

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
The Honorable Steven H. John, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

DEVONTA EDWARD WILLIAMS,.....APPELLANT

INITIAL BRIEF OF RESPONDENT
Appellate Case No. 2019-000222

RECEIVED

MAR 13 2020

SC Court of Appeals

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APPELLANT'S STATEMENT ON APPEAL

Whether the trial court erred where it denied Appellant's motion to direct a verdict of acquittal on the charge that Appellant attempted to murder Latreva Knox, where there was no evidence Appellant intended to kill Knox, since a specific intent to kill is an element of attempted murder?

RESPONDENT'S COUNTER STATEMENT ON APPEAL

Did the trial court err in the denial of the Appellant's motion for directed verdict due to the court finding sufficient evidence of the attempted murder of Mr. Knox to submit the case to the jury?

STATEMENT OF THE CASE

On November 12, 2016, a group of individuals were conversing on Freemont Rd. in Longs, South Carolina. Among these individuals were Levi Moody, Brandon Wells and Latrevais Knox. The Appellant walked up to the group of individuals stating to Mr. Wells “where is my money?” Before the victim could inquire about what he was referring to, the Appellant pulled out a gun and shot at Mr. Wells. As Mr. Wells attempted to escape Appellant continued to shoot into the crowd injuring not only Mr. Wells but also injuring Mr. Knox and killing Mr. Moody.

An eyewitness by the name of Elouise Horne told the authorities that the shooting occurred right outside her home. Since her grandchildren were outside she left her home to make sure they came into the house out of danger. She personally knew the Appellant at the time the incident occurred. (Tr. p. 105 lines 17-20) She positively identified the Appellant as the shooter. (Tr. p. 105 lines 10-16) Another eyewitness Patrick Bellamy told authorities that he was driving with his son and a friend from a football game. He also saw the Appellant pull out the weapon and proceeded to shoot. Once shooting began he backed up his car and fled the area. (Tr. p. 134 lines 11-12)

The actions of the Appellant caused Mr. Moody to be shot in the stomach which severed an aorta in his leg causing massive internal bleeding which eventually led to his death. (Tr. p. 212 lines 21-25) He also shot Mr. Wells in the stomach and buttocks (Tr. p. 167 line 25 – p. 168 line 5), and Mr. Knox in the back of the leg. (Tr. p. 158 line 10) Mr. Wells and Mr. Knox both survived their gunshot wounds. All eyewitnesses informed the authorities that the person who committed this act was the Appellant. Once he found out the authorities were searching for his

whereabouts he turned himself in. Appellant was then charged with murder and two counts of attempted murder.

On February 4, 2019, the Appellant's case was called for trial before the Honorable Steven H. John. Present were assistant solicitors Seth A. Oskin and George H. DeBusk, Jr., Appellant was represented by J. Eric Fox. The trial concluded on February 7 with a jury of his peers deciding unanimously Appellant guilty of all charges. (Tr. p. 389 line 17 – p. 390 line 4) Appellant then presented himself before the trial court who sentenced him to a thirty-five year period of incarceration for the offense of murder; and, thirty years for each count of attempted murder. All of these offenses are to be served concurrently. (Tr. p. 400 lines 5-18)

At the conclusion of this trial the Appellant filed a timely notice of appeal before this court. Within this appeal the Appellant alleges that the trial court erred in the denial of his motion for directed verdict. Appellant argues that the court erred in this denial since there was no evidence revealing that there was ever any intent to murder Mr. Knox. Appellant argues that the doctrine of transferred intent should not apply to attempted murder since it is a specific intent crime.

Respondent argues that there was sufficient evidence provided revealing Appellant committed this act with maliciousness. Once Appellant fired his weapon at Mr. Wells that revealed an obvious intent to kill. The doctrine of transferred intent can definitely be applied to attempted murder, since the punishment goes with the intent and not the crime. The trial court did not err in the denial of Appellant's motion for direct verdict. The only criteria the trial court must consider during a motion for directed verdict is, if sufficient evidence was provided that could prove the guilt of the Appellant. That was successfully provided by the solicitor. The trial court was proper in the decision denying Appellant's motion of directed verdict. Respondent

would now request this Court affirm the decision of the trial court. The Respondent's brief supporting the above referenced arguments follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In reviewing a denial of a motion for a directed verdict the evidence must be reviewed in the light most favorable to the state and if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused the court must find that such issues were properly to be decided by the jury. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272-273 (1990). The doctrine of transferred intent applies only in the situation of some intended harm inflicted on an unintended victim. *State v. Bryant*, 316 S.C. 216, 219, 447 S.E.2d 852, 854 (1994).

ARGUMENT

- 1. The trial court did not err in the denial of Appellant's directed verdict motion since the solicitor presented sufficient evidence to reveal that an attempted murder occurred through transferred intent.**

This appeal seeks to have the unanswered question in *State v. Williams* 427 S.C. 148, 829 S.E.2d 917 (2019) addressed and decided.

Appellant was convicted of murder and attempted murder. Murder is defined as the killing of any person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-10 (2018). Appellant was also convicted of attempted murder, which is when a person who with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-29 (2018). Malice is a major element of the both murder and attempted murder.

In the South Carolina Supreme Court case of *State v. Heyward*, 197 S.C. 371, 15 S.E.2d

669 (1941) malice was defined as:

“a wicked condition of the heart. It is a wicked purpose. It is a performed purpose to do a wrongful act, without sufficient legal provocation; and, in this case it would be an indication to do a wrongful act which resulted in the death of this man without sufficient legal provocation, or just excuse or legal excuse. In its proper sense the term “malice” conveys the meaning of hatred, ill-will or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.”

Heyward, 15 S.E.2d at 671, quoting, *State v. Gallman*, 79 S.C. 229, 60 S.E. 682, 686 (1908)

The difference is that attempted murder requires specific intent.

Appellant was charged with murder and attempted murder due to the doctrine of transferred intent, whereby the actor’s intent to kill his intended victim is said to be transferred to his actual victim. *State v. Gandy*, 283 S.C. 571, 574, 324 S.E.2d 65, 67 (1984). Appellant in this case shot at Mr. Wells into a crowd of people with the specific intent to kill him. Although he failed to kill the intended target he did injure him as well as Mr. Knox and caused Mr. Moody’s death. There is no doubt that evidence of *mens rea* existed. He had malice in his heart and there was an intent to kill so the trial court did not err in the denial of Appellant’s motion for directed verdict. If the mental state exist then there exist an intent to kill and this intent can be transferred to other victims. In *State v. Fennell*, 340 S.C. 266, 531 S.E.2d 512 (2000) the Supreme Court stated that the word “transferred intent” is a bit misleading. In *Fennell* the Court stated:

The defendant's mental state, or *mens rea*, whatever it may be at the time he allegedly commits a criminal act is contained within the defendant's brain when he commits the act. That mental state never leaves the defendant's brain; it is not "transferred" from the defendant's brain to another person or place. A more apt description might be that the mental state is like a spotlight emanating from its source – the defendant's mind – to its target – the intended victim.

Nor is that mental state in limited supply. The mental state "spotlight" is not extinguished at the moment a bullet strikes and kills the intended victim, such that there is no mental state left upon which to convict an unintended victim who also is injured or killed.

Fennel, 340 S.C. at 271, 531 S.E.2d at 515.

The "spotlight" of the Appellant was all those individuals on Fremont Rd. standing on that street corner when Appellant opens fire with no regard to human life. If there is malice in the Appellant's heart then he is guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake. *Heyward*, 197 S.C. at 377, 15 S.E.2d at 672.

Thus the question unanswered in *Williams* should be decided.

It is obvious that Appellant had intent to kill, he injured the intended target as well as killing and wounding innocent bystanders. The actions of the Appellant should not be excused because he could not complete the intended purpose of his crime. Appellant argues that there should not be any transferred intent due to the fact that there was no intent to kill Mr. Knox. However, Mr. Knox was struck due to the Appellant's intentional malicious firing into a group of people. The specific intent to kill can be inferred by the surrounding circumstances of the case including the use of a deadly weapon and the character of the attack. *State v. Sutton*, 340 S.C. 393, 397, 532 S.E.2d 283, 285 n.5 (2000).

There is no doubt Appellant had an intent to kill. The question raised by the Appellant is can that intent be transferred to a victim that was just at the scene who was injured but not killed.

The Supreme Court has previously ruled that attempted murder requires proving that the defendant had a specific intent to kill. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). Appellant argues that since there is a requirement as to a specific intent to kill, transferred intent cannot apply to an attempted murder, we disagree. Appellant had malice and intent to kill Brandon Wells. He shot at him with the specific intention to kill him, he is not responsible for another charge of murder due to the fact Mr. Knox was lucky enough only to be struck in the leg and not a major vital organ as Mr. Moody. Where there is intent to kill and act designed to bring about desired killing, accused is responsible for all natural and probable consequences of the act, regardless of intended victim. *U.S. v. Willis*, 46 M.J. 258 (1997). It is clear from the facts of this case Appellant committed an act of malice by firing a weapon at Mr. Wells into a crowd of people. He is responsible for all the consequences that is a result of said act.

This court recently ruled in *State v. Williams*, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018), *aff. as modified*, *State v. Williams* 427 S.C. 148, 829 S.E.2d 702 (2019), that the circuit court did not err in instructing the jury on transferred intent in a case involving attempted murder.¹ In *Williams* this court determined that “A person who acting with malice, unleashes a deadly force in an attempt to kill...an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.” *Williams*, 422 S.C. at 543, 812 S.E.2d at 926, *quoting*, *Fennell*, 340 S.C. at 276, 531 S.E.2d at 517.

¹ In *Williams* the South Carolina Supreme Court ruled “Because the court of appeals treated the case as if it had been tried as a specific-intent crime, we vacate the portion of its opinion dealing with the issue of transferred intent and leave for another day the determination of whether the doctrine applies to attempted murder.” *State v. Williams*, 427 S.C. 148, 157-158, 829 S.E.2d 702, 707 (2019)

Appellant had a total disregard for human life. He shot into a crowd of people with the expressed intent on killing Mr. Wells. This was definitely an act of malice, and the fact one victim was lucky enough not to die should not absolve the Appellant or relieve him of the malicious recklessness that occurred. When you shoot a firearm into a crowd of people with the specific intent of killing one particular person, you have assumed responsibility to all those that have been injured regardless if that person was the intended victim or not. This should not be excused due to the fact Mr. Knox was not the intended victim, and was lucky enough to survive this incident. "Although the defendant did not act with malice toward the unintended victim, the defendant's criminal intent to kill the intended victim ... is transferred to the unintended victim." *Id.*, quoting, *Fennell*, 340 S.C. at 272, 531 S.E.2d at 515.

The Appellant argues that the trial court erred in denying their directed verdict. There was sufficient evidence presented by the State to allow this case to go to the jury. In considering a motion for a direct verdict the court is concerned with the existence or non-existence of evidence not its weight. A case should be submitted to the jury which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced. *State v. Robinson*, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). The question of the intent with which an act is done is one of fact and is ordinarily for jury determination. *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971).

The Appellant asked Mr. Wells "where is my money?" and soon thereafter opened fire. This reveals a malicious act with a depraved heart bent on mischief. This was definitely an intentional act, with a deadly weapon toward the person of another. This act was absent any mistake or reason. Since there were ample testimony presented during trial that Appellant was the only individual with a weapon, (Tr. p. 109 lines 8-9)(Tr. p. 134 lines 7-8) this cannot be

considered an act of self-defense. This was an act of malice, and a total disregard for human life. When you commit an act like this you should expect some type of punishment. There was obviously sufficient evidence revealing that Appellant fired the shot not in warning but directly toward the intended victim after an angry verbal confrontation. Both eyewitnesses who knew Appellant personally positively identified him as the shooter. There was also no evidence revealing that this was done accidentally, there was intent involved in this shooting. The trial court was definitely correct in allowing the jury to decide if the Appellant was innocent of these charges. In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the state, and if there exist any direct or circumstantial evidence tending to prove the guilt of the accused the appellate court must find that the case was properly submitted to the jury. *State v. Rowell*, 326 S.C. 313, 315, 487 S.E.2d 185, 186 (1997). The evidence here supports the ruling allowing the case to go to the jury.

In other jurisdictions it has been determined that transferred intent can apply to attempted murder. The elements of attempted murder in Illinois are very similar to that of South Carolina.² The Illinois Appellant Court has decided that the doctrine of transferred intent is applicable in attempted murder cases, *People v. Swaney*, 2 Ill.App.3d 857, 276 N.E.2d 346 (1971); *People v. Burrage*, 269 Ill.App.3d 67, 645 N.E.2d 346 (1994); *People v. Hill*, 276 Ill.App.3d 683, 658 N.E.2d 1294 (1995); *People v. Carlisle*, 35 N.E.3d 649 (2015). The state of Louisiana has also determined that the law of transferred intent does not require that intent to kill be of a specific victim, but only that the defendant had the intent to kill someone. *State v. Wright*, 286 So.2d 1176 (2019). In *State v. Ross*, the Louisiana Court of Appeals decided:

² An individual commits the offense of attempted murder when with, specific intent to kill, he does any act which constitutes a substantial step toward the commission of murder. *People v. Hill*, 276 Ill.App.3d 683, 687, 658 N.E.2d 1294, 1297 (1995)

The doctrine of transferred intent provides that “[w]hen a person shoots at an intended victim with specific intent to kill or inflict great bodily harm and accidentally kills or inflicts great bodily harm upon another person, if the killing or inflicting of great bodily harm would have been unlawful against the intended victim actually intended to be shot, then it would be unlawful against the person actually shot, even though that person was not the intended victim.”

State v. Ross, 115 So.3d 616, 621 (2013), quoting, *State v. Stroger*, 814 So.2d 725, 728 (2002).

Appellant argues that the trial court erred in the denial of their directed verdict due to the fact he was improperly charged with the attempted murder of Mr. Knox. That is a specific victim, not a specific intent, and the punishment should go with the intent and not the crime.

Appellant argues in his directed verdict motion that it was unlawful for him to be charged with attempted murder through transferred intent.³ There was sufficient evidence revealing that the Appellant shot into a crowd in an attempt to kill Mr. Wells. As a result of this shooting Mr. Knox was shot in the leg. The only presumption is that due to the malicious act of the Appellant Mr. Knox suffered this injury. Though directed verdict motion the Court was given the choice to dismiss or proceed.⁴ In reviewing the evidence most favorable to the state, the trial court could not grant the directed verdict due to the facts raised by the state regarding Appellant actions. There exist no error on the behalf of the court regarding the denial of the Appellant’s directed verdict. This decision should be affirmed by this court.

³ Appellant failed to object to the jury instruction for transferred intent.

⁴ Appellant never requested a jury instruction on the lesser-included offense of assault and battery of a high and aggravated nature.

CONCLUSION

The trial court made the proper decisions regarding this matter the Respondent respectfully request this court to affirm the decision of the trial court.

Respectfully submitted,

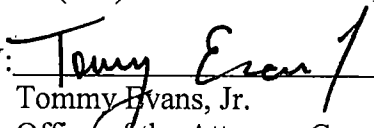
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CERTIFICATE OF SERVICE

I, Tommy Evans, Jr., counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record: Joanna K. Delany, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 13th day of March, 2020.



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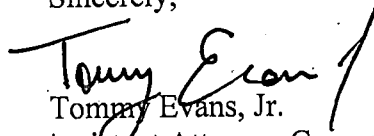
Re: *The State v. Devonta E. Williams*
Appeal from Horry County
Appellate Case No. 2019-000222

Dear Ms. Kitchings:

Enclosed for filing in your office is an original Initial Brief of Respondent, Designation of Matter and Certificate of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant Attorney General

TE/dmd

Enclosures

cc: Joanna K. Delany, Esq. (w/two copies of encls.)
The Honorable Jimmy A. Richardson, III Solicitor, 15th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)