STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE # 2013-002304

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767. On October 14, 2013, appellant was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented appellant. R. 1. The jury convicted appellant. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. This appeal follows.

ARGUMENT

1.

The trial court erred in refusing to charge the jury on the lesser-included offense of first-degree assault and battery.

Relevant Facts

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Orienthal James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him $26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver drugs and agreed with the solicitor that his intention was "to rip [Young] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 11. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 511, l. 9 – 512, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified appellant as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw Charley come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Appellant was Ycedra's second cousin and she did not identify appellant as being with Charley in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long claimed he found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He claimed a person who "undoubtedly was laying in the ditch beside the van" stood up and faced him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him

their hands. R. 324, ll. 14 – 21. Officer Long claimed the person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the vehicle and notify the other officers. R. 325, ll. 1 – 17. He claimed a camera in his vehicle was not working. R. 325, ll. 1 – 6. Officer Grenier pulled his vehicle in front of the van to box it in. R. 325, ll. 18 – 23. The van stopped. R. 325, ll. 18 – 25. The police claimed they found appellant driving the car and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense. R. 576, ll. 1 – 10. On direct-examination, Charley testified that he told appellant he would pay him to drive Charley and a man named Rico that night. R. 584, l. 5 – 585, l. 11. Charley told appellant he was "going to see some girls." R. 585, ll. 23 – 25. Charley never told appellant anything about a shooting, or guns, or his dispute with Young. R. 586, ll. 1 – 13.

While appellant waited in the van, Charley and Rico went to Young's trailer. R. 590, l. 3 – 591, l. 7. Charley heard Young shout. R. 591, ll. 14 – 19. Young opened the door of the trailer and fired two shots in the air. R. 592, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 592, ll. 9 – 21. Charley ran. R. 592, ll. 24 – 25. Rico shot at the trailer. R. 592, l. 17 – 18. When Charley got into the van, he said the police pulled up "within five seconds." R. 593, ll. 16 – 23. Appellant was still in the van when Charley returned. R. 593, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 601, l. 21 – 604, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R.

604, ll. 4 – 6. The solicitor accused Charley of "double-crossing the State." R. 604, ll. 15 – 19.

Only after the solicitor's accusations of a double-cross and mentioning his plea deal did Charley recant his direct-examination testimony and implicate appellant in the shooting. R. 605, ll. 13 – 631, l. 24. Under intense questioning from the solicitor, Charley claimed appellant was with him at the scene of the shooting and that there was no "Rico." R. 605, l. 13 – 611, l. 25.

However, Charley was adamant that Ycedra and her brother were not in the house at the time of the shooting. R. 615, ll. 8 – 23. Charley testified that he knew they were not there because the van that Ycedra drove was not in the yard. R. 615, ll. 8 – 23. Charley testified he had no "beef" with Ycedra and no "beef" with Joseph. R. 615, l. 24 – 616, l. 5. When asked why he would have "shot the whole house up not caring about whether they lived or died," Charley responded, "I can't say I was not caring about whether they lived or died. He shot, so I shot in the air, that's how it happened." R. 616, ll. 6 – 11. Charley claimed appellant shot, but did not know the direction that appellant fired. R. 618, ll. 9 – 13. When shown a picture of the trailer, Charley explained that the bullet holes could have come from inside the trailer. R. 627, ll. 4 – 21.

Discussion

After the trial court charged the jury, appellant placed his earlier objections at a bench conference on the record. R. 713, l. 14 – 716, l. 15. Appellant requested the lesser included offense of first-degree assault and battery. R. 716, ll. 5 – 15. Appellant argued "there's been no testimony of any injuries with any of the people inside this home." R.

716, ll. 5 – 15. Appellant pointed out that no physical evidence matching the guns was found. R. 716, ll. 5 – 15.

In response, the State argued that appellant was entitled only to a charge on attempted murder because the "two theories that were posited were either that he was totally not present and unaware of this and had absolutely no involvement, criminal involvement at all or he was completely involved in it." R. 716, ll. 18 – 25. The trial judge denied the request for the lesser included offense because "[a]ll the evidence in this case" showed that appellant "shot up a mobile home with the intent to kill an individual who was within the home. . . ." R. 717, ll. 15 – 23. The court added, "The evidence is devoid of any lesser included offense indicia." R. 718, ll. 5 – 6.

The trial judge erred because no one in the trailer was injured. A person can be guilty of first-degree assault and battery if the person unlawfully "offers or attempts to injure another person with the present ability to do so, and the act . . . is accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600(C)(1)(b)(i). From the plain language of the statute, first-degree assault and battery does not require an injury. Id. It is enough that the defendant "offer" or "attempt to injure." Id. Furthermore, one can be guilty even if the means used are likely to produce death. Id.

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the

facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

Viewing the facts in the light most favorable to appellant, the jury could have found that appellant lacked malice, but used means likely to produce death. No one in the trailer was injured. Charley testified that he was not sure of the direction appellant fired. Charley also testified that Young fired first. R. 592, ll. 2 – 6. The trial judge mistakenly accepted the solicitor's argument that there was "no middle ground." R. 717, ll. 2 – 3. Under the "any evidence" standard, the jury could have concluded that appellant did not possess malice, especially considering that no one was injured and Young fired first. This Court should reverse appellant's convictions and grant him a new trial.

2.

The trial court erred in charging the jury on the doctrine of transferred intent.

Because attempted murder requires specific intent, the trial court erred in charging transferred intent. State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015) *cert. granted* Mar. 28, 2016. Appellant objected to the trial court's charge on transferred intent. R. 713, l. 18 – 714, l. 7. The State requested the charge. R. 714, ll. 8 – 21. Appellant argued:

> We object to the transfer[red] intent charge. Generally speaking, transferred intent is, is—I understand it is shooting at a specific person and missing and hitting another. I don't believe that the facts of this case support that charge. You know, here I think it's stated that the theory of malice just because there is a shooting. And we would respectfully object to the transfer[red] intent charge, Your Honor.

R. 713, l. 23 – 714, l. 7. The trial court granted the State's request to charge transferred intent over appellant's objection, noting that appellant was accused of shooting into a house with people "he did not know were there." R. 714, ll. 8 – 21. The trial judge explained that "the Court was concerned that the jury may believe, after charging that intent is necessary, that the defendant had no intent to harm those individuals." R. 714, ll. 8 – 21.

In King, this Court held that the attempted murder statute requires the State to prove the defendant acted with the specific intent to kill. King at 407-11, 772 S.E.2d at 191-93. The Court relied on the language used by the Legislature when it enacted the attempted murder statute. Id. The Court also relied on State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) in which the Supreme Court refused to recognize a separate offense of attempted murder and stated that attempted murder would require specific intent. Id.

Because attempted murder requires the State to prove specific intent, the trial court erred in charging that any intent appellant had to kill Young could be transferred to other people. This error is magnified in the factual situation presented here because, as recognized by the trial court, the evidence did not show that appellant was aware that anyone was inside of the trailer. Charley testified that no "beef" existed with respect to the other two occupants of the trailer. The transferred intent charge allowed the jury to find appellant guilty of attempted murder as to Ycedra and Joseph without requiring the State to prove that (1) appellant knew they were in the trailer; and (2) appellant intended to kill them as well as Young.

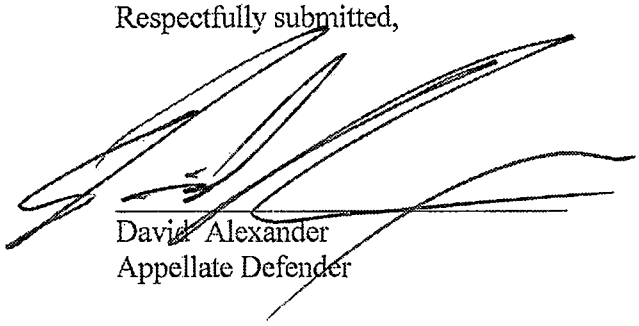
Furthermore, the transferred intent doctrine does not apply to attempt crimes. State v. Hinton, 630 A.2d 593, 600-02 (Conn. 1993). See also People v. Smith, 124 P.3d 730, 739-40 (Cal. 2005) ("The mental state required for *attempted* murder is further distinguished from the mental state required for murder in that the doctrine of 'transferred intent' applies to murder but not to attempted murder."). In Connecticut, attempted murder requires specific intent. Hinton, 630 A.2d at 601. "Transferred intent is not needed, however, to insure that a defendant is prosecuted for attempted murder." Id. at 600-02. "A defendant can still be prosecuted for his intent to kill and conduct aimed at killing the intended victim whether a third party is killed **or no one is even injured.**" Id. (emphasis added). "The doctrine of transferred intent, generally considered a necessary fiction, is therefore not necessary to prosecute for attempted murder a defendant whose aim was poor." Id. The Hinton court further reasoned that the rule of lenity required this result. Id. See also State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.").

Just like in Hinton, South Carolina's version of attempted murder requires specific intent and South Carolina uses the rule of lenity. Therefore, this Court should apply the reasoning of Hinton to this case and hold that South Carolina does not apply transferred intent to attempted murder. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

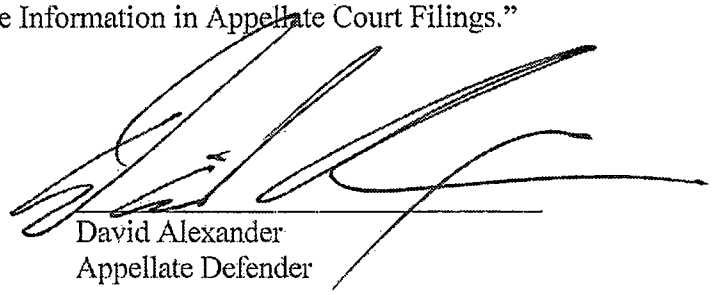
ATTORNEY FOR APPELLANT

This 5th day of May, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the 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."

May 5th, 2016



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of May, 2016.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.