State Of South Carolina
In The Court Of Appeals

Appeal From OranGeBurG County
Edgar W. Dickson, Circuit Court Judge

The State.

Respondent.

vs.

Treshawn M. Jenkins,

Appellant.

2018-000360

Pro Se Anders Brief

Treshawn Jenkins #373775
Lee Correction Institution
990 Wisacky H.Ghway
Bishopville, South Carolina
29010/22A-1157

Questions Presented

Question One:

Whether this court should apply exception to General rule of issue Preservation to review new rule announced in State v. Burdette?

Question Two:

Did trial court err in charging the Jury on the doctrine of transferred intent for attempted murder?

Question Three:

Did trial court standard for the admissibility of third-Party Guilt evidence unconstitutionally diminish the Jurys role to find facts and assess the credibility of witnesses in criminal cases as was done by trial court?

Question One:

Whether this court should apply exception to General rule of issue Preservation to review new rule announced in State v. Burdette?

Facts

During time of Petitioners trial February 20th-23rd, 2018, the decision in State v. Burdette, was not final, and when counsel filed Anders brief herein. Just approximately four and-a half (4'½) months before brief was submitted, our State Supreme Court had completed oral arguments (See Anders Brief)

Counsel made no objections to this charge, and as a consequence trial court charged

> "Inferred malice may also arise when the deed is done with a deadly weapon"
>
> ROA PG 677; lines 11-12

Law/Analysis

Petitioner avers that this court, has excused counsel failure to object at trial and reviewed issue on direct appeal. See, State v. Bonner, 400 S.C. 561 (2013) In Bonner, the state conceded that Bonner sentence was illegal, but that issue

was not objected to at trial barring appellate review. This court rejected state's argument and remanded for new sentencing.

However, it must be noted for the record that Prosecution mentioned Belcher in its argument to court (ROA PG 614; LINES 4-12) which was overruled by Bundelle and as such Belcher is no longer the law.

Question Two:

Did trial court err in charging the Jury on the doctrine of transferred intent for attempted Murder?

Factual Analysis:

At the end of state Presentation of evidence, all Parties discussed what was to be charged to Jury (ROA PG 612; lines 23-25; PG 613; lines 1-25)

Prosecution requested court charge transfered intent (ROA PG 613; lines 20-21) moreover, the Prosecution further argued that

Ms. Cornwell: .... Based on Belcher there is a Presumptive inference charge that remains correct where the only issue Presented to the Jury is whether or not the defendant has committed a murder or ABWIK and that is still Good law. So we would ask for under murder/malice that there be instruction that Jury has transferred intent to infer malice by use of a deadly weapon

ROA PG 614; lines 8-14

During the colloquy it was stated

Ms. Cornwell: And that's State v. Belcher, 385 S.C. 597. And then finally, Your honor, just out of an abundance of caution we would ask for the hand of one hand of all.

Mr. Farley: And we will argue these later

The Court: Okay

Mr. Farley: There is typically a Principal when You charge someone as a Principal and also Guilty as an accomplice, but---

ROA PG 614; lines 16-23

Any objections made to the transferred intent charge, was done off the record as noted by trial court that:

The Court: I know we had this discussion off the record. Were having it on the record now.

Mr. Farley: Yes sir.

ROA PG 621; lines 23-25

Defense counsel vehemently argued, that shooting was quite Possibly accidental and no one intended for anyone to die (ROA PG 621; lines 13-22) and the defense request was denied not to charge transferred intent

Legal Analysis:

Petitioner argues the trial court erred in finding the doctrine of transferred intent applied to a specific intent crime such as attempted murder

Moreover, defense has challenged the trial courts instruction to the Jury that

"Intent may be shown by acts and conduct of the defendant and other circumstances from which You may naturally and reasonably infer intent. Transferred Intent. If the defendant with malice aforethought attempts to kill another Person but by mistake injures and kills a different Person, the defendant still has the intent to kill. to the actual Person killed or injured. The defendant would be Guilty of murder or attempt murder Just as if the attempt had resulted in the death or injury of the Person the defendant attempted to kill

ROA PG 678; lines 14-25

A specific intent to kill is not an element of attempt murder, but there must be intent to cause serious bodily injury. As a result, this instruction has become law of this case. See, Smith v. State, 413 S.C. 194, 196 (2015) (explaining an unappealed ruling whether right or wrong, is the law of the case)

It is well settled in South Carolina, that the doctrine of transferred intent applies to General intent crimes. See, State v. Tennell, 340 S.C. 266, 271-73 (2000); State v. Heyward, 197 S.C. 371, 376-77 (1941)

Section 16-3-29 of the SC. code (Supp. 2019) defines attempt murder

"A Person who with intent to kill, attempts to kill another Person with malice afore-thought, either expressed or implied commits the offense of attempted murder"

16-3-29 code of laws

Because the crime is defined by statute, we first look to the language of the statute to determine what the legislature intended the elements of the crime to be including the

level of intent required. See, Gunyard v. State, 260 S.C. 220, 227 (1973) ("The Power of the legislature to declare what acts shall constitute crimes ..... includes the Power to make the commission of the act criminal without regard to the intent or knowledge of the accused... Therefore, whether knowledge and intent are necessary elements of a statutory crime must be determined from the language of the statute (citing) State v. Manos, 179 S.C. 45, 49-50 (1936)) If the language of a statute is "unambiguous and conveys a clear meaning" the court must determine the intent of the legislature exclusively from that language, and other "rules of statutory construction are not needed." See, State v. Elwell, 403 S.C. 606, 612 (2013) The Phrase "with intent to kill" in Section 16-3-29 does not clearly indicate what level of intent the legislature meant to require the state to Prove, because the word "intent" can mean anything from Purpose to negligence. See, State v. DeFries, 316 S.C. 13, 18 (1994) Therefore, we must look beyond the words of statute and use rules of statutory construction to determine what the legislature intended. See, State v. Gaines, 380 S.C. 23, 33 (2008)

Section 16-3-29 was enacted in 2010 as Part of the Omnibus Crime Reduction and Sentencing reform act. See, Act No. 273, 2010 S.C. Acts 1949. Before 2010 our courts held attempt crimes require the state to Prove the defendant had specific intent to complete the attempted crime. See, State v. Sutton, 340 S.C. 393 (2000) (stating "intent is a specific intent crime" and "the act constituting the attempt must be done with intent to commit the Particular crime" quoting, 21 Am. Jur. 2d Criminal law sec. 176 (1998)) See State v. Nesbitt, 346 S.C. 226, 231 (Ct. App. 2001)

Sutton was decided before the legislature enacted 16-3-29, as the Sutton sought to address the question "whether attempt murder was an offense in this state" Sutton, id

at 396). To answer this question, the court compared the elements of ABWIK and murder Possession of a firearm during commission of a violent crime. On appeal, the Court Of Appeals vacated Sutton attempted murder conviction and sentence, finding ABWIK and attempted murder are in essence, the same offense. Id at 395..

In some Jurisdictions, there can not be an attempt to commit an unintended murder or an involuntary manslaughter. See. Abernathy v. State, 109 Md. App 364/1996) Therefore, the doctrine of transferred intent is not applicable to the crime of attempted murder. Because the crime of attempt sanctions what the Person intended to do but not accomplish, not unintended and unaccomPlished Potential consequences, the defendant who fails to kill the unintended victim can not be convicted of attempt murder under a theory of transferred intent. See. People v. Franklin, 1 Cal. App 5th 1234/2nd Dist. 2016)

Question Three:

> Did trial court standard for the admissibility of Third-Party Guilt evidence unconstitutionally diminish the Jury's role to find facts and assess the credibility of witnesses in criminal cases as was done by trial court?

Factual Analysis:

After both sides rested, the Parties had a charge conference at which time the following took Place:

The Court: All right. Mr. Farley

Mr. Farley: So to solve all these People with Guns shooting all over the Place, I say we do a charge of a third-Party Guilt. Also, I'm thinking -- well, I mean, there's evidence to support both a voluntary and involuntary manslaughter charge so we're going to be asking for those....

App. Pg 616 lines 6-12

The Court: .... And then Mr. Farley, You had asked about charging third-Party, voluntary manslaughter, involuntary manslaughter and I indicated to You that I did not believe based on the evidence that I have heard during trial that there was a basis for any of those charges, but I wanted to Preserve Your objection to my ruling on that on the record.

Mr. Farley: And may I briefly argue those, Judge

The Court: Yes Sir

Mr. Farley: Basically -- and third Party Guilty for that matter. It's our contention that there was there was four other Parties that could have Possibly committed this crime and without the Jury being able to take that into account in the charges, I think, would deprive my client of a right that I think he has a right to. So we would ask court charge third Party Guilt.

The Court: Okay. And, again, based on the evidence that I heard, I don't think

there was any testimony indicating that anyone other than Mr. Jenkins had fired any shots in the direction of the shed and like that. So I think I understand and I appreciate your argument and I'm going to stay with my decision not to charge that because I think it'd be confusing to the jury... But I'm going to note on the record and preserve your objection

Mr. Farley: Thank you, Judge

App. Pg 618; line 24-25; Pg 619; lines 1-6; 12-25; Pg 620; lines 2-4

Trial court ruling is not supported by the record as the testimony elicited is as follows:

Tramel Benjamin

A: .... Then the next minute I know, thats when shots fired. So we all started to get down. We all got down.

App. Pg 233; lines 20-22

Cross-Examination T. Benjamin

Q: Where were the gun shots coming from?
A: From the top of the road from the black buick
Q: Okay. Were you able to make out anybody that was shooting?
A: No. I only seen someone, a black person with a white shirt and blue shorts

App. Pg 241; lines 17-22

Direct examination; G. Jenkins

Q: How many sets of Gunshots did You hear?

A: Well. when I first run around the house. they was shooting. then it stopped for a few seconds. then it start back again.

App. Pg 255; lines 9-12

Crime scene investigator testimony does not reveal. the caliber of shell casings he found or type of bullets that made holes in shed (App. Pg 313-354) is the type of testimony which does not support court analysis. (App. Pg 619; lines 20-22)

Direct Examination: T. Smoot

Q: Okay. And what did You do during that time?

A: I Got out the car and let a shot in the air

Q: So You Got out the car and also had a Gun

A: Yes Ma'am

App. Pg 396; lines 4-7

Direct examination: Matthew Brown

Q: And Mr. Jenkins Jumped out. What did Mr. Smoot do?

A: I don't know. When shots started firing. I know Mr. Smoot opened his door and shot.

Q: Okay. And what kind of Gun did You see Mr. Smoot with?

A: Like a little revolver type Gun

App. Pg 427; lines 11-15

Direct examination: Dwendell High

Q: And I believe You also said that Smoot started firing as well?

A: Yes

App. Pg 458; lines 5-7

Cross-Examination: Dwendell High

Q: And I think You said Smoot Got out of the car to shoot when he shot?

A: I seen him shoot in the air

App. Pg 479; lines 11-13

Direct: Zaquon Taste

A: ... When I was driving I ran over his foot and he wasn't shooting at all. That was Frank Smoot shoot first. And then when I back up and Got off his foot, that when he shoots.

Q: Okay. And approximately how many times did You hear Frank Smoot Shoot?

A: I think it was like, two, three

Q: Did You ever see Mr. High Get out the car and shoot?

A: Yeah. He shoot last. He was the last Person that shot, but he shot in the air.

Q: So who all in the car do You know had a Gun?

A: Everybody except me and Matt.

App. Pg 500; lines 18-24; Pg 501; lines 5-7; 15-16

Trial court ruling defies logic, inter alia, it is clear trial court standard is in essence requiring defense to "conclusively" show some Proof which will

support third-Party Guilt defense. Similarly, appellant avers that trial court has assumed role of Jury in reaching the decision it did, and as such, violated his right to have Jury determine whether such Proof exist.

Legal Analysis

Three incontrovertible Propositions make clear that trial courts approach to the admissibility of third-Party Guilt evidence can not survive constitutional scrutiny.

First, the constitution Guarantees every criminal defendant a trial by Jury.

Second, if a trial by Jury means anything, it must mean that the Jury serves as the trier of fact with exclusive responsibility for assessing credibility and weighing evidence;

Third, the trial court's approach to admitting third-Party Guilt evidence transfers this inalienable Jury function to trial court by requiring, that to be admitted, a defendant's Proffered third-Party Guilt evidence must "overcome" the Prosecution's evidence of Guilt to the Point of creating a "reasonable inference" of innocence

Almost Forty Years ago, the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment Guarantees a trial by Jury in all criminal cases because this right, Guaranteed in all Federal cases by the Sixth Amendment "is Fundamental to the American scheme of Justice". See, Duncan v. Louisiana, 391 U.S. 145, 149 (1968)

As the court recognized then, and has reaffirmed many times since, the constitutions framers believed that the common-sense judgment of a jury was "an inestimable safe-guard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge" id. at 156. This belief was no mere abstraction, the framers had bitter experience with the transfer of power from local juries to judges appointed by the crown as an instrument of monarchial oppression and for this reason, the right to trial by jury was "one of the least controversial" aspect of the Bill Of Rights. See, Apprendi v. New Jersey, 530 U.S. 466 (2000)

Trial court decision in this case mocks these principles, under the guise of establishing a standard for admitting third-party guilt evidence, it unsurps the jury's exclusive perogative as the trier of fact to assess credibility and weigh evidence arrogates this power to court itself. According to the decision below, a defendant seeking to introduce third-party guilt evidence must sufficiently "overcome" the prosecutors evidence to raise a "reasonable inference" in the eye's of the trial judge as to defendants own innocence. In the absence of such a comparative showing, even if the third-party evidence is relevant, competent, and otherwise admissible, the defendant as was case in Holmes v. South Carolina, 547 U.S. 319 (2006) prohibited from presenting it to the jury.

Holmes is distinguishable from case at bar. In Holmes, the State Supreme Court specifically determined that because, in its view, the prosecution had strong forensic evidence. Holmes could not make the requisite showing even to allow his third-

Party Guilt evidence to reach Jury. Holmes, id at 329.. In reaching this conclusion, the court engaged in explicit weighing of the Prosecutions evidence, including the forensic evidence, the evidence that Holmes matched Ms. Stewart's description of her assailant, and the evidence that he was on block at time of attack. The court also explicitly evaluated Holmes attempts to discredit the Prosecutions forensic case through competing expert testimony. Implicit in the courts assessment were a myriad of credibility determinations regarding the competing witnesses who testified about the integrity of the Police evidence collection and the results of the forensic testing, as well as, an outright rejection of Holmes Proffered circumstantial evidence and third-Party Guilt evidence that the Police Planted blood evidence that Yielded the forensic results the State considered so damning.

In effect, the decision below creates a two-trial system for criminal defendants seeking to introduce third-Party Guilt evidence. In the first trial, the defendant must convince a court that his third Party evidence is not only competent, material, and relevant, but standing alone, when weighed against the Prosecutions case and raise a "reasonable inference" of innocence, in the second trial, the one before the Jury, the defendant Gets to Present his complete defense only if he wins the initial trial before the Judge.

Wherefore, it is Prayed court Grant writ.

Date: 13 day of July, 2020.

Respectfully Submitted

s/ Treshawn Jenkins

Treshawn Jenkins #31375/Pro Se

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Sgt Fox	Law library	9-30-19
INMATE'S NAME:		**SCDC #:**
Treshawn Jenkins		373775
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Dear, Ms. Fox I'm seeking your assistance in this matter. *(BE SPECIFIC)
I was granted access to the law library by you for a court deadline date of September 23. I was denied access to the law library on the date of September 10th due to a institutional lockdown for roll call count. I was also denied access to the library on the date of September 17th by officer Myers due to her not allowing me to report for my OTR.

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DISPOSITION BY STAFF MEMBER: ~~T/M~~ Treshawn Jenkins #373775 due to a series of unfortunate events you were denied access to the Library On September 10th and 17th I will do my best to accommodate with any New Requests you may have!

DATE:	SIGNATURE:
10/01/2019	

SCDC FORM 19-11 (REV.FEB 2001)

Treshawn Jenkins #373775
Lee Correction Institution
990 Wisacky Highway/72A1157
Bishopville, South Carolina 29010

July , 2020

Honorable Jenny A. Kitchings, Chief Clerk
South Carolina Court Of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Jenkins #2018-000360
Subject: File Pro Se Anders Brief

Hon. Kitchings

Enclosed is my original Pro Se Anders brief, and ask that it be not held against me for filing late. Also find enclosed a document showing the Problems I have experienced, and hope You will file brief and return a clock stamped filed copy.

With kind Regards
s/ Treshawn Jenkins
Treshawn Jenkins/Pro Se

cc: File
Encl. Institutional request to Staff
Pro Se Anders Brief

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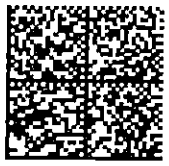

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