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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY MCNEIL,

APPELLANT

APPELLATE CASE NO: 2021-000933

FINAL REPLY BRIEF OF APPELLANT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I.** The trial court erred when it failed to grant a directed verdict on the charge of attempted murder after the State's case in chief lacked any evidence of malice aforethought or intent to kill.
- II.** The trial court erred in overruling defense counsel's objection to improper burden-shifting during the cross-examination of Shaderick Williams.

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

- I.** Because Appellant shot victim at close range and the injuries sustained were life threatening, sufficient evidence exists of specific intent for the charge of attempted murder, and anyway the jury found Appellant guilty of ABHAN.
- II.** The prosecutor's question posed to a defense witness did not shift the burden of proof, and the trial court's instruction eliminated any feasible question as to the State's burden of proving Appellant's guilt beyond a reasonable doubt.

ARGUMENT

I. The trial court erred when it failed to grant a directed verdict on the charge of attempted murder after the State's case in chief lacked any evidence of intent to kill.

Per South Carolina statute, someone guilty of “attempted murder” is defined as “[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. Through its presentation of evidence, the State did not introduce any evidence that Appellant had any intent to kill a person. Instead, Mr. Washington’s testimony was his second story — that Appellant pulled out a gun and shot, which was witnessed by Sed. There is no evidence adduced that Appellant aimed at a specific part of Mr. Washington’s body, fired more than one shot, made any statement that he intended to harm Mr. Washington, or had any motive to kill whatsoever. Therefore, the court erred when it refused to grant Appellant a directed verdict, since the State offered no proof that Appellant had the requisite intent to kill, much less the specific intent. This argument is valid at the mid-point and close of presentation of evidence even though Appellant was convicted of a lesser included offense that did not require intent as his original charge of attempted murder necessitated intent to kill and malice.

The State argues that a reasonable juror could have inferred the intent necessary to convict someone of “attempted murder” because Appellant used a deadly weapon. He cites State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2021) for the proposition that, “without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct.” Further, making a determination of intent is ordinarily for the jury. State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). To back up these points, the State cites to several cases from the Midwest (Ohio, Illinois, Indiana) and California, but cannot find

any binding upon this court. The State also does not argue why this court should adopt these opinions or find them influential upon this decision.

Without this or other relevant guidance, Appellant argues, a reasonable juror would not be able to infer that Appellant had the requisite intent to commit attempted murder. By the nature of his actions – casually drawing his gun and firing without aiming – Appellant did not show the specific intent to kill Washington. Because he did not show it, the State could not prove it. For this reason, the charges should not have gone to the jury. It is undisputed that Washington was shot and that this injury could have been fatal. However, this is the only evidence presented by the State. As outlined in the initial brief, no testimony was provided to lay out the evidence required to prove intent to kill and malice aforethought.

The State also implies that this question is irrelevant because Appellant was ultimately convicted of ABHAN rather than attempted murder. Appellant argues that this is a separate issue and a red herring. Appellant was charged with attempted murder and there is no evidence in the record to support that a discussion of lesser included offenses happened before the jury charges were discussed after the close of the presentation of evidence. When the first motion for directed verdict was made after the close of the State's case, it should have been granted due to the failure of the State to prove the requisite elements for attempted murder.

The trial court erred by refusing to direct a verdict of acquittal, since no evidence was produced that Appellant had the requisite intent to kill. Rule 19(a), SCRCrimP; State v. Hepburn, 406 S.C. at 429, 753 S.E.2d at 408; State v. Cherry, 361 S.C. at 593, 606 S.E.2d at 478; State v. James, 362 S.C. at 561, 608 S.E.2d at 457. This court must reverse.

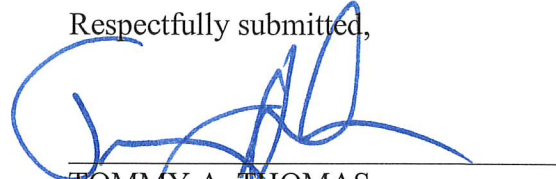
II. The trial court erred in overruling defense counsel's objection to improper burden shifting during the cross-examination of Shaderick Williams.

Appellant rests on the contents of his initial brief.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence for assault and battery of a high and aggravated nature, and remand for entry of a verdict of acquittal.

Respectfully submitted,



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