

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Berkeley County

John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM GUY SHUMPERT,

APPELLANT

APPELLATE CASE NO 2017-001713

RECEIVED

FINAL BRIEF OF APPELLANT

OCT 16 2018

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motions for directed verdicts of acquittals on the weapon and attempted murder charges because the defense of legal impossibility applied in the case, and because the evidence failed to establish specific intent with respect to the attempt charges as the gun used was inoperable and could not fire gunshots.

STATEMENT OF THE CASE

Appellant William Guy Shumpert was convicted of possession of a weapon during the commission of a violent crime and two counts of attempted murder per jury trial held during the August 2017 term of the Spartanburg County General Sessions Court before Judge John C. Hayes. Debra Littlejohn and Julie Shivers represented appellant at trial, and Assistant Solicitors Benjamin Dennis and Bart Stegall appeared on behalf of the state. Appellant was sentenced to imprisonment for an aggregate term of seventeen years.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motions for directed verdicts of acquittals on the weapon and attempted murder charges because the defense of legal impossibility applied in the case, and because the evidence failed to establish specific intent with respect to the attempt charges as the gun used was inoperable and could not fire gunshots.

At trial, State's witness Faye Boone testified that she allowed appellant to live with her in her apartment in 2015, and that on November 26, 2015, she returned to her apartment after having eaten Thanksgiving dinner with her son and found appellant and liquor bottles everywhere inside the apartment. Boone stated that shortly thereafter, her friend Karen came over, and that after Karen entered, appellant grabbed Karen and shoved her into a wall. Then, Boone stated that when she threatened to call 911, appellant went outside and came back inside with a gun and pointed the gun at her (Boone) and pulled the trigger, and then pointed the gun at Karen's stomach and pulled the trigger. R. 17, l. 6 – R. 28, l. 22.

Karen Clarkson testified at trial and verified Boone's account of the events that occurred on the date in question. Clarkson stated that appellant choked her and threw her up against the wall on that evening, and that he then left briefly, but returned with a gun, which he pointed at her head and stomach and kept pulling the trigger while he was pointing the gun at her. R. 54, l. 17 – p. 65 l. 4.

Appellant was subdued and arrested when local police arrived on the scene.

Before the state rested its case, firearm examiner Tracy Thrower testified with respect to the condition of the gun used by appellant in the case. Thrower stated that the gun did not fire during her testing. R. 209, l. 1-6. Thrower explained that the gun was a .22 long rifle caliber weapon, and that when she test fired it, she noticed a broken crack between the hammer and the

back strap of the frame, and that after twelve tries (six times as double action), the gun would not fire. R. 196, l. 1 – R. 197, l. 12; R. 206, l. 4-9; R. 204, l. 2-11. Thrower added that at no point during her testing did the gun ever fire when the trigger was pulled, and that the gun did not operate when the hammer was pushed off. R. 204, l. 2-14; R. 208, lines 3-8. Thrower concluded that she could not pin point why the weapon did not work, and noted that the gun's firing pin was stuck in a forward position and that the spring inside the gun did not work. R. 206, l. 10 – R. 208, l. 4.

At the close of the state's case, defense counsel moved for directed verdicts on the charges because there was insufficient evidence of any attempt to kill via a specific intent to kill because the gun could not and did not fire at neither Boone nor Clarkson. A possible inference was that appellant merely meant to scare the women. R. 213, l. 9 – p. 216, l. 18. The Court denied the directed verdict motions. R. 216, l. 19-25.

Appellant did not testify at trial or present witnesses on behalf of the defense.

The defense of legal impossibility was applicable in the case. The defense of impossibility refers to circumstances which render the attempt unsuccessful, i.e. where the impossibility of a defendant's successfully committing a crime eliminates the culpability of his having tried to do so. United States v. Frazier, 560 F.2d 884 (1977) To use this defense to an attempt prosecution, the circumstances must be such as to render successful completion of the crime "legally" impossible. United States v. Frazier, supra. Legal impossibility addresses those situations in which the intended acts, even if successfully carried out, would not amount to a crime. United States v. Frazier, supra. Here, appellant could not have committed any attempted murders because the gun used could not (and did not) fire as the gun was an inoperable gun that did not function properly. The gun was

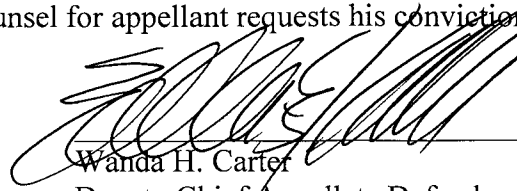
incapable of shooting bullets. Simply put, the gun did not work. Thus, it was not legally possible for appellant to have committed the two counts of attempted murder charged against him.

Moreover, the mens rea of an attempt crime is one of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime, i.e., that the actor consciously intended the completion of the act comprising the inchoate offense. State v. Reid, 383 S.C. 285, 679 S.E.2d 194 (2011). Appellant could not have formulated the specific intent required for guilt on the attempted murder charges because the gun was inoperable, which in turn bore on the same as he acted out this event of pulling the trigger of an inoperable gun. He surely knew this. This behavior could not constitute specific intent to kill; and therefore, appellant was not guilty of the two attempted murder charges. See State v. King, 2017 WL 4800004 (filed October 25, 2017---hearing denied March 9, 2018), where the Court held that attempted murder requires proof that the defendant possessed a specific intent to kill as interpreted under S.C. Code Ann. Section 16-3-29. In King, supra, the Court held that specific intent means that the defendant consciously intended the completion of acts comprising the attempted offense. The King Court cited to Keys v. State, 104 Nev. 736, 766 P.2d 270 (1988), where the Court held that an attempt is a failure to accomplish what one intended to do. Clearly, appellant was not guilty of the two attempted murder charges as there was not specific intent to kill; and note further that appellant was not guilty of the possession of a weapon charge because the gun was inoperable and hence was not a weapon within the definition of what would constitute a weapon.

Clearly, the state did not present sufficient evidence of proof beyond a reasonable doubt of all elements of all offenses charged against appellant. See Jackson v. Virginia, 443 U.S. 307 (1979). A judge should grant a directed verdict motion when there is a mere suspicion that the accused is guilty. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2007).

CONCLUSION

Based on the foregoing argument, counsel for appellant requests his convictions and sentences be vacated.



Wanda H. Carter
Deputy Chief Appellate Defender

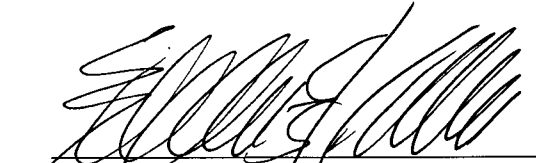
ATTORNEY FOR APPELLANT

This 16th day of October, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

October 16, 2018



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