STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Kirk Griffin, Circuit Court Judge

The State of South Carolina,

Respondent,

vs.

Michael Anthony McNeil,

Appellant.

Appellate Case No. 2021-000933

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant McNeil was indicted and tried for attempted murder and possession of a weapon during a violent crime. With the Honorable R. Kirk Griffin presiding, the jury convicted McNeil for the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) and the weapons charge following trial on August 16-18, 2021. Judge Griffin sentenced McNeil to life without parole pursuant to S.C. Code Ann. § 17-25-45, with a 2008 assault and battery with intent to kill conviction and a 2016 ABHAN conviction serving as the two predicate convictions.

STATEMENT OF FACTS

His fingers were grazed since they were in the way, but Maurice Washington was shot in the groin area by Appellant McNeil as he leaned in the passenger-side window of McNeil's car to speak to McNeil. As he looked at McNeil in astonishment, McNeil "just had that dumb look on his face," and Washington ran away, eventually catching a ride to the hospital, where he was visited by police officers curious about his gunshot wounds. R. pp. 194-98.

Washington made his living selling drugs and sold them with McNeil. R. p. 172; p. 176. Identity certainly was not an issue – Washington has known McNeil his whole life. R. p. 175. Washington got in the car with McNeil, believing they were headed to the store to get cigar blunts, yet McNeil drove past Food Lion. When Washington exclaimed he thought they were getting blunts, McNeil giggled and told him to "chill." Eventually, after driving aimlessly, they stopped at a store and Washington bought some cigars, which they used to roll marijuana and "cabs" – cigars laced with cocaine. R. pp. 176-87.

Then McNeil persisted in joy-riding and refused to drop Washington off, even when Washington explained he needed to make a drug sale. R. pp. 188-91. McNeil wanted Washington to stop because Washington saw his housemate, "Boo," at a gas station. Instead, Washington testified:

> So we get to the stop sign. He coast through the stop – he ain't even stop at the stop sign. Coast through the stop sign.
>
> Now I'm in my – I'm still not thinking like Little Mike about to shot me or he got something going on, but my spider senses[1] tell me like what is it Little Mike got going on?

R. p. 191, lines 7-19. Before McNeil shot Washington, Washington asked "plenty of times" to be

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[1] This is likely a reference to a comic book character, Spider-Man, who has the ability to sense danger before it happens. See https://marvelanimated.fandom.com/wiki/spider-sense (visited Feburary 10, 2022).

dropped off. R. p. 202, lines 20-23. Washington added, "Like he's got some weird business going on." R. p. 191, line 25. Washington was suspicious and McNeil looked crazy. They entered the trailer park where McNeil lived and saw McNeil's cousin, Sed, outside the trailer. Washington gathered up his stuff, exited the car, leaned in the window while McNeil spoke with his cousin on the driver side of the car, and told McNeil, "I'm going to holler at you to come get me later on." R. pp. 192-94 (direct quote, p. 194, lines 17-18); p. 194, lines 24-25 (explaining McNeil's cousin was Sed). Washington explained, "So he look up at me, 'that's Boo, that's Boo?' And he just pulled the gun out and pow." R. p. 194, lines 19-20. Washington testified, "So I like, Little Mike, you shoot me. He got this dumb look on his face. I stand there for like three seconds, then I slammed the door and I took off running." R. p. 194, lines 20-23.

Washington reached the entrance to the trailer park as Boo pulled up, so Boo took Washington to the hospital. R. p. 198. Washington did not want to talk to the police at the hospital, he made up a story for them because he did not want to tell them McNeil shot him. R. pp. 198-200. However, the death of his cousin Zia changed his mind, and he visited police a few days later and told them what really happened. R. pp. 200-02. Washington professed to not know why McNeil shot him. R. p. 202, lines 24-25. Washington explained he told Boo and Zia that McNeil shot him, and he testified Zia told "everybody" before Zia's death. R. p. 203, lines 1-7.

Ruben Serrudo, a North Charleston police officer at the time, testified he met Washington at the hospital and collected GSR samples. Washington gave a vague story of what occurred. Washington was shot in the fingers and the groin. R. pp. 242-44. Officer Robert Bailey spoke with Washington at MUSC, but the second time he interviewed Washington at the police station at Washington's request, and Washington gave a different version of events. The shooting was not

within the North Charleston Police Department's jurisdiction, so the case was referred to the Charleston County Sheriff's Office. R. pp. 251-52.

Dr. George Rodelsperger, Jr., testified the gunshot wound to the groin area was potentially life-threatening and Washington was originally classified as a critical patient. Washington was tachycardic, which evidenced both blood loss and early shock. R. p. 306; p. 308. Washington's care was transferred to Dr. Stephen Fann, who testified a shot to the groin or proximal thigh can be life-threatening and fatal. The bullet was left in Washington. R. p. 318. Dr. Fann explained the concern for "a potential major vascular injury and so he underwent an ATLS or an Advanced Trauma Life Support type algorithm for evaluation of trauma." R. p. 313, lines 3-8.

Shaderick "Sed" Williams, McNeil's cousin, was the only witness for the defense. He claimed he never saw McNeil shoot Washington, contradicting Washington's testimony that McNeil was speaking with Williams immediately before McNeil turned and shot Washington. R. pp. 349-51. Williams denied knowing anything that happened. R. p. 356.

STANDARD OF REVIEW

The first issue is a question of the sufficiency of evidence to survive a motion for directed verdict. Respondent details this standard within its analysis of the issue, but the question ultimately is whether evidence in the light most favorable to the government is sufficient for any rational juror to find the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.").

The second issue is perhaps best characterized as to whether a question posed to a defense witness was improper and therefore, a question of whether the trial court abused the wide latitude it is accorded over cross-examination of a witness. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300, 314 (2001).

ARGUMENT

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.

McNeil shot Washington at close range and Washington sustained life-threatening injuries, but McNeil contends that insufficient evidence of his specific intent to kill Washington existed for the attempted murder charge to be considered by the jury. McNeil was convicted of ABHAN.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Pearson, 415 S.C. at 471 n.2, 783 S.E.2d at 806 n.2 (quoting Jackson, at 319) (emphasis in the original); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

Our Supreme Court has interpreted the statutory offense of attempted murder to require a specific intent to kill. State v. King, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017) (analyzing S.C. Code §16-3-29). "[W]hether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct." State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012); State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("The question of criminal intent with which an act is done is one of fact and **is ordinarily for jury determination except in extreme cases**[.]" (emphasis added)).

"A natural and probable consequence of shooting a person at nearly point-blank range is that the victim will suffer life-threatening injury." State v. Cotton, 55 N.E.3d 573, 578 (Ohio Ct. App. 2015). An Illinois opinion found, "Specific intent to kill may be shown by the surrounding circumstances, including the character of the assault and the use of a deadly weapon. . . . Firing a gun at a person supports the conclusion that the person doing so acted with the intent to kill." People v. Brown, 793 N.E.2d 75, 80 (Ill. App. Ct. 2003) (internal citations omitted). The Indiana Court of

Appeals noted, "Firing a gun in the direction of an individual is substantial evidence from which a jury may infer intent to kill." Simmons v. State, 999 N.E.2d 1005, 1010 (Ind. Ct. App. 2013); see State v. Lively, 153 So.3d 1061, 1068 (La. Ct. App. 2014) (defendant aimed gun at head, but shot victim in the leg; and the court observed "[i]t is well-settled that the act of pointing a gun at a person and firing the gun is an indication of the intent to kill that person.") (citations and internal quotations omitted); see also People v. Millbrook, 222 Ca.App.4th 1122, 1149 (Cal. Ct. App. 2014) ("Here Millbrook admitted pointing the gun at Manoa and intentionally shooting it, and Manoa testified that the gun was no more than two feet away from him when Millbrook fired. Neither the fact that Manoa survived nor the fact that Millbrook shot only once 'compel[s] the conclusion that [Millbrook] lacked the animus to kill in the first instance.'") (citations omitted).

In the present case, a reasonable juror could find McNeil specifically intended to kill Washington with a single shot. Treating doctors testified the injuries were potentially life-threatening and saw evidence of blood loss and early shock. It is certainly reasonable to believe that McNeil understood he was inflicting life-threatening injury. In tandem with McNeil's behavior in depriving Washington his freedom and his devious mood, reasonable jurors could find McNeil discharged his weapon at close range with the specific intent to kill Washington. Accordingly, evidence supports submitting the charge of attempted murder to the jury.

Further, this argument is negated by the jury's verdict for ABHAN, **a lesser included offense**. See S.C. Code § 16-3-600 (B)(3). "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." S.C. Code § 16-3-600 (B)(1). "Great bodily injury: means bodily injury which

causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code § 16-3-600 (A)(1). In the instant case, McNeil inflicted life-threatening injuries on Washington when he shot him in the groin.

McNeil makes the conclusory argument that not only should directed verdict been granted for attempted murder, but the trial court should not have allowed the case to go to the jury on the lesser included offense of ABAHN. In State v. Hiott, 276 S.C. 72, 276 S.E.2d 163 (1981), the defendants were indicted for armed robbery, but the trial court submitted the indictment for the jury for attempted armed robbery because the lack of evidence that a toothbrush found in their possession was stolen. The defendants appealed, arguing attempt was not a lesser included offense and the indictment should not have been submitted to the jury after the trial court struck out the item alleged to have been stolen. The Supreme Court rejected the arguments, observing: "We follow the general rule that where an indictment charges an offense which cannot be committed without also committing a lesser offense, the defendant may be convicted of the lesser one even though acquitted of the greater." Id. at 80, 276 S.E.2d at 167. The Court likewise argued any variance in the amended indictment did not prevent submitting the case to the jury. Id.

In State v. Green, 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014), the trial court granted directed verdict for first degree burglary because the lack of evidence showing Green entered the dwelling; but over Green's objection, the trial court submitted the indictment to the jury for attempted burglary. This Court rejected the argument that the trial court improperly enlarged the indictment when it instructed the jury on attempted burglary because Green was on notice of the charge **and** its lesser included offenses. Id. at 595, 753 S.E.2d at 262.

In the present case, evidence supported a possible verdict of attempted murder since McNeil

shot Washington at close range and Washington suffered severe, life-threatening injuries. Further, it was proper for the case to go to the jury with ABHAN as a possible verdict, and therefore, the convictions and sentences should be affirmed.

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.

McNeil claims the prosecution shifted the burden of proof during its cross-examination of Shaderick "Sed" Williams. Washington claimed McNeil and Williams were in the middle of the conversation when McNeil turned his attention to Washington and shot him. R. p. 194. Williams claimed he did not see McNeil shoot Washington and professed he did not understand why he was testifying at trial. R. p. 351.

Cross-examination culminated as follows:

> Q: Okay. And you've never told this to anybody else? You've never – excuse me. You've never contacted anyone to tell them?
>
> A: Well, after I was contacted about it or whatnot, you know I talked to my father about it, probably the only person I can remember I said something to about it.
>
> Q: Okay. And you guys are – you again are very close with Mr. McNeil, your cousin?
>
> A: I am.
>
> Q: And today is the first day that you could help him out by doing anything?
>
> A: Yes, ma'am ---
>
> Defense counsel: --- objection, Your Honor. Burden shifting.

Court: Overruled.

Q: And would you do anything for your cousin?

A: I didn't see my cousin shoot that gun.

Q: That's fine. You'd do anything for your cousin?

A: No. I mean anything outside of lying for him about a situation like that.

R. p. 353, line 19 – p. 354, line 14.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (citing State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981)). Judges are entrusted with wide latitude concerning the potential limitations on cross-examination of a witness. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300, 314 (2001) ("Trial judges retain wide latitude however, to impose reasonable limits on cross-examination including questions regarding matters that are only marginally relevant.") (citations omitted).

On appeal, McNeil maintains the prosecutor's question shifted the burden of proof. McNeil relies on State v. Attardo, 263 S.C. 546, 211 S.E.2d 868 (1975). But Attardo is inapplicable, least of all because it was a challenge to a jury instruction on the knowledge element for possession of marijuana with intent to distribute. The instruction put the burden on the defendant to prove that he did not have knowledge of the substance in the defendant's possession. Id. at 553, 211 S.E.2d at 871.

In the instant case, the question was not burden-shifting, but merely part of an examination to show potential bias from the defendant's witness, and the examination constitutes an allowable

impeachment. See Rule 607, SCRE ("The credibility of a witness may be attacked by any party, ..."); Rule 608(c), SCRE ("Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."). Of course, the reason a defendant calls a witness is so a witness may be able to help the defendant's case.

Undoubtedly, it is important for the jury to understand the burden lies with the State. See Attardo, 263 S.C. at 552, 211 S.E.2d at 870 ("The obvious rationale behind the principle that the burden of proof is on the State is the safeguard of the presumption of innocence."). However, as discussed below, the trial court's instructions to the jury firmly commanded the proper burden, so any confusion from the lone question was surely cured, and any supposed error was rendered harmless by the instructions.

Following the parties resting and then their closing arguments, the trial court instructed the jury on the law. The trial court admonished the jury that the State bore the burden of proof. The trial court explained, "A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent." R. p. 422, lines 13-17. The trial court continued:

> I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictments were issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.
>
> This presumption of innocence does not end when you begin your deliberation but it accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying you of that guilt beyond a reasonable doubt.
>
> The presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

R. p. 422, line 18 - p. 423, line 13. The trial court proceeded to instruct the jury on reasonable doubt

and admonished the jury it could only convict the defendant if convinced of his guilt beyond a reasonable doubt. R. pp. 423-24. In explaining direct and circumstantial evidence, the trial court commanded that the burden of proof beyond a reasonable doubt "rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two." R. p. 425, lines 8-13. The trial court admonished the jury it may not consider that the defendant did not testify, concluding, "The burden of proof, as I have stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt." R. p. 427, lines 4-7.

Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). In the instant case, the challenged question did not affect the result of the trial as the jury instructions emphasized the State's burden of proof. The convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 25, 2022

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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