

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Sumter County
Honorable Howard P. King, Circuit Court Judge

Opinion No. 5835 (S.C. Ct. App. Filed July 14, 2021)
Lower Court Case No. 2015-GS-43-0655

THE STATE,

PETITIONER,

V.

JAMES CALEB WILLIAMS,

RESPONDENT.

APPELLATE CASE NO. 2021-001493

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

The Court of Appeals erred in reversing Williams' convictions for attempted murder and possession of a weapon during the commission of a violent crime finding the trial court should have granted a directed verdict because transferred intent does not apply to this charge of attempted murder. The Court erred in finding any issue related to transferred intent preserved for review on appeal. Additionally, transferred intent can apply to a charge of attempted murder and this Court should grant certiorari to make that determination. Finally, the Court of Appeals committed clear legal error in finding directed verdict should be granted because Williams was acquitted of the attempted murder of Myers when an acquittal on one charge is entirely irrelevant to a determination of whether a judge properly denied a motion for directed verdict and allowed a charge to go forward to the jury.

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

Whether the Court of Appeals properly held the trial court abused its discretion by refusing to direct a verdict on the attempted murder count where the state failed to present any direct or substantial circumstantial evidence respondent intended to shoot the victim, or that he shot anyone, and where the Court's refusal to grant a verdict based on the inapplicable legal fiction of transferred intent, which did not apply to the crime of attempted murder, was also an error of law?

STATEMENT OF FACTS

Procedural history

Respondent 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. Respondent's case was called to trial on July 17, 2017, before the Honorable Howard King, and a jury. Calvin Hasty represented respondent. Tyler Brown was the assistant solicitor.

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

The Court of Appeals, 2-1, reversed respondent's convictions, in State v. Williams, 435 S.C. 288, 867 S.E.2d 430 (Ct. App. 2021). The state then sought rehearing which was unanimously denied in the order of the Court of Appeals dated November 18, 2021. The state then sought certiorari from this Court.

This return of respondent follows.

ARGUMENT

The Court of Appeals properly held the trial court abused its discretion by refusing to direct a verdict on the attempted murder count where the state failed to present any direct or substantial circumstantial evidence respondent intended to shoot the victim, or that he shot anyone, and where the court's refusal to grant a verdict based on the inapplicable legal fiction of transferred intent, which did not apply to the crime of attempted murder, was also an error of law.

Introduction

There was no direct or substantial circumstantial evidence that respondent was the person that shot Ashley R., and absolutely no direct or substantial circumstantial evidence that he had any intent to kill her. There was also no evidence that respondent intended to kill the other victim, Malik Myers, during that same course of events, and the jury acquitted respondent of the attempted murder of Myers. R. 303, ll. 6-16. Ashley R. testified for the state during respondent's trial that Malik apologized to her after she was shot. In other words almost all of the inferences from this record were that Ashley was shot -- accidentally. If respondent 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 ABHAN.

The state on certiorari twists the above facts out of context to assert error in the Court of Appeals having noted in its opinion that respondent was acquitted by the jury of the attempted murder of Myers since the judge did not know that at the time of the directed verdict motion. That is a nice "gotcha" play, but irrelevant. The only salient points that matter here are that: (1) There was no direct or substantial circumstantial evidence that respondent shot a gun with the intent to kill Ashley R. or attempted to kill her in any manner whatsoever; and (2) The trial court

erred by considering the legal fiction of transferred intent urged upon it by the solicitor at the directed verdict stage to get beyond issuing a directed verdict since transferred intent was inapplicable to the charged crime of attempted murder.

The remainder of the state's arguments are superfluous when determining if a directed verdict should have been issued for respondent as to the crime of attempted murder of Ashley R. since there was no direct or substantial circumstantial evidence respondent intended to shoot and kill Ashley that night, and the doctrine of transferred intent was not applicable to the crime of attempted murder.

If respondent 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 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 . . . 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.

A large "group of people" was outside, and "EMS was on the way to pick up Ms. R. . . ." R. 24, ll. 13-19. Jones found six shell casings around 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 person shooting a gun in the area. R. 34, ll. 4-23.

As will be seen infra, it was undisputed that Malik Myers was also shooting his gun in the area that night. Respondent would later testify that Malik and respondent 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 respondent’s testimony. R. 212, l. 13 – 213, l. 19.

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

Chelsea nonetheless 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 acknowledged that the solicitor’s office eventually contacted her mother, and they asked Chelsea to come to the courthouse to see the solicitor. “They wanted me to be a witness to something that happened at the club that night.” R. 48, ll. 3-24. Chelsea repeated that

she wanted no part in this trial. R. 49, ll. 3-4. Chelsea said that she had never even met respondent 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 that she was going to the nearby McDonalds to “see a fight” between two girls. R. 71, l. 7 – 72, l. 6. While she was walking in 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 looked around and she 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. Ashley said that 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 respondent, 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 respondent was the person who fired the gun where the bullet ultimately wounded his leg. R. 66, ll. 5-23.

Detective Nathalie Kelly testified that Malik Myers told her that respondent 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.

Directed verdict motion

Defense counsel moved for a directed verdict, arguing that the state had failed to prove its case as to the shooting of both Malik Myers and Ashley R. 159, l. 22 – 160, l. 7.

The solicitor argued that the impeachment evidence of Malik Myers and other witnesses revealed respondent shot first. He also claimed there was “strong evidence” that respondent 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).

Immediately after the solicitor asserted that transferred intent was the reason to deny a directed verdict the judge cited Rule 19, SCRCrimP, which mandated that the court determine whether there was “competent” evidence mandating that the case should go to the jury, and he 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 [Ashley R.] 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. (emphasis added).

The defense case

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

They left the club at about one a.m., and went to respondent’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. . . 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 respondent shooting when these bullets were flying. R. 166, l. 7 – 169, l. 19.

McFadden was shot in the ear near respondent’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 [respondent’s] vehicle.” Snapp said there were no bullet holes in the

front of respondent'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.

Respondent 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.

Respondent left the club about one a.m. that morning. He remembered seeing Malik Myers coming towards his car, and that Malik had a gun. Malik began shooting at respondent, "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." Respondent 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. Respondent specifically said he did not shoot Ashley R. that night, and he did not intend to shoot anyone. R. 186, ll. 14-24.

Respondent 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. Respondent admitted he had a black forty caliber Springfield gun that night.¹ R. 194, l. 13 – 195, l. 5. Respondent 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.

Respondent 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.

¹ SLED agent Michelle Eichenmiller 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 respondent intended to shoot and kill Ashley.

Renewed directed verdict motion

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.

Court of Appeals opinion

The 2-1 majority of the Court of Appeals (McDonald, J. and Thomas, J.) wrote: “Williams argues the circuit court erred in failing to direct a verdict on the attempted murder charge because the State failed to present any direct or substantial circumstantial evidence that he had the specific intent to kill anyone—either Myers or Ashley R. He asserts the circuit court erroneously applied the doctrine of transferred intent because the offense of attempted murder requires a specific intent to commit murder. We agree.” State v. Williams, 435 S.C. 288, 867 S.E.2d 430, 433 (Ct. App. 2021).

The majority rejected the dissent’s contention that the transferred intent directed verdict motion issue was not preserved. The majority noted that the solicitor raised transferred intent as a reason to deny the directed verdict motion, and the judge ruled in favor of the state’s legal argument on transferred intent. “The circuit court ruled immediately—giving defense counsel no chance to reply to the State’s argument—citing Rule 19 of the South Carolina Rules of Criminal Procedure and recollecting its understanding of the testimony that the defendant, Mr. Williams, fired and was firing at both Mr. Malik Myers and that by transferred intent, at the other victim in this case.” State v. Williams, 435 S.C. 288, 867 S.E.2d 430, 433, n. 3. (Ct. App. 2021).

The Court concluded that it found the “[d]octrine of transferred intent inapplicable to this charge of attempted murder. The circuit court erred in denying Williams’s directed verdict

motion because § 16-3-29 requires proof of a specific intent to kill.” State v. Williams, 435 S.C. 288, 867 S.E.2d 430, 436 (Ct. App. 2021).

Discussion

The majority of the Court of Appeals properly found that the trial court erred by refusing to direct a verdict for respondent on the attempted murder charges based on the inapplicable doctrine of transferred intent. Further, as to error preservation the Court of Appeals properly found the issue was preserved since the solicitor argued transferred intent was a reason to deny the motion for a directed verdict, the judge immediately agreed with the solicitor and denied a directed verdict on that erroneous basis. There was no unfairness to the trial judge with how this occurred, and any other blame falls squarely on the shoulders of the solicitor for erroneously advocating transferred intent.²

Finally, the state “doth protest too much” about the Court of Appeals simply noting in its opinion that the jury acquitted respondent in the attempted murder of Myers where there was no evidence in this record that respondent possessed any intent to kill Ashley R., and the observation that the jury acquitted respondent of the attempted murder of Myers only underscores the lack of evidence of specific intent to kill in this record. It was not a suggestion that “[b]ecause Williams was acquitted of an attempted murder as it relates to one victim, the directed verdict as to the other should have been granted” as the state urges. Petition for

² The Court of Appeals correctly observed that the judge immediately ruled after hearing the solicitor’s transferred intent argument. The judge cited Rule 19 which states: “On motion of the defendant *or on its own motion*, the court shall direct a verdict in the defendant’s favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight. See Rule 19 (a), SCRPC. (emphasis added). Respondent here moved for a directed verdict but this rule of criminal procedure does place a duty on the trial judge that also respectfully cannot be ignored.

certiorari at 17. That respectfully is not a natural and logic reading of that simple observation by the Court of Appeals, and it is not a reason to grant certiorari where the majority of the Court of Appeals properly decided this case in a well-reasoned opinion.

First, in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), this Court held that the charge of attempted murder required the state to prove that the defendant had the specific intent to kill. S.C. Code §16-3-29 states: “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.” This Court therefore noted in King that the legislature -- when it enacted the attempted murder statute -- intended for it to have a specific intent to kill element.

As respondent argued in the Court of Appeals the state’s case here was that respondent irresponsibly or negligently fired his gun that night. The state contended that respondent meant to shoot Malik Myers, but did not make any assertion that respondent intentionally shot Ashley R. It definitely appeared that whomever shot Ashley R., that she was a random or accidental victim. That was why the solicitor successfully urged transferred intent as the reason not to grant respondent a directed verdict.

Respondent submits that the Court of Appeals properly read the tea leaves of this Court when it decided in State v. Geter, 434 S.C. 557. 864 S.E.2d 569 (Ct. App. 2021) that the doctrine of transferred intent was inapplicable to the charge of attempted murder.³ Further, a person recklessly wounding another person -- as in Geter -- would not go unpunished. The offender is still guilty of ABHAN which carries a prison sentence of twenty-years. See S.C. Code §16-3-600.

³ Geter is pending on separate petitions for writ of certiorari from the state and from Geter at the time of the filing of this Return.

This Court's opinion in State v. Smith, 430 S.C. 226, 845 S.E.2d 495 (2020) is also illustrative on the point of specific intent to kill, and the irresponsible shooting of a firearm. In Smith, the defendant was a gang member shooting at rival gang members in the Five Points District of Columbia. Smith claimed self-defense as the reason for him shooting his gun. It appeared the young woman tragically hit in the shooting was an unintended victim, and that the defendant had no intent to kill her. This Court did not address the specific intent to kill as to the charge of attempted murder because it reversed Smith's substantive convictions on other grounds. However, this Court in State v. Smith, 430 S.C. 226, 234 n. 9, 845 S.E.2d 495, 499 n. 9 (2020) wrote:

Nonetheless, we note the State indicated that—were the Court to reverse Smith's convictions—it intended to charge Smith with three counts of attempted murder for shooting at the rival group, and one count of assault and battery of a high and aggravated nature (ABHAN) for shooting the [unintended] victim. ABHAN is a general-intent crime, and, thus, there would be no question on remand as to the applicability of the doctrine of transferred intent. See State v. Williams, 427 S.C. 148, 157, 829 S.E.2d 702, 707 (2019) (“It is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes.”).

As to other jurisdictions handling of this attempted murder issue, in State v. Hinton, 227 Conn. 301, 630 A.2d 593 (1993), the Supreme Court of Connecticut noted that the crime of attempted murder required a specific intent to kill. The Court observed 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. Again, ABHAN would be the correct charge as to the unintended victim.

Further, in Cockrell v. State, 890 S0.2d 174 (2004), the Alabama Supreme Court held that the doctrine of transferred intent did not apply to the charge of the attempted murder as to an unintended victim. The Cockrell court cited Rollin M. Perkins, Perkins on Criminal Law 826 (2d ed.1969) (footnote omitted) with the following example:

“If, without justification, excuse or mitigation D with intent to kill A fires a shot which misses A but unexpectedly inflicts a non-fatal injury upon B, D is guilty of an attempt to commit murder—*but the attempt was to murder A whom D was trying to kill and not B who was hit quite accidentally*. *And so far as the criminal law is concerned there is no transfer of this intent from one to the other so as to make D guilty of an attempt to murder B*. Hence, an indictment or information charging an attempt to murder B, or (under statute) an assault with intent to murder B, will not support a conviction if the evidence shows that the injury to B was accidental and the only intent was to murder A.” Cockrell v. State, 890 So.2d 174, 177 (2004). (emphasis added).

Thus, if Aaron shoots at Billy intending to kill him, and misses and hits nothing, Aaron is still guilty of attempted murder because he shot at Billy intending to kill him. There is simply no windfall to the wrongdoer. In Smith, supra, it would seem that the defendant can be convicted of three counts of attempted murder for the three rival gang members he was actually shooting at, and for ABHAN for the victim who was accidentally shot. Thus, Smith faces one hundred and ten years (110 years) imprisonment (30 years for each of 3 counts of attempted murder, and 20 years for ABHAN before the gun charges are even brought into the equation.

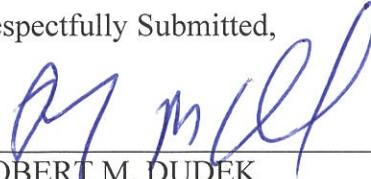
In the present case, respondent was a 17 year-old minor at the time of the Cream Club incident, and a college student at the time of his trial. It appears he only shot his gun that night

out of fear. There appears to be no evidence respondent shot Ashley R. but if he did it was out of crime recklessness which rendered him eligible for a twenty year sentence for the crime of ABHAN and not attempted murder. The Court of Appeals correctly held the trial court erred by refusing to grant respondent a directed verdict on the charge of attempted murder given the facts of this case.

CONCLUSION

The petition for writ of certiorari to the Court of Appeals should be denied.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'R. M. Dudek', written over a horizontal line.

ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR RESPONDENT

This 2nd day of March, 2022.