King v. Commonwealth

2000 | Cited 0 times | Court of Appeals of Virginia | July 25, 2000

Argued at Richmond, Virginia

MEMORANDUM OPINION [2] **

FROM THE CIRCUIT COURT OF THE CITY OF PETERSBURG Oliver A. Pollard, Jr., Judge

William Andrew King, Jr. (King) was convicted in a bench trial of attempted murder and use of a firearm during the commission of attempted murder. [3] The sole question on appeal is whether the evidence was sufficient as a matter of law to sustain the convictions. For the reasons that follow, we affirm his convictions.

I. BACKGROUND

"On appeal, 'we view the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom.'" Archer v. Commonwealth, 26 Va. App. 1, 11, 492 S.E.2d 826, 831 (1997). So viewed, the evidence proved that on January 30, 1997, between 9:00 p.m. and 10:00 p.m., Hamidullah Muhammad (the victim) was walking along a street in Petersburg. A car drove up occupied by three people, including King, who was sitting in the back seat. Someone in the vehicle shouted a racial epithet at the victim and asked the victim to "come here." The victim, who testified that he knew he was not safe, kept walking. King, who was wearing a skull cap and carrying a gun, exited the vehicle and followed the victim. The victim began to run with King chasing him while still carrying the gun. With King about twenty-five feet behind him, the victim ran to his apartment and dove through the front door. As he did so, King fired the gun. The victim was not injured and was unable to testify how close the bullet, which was not recovered, came to hitting him.

Later that evening, police stopped the vehicle occupied by King and two other individuals. King was in the back seat, and next to him on the seat was a loaded .38 caliber revolver that had recently been fired and which contained one spent shell casing. The police also recovered gloves and another weapon from the vehicle. George Carrington, another occupant of the vehicle, testified he drove the car in which King was a passenger and, although King got out of the car and chased the victim, he was unarmed and only wanted to ask directions.

II. ANALYSIS

King argues this evidence was insufficient to establish he had the specific intent to kill the victim.

Whether the required intent exists is generally a question for the trier of fact. See Haywood v. Commonwealth, 20 Va. App. 562, 566, 458 S.E.2d 606, 608 (1995). As such, this determination is binding unless plainly wrong. See Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987). King contends the evidence equally supports a reasonable hypothesis that his intent was something other than to kill the victim. We disagree.

The evidence established that after a racial epithet was shouted at the victim and a demand made that he approach the vehicle, King, who was a stranger to the victim, got out of the car with a loaded gun and chased him. No demand was made of the victim to turn over personal property nor did King brandish the gun at the victim or call for him to halt. At the point when King fired, he was twenty-five feet behind the victim, who was about to enter the safety of his apartment building. It was not unreasonable for the court as trier of fact to conclude that this was the last opportunity for King to shoot the victim.

The specific intent to commit [a crime] may be inferred from the conduct of the accused if such intent flows naturally from the conduct proven. Where the conduct of the accused under the circumstances involved points with reasonable certainty to a specific intent to commit [the crime], the intent element is established. Wilson v. Commonwealth, 249 Va. 95, 101, 452 S.E.2d 669, 674 (1995) (citations omitted).

"The Commonwealth need only exclude reasonable hypotheses of innocence that flow from the evidence, not those that spring from the imagination of the defendant." Hamilton v. Commonwealth, 16 Va. App. 751, 755, 433 S.E.2d 27, 29 (1993).

Taking the evidence in the light most favorable to the Commonwealth, we cannot say that the trial court's determination was "plainly wrong." Therefore, we affirm King's convictions.

Affirmed.

Benton, J., dissenting.

"To sustain a conviction for attempted murder, the evidence must establish both a specific intent to kill the victim and an overt but ineffectual act committed in furtherance of the criminal purpose." Wynn v. Commonwealth, 5 Va. App. 283, 292, 362 S.E.2d 193, 198 (1987). As in every criminal prosecution, "[t]he Commonwealth must prove each element of a charged offense beyond a reasonable doubt." Blaylock v. Commonwealth, 26 Va. App. 579, 589, 496 S.E.2d 97, 102 (1998); Jackson v. Virginia, 443 U.S. 307, 315-16 (1979). "In most cases, of course, the [Commonwealth] must satisfy its burden of proving specific intent by circumstantial evidence." Dickerson v. City of Richmond, 2 Va. App. 473, 477, 346 S.E.2d 333, 335 (1986). Under familiar principles, however, proof by circumstantial evidence is insufficient if it creates merely a suspicion of guilt. See Webb v. Commonwealth, 204 Va. 24, 34, 129 S.E.2d 22, 29 (1963). The evidence must be consistent with guilt

and exclude every reasonable hypothesis that the accused had another intent. See id.

Proof by circumstantial evidence "is not sufficient . . . if it engenders only a suspicion or even a probability of guilt. Conviction cannot rest upon conjecture." "'[A]ll necessary circumstances proved must be consistent with guilt and inconsistent with innocence and exclude every reasonable hypothesis of innocence.'" "When, from the circumstantial evidence, 'it is just as likely, if not more likely,' that a 'reasonable hypothesis of innocence' explains the accused's conduct, the evidence cannot be said to rise to the level of proof beyond a reasonable doubt." The Commonwealth need not "exclude every possible theory or surmise," but it must exclude those hypotheses "which flow from the evidence itself." Betancourt v. Commonwealth, 26 Va. App. 363, 373-74, 494 S.E.2d 873, 878 (1998) (citations omitted).

In denying William Andrew King's motion to strike, the trial judge himself expressed the uncertainty of the evidence when he remarked that if King was "not intending to kill [Hamidullah Muhammad] or rob him, what's the purpose" in chasing him. No evidence proved King made threats to kill or ever verbalized anything indicating his intent. Muhammad testified that he was walking alone from a restaurant when King "yelled out" to him. Muhammad began to run when he saw King holding a gun at his side pointing downward. He heard a shot but never saw the gun pointed at him. Significantly, the Commonwealth offered no evidence that the bullet went near Muhammad, hit the apartment or any part of the structure near him, or even traveled at any direction toward him. Muhammad did not testify that he heard the bullet passing through the air near his body.

The evidence proved only that while Muhammad was running, he heard a gunshot. From this evidence, it is just as likely that King fired a shot into the air or stumbled and accidentally discharged the gun. That King had a gun which discharged is not enough, standing alone, to prove his intent to murder Muhammad. "The Commonwealth 'must prove beyond a reasonable doubt both the act and [the] mental state. Sufficient proof of one element, but not the other, will result in reversal.'" Harrell v. Commonwealth, 11 Va. App. 1, 7, 396 S.E.2d 680, 682 (1990) (citation omitted) (emphasis added). Furthermore, to prove King's intent, it is not sufficient to merely prove that King's act, had it proved fatal, would have been murder. "'[W]hile a person may be guilty of murder though there was no actual intent to kill, he cannot be guilty of an attempt to commit murder unless he has a specific intent to kill.'" Haywood v. Commonwealth, 20 Va. App. 562, 566, 458 S.E.2d 606, 608 (1995) (citation omitted). Thus, the issue we must decide is not whether King's acts might have resulted in the death of Muhammad. Instead, the issue is whether the evidence showed that when King chased Muhammad, he had "formed the specific intent" to kill Muhammad. See id.

The trial judge simply erred when he invoked the following presumption:

So the State has produced a situation where a man with a gun chases another man down the street. The gun is fired. That presumption is he's trying to kill him.

"The necessary intent [the Commonwealth must prove] . . . is the intent in fact, as distinguished from an intent in law." Hargrave v. Commonwealth, 214 Va. 436, 437, 201 S.E.2d 597, 598 (1974).

[W]here a statute makes an offense consist of an act combined with a particular intent, such intent is as necessary to be proved as the act itself, and it is necessary for the intent to be established as a matter of fact before a conviction can be had. Surmise and speculation as to the existence of the intent are not sufficient, and "no intent in law or mere legal presumption, differing from the intent in fact, can be allowed to supply the place of the latter." Dixon v. Commonwealth, 197 Va. 380, 382, 89 S.E.2d 344, 345 (1955) (emphasis added).

When explaining his ruling, the trial judge, in effect, confirmed that the evidence leaves undifferentiated which of at least three possibilities explained King's intentions. He remarked as follows:

Of course, here we have a situation of a man walking down the street, a car pulls up beside him, something is said to him. He keeps walking. The defendant jumps out of the car with a .38. And this is, I think, late at night or early morning. I've forgotten which.

He chases the victim down the street. The victim is trying to get to his front door. As he's diving through the door, a shot is fired. At one point before that he looked back and saw the defendant with a gun down by his side. He said he had a stocking cap on. The police stopped the vehicle with the defendant in it. They find a stocking cap. They find two .38's.

No evidence was presented by the defendant. So what were the defendant's intentions? Is he trying to kill him? Is he trying to rob him? Is he trying to shoot him so he can rob him? I mean, no help was provided by the defense at all. (Emphasis added.)

Proof that leaves indifferent what King intended is insufficient to satisfy the Commonwealth's burden of proving the element of intent beyond a reasonable doubt. See Smith v. Commonwealth, 16 Va. App. 626, 627-28, 432 S.E.2d 1, 2 (1993). The physical evidence does not prove where the bullet landed. It does not prove whether King aimed or whether he stumbled. Thus, the evidence is insufficient to establish beyond a reasonable doubt that King intended to kill because, as the trial judge noted, it left undifferentiated whether King was "trying to kill him" or "trying to rob him" or "trying to shoot him so he can rob him." Where the facts are equally susceptible to multiple interpretations, at least one of which is consistent with the innocence of the accused, the trier of fact cannot arbitrarily adopt that interpretation which incriminates the accused. See Haywood, 20 Va. App. at 567, 458 S.E.2d at 609.

In summary, Muhammad testified that King had a weapon, that King chased him, and that he heard a single shot fired. The totality of circumstances does not point to an attempt to murder with any more certainty than it points to a conclusion that King purposefully discharged a firearm to frighten

Muhammad or accidentally discharged it. No evidence proved the weapon was ever aimed at Muhammad, and no evidence proved King threatened to kill Muhammad. "Suspicion, no matter how strong, is not enough. Convictions cannot rest upon speculation and conjecture." Littlejohn v. Commonwealth, 24 Va. App. 401, 415, 482 S.E.2d 853, 860 (1997).

For these reasons, I would reverse the conviction for attempted murder. I dissent.

1. * Retired Judge James E. Kulp took part in the consideration of this case by designation pursuant to Code § 17.1- 400, recodifying § 17- 116.01.

2. ** Pursuant to Code § 17.1- 413, recodifying Code § 17-116.010, this opinion is not designated for publication.

3. Although not part of this appeal, King was also convicted of felony failure to appear.