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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

PETITIONER-RESPONDENT,

V.

ROBERT XAVIER GETER,

RESPONDENT-PETITIONER.

APPELLATE CASE NO. 2021-001408

JOINT APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Robert Xavier Geter, Appellant.

Appellate Case No. 2018-001647

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5851
Heard June 7, 2021 – Filed August 18, 2021

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General Tommy Evans, Jr., and Solicitor Byron E. Gipson, all of Columbia, for Respondent.

KONDUROS, J.: In this criminal case, Robert Xavier Geter appeals his convictions for the murder of James Lewis (Decedent) and the attempted murder of Clarence Stone. The events in the case stem from a bar fight between Geter and Decedent. Geter maintains the circuit court erred in charging the jury on

transferred intent in relation to the attempted murder charge and in allowing certain testimony from Investigator Joseph Clarke. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

On the night of March 7, 2015, Stone was at a pool room/restaurant, Culler's Pool Hall, located on Monticello Road in Richland County. Stone acted as something of a bouncer for the business, watching out for arguments or other types of trouble or disturbances. According to Stone, he was playing a game of pool when he heard a commotion and went to investigate. He found Decedent and Geter on the floor fighting. Stone broke up the fight and took Decedent outside on a deck behind the building. Decedent wanted to go back inside to get his chain, and Stone indicated he would retrieve it for him. As Stone was preparing to go back inside, Geter came out onto the deck, approaching Decedent and asking "we good?" Then, Geter swung at Decedent and Stone was caught in between the two while attempting to break up the altercation. Geter had a knife and stabbed and killed Decedent. Geter also struck Stone, stabbing him in the eye, causing permanent blindness in that eye.

Geter was indicted on one count of murder and one count of attempted murder. At trial, in opening statements, Geter's attorney indicated Geter had acted in self-defense after several men, including Decedent and Stone, had attacked and beaten him.

Investigator Joseph Clarke, of the Richland County Sheriff's Office, testified after Stone in the State's case and indicated he was the on-call homicide investigator on the night of the stabbing. He testified as follows regarding his investigation of the incident.

> [STATE]: And you were here in opening statements, correct?
>
> [CLARKE]: Yes.
>
> [STATE]: Is that the first time you heard that story?
>
> [CLARKE]: No. Oh, that story?
>
> [STATE]: Yes, the story that he gave about – in opening statements?

[GETER]: Your Honor. I object. Openings are not evidence, so.

THE COURT: Overruled.

[STATE]: His scenario of the facts that Mr. Geter's attorney is now saying happened, is that the first time you have ever heard that?

[CLARKE]: Yes.

. . .

[STATE]: You confirmed that Clarence Stone was also a victim?

[CLARKE]: I did.

[STATE]: And you spoke with him as well?

[CLARKE]: I did. I took a statement at his home.

[STATE]: And he gave a statement of what occurred?

[CLARKE]: He did.

[STATE]: You saw him testify again today?

[CLARKE]: I did.

[STATE]: And was that exactly what he told you?

[GETER]: Objection. Your Honor. Improper vouching.

THE COURT: Overruled. You are asking about the testimony that he gave?

[STATE]: Yes. We watched him just a few minutes ago.

THE COURT: Overruled.

> [STATE]: The same thing he told this jury happened to him is what he told you?
>
> [CLARKE]: Seems absolutely consistent. Correct.

At the close of the State's case, Geter moved for a directed verdict arguing the State had offered no evidence Geter specifically intended to kill Stone as required by the attempted murder statute. The State contended the necessary intent to establish the attempted murder charge could be transferred based on Geter's intent to kill Decedent. The circuit court agreed and denied the directed verdict motion.

Geter testified in his own defense and indicated he had accidentally stepped on Decedent's foot and when confronted by Decedent, he apologized. While doing so, Stone came over and interfered in their conversation by hitting Geter in the back of the head. Then, according to Geter, Stone and Decedent were beating him pretty severely and he believed several other men were also attacking him. To defend himself, he pulled out his knife and while brandishing it, Decedent and Stone were injured.

At the close of all testimony, Geter renewed his motion for directed verdict which the circuit court denied. Geter objected to the circuit court charging on the doctrine of transferred intent. The circuit court denied the objection and charged the jury as follows:

> Ladies and gentlemen, we'll next talk about the doctrine of transferred intent. If the [d]efendant with malice aforethought attempts to kill another person, but by mistake injures or kills a different person, the law considers that the [d]efendant still had the intent to kill. Intent to kill is a mental state. It exists in the mind. So, if the State proves that a [d]efendant acting with malice had the intent to kill one person, but mistakenly injured another, the intent to kill is merely transferred from the original person the [d]efendant attempted to kill to the actual person injured.
>
> Pursuant to the transfer[red] intent doctrine, if one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal intent toward the second applies to the third as well.

The circuit court also charged the jury on self-defense. Geter was convicted of murder and attempted murder and sentenced to forty years' imprisonment and twenty years' imprisonment, respectively, to run concurrently. This appeal followed.

STANDARD OF REVIEW

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011) (*quoting Clark v. Cantrell,* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Likewise, the admission or exclusion of evidence is subject to the discretion of the circuit court. *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013). Additionally, any abuse of discretion related thereto is subject to a harmless error analysis. *Id*. at 362, 737 S.E.2d at 501.

LAW/ANALYSIS

I. Transferred Intent and Attempted Murder

Geter argues the circuit court erred in charging the jury on the doctrine of transferred intent to support the attempted murder charge. We agree.

The South Carolina Court of Appeals has twice-answered the first question presented in this appeal—whether the doctrine of transferred intent applies to attempted murder which requires specific intent.[1] In *State v. Williams*, 422 S.C. 525, 539, 812 S.E.2d 917, 924 (Ct. App. 2018), *aff'd in part as modified, vacated in part*, 427 S.C. 148, 829 S.E.2d 702 (2019), the court concluded "the doctrine of transferred intent is proper to convict a defendant of attempted murder regardless of whether a victim, intended or unintended, suffers an injury." In that case, Williams had fired shots into a trailer in which his intended target and two other people were located. *Id*. This court found:

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[1] "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29 (2015).

> Williams misconstrues the attempted murder statute to the extent he argues the statute requires the specific intent to murder specific victims. Williams specifically argues the transferred intent charge erroneously allowed the jury to find Williams guilty of attempted murder of Ycedra and Wrighton without requiring the State to prove (1) Williams knew they were in the [r]esidence and (2) Williams specifically intended to kill Ycedra and Wrighton [unintended targets], in addition to Young. We disagree.

Id.

However, the Supreme Court of South Carolina, based on preservation grounds, vacated the portion of *Williams* that decided the transferred intent question. *State v. Williams*, 427 S.C. 148, 150, 829 S.E.2d 702, 703 (2019). Because the defendant had not appealed the erroneous jury charge indicating attempted murder was a *general* intent crime, the court declined to weigh in. *Id*. "Because the court of appeals treated the case as if it had been tried as a specific-intent crime, we vacate the portion of its opinion dealing with the issue of transferred intent and leave for another day the determination of whether the doctrine applies to attempted murder." *Id*. at 157-58, 829 S.E.2d at 707. In spite of declining to address the merits of the issue, the court offered more insight in a footnote to the opinion.

> [W]e find the doctrine of transferred intent unnecessary to sustain the convictions for the attempted murders of Young and Wrighton. Petitioner was alleged to have specifically intended to kill Young the night of the shooting, and to have shot at the door where Wrighton stood, intending to kill the figure in the doorway. It matters not that Petitioner may have been unaware it was Wrighton in the door, rather than Young. Simply put, Petitioner *intended* to shoot the person (Wrighton) who appeared in the doorway. As a result, we alternatively sustain Petitioner's convictions for the attempted murders of Young and Wrighton without resort to the doctrine of transferred intent. Because Petitioner was sentenced to three concurrent twenty-year sentences, reversing his

> conviction for the attempted murder of [Ycedra[2]] would have no effect on the length of Petitioner's term of imprisonment, and we decline to do so, particularly given that the case was tried as if attempted murder was a general-intent crime.

Id. at 158 n.9, 829 S.E.2d at 707 n.9.

In *State v. Smith*, 425 S.C. 20, 32, 819 S.E.2d 187, 193 (Ct. App. 2018), *rev'd and remanded*, 430 S.C. 226, 845 S.E.2d 495 (2020), the court of appeals was again presented with the opportunity to consider the doctrine of transferred intent and attempted murder. The court concluded the doctrine of transferred intent could provide the specific intent to support the charge. *Id*. at 32, 819 S.E.2d at 193. It stated "[t]he foregoing evidence shows Appellant's unjustified, specific intent to kill at least one of the three men he encountered. Further, the State showed specific intent *as to Victim* [not one of the three men] through the doctrine of transferred intent." *Id*. As it had done in *Williams*, the supreme court declined to adopt the court of appeals' position on the issue. The supreme court stated:

> Smith also contends the court of appeals erred in finding the doctrine of transferred intent applied to attempted murder because it is a specific-intent crime. In particular, Smith argues the requisite specific intent necessary to support an attempted murder conviction must be the specific intent to kill *a specific person.* Smith points out the "State elected to prosecute [him] for the attempted murder of [the victim] instead of the attempted murder of [the men in the rival group]," and he "was not tried (nor has ever been tried) for any crime related to [the rival group]." We need not address this issue because the prior issues are dispositive. *Nonetheless, we note the State indicated that—were the [c]ourt to reverse Smith's convictions—it intended to charge Smith with three counts of attempted murder for shooting at the rival group, and one count of assault and battery of a high and aggravated nature (ABHAN) for shooting the victim. ABHAN is a general-intent crime, and, thus, there would*

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[2] We refer to the third person in the trailer, Ycedra Williams, as Ycedra to avoid confusion with the defendant.

> *be no question on remand as to the applicability of the doctrine of transferred intent.*

Id. at 234, 845 S.E.2d at 499 (emphasis added)(citation omitted).

Jurisdictions are split over whether transferred intent can be applied in attempted murder cases. In jurisdictions finding transferred intent applies in attempted murder cases, the rationale is largely based in public policy and reflects the logical extension of the of transferred intent doctrine in murder cases. In other words, if transferred intent applies to convict a killer of an unintended murder, why should a bad actor have lesser consequences simply because the unintended victim did not die? *See e.g. People v. Ephraim*, 753 N.E.2d 486, 496 (Ill. App. Ct. 2001) ("It is well established that in Illinois, the doctrine of transferred intent is applicable to attempted murder cases where an unintended victim is injured."); *State v. Gilman*, 69 Me. 163, 171 (1879) (applying transferred intent to ensure defendants are punished for their actions not the results); *Ochoa v. State*, 981 P.2d 1201, 1205 (Nev. 1999) (finding no reason not to apply transferred intent in case where intended victim died and unintended victim was wounded because although charges differed the intent was the same); *State v. Ross*, 115 So. 3d 616, 621 (La. App. 2013) ("Applying the doctrine of transferred intent to the facts of this case, Mr. Ross's specific intent to shoot Ms. Cloud was transferred when he accidentally also shot Ms. Peters and Mr. Newman" and the extent of their injuries was inconsequential); *State v. Fennell*, 340 S.C. 266, 276, 531 S.E.2d 512, 517 (2000) ("A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.").[3]

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[3] In *Fennell*, 340 S.C. 266 at 277, 531 S.E.2d at 518, the court found transferred intent applied to a charge of assault and battery with intent to kill (ABWIK). ("We hold that the doctrine of transferred intent may be used to convict a defendant of AB[W]IK when the defendant kills the intended victim and also injures an unintended victim."). However, ABWIK was a general intent crime. *See State v. Foust*, 325 S.C. 12, 14-15, 479 S.E.2d 50, 51 (1996) ("As this [c]ourt has recognized that a specific intent is not required to commit murder, the logical inference is that, likewise, a specific intent is not required to commit AB[W]IK."). Therefore, the analysis in *Fennell* cannot be considered determinative of this issue as the court has specified attempted murder is not the codification of ABWIK and does require specific intent. *State v. King*, 422 S.C. 47, 63-64, 810 S.E.2d 18, 26-27 (2017) ("Considering the legislative history as a whole, we conclude that section 16-3-29 is not a codification of the offense of ABWIK. We find the

On the other hand, some jurisdictions require a specific, intended victim to support an attempted murder charge. Those jurisdictions generally maintain that a person cannot be guilty of "attempting" to do an act he did not intend to do [injuring B while attempting to kill A] and public policy did not require extending the doctrine to punish or deter bad actors. *See Cockrell v. State*, 890 So. 2d 174, 181 (Ala. 2004) ("Applying the foregoing rules of construction, we conclude that the statute defining 'attempt' does not clearly evince a legislative intent to apply the doctrine of transferred intent—applicable only to the completed crime of murder—to punish as attempted murder the consequences of an unintended, nonfatal result."); *Ramsey v. State*, 56 P.3d 675, 681 (Alaska Ct. App. 2002) (finding the jury would have to conclude the defendant intended to kill the injured victim to convict her of attempted murder and could not rely upon transferred intent); *People v. Falaniko*, 205 Cal. Rptr. 3d 623, 631 (2016) ("[B]ecause '[t]he crime of attempt sanctions what the person intended to do but did not accomplish, not unintended and unaccomplished potential consequences,' the shooter who fails to kill the unintended victim cannot be convicted of attempted murder under a theory of transferred intent." (quoting *People v. Bland*, 48 P.3d 1107 (Cal. 2002)); *State v. Hinton*, 630 A.2d 593, 602 (Conn. 1993) ("[T]he rule of lenity leads us to conclude that the transferred intent doctrine should not be applied to the crime of attempted murder."); *State v. Brady*, 903 A.2d 870, 882-83 (Md. 2006) (finding "if a defendant intends to kill a specific victim and instead wounds an unintended victim without killing either, the defendant can be convicted only of the attempted murder of the intended victim and transferred intent does not apply");.

After considering South Carolina jurisprudence, as well as that from other jurisdictions, we conclude the circuit court erred in charging transferred intent as to the attempted murder charge.[4] To support that charge, the State must demonstrate

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General Assembly expressly repealed the offense of ABWIK and purposefully created the new offense of attempted murder, which includes a 'specific intent to kill' as an element.").

[4] We recognize this court has essentially drawn the same conclusion in the recent case of *State v. James Caleb Williams*, Op. No. 5835 (S.C. Ct. App. filed July 14, 2021) (Shearouse Adv. Sh. No. 24 at 21). However, certain facts in the two cases are distinguishable. Because Williams was acquitted of attempting to murder his "target," the majority in *Williams* concluded no intent existed that could be transferred to the unintended recipient of Williams's bullet. In the case sub judice, Geter was convicted of Decedent's murder. Therefore, because disposition of this case is *wholly* dependent on finding the transferred intent charge *never* applies to

Geter attempted to kill Stone, and that was not the State's theory of the case. So long as attempted murder is a specific intent crime, transferring the intent to kill does not satisfy the necessary mens rea to convict a defendant of the attempted murder of an unintended victim. Furthermore, from a public policy standpoint, the supreme court has strongly suggested in both *Williams* and *Smith* that the lesser offense of ABHAN in cases such as this would serve as an appropriate punishment for the accused.

Based on all of the foregoing, we conclude the circuit court erred in charging transferred intent in this case, and we reverse Geter's conviction for attempted murder.

II. Testimony of Investigator Clarke

Geter contends the circuit court erred in allowing Investigator Clarke to testify that Geter's opening statement to the jury was the first time he had heard the defense's "scenario of the facts" and that Stone's pretrial statement and testimony were "consistent." We agree in part.

The objection to Investigator Clarke's statement that he first heard Geter's scenario of the facts during opening statements is not preserved for our review. Geter did not object to the question on the ground of bolstering but only noted opening statements are not evidence. Consequently, the point is not preserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. A party may not argue one ground at trial and an alternate ground on appeal.").

The second statement—that Stone's prior statement to Investigator Clarke was consistent with his trial testimony—is troubling. In *State v. Chappel*, 429 S.C. 468, 837 S.E.2d 496 (2000), our supreme court outlined the elements to be examined when determining whether a witness is improperly bolstering another witness's testimony. This court decided the testimony of a witness is improper bolstering if:

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sustain an attempted murder charge, we conduct a full analysis rather than exclusively relying on *Williams*, even though much of the analysis follows the same rationale.

> (1) the witness directly states an opinion about the [other witness]'s credibility; (2) the sole purpose of the testimony is to convey the witness's opinion about the [other witness]'s credibility; or (3) there is no way to interpret the testimony other than to mean the witness believes the [other witness] is telling the truth.

Id. at 77, 837 S.E.2d at 501.

"Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness's veracity[] or where a prosecutor implicitly vouches for a witness's veracity by indicating information not presented to the jury supports the testimony." *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

Investigator Clarke did not *directly* comment on the veracity of Stone's testimony. By definition, consistent does not necessarily mean truthful, but it does mean "free from variation or contradiction,"[5] thus creating the impression of accuracy and truthfulness. The question serves no other purpose than to bolster Stone's trial testimony and puts an improper imprimatur on Stone's testimony as truthful. Notably, Stone's prior statement would not have been admissible to prove it was consistent with this trial testimony unless Geter had suggested Stone's trial testimony was a recent fabrication.[6] Therefore, it was inappropriate for

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[5] *See* Merriam-Webster.com/dictionary/consistent (defining consistent as "marked by harmony, regularity, or steady continuity; free from variation or contradiction").

[6] To admit a prior consistent statement at trial:

> (1) the declarant must testify and be subject to cross-examination,
> (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive,
> (3) the statement must be consistent with the declarant's testimony, and
> (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

Investigator Clarke to opine as to the consistency of Stone's testimony with his prior statement.

Nevertheless, any error in allowing Investigator Clarke's testimony is subject to a harmless error analysis. *See State v. Reyes*, 432 S.C. 394, 405-06, 853 S.E.2d 334, 340 (2020) (conducting a harmless error analysis in an appeal premised on improper vouching); *see also State v. Kelly*, 343 S.C. 350, 369-70, 540 S.E.2d 851, 860-61 (2001) (conducting a harmless error analysis after finding a witness had improperly vouched for another witness and suggested an imprimatur from the State) *rev'd and remanded on other grounds*, 534 U.S. 246, (2002). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial. [O]ur jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *Reyes*, 432 S.C. at 406, 853 S.E.2d at 340 (citations omitted).

In this case, all of the eyewitnesses' testimony was consistent and the forensic evidence in the case matched a version of events in which Geter was the final aggressor outside on the deck that evening, acting out of revenge rather than self-defense. Additionally, the circuit court instructed the jury that it was charged with determining the credibility of the witnesses in the case. It charged "[n]ecessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth." This instruction did not nullify Investigator Clarke's improper statement but mitigated its impact. *See id*. at 408-09, 853 S.E.2d at 342 (explaining any bolstering of a minor witness's credibility was cured by, among other things, the court's instruction that the jury was the sole arbiter of credibility). Accordingly, we find even though the circuit court erred in allowing Invesitgator Clarke's statement, the error was harmless.

State v. Saltz, 346 S.C. 114, 121-22, 551 S.E.2d 240, 244 (2001); *see id*. (explaining Rule 801(d)(1)(B), SCRE, changed South Carolina's common law to make a prior consistent statement admissible as substantive evidence).

CONCLUSION

Based on the foregoing, we find the circuit court erred in charging the jury on transferred intent. This finding mandates the reversal of Geter's conviction for attempted murder. Additionally, we conclude the circuit court erred in admitting Investigator Clarke's statement regarding the consistency of Stone's testimony with his prior statement. However, this error was harmless under the facts of this case. Nevertheless, we caution the State against eliciting such improper testimony. Because the reversible error in this case pertains only to Geter's conviction for attempted murder, his conviction for Decedent's murder is sustained.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

MCDONALD, J., concurs.

GEATHERS, J., concurring in part and dissenting in part: I agree with the majority that the challenged testimony of Investigator Clarke did not contribute to the verdict and, therefore, its admission was harmless beyond a reasonable doubt. However, I respectfully depart from section I of the majority's analysis concerning the status of our state's jurisprudence as to transferred intent. This court previously addressed this status in *State v. Smith*, 425 S.C. 20, 32–34, 819 S.E.2d 187, 193–94 (Ct. App. 2018), *rev'd on other grounds*, 430 S.C. 226, 845 S.E.2d 495 (2020). While our supreme court reversed our decision to affirm Smith's attempted murder conviction on other grounds, there is nothing to indicate that the court rejected our interpretation of its jurisprudence as to transferred intent. Therefore, I stand by that interpretation. Accordingly, I would affirm not only Geter's murder conviction but also his attempted murder conviction.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2018-001647

THE STATE,.....RESPONDENT

v.

ROBERT XAVIER GETER,.....APPELLANT

RESPONDENT'S PETITION FOR REHEARING

On August 18, 2021, this Court issued a published opinion affirming in part and reversing in part the Appellant's convictions for murder and attempted murder. *State v. Geter,* Op. no. 5851 (S.C. Ct. App. Filed August 18, 2021). In reversing the Appellant's conviction for attempted murder, this Court found that the trial court erred in charging the jury on the doctrine of transferred intent. Within the opinion this Court specifically stated that, "So long as attempted murder is a specific intent crime, transferring the intent to kill does not satisfy the necessary *mens rea* to convict the defendant of the attempted murder of the unintended victim." *State v. Geter,* 2021 WL 3641733, 5 (2021)

Pursuant to Rule 221(a) SCACR, Respondent, the State, respectfully petitions for rehearing because this Court appears to have misapprehended this decision on a critical point. This decision

goes against two previous decisions made by this Court. The majority is of the opinion that the trial Court erred in charging the jury on the doctrine of transferred intent as it relates to attempted murder. This Court in two previous decisions made opposite determinations. In *State v. Williams,* 422 S.C. 525, 812 S.E.2d 917 (2018) and *State v. Smith,* 425 S.C. 20, 819 S.E.2d 187 (2018), this Court ruled that transferred intent could be applied to attempted murder.

In *State v. Williams,* the Appellant fired shots into the home of the victim. Inside that home were two other individuals, no one was injured, but the Appellant was charged with three counts of attempted murder. One of the issues raised on appeal was, "did the circuit court err in charging the jury on the doctrine of transferred intent?" Upon conclusion, this court decided:

> "Evidence supported transferred intent charge in prosecution for attempted murder of three residents of dwelling by firing multiple gunshots into it and at dark figure standing at door during effort to take money from one resident; evidence indicated that defendant intended to get co-perpetrator's money back, specifically intended to commit murder, and was aware that intended victim did not live alone, and it was foreseeable that intended victim would not be alone." *Id.*

After this case was decided, the South Carolina Supreme Court granted certiorari. The Supreme Court decided that it is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes. *State v. Williams,* 427 S.C. 148, 157, 829 S.E.2d 702, 707 (2019). In *Williams,* the Supreme Court also decided that,

> "We therefore find no error in the trial court instructing the jury regarding the applicability of transferred intent to a "general-intent" crime. Because the court of appeals treated the case as if it had been tried as a specific-intent crime, we vacate the portion of its opinion dealing with the issue of transferred intent and leave for another day the determination of whether the doctrine applies to attempted murder." *Id,* 427 S.C. at 158, 829 S.E.2d at 707

Another decision previously decided by this Court was *State v. Smith,* 425 S.C. 20, 819 S.E.2d 187 (2018). In *Smith,* the Appellant fired a weapon into a crowd of people shooting at rival

gang members. He unfortunately hit an innocent bystander causing her lifetime paralysis. The Appellant was eventually convicted of attempted murder. One of the questions presented before this court, "was Appellant entitled to a directed verdict on the attempted murder charge?" This Court eventually decided,

> "Evidence was sufficient to establish that defendant's intentional use of deadly force in firing a pistol at rival gang members who had been talking with defendant's female friends, which resulted in injury to unintended victim, was unjustified, supporting defendant's conviction for attempted murder; female friends of defendant testified that rival gang members said nothing threatening to them, but were merely disrespectful, and that only defendant fired a shot, a disinterested witness testified that only defendant had a gun, defendant was free to flee the scene instead of firing, and defendant stated in a phone call to a female friend that he should have been charged with attempted murder instead of assault and battery, such that jury could find defendant had specific intent to kill at least one of the men and that any belief by defendant that he was in imminent danger of losing his life or sustaining serious bodily injury was unreasonable." *Id.*

The facts of the present case are similar. This Court ruled in *Williams* that the Appellant could have fled the area and not fired, which reveals the Defendant's intentional use of deadly force. The identical thing could be said about the Appellant in the present case. The Appellant was told to leave by the bar owner, but instead of vacating he decided to chase the victims outside who were away from the initial incident location. Once he decided to attack those two men he revealed malice which is required for murder and attempted murder.

Certiorari was also granted in the *Smith* decision. The Supreme Court decided to reverse this Court's decision due to felony attempted murder not being a recognized crime in South Carolina. *State v. Smith,* 430 S.C. 226, 234, 845 S.E.2d 495, 499 (2020). The majority has raised attention to this footnote in *Smith* where the Supreme Court stated,

> "Nonetheless, we note the State indicated that – were the Court to reverse Smith's convictions – it intended to charge Smith with three

> counts of attempted murder for shooting at the rival group, and one count of assault and battery of a high and aggravated nature (ABHAN) for shooting the victim. ABHAN is a general-intent crime, and thus, there would be no question on remand as to the applicability of the doctrine of transferred intent." *Smith,* 460 S.C. at 234, 845 S.E.2d at 499 fn. 9.

In the majority opinion it was decided that the Supreme Court strongly suggested that in both *Williams* and *Smith* that the lesser offense of ABHAN would serve as an appropriate punishment. The Respondent argues that the Supreme Court did not recommend that ABHAN would be a more appropriate punishment. The Supreme Court just stated that if the Appellant was convicted of ABHAN this issue cannot be raised. However, as stated within the dissent of the present case, "while our Supreme Court reversed our decision to affirm *Smith's* attempted murder conviction on other grounds there is nothing to indicate that the court rejected our interpretation of its jurisprudence as to transferred intent." *State v. Geter,* 2021 WL 3641733, 7 (2021)(Geathers J. Dissenting)

The majority is of the belief that the Supreme Court vacating the issue of transferred intent in *Williams* equates to them making a decision as to the legality of the issue of transferred intent as it applies to attempted murder. The Respondent disagrees, the court made no decision, because the attempted murder was tried as a general intent crime. The Supreme Court stated that it is well settled that transferred intent applies to general intent crimes, however, because this court treated attempted murder as a specific-intent crime they decided to vacate this decision and "leave for another day the determination of whether the doctrine applies to attempted murder." *Williams,* 427 S.C. at 158, 829 S.E.2d at 707. The Supreme Court has yet to rule on this issue.

As stated within my brief many jurisdictions have already decided this issue. In Nevada, *Ochoa v. State,* 115 Nev. 194, 198 (1999)(Doctrine of transferred intent allowed defendant's intent in fatally shooting intended victim to be transferred to bystander who was accidently shot as

unintended victim, and thus to support attempted murder conviction arising from shooting of bystander; fact that intended victim was killed did not prevent intent from transferring to unintended victim). In Illinois, *People v. Swaney,* 2 Ill.App.3d 857 (1971)(person who, while assaulting another with intent to kill, unintentionally injures a third person is guilty of intent to kill the third person). In Louisiana, *State v. Bass,* 115 So.2d 616 (2013)(The doctrine of transferred intent applies when a person inflicts great bodily harm to an unintended victim).

This Court has previously ruled that transferred intent applies to attempted murder. There has been no change in circumstances for this Court to change their ruling relating to this issue. The South Carolina Supreme Court has yet to address this issue with an affirmative ruling. Since the Supreme Court has never ruled, the previous ruling allowing transferred intent to apply to attempted murder should stand. There was obvious malice when the Appellant viciously attacked both victims with a knife. If Mr. Stone had unfortunately died the Appellant would be facing two counts of murder. So the Appellant should not be absolved of his actions just because Mr. Stone was fortunate enough to survive his significant injuries. It is obvious that the Appellant had a total disregard for human life when he committed these offenses. The solicitor should have been allowed to charge the Appellant with attempted murder since he displayed malice by taking one life and nearly taking another.

In *State v. Williams,* this Court reached a conclusion that transferred intent applies to attempted murder. This was decided because of the long established precedent regarding transferred intent explained in *State v. Fennell,* 340 S.C. 266, 531 S.E.2d 512 (2000). In *Fennell,* the Supreme Court explained transferred intent this way:

> The defendant's mental state, or *mens rea,* whatever it may be at the time he allegedly commits the criminal act is contained within the defendant's brain when he commits the act. That mental state never leaves the defendant's brain; it is not "transferred" from the

> defendant's brain to another person or place. A more apt description might be that the mental state is like a spotlight emanating from its source – the defendant's mind – to its target – the intended victim.
>
> Nor is that mental state in limited supply. The mental state "spotlight" is not extinguished as the moment a bullet strikes and kills the intended victim, such that there is no mental state left upon which to convict an unintended victim who also is injured or killed. *Fennell,* 340 S.C. at 271, 531 S.E.2d at 515.

There was nothing in the Supreme Court decisions of *Williams* or *Smith* that repudiates this analysis or states that the doctrine of transferred intent is inapplicable when it comes to attempted murder. Clearly when you use the *Fennell* analysis, transferred intent applies to attempted murder.

Since the Supreme Court declined to address this issue in both the *Smith* and *Williams* opinions, this Court should continue to apply the logic provided in the *Fennell* decision. This Court has applied this decision to previous cases relating to transferred intent as it applies to attempted murder, the same should be done in the present case.

CONCLUSION

For the reasons stated above, Respondent petitions for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reinstate Petitioner's conviction for attempted murder.

Respectfully submitted,

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
August 26, 2021

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,.....RESPONDENT,

v.

ROBERT XAVIER GETER,.....APPELLANT.

CERTIFICATE OF SERVICE
Appellate Case No. 2018-001647

I, Donna D'Alessio, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Rehearing and Certificate of Service has been forwarded to Appellant's counsel, Robert M. Dudek, Esq., via email today, August 26, 2021 to RDudek@sccid.sc.gov, and to his assistant at hkellner@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 26th day of August, 2021.

Donna D'Alessio

Donna D'Alessio, Legal Assistant for
Tommy Evans, Jr.
Assistant Attorney General

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROBERT XAVIER GETER,

APPELLANT

APPELLATE CASE NO. 2018-001647

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5851

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing because this Court may have overlooked the fact that, in the context of the testimonial exchange, defense counsel's objection to the testimony of Richland County Investigator Clarke opining that the defense's opening statement to the jury was the "first time" he heard of its self-defense case *was preserved* for appellate review. Second, petitioner seeks rehearing of this Court's holding that the claim of Richland County Investigator Clarke -- immediately after he accused the defense of fabricating a self-defense case for trial -- that the statements of victim Stone conversely were "absolutely consistent" was harmless. Respectfully, both opinions by Investigator Clarke were patently

improper, their improper nature was called to the attention of the trial judge by way of objection, and the trial judge still overruled even the second bolstering or vouching objection this Court correctly found proper. Fairness to the trial judge required no more than this.

Such opinions from a fact witness, the state's chief homicide investigator, that the defense attorneys in essence manufactured a defense that they revealed for the first time at trial in their opening statement while the victim's testimony and statements conversely were "absolutely consistent" should be condemned given their impermissible tendency to mislead and impact the jury. There would be nothing unfair to the trial judge in this Court doing so. Error preservation is respectfully a rule of fairness to the trial judge – fairness does not require perfection in trial objections.

In his opening statement to the jury, defense counsel Schwartz told the jurors that: "The defense here is that Robert fought back. And he was the prey for no other good reason other than accidentally stepping on somebody's shoes . . . James Lewis was absolutely beating the crap [out] of Robert Geter for no reason other than he stepped on his shoe. The fight breaks out. At some point Robert is hit in the back of the head with a beer bottle. And James Lewis and his friends continue to pummel him." R. 10, l. 20 – 11, l. 20. Defense counsel also told the jury that appellant tried to get away from the decedent, and instead, "[J]ames Lewis and Clarence Stone come after him swinging." R. 11, l. 21 – 12, l. 19.

Defense counsel emphasized: "Robert may have defended himself, but he did not murder James or attempt to murder Clarence. Murder requires malice. … The only intentional act that night was Robert was defending himself." R. 14, ll. 14-20. Defense counsel concluded, "he is not guilty of murder. He is not guilty of attempted murder. James Lewis is dead because of

what James Lewis did that night. Mr. Stone lost an eye because of what James Lewis did not night." R. 16, ll. 5-23.

The state called Richland County Sheriff's Department Investigator Joseph Clarke as a witness. R. 200, ll. 3-24. Clarke was the "primary homicide investigator on call" on the night of March 7, 2015. R. 201, ll. 5-22. Clarke offered that, after speaking to witnesses, "At that point they were saying, Boo [appellant] did it, Boo was the one responsible for it, et cetera. And I said, Fine." R. 212, ll. 12-24.

Clarke also testified that after he received word that the decedent had died, he secured a warrant for murder against appellant and a second warrant for the attempted murder of Stone. R. 224, ll. 2-18. Appellant agreed to meet Clarke at the police station the next day, and Clarke told appellant this was "still his side to the story that we need to know about. And that was truly what I was interested in. This had happened in a bar. It happened early in the morning. And there had been a lot of people there. So we want to hear his side of this thing." R. 227, l. 2 – 228, l. 1.

Appellant gave Clarke the "bloody knife" at the police station, and he told Clarke "there was like five dudes there." R. 228, ll. 2-6. Clarke said he then advised appellant of his "Miranda[1] rights," took the knife from him, gave appellant the two arrest warrants, and "we transported him to Alvin S. Glenn Detention Center without further incident." R. 228, ll. 2-22.

On cross-examination, defense counsel showed Clarke some photographs showing appellant's injuries. Clarke acknowledged, "There appears to be some swelling to his face, no question." R. 238, l. 11 – 241, l. 17. Defense counsel asked Clarke about his experience in law enforcement and what he had done before taking out the arrest warrants. Clarke insisted, "I had

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

probable cause for the arrest." R. 232, l. 23 – 237, l. 3. Clarke offered that "evidence is like money, you always want more of it," and he said that more investigation could lead to more corroboration of one side of the story or the other. R. 237, l. 1 – 244, l. 6. When questioned about what investigation he did into appellant's self-defense case, Clarke responded that was "not relevant." The following occurred on cross-examination of Clarke:

> Q: [N]ot relevant to you because you had already taken out the warrants, right?
>
> A: Because I had probable cause for the arrest, counselor.
>
> MS. ZMROCZEK: No further questions, Your Honor.

R. 244, ll. 3-8.

On redirect examination, Clarke said, other than appellant telling him he was attacked by five men, there was no one else saying anything other than this was a "one-on-one" fight between appellant and the decedent. R. 244, ll. 13 – 17. Clarke also said he was getting other statements that corroborated what the Cullers told him had occurred. R. 246, ll. 5-15. The following then occurred in redirect examination of Clarke by the solicitor:

> Q: **And you were here in opening statements, correct?**
>
> **A: Yes.**
>
> **Q: Is that the first time you heard that story?**
>
> *A: No. Oh, that story?*
>
> *Q:* **Yes, the story that he gave about -- in opening statements?**
>
> *MS. ZMROCZEK: Your Honor, I object. Openings are not evidence, so.*
>
> *THE COURT: Overruled.*
>
> *BY MR. CATHCART:*

Q: **His scenario of the facts that Mr. Geter's attorney is now saying happened, is that the first time you have ever heard that?**

A: Yes.

Q: And you also, by the time Mr. Geter came, turned himself in, knowing that the police were looking for him, this hand that has no other injuries but is covered in blood wasn't covered in blood by the time you got to it, correct?

A: It did not appear to be covered in blood when he came to me.

Q: The clothes on him that had what appeared to be blood on them, you collected, right?

A: Correct.

Q: Including this gray undershirt, correct?

A: Correct.

Q: **You confirmed that Clarence Stone was also a victim?**

A: I did.

Q: And you spoke with him [Stone] as well?

A: I did. I took a statement at his home.

Q: And he gave a statement of what occurred?

A: He did.

Q: You saw him testify again today?

A: I did.

Q: And was that exactly what he told you?

MS. ZMROCZEK: Objection, Your Honor. Improper vouching.

THE COURT: Overruled. You are asking about the testimony that he gave?

MR. CATHCART: Yes. We watched him just a few minutes ago.

THE COURT: Overruled.

BY MR. CATHCART:

Q: The same thing he told this jury happened to him is what he told you?

A: **Seems absolutely consistent, correct.**

Q: Thank you. No further questions.

R. 247, l. 4 – 249, l. 23. (emphasis added).

This Court held that defense's counsel objection to the Investigator's claim that the first time he heard of a self-defense case was in defense counsel's opening statement was not preserved for appellate review. State v. Robert Xavier Geter, Op. No. 5851, Howard's Adv. Sh. #28 at p. 92 (filed August 18, 2021). This Court also held the investigator's testimony that the statements of victim Stone were conversely "absolutely consistent" was harmless error. State v. Robert Xavier Geter, Op. No. 5851, Howard's Adv. Sh. #28 at p. 92-94 (filed August 18, 2021).

Error Preservation

This Court found the legal issue of Investigator Clarke's improper testimony to the jury that the first time he heard the defense's "scenario of the facts" -- its self-defense case -- was during defense counsel's opening statement unpreserved. This Court noted, "Geter did not object to the question on the grounds of bolstering but only noted opening statements are not evidence." State v. Robert Xavier Geter, Op. No. 5851, Howard's Adv. Sh. #28 at p. 92. However, when viewed in the context of what Investigator Clarke said immediately after that about the victim's statements *to him throughout*, it is apparent that defense counsel's objection as to both objections was improper bolstering or vouching on the part of Investigator Clarke.

Clarke was vouching for the state's case by conveying to the jury that he heard the defense case of self-defense for the first time during the defense attorney's opening statement. This clearly signaled to the jury that the investigator found the defense case not credible, and immediately after that he stated he conversely found the statements of victim Stone "absolutely consistent," meaning credible. This is apparent from the context of the testimonial exchange at trial with Investigator Clarke. Further, the trial judge overruled both objections where, respectfully, it was clear that defense counsel was objecting to Investigator Clarke's opinions and comments on the credibility of the defense case versus the state's case.

Defense counsel objected to Investigator Clarke's opinion that the first time he heard of the defense's self-defense case was during defense counsel's opening argument. Defense counsel objected and properly called the judge's attention that opening statements were not evidence. Immediately after that, defense counsel objected that Investigator Clarke was impermissibly bolstering or vouching for the state's case by testifying that victim Stone's statements were absolutely consistent.

Given this context, and the fact that the trial judge overruled both objections to the same testimony where it is readily apparent from the record what the solicitor was improperly doing, both issues were preserved for appellate review. There would be no unfairness to the trial judge in properly finding both objections -- to this inextricably entwined improper opinion testimony -- preserved for appellate review.

An objection that opening statements were not evidence *and that the state was improperly bolstering or vouching for the state's case* would have been futile since this record showed the judge erroneously overruled the second defense objection on the basis of bolstering or vouching immediately thereafter when Investigator Clarke opined victim Stone's statements

were absolutely consistent. Where the record shows an objection would have been futile in context, the matter is preserved for appellate review. See Appellate Practice in South Carolina, Toal, Vafai, and Muckenfuss, at pp. 71-72 (1999 ed.), *citing* State v. McDaniel, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct.App. 1995) where this Court found two defense objections that were overruled sufficient to preserve the issue. The essential point in McDaniel, as here, is that where the judge had two chances to sustain a proper legal objection, and instead erroneously overruled them, then there is no unfairness to the trial judge in finding the issue preserved.

Again, it is apparent that the solicitor was using Investigator Clarke to improperly bolster the state's case by testifying that he first heard the defense's "factual scenario" during defense counsel's opening statement. Conversely, Clarke said that the statements of victim Stone were absolutely consistent throughout. It was apparent what the state successfully got away with in presenting these improper bolstering lay opinions to the jury through Investigator Clarke. Respectfully, this Court should grant rehearing and find both objections -- one right after another -- to Investigator Clarke's improper testimony during this testimonial exchange preserved the issue for appellate review.

Harmless Error

This Court held that Investigator Clarke's improper bolstering or vouching for the state's case by testifying victim Stone's statements were absolutely consistent was harmless error. This Court wrote:

> In this case, all of the eyewitnesses' testimony was consistent and the forensic evidence in the case matched a version of events in which Geter was the final aggressor outside on the deck that evening, acting out of revenge rather than self-defense. Additionally, the circuit court instructed the jury that it was charged with determining the credibility of the witnesses in the case. It charged "[n]ecessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply

> means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth." This instruction did not nullify Investigator Clarke's improper statement but mitigated its impact. *See id.* at 408-09, 853 S.E.2d at 342 (explaining any bolstering of a minor witness's credibility was cured by, among other things, the court's instruction that the jury was the sole arbiter of credibility). Accordingly, we find even though the circuit court erred in allowing Investigator Clarke's statement, the error was harmless.

State v. Robert Xavier Geter, Op. No. 5851, Howard's Adv. Sh. #28 at p. 94 (August 18, 2021).

Respectfully, all of the eyewitness testimony was not consistent with appellant being the final aggressor and acting out of revenge rather than in self-defense, unless appellant's testimony is wholly disregarded. Appellant testified that the two men were beating him badly. "My eyes were shut, both my eyes were shut, and it was blurry. All I seen was a blur, like two people at the same time. And I still got the knife. So everybody come up to me, like, Man, what happened, what happened, Boo? I was like, Man, they just jumped me, Man, they just jumped me." Appellant remembered the decedent came "out the back door," saying, "Motherfucker, you just stabbed me." R. 362, l. 5 – 365, l. 14.

Further, appellant testified on cross-examination that there were a number of men "stomping me, but my only focus was on Clarence and James because they was the closest. They was getting the most licks in. They was the closest." Appellant thought there were about five men beating him that evening. R. 401, ll. 1-12.

Even Investigator Clarke acknowledged there was swelling to appellant's face as a result of the injuries he suffered during the fatal fight. R. 238, l. 11 – 241, l. 17. Further, the forensic testimony on the wounds involved otherwise did little to assist the jury in determining whether appellant's actions that night were in self-defense or as an aggressor acting with malice aforethought.

This case was a swearing match between self-defense as a defense and testimony seeking to negate that claim of self-defense by painting appellant out to be a man intent on homicidal mischief. This fight between appellant and victim Stone and the decedent, James Lewis, should not be found to be harmless error because it cannot be said that the bolstering/vouching opinion evidence of Investigator Clarke as to the lack of credibility of the self-defense case versus the absolute credibility of the victim's account of the fight being credible did not in any way contribute to the guilty verdicts. See State v. Mizzell, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002).

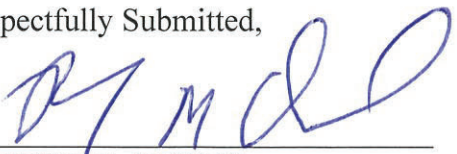
It was improper for the solicitor to ask Investigator Clarke if the defense's opening statement was the first time he heard the defense's scenario or narrative of what occurred – its self-defense case. Investigator Clarke was a fact witness and should not have been allowed to draw legal conclusions about the evidence or vouch for the consistency or veracity of one side or the other. See Rule 701(a), SCRE; State v. Westmoreland, 421 S.C. 410, 807 S.E.2d 701 (Ct.App.2017). This error was highly unusual since it seems a solicitor would know better, and it was extremely prejudicial. As an officer of the Court, undersigned counsel also avers that such vouching or bolstering of the state's theory of the case by law enforcement officers seems to unfortunately be becoming more commonplace in our trial courts.

Our Supreme Court wrote in State v. Tapp, 398 S.C. 376, 389-390, 728 S.E.2d 468, 475 (2012) that "[o]ur jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict. See State v. Mizzell, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). Similarly, as to harmless error in a self-defense case, the Court in Porter v. State, 455 Md. 220, 166 A.3d 1044 (Ct.App. 2017), noted "Reversal is required unless the error did not

influence the verdict." Id. at 342, 941 A.2d 1107 (citation omitted). "To say that an error did not contribute to the verdict is ... to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." Id. (citation omitted). In other words, reversal is required unless we find that the error was harmless. We have explained that an "error is harmless only if it did not play any role in the jury's verdict." Id. (emphasis added) (citation omitted). The State carries the burden of proving, beyond a reasonable doubt, that the error meets this high standard. Dionas v. State, 436 Md. 97, 108, 80 A.3d 1058 (2013) (citation omitted).

Here, the homicide investigator testified that the first time he heard of appellant's self-defense case was in defense counsel's opening statement to the jury and that victim Stone conversely had been absolutely consistent in his contention that appellant acted in a cold-blooded calculated manner to commit murder. It respectfully cannot be said with any confidence that this improper opinion testimony did not play any role in the jury's verdict or that it did not contribute to the jury's verdicts. Rehearing should be granted to appellant Robert Xavier Geter.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 2nd day of September, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

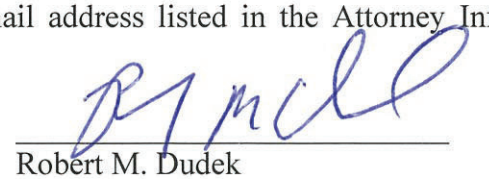
ROBERT XAVIER GETER,

APPELLANT

APPELLATE CASE NO. 2018-001647

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 2nd day of September, 2021.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Xavier Geter, Appellant.

Appellate Case No. 2018-001647

ORDER

After careful consideration of the State's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the State's petition for rehearing is denied.

_____ J.

_____ J.

In accordance with my dissent, I would vote to grant the State's petition for rehearing.

_____ J.

Columbia, South Carolina

cc:

FILED
Nov 05 2021

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Donald J. Zelenka, Esquire
Tommy Evans, Jr., Esquire
Byron E. Gipson, Esquire
The Honorable DeAndrea G. Benjamin

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Xavier Geter, Appellant.

Appellate Case No. 2018-001647

ORDER

After careful consideration of Appellant's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, Appellant's petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Donald J. Zelenka, Esquire
Tommy Evans, Jr., Esquire

FILED
Nov 05 2021

Byron E. Gipson, Esquire
The Honorable DeAndrea G. Benjamin