

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES CALEB WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2017-001601

RECEIVED

FINAL BRIEF OF APPELLANT

AUG 21 2018

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict on attempted murder counts where the state failed to present any direct or substantial circumstantial evidence appellant specifically intended to shoot anyone, since the judge's reasoning that appellant was guilty if anyone was shot in the parking lot that night, because he admitted he shot a gun, was erroneous as to the charge of attempted murder that appellant was ultimately convicted of committing?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for the offenses of two counts of attempted murder, and possession of a weapon during a violent crime. R. 310 – 312. Appellant's case was called to trial on July 17, 2017, before the Honorable Howard King, and a jury. Calvin Hasty represented appellant. Tyler Brown was the assistant solicitor.

On July 19, 2017, the jury found appellant guilty of the attempted murder of Ashley R., but not guilty of the attempted murder of Malik Myers. The jury also found appellant guilty of possession of a weapon during a violent crime. R. 303, ll. 6-16. Judge King sentenced appellant to fifteen years imprisonment, suspended upon the service of ten years, and five years probation. R. 304, ll. 7-14.

This appeal follows.

STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘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.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The court erred by refusing to direct a verdict on attempted murder counts where the state failed to present any direct or substantial circumstantial evidence appellant specifically intended to shoot anyone, since the judge's reasoning that appellant was guilty if anyone was shot in the parking lot that night, because he admitted he shot a gun, was erroneous as to the charge of attempted murder that appellant was ultimately convicted of committing.

Introduction

There was no substantial circumstantial evidence that appellant shot Ashley R., or that he specifically intended to attempt to murder her. The same was true of Malik Myers, and the jury acquitted appellant of that attempted murder. R. 303, ll. 6-16. Given this record, if appellant did not intend to shoot Malik Myers, it is hard to fathom how the judge thought there was substantial circumstantial evidence appellant attempted to shoot and kill Ashley R. Malik Myers, after all, had already been sentenced for him shooting a gun at the May 2, 2015, teen party at the Club Cream in Sumter and seemingly attempting to kill Ashley R. Further, Malik essentially refused to implicate appellant in any manner in his testimony before the jury in this case.

Ashley R. would testify that Malik apologized to her after she was shot -- almost all inferences from the record being that she was shot -- accidentally. If appellant discharged his gun that night in a negligent or irresponsible manner, the correct charge was not attempted murder. The proper charge fitting the facts of this case was likely ABHAN.

Relevant Facts

Lead Corporal Joseph Jones was dispatched to a shooting in the area of the Club Cream in Sumter -- at a "teen party" -- in the early morning hours of May 2, 2015. R. 19, l. 4 -- 23, l. 24. Jones remembered that reserve officer Steve Bickford "happened to be in the area right there

on Rast Street, Bultman Street area of Club Cream. And he came across where he was staying at and saw a bunch of people running from the parking lot. . . .” R. 22, ll. 16-26. Fifteen-year-old Ashley R. was crying. She had been shot in the leg. R. 23, l. 26 – 24, l. 8.

Jones remembered seeing a large “group of people” outside, and “EMS was on the way to pick up Ms. R. . . .” R. 24, ll. 13-19. Jones remembered finding six shell casings at the scene. Only one gun, a Springfield .40 caliber pistol was found in the area, even though it was undisputed there was more than one shooter. R. 34, ll. 4-23.

As will be seen infra, it was undisputed that Malik Myers was also shooting his gun that night. Appellant would later testify that Malik and appellant were not the only persons who fired a gun that evening in the parking lot at the teen club. R. 194, l. 23 – 197, l. 21. Defense counsel renewed his motion for a directed verdict at the conclusion of the defense case following appellant’s testimony. R. 212, l. 13 – 213, l. 19.

Chelsea Rogers was nineteen-years-old at the time of appellant’s trial. R. 37, l. 24 -- 38, l. 5. Chelsea admitted she did not want to testify during appellant’s trial. R. 38, ll. 8-11.

Chelsea stated on May 2, 2015, that she went to the Club Cream for a teen party in Sumter. Describing a teen party, Chelsea said: “I guess it’s where a lot of teens get together, you know, have fun, but something bad always ends up happening.” R. 38, ll. 18-21.

Chelsea said that Malik Myers was a friend but he did not go with her to the teen party that night. Chelsea and her friends arrived at the teen party at about eleven o’clock, They were “dancing and having fun” when she saw there was a problem on the other side of the club. R. 39, l. 18 – 40, l. 4.

Chelsea remembered talking to Malik, “and he said he was going to leave with me.” They all walked out of the club. Chelsea was walking to her car, and Malik was a behind her.

“When we got over there to the car, I heard a gunshot from over there . . . I heard another gunshot, and then I heard another one come back from where everybody was at.” Chelsea said she did not see Malik with a gun that night, and Malik ran in the opposite direction of the gunfire “to where his friends were.” R. 40, l. 18 – 44, l. 18.

Chelsea said that the solicitor’s office eventually contacted her mother, and they asked her to come to the courthouse to see the solicitor. Chelsea remembered, “They wanted me to be a witness to something that happened at the club that night.” R. 48, ll. 3-24. Chelsea again said she wanted no part in this trial. R. 49, ll. 3-4. Chelsea offered that she had never met Appellant James Williams. R. 53, ll. 9-17.

Ashley R. was fifteen-years-old at the time of the teen party at the Club Cream on May 2, 2015. R. 68, l. 11 – 69, l. 15. She arrived at the teen party between ten and eleven o’clock. She was still at the club when it was closing at two a.m. R. 69, l. 16 – 70, l. 21.

Ashley remembered after leaving the club she was going to the nearby McDonalds to “see a fight” between two girls. R. 71, l. 7 – 72, l. 6.

When she was walking into the parking lot “up to a car, they said fight, gun, shooting. That’s when -- by the time I could duck down, feel (sic) like a bee sting. I touched my leg, and started to panic.” R. 72, ll. 2-12. Ashley said she looked around and saw Malik Myers. “But I seen him shoot after -- I seen the other like two -- two shots before he shoot (sic), that’s when I duck down . . .” “I seen Malik with a gun, that’s when I heard the -- before he shoot (sic), I heard like two more, two or three gunshots before he shoot. (sic). He shoot. (sic).” R. 72, l. 2 – 73, l. 10.

Ashley estimated four or five shots were fired before she realized she had been shot in the leg, and was bleeding. R. 74, l. 9 – 76, l. 4. Ashley was treated at Tuomey Hospital in Sumter.

The bullet was removed from her leg. R. 75, l. 19 – 77, l. 14. Ashley told the police that she was shot by an unknown black man. She said Malik Myers “came to me and apologized to me afterwards. That’s how I get (sic) to know him.” R. 78, ll. 7-17.

On cross-examination, Ashley repeated that Malik Myers apologized to her. Ashley said she was not sure whether Malik was apologizing because he shot her, but Ashley said after Malik apologized, “I said, ‘You good, I’m not mad at you.’ He said, ‘Okay.’” R. 85, l. 12 – 86, l. 7. Ashley said she heard there were at least two people shooting guns that evening. R. 88, ll. 9-13.

Malik Myers testified that he pled guilty to ABHAN for the shooting incident in this case. He was seventeen-years-old at the time of the May 2, 2015 teen party. R. 54, l. 3 – 56, l. 20. Myers essentially disavowed his statement to the police, telling the solicitor, “Man, I just came from a hospital, man. I wasn’t thinking right when I was writing my statement. . . . it wasn’t no altercation. It was just some words.” R. 59, ll. 2-9.

Malik said he had his .38 revolver with him that evening “because anything could have happened after the club.” R. 62, ll. 2-19. As for appellant, Malik Myers said: “I don’t know whether James Williams was shooting or not. I’m just saying -- I -- you telling me -- I just know I got shot. You’re saying he’s the shooter. I’m telling you I didn’t know he was shooting. That’s what this statement said.” R. 65, ll. 2-14. Myers testified he was shot in the leg, and he repeated he did not know if appellant was the person who fired the gun where the bullet ultimately wounded his leg. R. 66, ll. 5-23.

SLED agent Michelle Eichenmiller was qualified as an expert in ballistics and firearms. R. 112, ll. 1-9. She testified “in my opinion, those cartridge cases [found at the scene] were fired by the firearm.” The firearm was a Springfield model XD .40 Smith and Wesson. R. 117, l. 25 – 118, l. 10.

As to the bullet removed from Ashley R.'s leg, the SLED agent could only say that "the comparisons were inconclusive with the test fired bullet from the Springfield and the evidence bullet that was submitted. R. 118, l. 11 – 120, l. 3; R. 122, ll. 12-22. Inconclusive does not rise to the level of substantial circumstantial evidence, and there was no evidence appellant intended to shoot and kill Ashley.

Detective Nathalie Kelly testified that Malik Myers told her that appellant shot at him and hit him in the leg. Malik said: "I pull out the .38 gun I had and shot back." R. 142, l. 19 – 143, l. 15.

Defense counsel moved for a directed verdict, arguing Malik Myers was not sure who shot him and the same was true for Ashley R. Defense counsel said the state had not carried its burden of proof. R. 159, l. 22 – 160, l. 7.

The solicitor argued that the impeachment evidence of Malik Myers and other witnesses revealed appellant shot first. He also claimed there was "strong evidence" that appellant shot Ashley R. "And also **just specifically because he was not shooting directly at Ashley**, I would point out that we're proceeding **under transferred intent** and we do believe that he was firing his gun with malice and the bullet struck Ashley R." R. 160, l. 13 – 161, l.6. (emphasis added).

The judge said his duty under Rule 19, SCRCrimP, when ruling on a directed verdict was to determine whether there was "competent" evidence mandating that the case should go to the jury. The judge ruled that his recollection of the testimony was that "Mr. Williams, fired first and was firing at both Mr. Malik Myers **and that by transferred intent**, at the other victim in the case." (emphasis added). The judge said there was both direct and circumstantial evidence, and he was therefore not going to direct a verdict. R. 161, l. 10 – 162, l. 13.

During the defense case, Qawiyy McFadden testified that he went to the teen party on May 2, 2015, and he got together with appellant there. R. 164, l. 8 – 165, l. 12.

They left the club at about one a.m., and went to appellant's Mustang. R. 165, ll. 2-24. McFadden said it was crowded at the club when the shooting occurred. McFadden testified: "I seen everybody coming out of the club, so I got out of the car to see what was the next move for the night. And then mix up -- the shots started going off when I was out of the club. I seen James go like towards the back of his car and by maybe the first five shots, I was already hit. And I didn't know what else happened." McFadden said he did not see appellant shooting when these bullets were flying. R. 166, l. 7 – 169, l. 19.

McFadden was shot in the ear near appellant's green Mustang. R. 166, l. 7 – 169, l. 19. McFadden stated he was not sure if Malik Myers was charged with shooting him. R. 171, ll. 10-12.

Crime scene investigator Amanda Snapp testified that there appeared to be "five bullet holes in the roof line of [appellant's] vehicle." Snapp said there were no bullet holes in the front of appellant's car, so "I can only imagine that they came from the back of the vehicle, most likely." R. 174, l. 17 – 177, l. 10.

Appellant testified in his own defense. He was nineteen-years-old, and he was only seventeen at the time of the teen party. He was attending Central Carolina University at the time of his trial. R. 178, l. 6 – 180, l. 1. Appellant left the club about one a.m. that morning. He remembered seeing Malik Myers coming towards his car, and Malik had a gun. Malik began shooting at appellant, "So that's when I started shooting, and that's when I ran off when I seen the security guard coming, and I threw my gun under the tree." Appellant said that Mailk Myers almost shot him, and McFadden was actually shot. He drove McFadden to Tuomey Hospital

early that morning. R. 181, l. 19 – 184, l. 9. Appellant specifically said he did not shoot Ashley R. that night, and he did not intend to shoot anyone. R. 186, ll. 14-24.

Appellant testified on cross-examination that he fired into his own car so that whomever was shooting would think he was serious, and he was not shooting in the air. Appellant admitted he had a black forty caliber Springfield gun that night. R. 194, l. 13 – 195, l. 5. Appellant said he found five bullet casings on top of his car, and the sixth one “I probably shot it into the ground.” R. 195, l. 19 – 197, l. 7.

Appellant repeated that Malik Myers shot at him first and he told the solicitor there were more than two people shooting at the time of the incident. R. 197, ll. 8-21. As stated, defense counsel renewed his motion for a directed verdict, and the judge -- again citing Rule 19, SCRCrimP -- said it was his duty to send the attempted murder charges to the jury. R. 212, l. 16 – 213, l. 19.

Discussion

Defense counsel moved for a directed verdict, given the lack of evidence that appellant shot Ashley R., the only victim still at issue on appeal given the jury’s verdict. The judge, citing Rule 19, SCRCrimP, stated his view of the evidence was that there was not a failure of “competent evidence” tending to prove the charge in the indictment. See Rule 19, SCRCrimP. The judge reasoned, siding with the solicitor, that he found the state had carried its burden at the directed verdict stage because appellant could be guilty by reason of *transferred intent*. That was error.

In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), our Supreme Court, in affirming this Court as modified, held that the charge of attempted murder required the state to prove that the defendant had the specific intent to kill. Transferred intent by its nature involves an accidental

shooting victim. See State v. Horne, 282 S.C. 444, 319 S.E.2d 703 (1984). Our Supreme Court noted that the legislature -- when it enacted the attempted murder statute -- intended for it to have a specific intent to kill element.

This case illustrates the error in the trial judge's Rule 19, SCRCrimP reasoning. The state's case was generally that appellant irresponsibly or negligently fired his gun that night. The state contended that appellant meant to shoot Malik Myers, but did not make any assertion that appellant intentionally shot Ashley R.

The jury found appellant not guilty in the attempted murder of Malik Myers, but found him guilty of attempted murder as to Ashley R. It definitely appears that whomever shot Ashley R., that she was a random or accidental victim.

In State v. Hinton, 227 Conn. 301, 630 A.2d 593 (1993), the Supreme Court of Connecticut noted that the crime of attempted murder requires a specific intent to kill. The Court noted that the doctrine of transferred intent that applies to murder, is not needed for the crime of attempted murder, and it does not apply. The Court reasoned that a person could be prosecuted for the attempted murder of a specific person regardless of the fact that that intended victim was not shot or even injured. An unintended or third party victim is irrelevant to the crime of attempted murder. ABHAN would have been the correct charge in this case.

Here, there was no substantial circumstantial evidence that appellant intended to kill or murder Ashley R. Therefore, the trial court erred in denying appellant's motion for a directed verdict, since there was no substantial circumstantial evidence appellant intended to kill Ashley R.

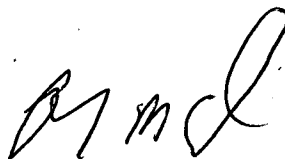
Further, under the trial judge's Rule 19, SCRCrimP, reasoning, the judge incorrectly found that this was a jury issue, because appellant could be found guilty of the attempted murder of Ashley R. given the doctrine of transferred intent.¹ That, as explained above, was error.

For these reasons, this Court should issue an order of acquittal for the attempted murder of Ashley R. Because such a correct order would in effect exonerate appellant of both attempted murder charges, his conviction for possession of a weapon during a violent crime should also be vacated.

¹ Appellant is aware of State v. Williams, Op.No. 5540 (Filed February 28, 2018) in which a panel of this Court held transferred intent was properly charged in an attempted murder case. Williams will be challenged on certiorari to the Supreme Court

CONCLUSION

By reason of the foregoing arguments, a verdict of acquittal should issue on appellant's conviction for attempted murder, and for reasons consistent with that order, a verdict of acquittal for appellant's conviction for possession of a weapon during a violent crime should also be issued.



Robert M. Dudek
Chief Appellate Defender

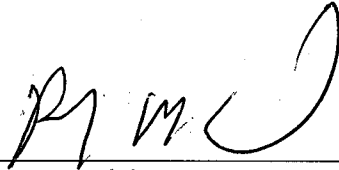
ATTORNEY FOR APPELLANT

This 21st day of August, 2018.

CERTIFICATE OF COUNSEL

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."

August 21, 2018



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