

CASE SUMMARY

The People of the State of California v. Jarmaal Laronde Smith
No. S123074

Defendant Jarmaal Laronde Smith threatened violence to a former friend named Karen. Months later, defendant had a chance encounter with Karen, her boyfriend, Renell, and their three-month-old son. Defendant and Renell got into an argument, and defendant lifted his shirt and put his hand on a gun in his waistband. Renell backed away and got into a car containing Karen and their child. Karen drove off. Renell was in the front passenger seat. Their son was in an infant car seat directly behind Karen. Defendant fired a single shot from his gun. The bullet shattered the rear window, sent glass onto the baby's face, passed through the driver's headrest, and lodged in the driver's door. Although they were directly in the line of fire, Karen and the baby were not hit by the bullet.

After trial by jury in the Sacramento County Superior Court, defendant was found guilty of attempted murder of Karen, attempted murder of her baby son, and other crimes. He was sentenced to two state prison terms of 27 years each, to be served at the same time, for the two attempted murders.

Defendant sought appellate review by the California Court of Appeal. After the parties filed written papers setting forth their legal positions (called "briefs") and waived oral presentations to the court (called "oral argument"), the Third Appellate District of the Court of Appeal upheld ("affirmed") the convictions.

Defendant then petitioned for review by the California Supreme Court, which agreed to decide the following issue:

1. Is there sufficient evidence to support defendant's conviction for attempted murder of the baby?

A person who kills another human being is guilty of murder if the person intended to kill the victim (this is called "express malice") *or* if the person performed an act the natural consequences of which are dangerous to human life, and the person did so with conscious disregard of the danger to life (this is called "implied malice").

However, attempted murder requires express malice – an intent to kill the victim.

Defendant argues that although there may have been evidence of implied malice, there was insufficient evidence to establish that he intended to kill the baby; therefore, he cannot be convicted of attempted murder of the baby.

The Attorney General contends the evidence supports both attempted murder convictions because defendant intentionally created a "kill zone" by firing a bullet at both Karen and the baby, from which it can be inferred that he intended to kill both of them even if his primary target was Karen.

The “kill zone” theory, also known as the “concurrent intent” theory, can be applied when an attack is directed at killing a particular victim, but the “nature and scope” of the attack lead to a reasonable conclusion that the attacker concurrently intended to kill everyone in the immediate vicinity of that victim in order to ensure the victim’s death. Examples of this principle of law include placing a bomb on a commercial airplane intending to kill one passenger but assuring the death of all the passengers; poisoning the food of an entire family in order to kill one member of the family; and firing multiple bullets into a car occupied by more persons than just the primary victim.

Defendant counters the “kill zone” theory cannot be extended to this case, where only one shot was fired.