arrested. R. 500, l. 1 – 501, l. 9. With help of two bystanders and a wheelchair, Appellant was able to get to the emergency room for treatment. *Id.*

When first interviewed by police, Appellant lied and claimed that he was shot by an unknown group of assailants that he had come across while walking on a dirt road in Clarendon County. R. 504, l. 7 – 512, l. 15. At trial, Appellant freely admitted that he did not trust law enforcement and had no intention of telling law enforcement how he had been shot. *Id.* Appellant's version of events never changed, despite a caustic and prolonged cross-examination by Senior Assistant Solicitor John P. Meadors. *Id.*

Tyrone Williams' Testimony

Williams was the State's most important witness. At the onset of his testimony, Williams admitted that gambling regularly occurred at the Manning Avenue Club and that he had "been in a little bit" of legal trouble. R. 220, ll. 2-25. In fact, Williams further admitted that there had been gambling at the Manning Avenue Club the night before shooting. *Id.*

At trial, Williams would claim that he arrived at his club around noon to clean up from the night before. R. 223, l. 1 – 225, l. 17. Minor was with him. While he was cleaning, Walter Brunson, a longtime friend of Williams, stopped by while he was running errands. The men chatted briefly before Brunson left. *Id.* Sometime later, Brunson returned to continue talking with Williams. *Id.*

Williams alleged that shortly after Brunson returned to the club, two men walked in. R. 226, l. 4 – 229, l. 19. Williams claimed the men looked out of place because they were wearing black hoodies on a hot day. Williams was also suspicious because he did not recognize the men and they spoke with a Geechee-Gullah accent particular to the low country. *Id.* Petitioner would identify one man as Appellant, but never identified the second man, whom he described as very light skinned almost an albino. *Id.*

Williams averred that he began talking to the two men, who asked him odd questions about his business. *Id.* According to Williams, Appellant then asked for something to drink, Williams directed him to a cooler where Appellant picked out a Mistic soda. Appellant then walked over to the bar area where Williams was standing next to a glass jar that served as his cash register. *Id.*

Appellant paid Williams with a five dollar bill. Immediately after Williams handed Appellant his change, Appellant pulled out a gun and demanded Williams hand over money. R. 234,

l. 3 – 237, l. 14. The second man also pulled out a gun and struck Brunson with it, knocking him to the floor.

Despite having a gun pointed at him and having over three thousand dollars in his pocket, Williams claimed that he first told Appellant that he did not have any money. *Id.* As Williams said this, the second man began shooting. Williams alleged that after the second man opened fire, Appellant began shooting him. *Id.*

Scared by the gunfire, Minor ran to Williams. According to Williams, Appellant continued to shoot at Williams even after Minor ran to him. R.247, l. 3 – 251, l. 25. Williams was shot four times with a .38 caliber gun, .38 caliber shell casings were recovered from the crime. While Williams denied having a gun, police also discovered multiple .45 caliber shell casings in the middle of the floor and the wall having the door that Appellant and the second man fled out of was covered in .45 caliber shell holes. R. 363, l. 21 – 386, l. 11.

An ambulance ultimately took Williams to Toumey. Brunson was not shot during the incident and did not attempt to call the police before the fleeing the club. R. 308, l. 20 – 312, l. 9. Thankfully, Minor was not injured. Once at the hospital, Williams told police his version of events, leading police to further question and ultimately arrest Appellant.

Jury Instructions

Appellant received jury instructions on self-defense. R. 587, ll. 1-22. The court also agreed to charge the lesser included offenses of assault and battery of a high and aggravated nature with respect to the attempted murder of Williams. R. 589, l. 1 – 595, l. 7. The court also charged the lesser included offense of assault and battery, first degree, with respect to the attempted murder of Minor. *Id.* Defense counsel declined instructions of the lesser included offenses of assault and battery, second degree. *Id.*

At the beginning of the charge conference, the trial court asked the State, "[w]hat is the evidence . . . that [Appellant] had the specific intent to kill" Minor? R. 576, ll.5-15. The State responded that it believed the specific intent to kill could be proven by Appellant having continued shooting at Williams despite Minor running to Williams. *Id.* at ll. 16-22.

The Court analogized this purposed definition of specific intent as similar to the definition of malice found in *State v. Mouson*, 3626 S.C. 199, 485 S.E.2d 918 (1997); R. 580, l. 18 – 581, l. 22. Specifically the court concluded:

> The only part about malice that I have a question about in this case, and I'm – this may dovetail into the depraved heart charge that the State wants. We haven't gotten to that yet. Keeping in mind that attempted murder is a specific intent crime. There may [be] an issue with the second page of attempted murder, the second paragraph that says malice may be inferred from conduct showing a total disregard for human life. That's kind to *Mouzon* situation, which was the horribly reckless operation of a motor vehicle.

Id. Defense counsel objected to this "inferred specific intent" charge. R. 581, ll. 9-10. Following closing argument, the trial court instructed the jury as follows:

> Now, Ladies and gentlemen, in the context of attempted murder, when I mention the word specific intent, the word intent means intending a particular result to occur. It means not accidently or not involuntarily. An intent again may be shown by acts and conduct of the defendant [and] other circumstances from which you may naturally and [reasonably] infer intent. Evidence of the character of the act, the purpose to be accomplished and resulting wounds or injuries may be considered by you if at all, in determining the intent with which the act was committed.
>
> **Now, ladies and gentlemen, intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully committed an act the natural tendency of which is to destroy another person's life, as long as the State has proven to you beyond a reasonable doubt that the defendant acted with a specific intent to kill.**

R. 659, l. 13 – 660, l. 6. Following the jury verdict, defense counsel renewed all of his objections. R. 700, l. 5 – 701, l. 12.

Discussion

Appellant objected to the trial court's decision to charge the jury that specific intent to kill may be inferred from an act of "such recklessness and wantonness as to indicate a depravity of mind and disregard of human life." R. 580, l. 18 – 581, l. 22. This charge was a misstatement of the law regarding attempted murder, specific intent, and malice. Accordingly, the trial court erred in giving the instruction.

At the root of the error is the trial court's conflation of malice and specific intent. 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*).

Contrary to the trial court's ruling, the statute defining attempted murder requires a specific intent to kill. *State v. King*, 412 S.C. 403, 772 S.E.2d 189, 191-193 (Ct. App. 2015) ([l]egislature intended the State to prove specific intent to commit murder as an element of attempted murder, therefore trial court erred by charging that attempted murder is a general intent crime).

Even prior to the passage of statutory attempted murder in 2010, the South Carolina Supreme Court, while declining to recognize the offense of attempted murder, 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*).

Malice is defined as the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. *Tate v. State*, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002); *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998); *State v. Johnson*, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987). Malice and specific intent are separate elements of attempted murder.

By charging jurors that they could infer specific intent to kill if "the defendant voluntarily and willfully committed an act the natural tendency of which is to destroy another person's life," the trial court effectively reduced attempted murder to a general intent crime, identical to the former crime of assault and battery with intent to kill. *See State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996) (holding that intent to kill for ABWIK "may be shown by acts and conduct from which a jury may naturally and reasonably infer [general] intent.").

. "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Mattison,* 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) "A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues." *State v. Lee-Grigg*, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). A trial court commits reversible error where it fails to give a requested charge on an issue raised by the evidence. *Id.* at 406, 649 S.E.2d at 50.

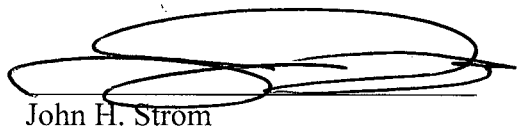
Appellant was prejudiced by the trial court's improper jury instruction because it reduced and diluted one of the key elements that the State had to prove in order to convict Appellant. Further, there was evidence that Appellant acted in self-defense.

Accordingly, it cannot be said, beyond a reasonable doubt, that the improper charge allowing jurors to "infer" specific intent to kill if "the defendant voluntarily and willfully committed an act the natural tendency of which is to destroy another person's life" did not

impact the verdict. The failure to correctly charge the jury that attempted murder requires a specific intent to kill requires reversal. *See State v. Lee-Grigg*, 374 S.C. 388, 414, 649 S.E.2d 41, 55 (Ct. App. 2007) (for harmless error, courts must determine beyond a reasonable doubt the error complained of did not contribute to the verdict").

CONCLUSION

For the reason set forth above, Appellant Raymond Scott requests that this Court reverse his conviction and remand this case for a new trial.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of June, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Honorable George C. James, Circuit Court Judge

THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Raymond Angelo Scott states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge George C. James, which was held on July 18 - 21, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Raymond Angelo Scott.

Respectfully Submitted,

John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of June, 2017.

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IN THE COURT OF APPEALS

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictments; and
(2) Trial Transcript July 18-21, 2016.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 19, 2017

John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

June 19, 2017.

John ~~H. Strom~~
Appellate Defender

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