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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

PETITIONER,

v.

MONTRELLE LAMONT CAMPBELL,

RESPONDENT.

Appellate Case No. 2022-000349

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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In light of certain arguments set forth in Campbell's Return, and in light of the Court of Appeals' recent opinion in *State v. Williams* demonstrating an analysis completely contrary to the Court of Appeals' holdings in this matter, Petitioner sets forth the following arguments in this brief Reply.

ARGUMENT

I. Campbell has enlarged the holding of *King* beyond the parameters of the opinion.

Campbell cites to the quoted language of *Keys* regarding the absolute requirement of express malice for attempted murder as if this Court adopted the analysis and conclusion of the Nevada Court as its own and issued a holding on the matter. (Return, at 13). *It did not*; and the fact that this Court set forth merely its concern for statutory inconsistency of inferred malice by footnote is indication that the opinion in *King* lacks the controlling holding that Campbell attempts to rely upon. This Court has never ruled that express malice (however such is defined) is an explicit element for the charge of attempted murder, and the statutory language for the charge is in direct conflict with such an argument.

Campbell's argument to the contrary is made all the more problematic by his assertion that the Court of Appeals decision in this case does not limit the jury from "infer[ring] malice from the circumstances of the case in considering a defendant's guilt for attempted murder as the state asserts." (Return. at 12-13). In one breath, Campbell has argued that attempted murder demands express malice, while also claiming that the jury may still infer malice from the circumstances of the case on an attempted murder charge.

The Court of Appeals erroneous decision, Campbell's arguments in support, and the general confusion by courts across the state exist because of a lack of clarity on the meaning behind certain terms that are used commonly, and often interchangeably, in the law. Across the state our

courts instruct that express malice and inferred malice are not different in types of malice, but are simply different in the type of evidence that are used to demonstrate malice. These are terms that do nothing more than imitate the meaning of direct evidence versus circumstantial evidence, a purpose that arguably renders them irrelevant. Though we make this clear to juries, and then instruct juries that they may make inferences from the facts and circumstances of the case as they deem proper, appellate jurisprudence seems to place separate and heightened importance on “express malice” as being a specific type of evidence that must be present in the record. There is no rule of law that requires an element of a crime be met by direct evidence. While this Court has held in the past that it is “logically impossible to attempt an unintended result”, it is certainly possible and permissible for the jury to infer from the facts of the case that a defendant bore the specific intent to kill, absent direct evidence of such intent. The Court of Appeals’ decision in this case is contrary to this most basic premise because it conflates the ideas of the jury inferring malice from the facts presented, and malice implied as a matter of law, such as was permitted until this Court’s holding in *Burdette*.

Malice implied by law may well be problematic for a specific intent crime. However, the jury’s ability to infer malice from facts bears no such concern, and notwithstanding the charge given under *Belcher* at trial, the record is saturated with both direct and circumstantial evidence of malice that renders the charge entirely harmless.

II. Campbell denies the presence of direct evidence of malice (express malice) in the record without supporting argument, despite clear evidence that Campbell planned and prepared for a premeditated murder.

Campbell asserts that “[t]here was no evidence the shooting was premeditated or planned in advance as the state claimed. See Pet. At 8-9. The alleged ‘evidence of preparation’ outlined by the state is simply not supported by the record.” That is patently wrong, and Campbell conveniently

moves on without attempting to support such an argument. *By Campbell's own assertion of the facts:*

1. Campbell had a violent confrontation with Katrina mere hours before the shooting at her residence (Return, at 2);
2. Campbell used the car belonging to Ms. President – a woman he had stayed with the night prior – in the early morning to travel to the location of the crime (Return, at 3);
3. Campbell got his friend Mr. Richardson to join him in the Ms. President's car under the guise of getting cigarettes (Return, at 4);
4. Campbell exited the car with explicit instruction to Mr. Richardson to park the car on Nunan Street (Return, at 4-5);
5. Moments after hearing gunshots Campbell returned to the car that Mr. Richardson had parked on Nunan Street as instructed, and Campbell was carrying an AR-15 'assault type rifle' that was still smoking (Return, at 5);
6. Mr. Richardson testified that Campbell then told him to "go", which prompted Mr. Richardson to drive them both back to North Charleston (Return, at 5).

The record also demonstrates that the shooting itself was conducted in an ambush style upon an apartment full of unsuspecting victims. Obtaining a car that does not belong to you, obtaining a that car during the early morning hours without permission, getting a friend to ride along and park the car at a specific location, bringing an assault rifle with you on the trip, returning to the specific location of the parked car with the assault rifle, and having your friend there to drive away are all textbook examples of "planning", "preparation", and "premeditation" to commit a shooting.

III. The Court of Appeals' recent opinion in *State v. Williams* gives entirely contrary legal reasoning to the analysis relied upon in reversing Campbell's conviction.

The Court of Appeals in this matter ruled that an attempted murder charges requires both express malice and specific intent to kill. It *then held* that:

In the present case, the evidence of express malice is significantly less than the amount in *Brooks*. The State contends Campbell's previous altercation with Katrina, Campbell driving across town to commit the crime, and someone firing a weapon fourteen times into Katrina's apartment is sufficient evidence of express malice to overcome the trial court's erroneous inferred malice jury instruction. However, Campbell's pervious altercation with Katrina and Campbell driving across town is not a total disregard for human life like the defendant in *Brooks* displayed.

State v. Campbell, 435 S.C. 528, 538, 868 S.E.2d 414, 419 (Ct. App. 2021), reh'g denied (Feb. 24, 2022). Notwithstanding the Court of Appeals dual reliance upon what it understands to be "express malice" and case law that relies upon inference of malice by way of total disregard for human life, *the Court of Appeals completely dismisses the hail of gunfire nature of the act itself* and inexplicably finds the record insufficient on the basis of malice, absent the erroneous *Belcher* instruction.

The Court of Appeals recently filed its published opinion in *State v. Williams*, on June 15, 2022. In yet another specific intent/attempted murder issue, which the Court of Appeals took the opportunity to earmark as ripe with confusion, the Court of Appeals issued completely contrary logic to that used to reverse Campbell's conviction. In *Williams*, the Court of Appeals states as follows:

Now consider an entirely different hypothetical. This one comes to us from the Supreme Court of California in *People v. Bland*, 48 P.3d 1107 (Cal. 2002). Suppose a villain intends to kill a particular target. The criminal sees the target standing in a group of people, and in an effort to ensure the target's death, *the villain shoots multiple times in the group's direction*. *Bland* explains that when the villain escalated his attack from a single bullet aimed at the target *to a hail of bullets* into the group, **a factfinder could reasonably infer that the villain**

concurrently intended to kill multiple people in the immediate vicinity. *Id.* at 1118. To be clear, this is not transferred intent. The villain's primary goal was to kill the target. However, the circumstances also warrant the jury inferring the villain intended to kill others in the vicinity too.

We think this case is like that hypothetical. In the light most favorable to the State, Williams approached a group of people, argued with someone in the group, pointed his gun into the group, and fired at least four shots. He killed one person and injured two others, including Knox.

We think this version of events supports a valid theory of attempted murder. We note that intent to kill—even specific intent to kill—may be shown by circumstantial evidence. *State v. Taylor*, 434 S.C. 365, 862 S.E.2d 924 (Ct. App. 2021) (finding intent to kill may be shown through circumstantial evidence), cert pending; cf. *State v. McGowan*, 430 S.C. 373, 381, 845 S.E.2d 503, 507 (Ct. App. 2020) (finding verdict of first degree assault and battery of a child victim was not supported by evidence of specific intent to injure the child when no evidence was presented McGowan knew the child was in the home when McGowan shot in the direction of the home). **It is, after all, only natural to infer that when someone shoots at another person, the shooter intends to kill. By the same reasoning, when someone points and fires a deadly weapon multiple times at a group of people he knows are in the line of fire, we believe a rational juror could infer the shooter intended to murder whoever may have been injured in that group.** See *Gerald Rudell Williams*, 427 S.C. at 157 n.9, 829 S.E.2d at 707 n.9 (finding the doctrine of transferred intent was unnecessary to uphold Williams' conviction of attempted murder when evidence was presented indicating Williams intended to kill "the figure in the doorway" regardless of whether Williams had premeditated motive to kill that particular person in the doorway); see also *King*, 422 S.C. at 55, 810 S.E.2d at 22 (agreeing with our holding that the State must "prove specific intent to commit murder").

State v. Williams, No. 2019-000222, 2022 WL 2137119, at *3 (S.C. Ct. App. June 15, 2022) (emphasis added). The nature of this opinion, and specifically the concession that specific intent can be demonstrated by circumstantial evidence, cannot be squared with the Court of Appeals' ruling that express malice is required to prove attempted murder. It further cannot be squared with

the Court of Appeals' complete disregard for the "hail of gunfire" type of shooting committed by Campbell in this case, which the Court of Appeals found independently sufficient for specific intent supporting an attempted murder conviction in *Williams*.

No two cases are identical, but the vast contrast between the Court of Appeals' opinions in *Campbell* and *Williams* highlights the state of disarray in the law of attempted murder, and that such disarray is only going to lead to repeated inconsistencies in decisions made by our appellate court and circuit court judges. Further confusion can be addressed and prevented by simply clarifying the equivalent meanings of express/inferred malice to that of direct/circumstantial evidence of malice, and that specific intent can be proven by malice inferred from the facts of the given case. Certiorari is not just warranted in this matter, it is critically necessary.

CONCLUSION

For all the foregoing reasons set forth in Petition for Writ of Certiorari and this Reply, Petitioner respectfully petitions this Court to grant certiorari in this case.

(Signature block on following page)

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