

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 19 2020

Appeal from Sumter County

SC Court of Appeals

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHAUNCEY A. WRIGHT,

APPELLANT

APPELLATE CASE NO 2019-001407

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this trial for attempted murder and armed robbery, did the trial judge err in refusing to direct a verdict of acquittal for attempted murder when the State failed to prove a specific intent to commit murder?

STATEMENT OF THE CASE

In December of 2018, the Sumter County Grand Jury indicted Appellant, Chauncey A. Wright for armed robbery and attempted murder, indictment #2018-GS-43-1140. On August 12, 2019, Appellant proceeded to jury trial before the Honorable R. Ferrell Cothran, Jr. Michael D. Routzong represented Appellant at trial. Solicitor Ernest A. Finney, III, prosecuted the case. The jury returned verdicts of guilty on each count. Judge Cothran sentenced Appellant to eighteen (18) years for armed robbery and twenty (20) years concurrent for attempted murder. A timely notice of intent to appeal was served on August 19, 2019. This appeal follows.

STANDARD OF REVIEW

“[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); see Hepburn, 406 S.C. at 429, 753 S.E.2d at 408 (“In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict.”). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. The trial judge “should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” *Id.* “ ‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.* “However, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis.*” State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) (emphasis added).

“On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). State v. Pearson, 415 S.C. 463, 469–70, 783 S.E.2d 802, 805–06 (2016).

ARGUMENT

In this trial for attempted murder and armed robbery, the trial judge erred in refusing to direct a verdict of acquittal for attempted murder when the State failed to prove a specific intent to commit murder.

The jury found Appellant guilty of striking Kamieshkumar “Kenny” Patel in the head with a stick and robbing the Station, a convenience store where Mr. Patel worked. Videos from store surveillance cameras were admitted in evidence without objection as State’s exhibit #35. (R. p. 96, line 19 – p. 97, lines 1-5). Mr. Patel testified at trial that the robber came into the store two days earlier and got rolling papers on store credit. (R. pp. 124-130). The receipt for the store credit lists the name “Chop.” (R. p. 130, lines 1-25). Mr. Patel identified Appellant from a photo line-up and identified him as “Chuck.” (R. p. 196, lines 1-25). As to injuries, Mr. Patel testified that, “He hurt me on the head with something that felt very hard and then he had something on his hand that he punched me in the face, in the eye or. And I was punched on the jaw and then on the head too many times and two, I lost two of my teeth on the side. (R. p. 115, lines 6-10). Mr. Patel testified that he spent three weeks in the hospital, had to see a dentist and an eye doctor and required plastic surgery. (R. p. 118, lines 2-24).

At the close of the State’s case Appellant moved for a directed verdict of acquittal on both the attempted murder charge and the armed robbery charge. (R. p. 271, line 14 – p. 272, lines 1-13; p. 273, lines 10-24). As to the attempted murder charge Appellant specifically argued that the State failed to prove a specific intent to commit murder. (R. p. 271, line 19 – p. 272, lines 1-2). Appellant argued instead that the injuries were consistent with assault and battery of a high and aggravated nature [ABHAN] or assault and battery first degree. (R. p. 273, lines 16-24). The trial judge denied the motion as to both charges. (R. p. 273, line 25 – p. 274, 275, lines 1-11). Addressing the attempted murder charge the judge stated:

As far as attempted murder, you know, there's obviously video that's evidence in this record that the assailant in this case beat Mr. Patel severely with an object, which caused severe head trauma to him. He was in intensive care at least six days; it could have caused death. And based on the evidence the jury could determine whether he had a specific intent to kill him based on the assault that occurred in the bathroom. Now having said that, based on the rest of the evidence, they may determine, but it goes to the weight of the evidence in what they think important, the fact that on that video after he assaulted the victim in this case he went to the cash register and took the money out and at that time the victim was standing there and he just told the victim to move and he did not assault him further, which he could have killed him. But I think the standard is at the time of the assault is there any evidence with intent to kill; and the fact, based on his injuries he could have clearly died from hemorrhaging to the brain in this particular case so I will – I think there's enough evidence in this case and what weight the jury gives that is up to them. I'll allow it to go to the jury on both counts.

(R. p. 274, line 12 – p. 275, lines 1-11). The trial judge erred in refusing to direct a verdict of acquittal for the attempted murder charge because the State failed to prove a specific intent to commit murder. A severe beating that could have resulted in death, alone, does not prove a specific intent to commit murder. Great bodily injury or an act likely to produce death or great bodily injury proves assault and battery of a high and aggravated nature, not attempted murder.

S.C. Code Ann. § 16-3-29 provides that, “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. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years.” In State v. King, 422 S.C. 47, 63–64, 810 S.E.2d 18, 26–27 (2017) (n. #5 omitted), the South Carolina Supreme Court wrote, “Considering the legislative history as a whole, we conclude that section 16-3-29 is not a codification of the offense of ABWIK. We find the General Assembly expressly repealed the offense of ABWIK and purposefully created the new offense of attempted murder, which includes a ‘specific intent to kill’ as an element.”

In State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (n. #5 omitted), the South Carolina Supreme Court noted:

In general, “[a]ttempt is a specific intent crime.” 21 Am.Jur.2d Criminal Law § 176 (1998). “The act constituting the attempt must be done with the intent to commit that particular crime.” Id. See also Wharton's Criminal Law Attempt §§ 694-695 (1996)(“To constitute an attempt, there must be an intent to commit a particular crime ... Although a murder may be committed without an intent to kill, 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. United States v. Calloway, 116 F.3d 1129 (6th Cir.1997). Attempted murder would require the specific intent to kill and conduct towards that end.

In footnote #5 in Sutton the Court noted, “A specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries. People v. Parker, 311 Ill.App.3d 80, 243 Ill.Dec. 894, 724 N.E.2d 203 (1999).” 340 S.C. at 397, 532 S.E.2d at 285. In the present case the trial judge erred in only relying on the extent of the victim’s injuries to establish a specific intent to kill. The other surrounding circumstances establish the lack of a specific intent to kill. The State in the present case proved an intent to rob, not a specific intent to commit murder. The State proved ABHAN, not attempted murder.

S.C. Code Ann. § 16-3-600(B)(1) provides, “A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: (a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.” While the trial judge properly charged the jury with the lesser included offense of ABHAN, the judge erred in refusing to direct a verdict of acquittal for attempted murder when the State failed to prove a specific intent to commit murder. Viewing

the evidence in the light most favorable to the State, there is no evidence of a specific intent to commit murder.

In considering the directed verdict motion, the judge only relied on the extent of the injuries and failed to consider the other surrounding circumstances that do not support a specific intent to commit murder. The weapon used was a stick or rod rather than a firearm or knife. The character of the attack demonstrates an intent to rob. As noted by the trial judge, after the assault the individual went to the cash register and took the money out while the victim was standing there and the individual just told the victim to move and did not assault him further. (R. p. 274, line 23 – p. 275, lines 1-3). The extent of the injuries support ABHAN not attempted murder. The State failed to prove a specific intent to commit murder. The trial judge erred in refusing to direct a verdict of acquittal for attempted murder.

CONCLUSION

Based on the above argument, this Court should reverse the attempted murder conviction.

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Chauncey A. Wright states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Ferrell Cothran, which was held on May 13, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Chauncey A. Wright.

Respectfully Submitted,

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of May, 2020.

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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 indictment and sentencing sheets;
- (2) Trial transcript pages 1-322;
- (3) State's Exhibits #4, #5, #6, #20, #21 – Photos -**To be transported;**
- (4) State's Exhibit #35 – CD of surveillance camera video – **To be transported.**

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

May 19, 2020

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

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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.”

May 19, 2020.

s/ Kathrine H. Hudgins

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