REL: August 14, 2020

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0797

Ronji Dejuan Vason

v.

State of Alabama

Appeal from Lee Circuit Court
(CC-18-292)

McCOOL, Judge.

Ronji Dejuan Vason appeals his conviction for attempted murder, a violation of § 13A-4-2 and § 13A-6-2, Ala. Code 1975, and his sentence of life imprisonment. We affirm.

Facts and Procedural History

The evidence presented at Vason's trial tended to establish the following facts. Abbas Vazin owns a liquor store in Macon County and lives approximately 500 yards from the store. In the early morning hours of August 11, 2017, Vazin was at home when he heard the alarm at his store sound, and Vazin immediately "jumped in [his] car and drove to the store." (R. 264.) Video surveillance from a security camera at Vazin's store showed that, before Vazin arrived, a total of five men were "going back and forth across the street taking" cigarettes, bottles of liquor, and cash to two cars that were parked in a vacant lot across the street from Vazin's store. (R. 271.) When Vazin arrived, he "didn't see any cars in the parking lot," so he "figured [he was] already late." (R. 264.) However, when Vazin entered his store, he encountered "three individuals with all of [Vazin's] cigarettes and ... stuff under their arm." (R. 265.) Vazin testified that he "held the door as long as he could" in an attempt to keep the three intruders from leaving but that they "pushed [him] out of the way and took off." (R. 265.) According to Vazin, once the three intruders managed to exit the store, they ran across the street to the vacant lot, where they and the other two

intruders attempted to flee in the two automobiles parked there -- one intruder in one and four intruders in the other. Vazin, who by that time had returned to his vehicle, testified that the car carrying a single intruder left the vacant lot first but that he "rammed [the car carrying four intruders] with [his] car" and then "started pursuing them." (R. 280.) According to Vazin, he continued to pursue the four intruders in the direction of Lee County, reaching speeds of 65 to 70 miles per hour and "hit[ting] them again from the back," until he "saw the police coming," and, once the police officer "turned his lights on," Vazin stopped pursuing the intruders and "let [the police officer] have it." (R. 281.)

Quentavious Morgan, a police officer with the Notasulga Police Department, was the officer who saw Vazin pursuing the car with the four intruders and took over the pursuit. According to Officer Morgan, at approximately 3:00 a.m., he was traveling on Highway 14 near Notasulga when he observed "two vehicles ... traveling at a high rate of speed" cross in front of him on Tallapoosa Street. (R. 325.) Officer Morgan testified that he observed the first car, a Nissan, "run through [a] stop sign" and that he "saw four masked men" in

the Nissan. (R. 325.) Thus, Officer Morgan "activated [his] blue lights and sirens and began chase" (R. 325-26), at which point the second vehicle "immediately pulled over." (R. 329.) Officer Morgan testified that, as he was pursuing the Nissan at speeds of 80 to 90 miles per hour down a "completely dark" road (R. 332), "there were projectiles[, i.e., bottles of liquor,] being thrown out of the window, smashing on [his] windshield." (R. 329-30.) Officer Morgan could not identify which passengers were throwing the liquor bottles because "it was almost like it was raining because [of] the alcohol that was being thrown." (R. 331.) However, Officer Morgan testified that he could see that the liquor bottles "were coming from both sides of the [Nissan]" and that he "could just see bottles coming from the left and the right side, from the back of the vehicle." (R. 330.) More specifically, Officer Morgan testified that he could see two occupants of the Nissan with "half their bod[ies] ... out of the window" and their "back[s] or butt[s] on the door panels," "facing towards" him while "throwing stuff ... on each side." (R. 336.) When asked to describe what he was experiencing at the time, Officer Morgan testified:

> "I was just amazed at the bottles being thrown. And at one point they were trying to run me off the road. And, you know, it was like, you throw something out of the window at eighty miles per hour in the officer's direction, and it's ... like a missile coming at you. It was -- it was that hard. The windshield was cracked and I -- at that point I started to feel that, okay; this -- I am not going to go home tonight. So I continued on, because that's what we are supposed to do, and just continued until I had nothing left to give."

(R. 333.)

According to Officer Morgan, once the occupants of the Nissan "realized that [he] wasn't going to back off[,] ... that's when [he] heard gunshots ... and that's when [he] realized [he] was being shot at." (R. 333.) However, Officer Morgan could not determine from which side of the Nissan the shots were being fired. Officer Morgan testified that he returned fire, at which point the Nissan accelerated, and, according to Officer Morgan, once he was able to "catch back up" (R. 337) to the Nissan, one of the occupants threw a case of beer at him from the right side of the Nissan. Officer Morgan testified that the case of beer landed in the road in front of his car, which caused Officer Morgan to swerve "to avoid hitting the box and [his] vehicle went off the road and ... slid maybe 50 yards before [he] regained control of the

vehicle and got back in the chase." (R. 338-39.) Eventually, Auburn police officers joined Officer Morgan's pursuit of the Nissan, which ended when the Nissan "[ran a] stop sign and crashed into a fence and that's when the subjects got out of the vehicle and took off running." (R. 341.) Three of the occupants of the Nissan, including Vason, were apprehended not far from the scene of the accident "within maybe minutes" (R. 345), and the fourth occupant was apparently apprehended sometime later.

Mitch Allen, an investigator with the Lee County Sheriff's Department, interviewed Vason following Vason's apprehension and took a written statement from Vason, which was read into evidence and which states, in pertinent part:

> "I, Ronji Vason, can somewhat read and write the English language. I am giving a voluntary statement to Inv. Wilson and Inv. Allen on 08/[11]/2017. Curt came and picked me up in a 4 door car that was brown in color from the Bama motel in Montgomery, AL. I left with him to go get high. We were smoking some loud weed. Curt took me out to a store where we met up with some guys that I didn't know. We broke into the store and took some liquor bottles and some other stuff from the store. While we were loading up the car with the stuff from the store some truck pulled up to the front of the store. I then jumped into a car with some guys I did not know because Curt had already left. While I was getting into the car the truck rammed the car I was getting into in the rear bumper. When I got into the car we pulled

> off. I was in the back driverside seat of the vehicle. The truck that rammed us at the store followed us and rammed us a couple more times while we were going down the road. The guy that was sitting in the back passenger side seat started throwing liquor bottles out of the window at the truck. The guy in the front passenger side seat then gave the guy in the back passenger side seat a gun. I saw the guy shoot at the truck and then the truck disappeared. I told the guy driving the car I was in to let me out of the car and he wouldn't. The police then tried to stop the car right after the truck disappeared. The guy driving still did not stop. The guy in the back passenger side seat then gave the gun back to the guy in the front passenger side seat. I then saw the guy in the front passenger side seat shooting at the police that was trying to stop us. The police was shooting at us too. The guy next to me in the back passenger side seat was throwing liquor bottles at the police car while the guy in the front passenger side seat was shooting at the police car. I ducked down in the seat until the car finally stopped. I then ran from the car but was arrested by the police. Inv. Allen showed me some pictures and the tall guy with the plattes in his hair was in the front seat passenger side seat. The short guy with the plattes that were in rubber bands was in the back passenger side seat next to me. The picture that was on the piece of paper that Inv. Allen showed me was the driver of the car that I was in. This statement is true and accurate to the best of my knowledge."[1]

(C. 125-26.)

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[1]"Curt" was not otherwise identified at trial. Inv. Allen testified that, based on Vason's statement, the driver of the Nissan was Javante Felder, the front passenger was Marion Felder, and the rear passenger sitting behind Marion Felder was Alexander Felder. (R. 700.) According to the State, Javante, Marion, and Alexander pleaded guilty to attempted murder. State's brief, at 2.

When police officers inventoried the Nissan, they discovered "a pistol in the front passenger floorboard" (R. 466) "laying flat down with a magazine in it." (R. 542.) A swab of the pistol was provided to the Alabama Department of Forensic Sciences, which tested the swab for deoxyribonucleic acid ("DNA"). Although forensic testing indicated that none of the four individuals in the Nissan could be excluded as a contributor to the DNA found on the pistol, no conclusion could be reached as to which occupant or occupants of the Nissan contributed to that DNA because, "[d]ue to the complex and/or limited nature of the samples, the DNA detected from the [pistol] is not suitable for comparison purposes or for searching in the Combined DNA Index System." (C. 114.) In addition, there was no "[t]race evidence that could potentially be gunshot residue" found on Vason's hands or neck when he was tested for such evidence at the Lee County Sheriff's Department following his apprehension. (R. 496.)

Approximately two months after Vason was arrested, he gave another written statement to Inv. Allen, which was also read into evidence and which states, in pertinent part:

> "I, Ronji Dejuan Vason, have requested to speak with Inv. Allen again about this situation that happened

> on 08/11/2017. I remember a couple of more details that I didn't remember when I spoke with him on 08/11/2017. Everything that I told Inv. Allen before is true but I remember while we were being chased by the guy in the truck from the store that we had just broke into: the guy in the backseat with me, who I know as Bake or the Short Felder, got a gun from the driver, Vante Felder. Bake then shot several times at the guy in the truck and then the police got behind us and the truck pulled over. Bake then shot at the police and I remember somebody saying 'Shoot that motherfucker OG'[2] and they were talking to me. I got the gun and unloaded it and I also took the clip out of the gun. I then threw the gun in the front of the car and told the people that I came to do a burglary not to kill anyone. I did not shoot the gun and I was trying to keep the people in the car from shooting it and that's why I unloaded it. This statement is true and accurate to the best of my knowledge."

(C. 123.)

At the close of the State's case, Vason moved for a judgment of acquittal on the ground that the State's evidence was insufficient to prove a prima facie case of attempted murder. The trial court denied Vason's motion and submitted the case to the jury, along with an instruction on complicity liability, see § 13A-2-23, Ala. Code 1975, and the jury found Vason guilty of attempted murder.[3] The trial court

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[2]Inv. Allen testified that "OG is quotation for -- it's a gang name. Original Gangster." (R. 717.)

[3]The trial court also charged the jury on reckless endangerment, a violation of § 13A-6-24, Ala. Code 1975, as a

subsequently sentenced Vason to life imprisonment, and Vason provided oral notice of appeal at the sentencing hearing. Rule 3(a)(2), Ala. R. App. P.

Analysis

On appeal, Vason argues that the trial court erred by denying his motion for a judgment of acquittal because, he says, the State failed to present sufficient evidence to sustain his attempted-murder conviction.

> "'"'In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution.'" Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). "'The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt.'" Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). "'When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should

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lesser-included offense of attempted murder.

submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision.'" Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). 'The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury.' Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978).

> "'"The trial court's denial of a motion for judgment of acquittal must be reviewed by determining whether there was legal evidence before the jury at the time the motion was made from which the jury by fair inference could find the defendant guilty. Thomas v. State, 363 So. 2d 1020 (Ala. Cr. App. 1978). In applying this standard, this court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt. Willis v. State, 447 So. 2d 199 (Ala. Crim. App. 1983). When the evidence raises questions of fact for the jury and such evidence, if believed, is sufficient to sustain a conviction, the denial of a motion for judgment of acquittal does not constitute error. McConnell v. State, 429 So. 2d 662 (Ala. Crim. App. 1983)."'

"Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003), cert. denied, 891 So. 2d 998 (Ala. 2004) (quoting Ward v. State, 610 So. 2d 1190, 1191 (Ala. Crim. App. 1992)).

"....

"'The elements of the crime of attempted murder are intent to kill and an overt act towards commission of that act.' Bradford v. State, 734 So. 2d 364, 369 (Ala. Crim. App. 1999) (citing Chaney v. State, 417 So. 2d 625 (Ala. Crim. App. 1982)).

> "'"Attempted murder is a specific intent crime .... An attempt to commit murder requires the perpetrator to act with the specific intent to commit murder .... A general felonious intent is not sufficient." Free v. State, 455 So. 2d 137, 147 (Ala. Cr. App. 1984). To establish a prima facie case of attempted murder, the State must present evidence of the accused's specific intent to kill, and of "some overt act in part execution of the intent to commit the crime ... which falls short of the completed crime; the difference between attempt and commission being that the act or step fails to produce the result intended." Broadhead v. State, 24 Ala. App. 576, 139 So. 115, 117 (1932).'

"Minshew v. State, 594 So. 2d 703, 704 (Ala. Crim. App. 1991)."

Murphy v. State, 108 So. 3d 531, 540-41 (Ala. Crim. App. 2012).

> "'... "Circumstantial evidence alone is enough to support a guilty verdict of the most heinous crime, provided the jury believes beyond a reasonable doubt that the

> accused is guilty." White v. State, 294 Ala. 265, 272, 314 So. 2d 857, cert. denied, 423 U.S. 951, 96 S. Ct. 373, 46 L. Ed. 2d 288 (1975). "Circumstantial evidence is in nowise considered inferior evidence and is entitled to the same weight as direct evidence provided it points to the guilt of the accused." Cochran v. State, 500 So. 2d 1161, 1177 (Ala. Cr. App. 1984), affirmed in pertinent part, reversed in part on other grounds, Ex parte Cochran, 500 So. 2d 1179 (Ala. 1985).'

"White v. State, 546 So. 2d 1014, 1017 (Ala. Crim. App. 1989). Furthermore,

> "'"[c]ircumstantial evidence is not inferior evidence, and it will be given the same weight as direct evidence, if it, along with the other evidence, is susceptible of a reasonable inference pointing unequivocally to the defendant's guilt. Ward v. State, 557 So. 2d 848 (Ala. Cr. App. 1990). In reviewing a conviction based in whole or in part on circumstantial evidence, the test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt; not whether such evidence excludes every reasonable hypothesis but guilt, but whether a jury might reasonably so conclude. Cumbo v. State, 368 So. 2d 871 (Ala. Cr. App. 1978), cert. denied, 368 So. 2d 877 (Ala. 1979)."

> "'Ward[v. State], 610 So. 2d [1190,] 1191–92 [(Ala. Crim. App. 1992)].'
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> "Lockhart v. State, 715 So. 2d 895, 899 (Ala. Crim. App. 1997)."

Mogil v. State, 225 So. 3d 211, 216 (Ala. Crim. App. 2016).

In support of his claim that the State failed to present sufficient evidence to sustain his attempted-murder conviction, Vason argues that the State failed to prove that he committed an overt act toward the murder of Officer Morgan. Murphy, supra. Specifically, Vason argues that "there is no physical or direct evidence that he ever fired the pistol" that was recovered from the Nissan. Vason's brief, at 9. However, we conclude that the State presented sufficient evidence to sustain Vason's attempted-murder conviction despite the lack of such "physical or direct evidence that he ever fired the pistol."

Officer Morgan testified that the liquor bottles being thrown at his car, which was traveling at 80 to 90 miles per hour, were "like a missile coming at [him]" and that the bottles cracked the windshield of his car. It was certainly possible that those missile-like liquor bottles could have caused Officer Morgan's death, either by breaking through the

windshield of Officer Morgan's car and fatally striking him or by disabling his car or causing him to lose control of the car and be fatally injured in a resulting accident. In fact, at one point during the pursuit Officer Morgan did lose control of his car as a result of the objects being hurled at him, and he testified that, once the liquor bottles began hitting his car, he believed he was "not going to go home tonight." Thus, we hold that the act of throwing full liquor bottles or other similar objects at a vehicle traveling at or in excess of highway speeds may be sufficient to satisfy the element of "an overt act towards," Murphy, 108 So. 3d at 540 (citation omitted), the murder of the driver of that car. See Overnite Transp. Co. v. International Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, 168 F. Supp. 2d 826, 845 (W.D. Tenn. 2001) ("[T]hrowing a brick or rock at a truck's windshield when it is traveling at highway speed may be found to constitute attempted murder, because a fact finder could reasonably infer an intent to kill from the circumstances surrounding the act."). The question then becomes, in this case, whether there was sufficient evidence

tending to indicate that Vason threw liquor bottles at Officer Morgan's car from the car Officer Morgan was pursuing.

As noted, Vason admitted in his statement that he was one of only two passengers in the backseat of the Nissan and, specifically, that he was sitting behind the driver. Although Officer Morgan could not identify which occupants of the Nissan were throwing liquor bottles, he could see that the liquor bottles were being thrown "from the left and the right side" of the Nissan and were being thrown from "the back of the vehicle," i.e., the backseat of the Nissan. (Emphasis added.) Therefore, the evidence indicated that both of the back-seat passengers in the Nissan, one of whom was Vason, were throwing liquor bottles at Officer Morgan's car. Although the State's evidence tending to establish that fact was circumstantial, circumstantial evidence was sufficient in and of itself to support Vason's conviction, provided that the evidence was "susceptible of a reasonable inference pointing unequivocally to the defendant's guilt." Moqil, 225 So. 2d at 216 (citations omitted). Here, the only reasonable conclusion to draw from Officer Morgan's testimony and Vason's statement is that the person sitting behind the driver of the Nissan was

throwing liquor bottles at Officer Morgan's car and that Vason was that person. Thus, considering the evidence in a light most favorable to the State and according the State all legitimate inferences therefrom, Murphy, supra, we conclude that the evidence supports a finding that Vason was throwing liquor bottles at Officer Morgan's car. Accordingly, the State presented evidence sufficient to prove that, under the facts of this case, Vason committed an overt act toward the murder of Officer Morgan.

In addition, although there was no direct evidence tending to establish that Vason fired the gun found in the Nissan, the State's evidence indisputably established that shots were fired from the Nissan, that Vason was in possession of the gun at some point during Officer Morgan's high-speed pursuit of the Nissan, and that the other occupants of the Nissan were instructing Vason to shoot at Officer Morgan's car. That evidence, coupled with the evidence indicating that Vason was throwing liquor bottles at Officer Morgan's car, constitutes circumstantial evidence from which the jury could have found that Vason also fired the gun at Officer Morgan's car. Although Vason denied in his statement that he had fired

the gun, the jury was not required to afford Vason's statement any credibility. Acklin v. State, 790 So. 2d 975, 1009 (Ala. Crim. App. 2000). In fact, we note that Vason claimed to have unloaded the gun and to have removed the magazine from the gun but that the gun was found with the magazine intact, which tends to discredit Vason's statement. Thus, for the foregoing reasons, we conclude that the State presented sufficient evidence to prove that Vason committed an additional overt act toward the murder of Officer Morgan, i.e., the firing of the gun.

Of course, to convict Vason of attempted murder, the State was required to prove not only that Vason committed an overt act toward the murder of Officer Morgan but also that Vason committed that act with the specific intent to murder Officer Morgan. See Murphy, 108 So. 3d at 540-41 ("To establish a prima facie case of attempted murder, the State must present evidence of the accused's specific intent to kill, and of 'some overt act in part execution of the intent to commit the crime.'" (citations omitted)). However, it is well settled that

> "'"[i]ntent, ... being a state or condition of the mind, is rarely, if ever,

> susceptible of direct or positive proof, and must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence." McCord v. State, 501 So. 2d 520, 528–529 (Ala. Cr. App. 1986), quoting Pumphrey v. State, 156 Ala. 103, 47 So. 156 (1908).'
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> "French v. State, 687 So. 2d 202, 204 (Ala. Crim. App. 1995), aff'd in part, rev'd in part on other grounds, 687 So. 2d 205 (Ala. 1996).
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> > "'"The question of intent is hardly ever capable of direct proof. Such questions are normally questions for the jury. McMurphy v. State, 455 So. 2d 924 (Ala. Crim. App. 1984); Craig v. State, 410 So. 2d 449 (Ala. Crim. App. 1981), cert. denied, 410 So. 2d 449 (Ala. 1982)." Loper v. State, 469 So. 2d 707, 710 (Ala. Cr. App. 1985).'
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> "Oryang v. State, 642 So. 2d 989, 994 (Ala. Crim. App. 1994)."

Connell v. State, 7 So. 3d 1068, 1090-91 (Ala. Crim. App. 2008). Therefore, Vason's intent to murder Officer Morgan could be inferred from Vason's acts of throwing liquor bottles and shooting at Officer Morgan's car while Officer Morgan was pursuing the Nissan in which Vason was a passenger at speeds approaching 100 miles per hour on an unlit road in the middle of the night. See Jones v. State, 710 So. 2d 870, 878 (Miss. 1998) ("[A]n inference of intent to kill is raised through the

intentional use of any instrument which, based on its manner of use, is calculated to produce death or serious bodily injury."). Furthermore, such an inference is strengthened in this case by the fact that the occupants of the Nissan were attempting to elude a law-enforcement officer after committing a burglary and that the other occupants of the Nissan, according to Vason, were instructing Vason to kill Officer Morgan. Thus, because Vason's intent to murder Officer Morgan could be inferred from the evidence tending to establish Vason's acts of throwing liquor bottles and shooting at Officer Morgan's car, the question of Vason's intent in committing those acts was a question for the jury. Connell, supra.

Based on the foregoing, we conclude that the State presented evidence sufficient to prove that Vason committed overt acts toward the murder of Officer Morgan and that Vason committed those acts with the specific intent to murder Officer Morgan. Thus, the State proved a prima facie case of attempted murder, Murphy, supra, and, therefore, the trial

court did not err by denying Vason's motion for a judgment of acquittal.[4]

Moreover, we conclude that the State presented evidence sufficient to sustain Vason's attempted-murder conviction under a complicity theory. Section 13A-2-23 provides, in pertinent part:

> "A person is legally accountable for the behavior of another constituting a criminal offense if, with the intent to promote or assist the commission of the offense:
>
> "....
>
> "(2) He aids or abets such other person in committing the offense."

Here, the evidence unequivocally established that one of the four occupants of the Nissan fired a gun at Officer Morgan's car during his high-speed pursuit of the Nissan. The evidence also established that Vason was one of the passengers throwing

[4]We note that Vason makes a cursory argument on appeal that the jury's verdict was against the great weight of the evidence, although he makes no attempt to develop that argument. However, to the extent Vason attempts to challenge the weight of the evidence, he failed to preserve that claim for appellate review because he did not raise that claim in a motion for a new trial. See Zumbado v. State, 615 So. 2d 1223, 1241 (Ala. Crim. App. 1993) ("The issue of the weight of the evidence is preserved by a motion for a new trial, stating 'that the verdict is contrary to law or the weight of the evidence.'" (quoting Rule 24.1(c)(1), Ala. R. Crim. P.)).

liquor bottles at Officer Morgan's car during that high-speed pursuit, and, as noted, Vason's intent to murder Officer Morgan by that act could be inferred from the act itself. Thus, Vason's act of throwing liquor bottles at Officer Morgan's car in conjunction with an occupant of the Nissan shooting at Officer Morgan's car was sufficient to find that Vason intended to aid or abet the shooter in the attempted murder of Officer Morgan, i.e., that Vason was guilty of attempted murder under a complicity theory. § 13A-2-23. Accordingly, for this reason as well, the trial court did not err by denying Vason's motion for a judgment of acquittal.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.