

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

The Honorable Deadra L. Jefferson, Circuit Court Judge

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Oct 10 2022

S.C. SUPREME COURT

THE STATE,

PETITIONER,

v.

MONTRELLE LAMONT CAMPBELL,

RESPONDENT.

Appellate Case No. 2022-000349

APPENDIX

[Volume 2]

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VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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JUL 29 2019
SC Court of Appeals

THE STATE,

RESPONDENT

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT

APPELLATE CASE NO 2018-000115

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S NO. 95 (SURVEILLANCE VIDEO FOOTAGE)
STATE'S NO. 118 (HOME SURVEILLANCE VIDEO FOOTAGE)**

1 because she knew officers where already on their way. So
2 just because she didn't mention things in her 911 call
3 doesn't mean she's changing her story. And somethings might
4 be a little fuzzier two years later. But the bottom line is
5 that police did not send anyone out, the detective or
6 anyone. They talked to numerous people, other people;
7 people that had nothing to do with this case just to, like,
8 little things to checkup on. They didn't bother talking to
9 her. Even over two years later up to this trial, they
10 didn't bother talking to her.

11 And Marty (ph), well, her observations are not
12 consistent. We don't get to hear -- that the State has,
13 that Detective Tuttle has. They pretty much wrote her off.
14 I mean, she's kooky, you know. So they don't think she's
15 the most reliable. But just because she believed that, you
16 know, hearing a whole bunch of gunshots might mean that ISIS
17 is involved doesn't mean that she's not a credible person.
18 It doesn't mean that she would take it upon herself when she
19 was seeing to her son, when she was clearly startled and
20 shaken up herself, that she would just call police and just
21 make up something or say something that wasn't true. For
22 what purpose? Why would she make -- why would she put
23 herself, get herself involved? She went out and talked to
24 place that night. It is not as though she was trying to get
25 involved in like, you know, running down to the police

1 station saying I want to be involved, hear me out. She
2 thought that they knew what was going on so she let it go.
3 She wasn't seeking attention or anything like that.

4 And you heard from Detective Tuttle today trying to
5 repeat the testimony about the car. Well, cameras don't
6 pick up everything. We know that because sometimes they'll
7 seem to be getting somewhere and it moves around. This car
8 pulled off. It wasn't speeding in a weird way. It could've
9 pulled off and stopped for all we know. She doesn't know.
10 She just saw it pulled over. And the city cams, they don't
11 necessarily show color. So even though Detective Tuttle may
12 have gone back two years later to look to see if he could
13 find the lime green car, maybe the color just didn't come
14 off that well. It doesn't mean it doesn't exist. Because
15 at the end of the day, does it makes sense that Peggy Blake
16 would have just lied about that. That makes zero sense.

17 The reason the police were stuck on Montrelle is
18 because of the -- so I want to talk about that. And
19 Mr. Simpson stated this, but yeah, I mean it does not make
20 sense at all. Based on this minor altercation that
21 Montrelle would've gone back the next night and shot up the
22 place. It just makes no sense. So what we know about that
23 Thursday evening is that Kadeshia, Montrelle's sister, went
24 over to Katrina's. She was really more friends with Kerri
25 and Katrina. They hadn't seen each other in a while because

1 Katrina -- or Kerri had been living out of town. They go
2 over there showing -- they get together though like the next
3 night. So a lady comes in and says, hey, Kadeshia, your
4 brother wants to talk to you. And so Kadeshia is still
5 catching up with her old good friend. So hey go outside and
6 so a man walks in. He and Kadeshia clearly know each other.
7 He doesn't try to start a scene, he doesn't say anything to
8 anyone. You know, he's there to see his sister. And
9 they're acting like this is some horrible person who barged
10 in her house without permission. I mean, even if, you know,
11 on that night Katrina didn't let just random people in.
12 Clearly, that's not something that is uncommon. He went
13 into see his sister.

14 Katrina tried to minimize things, but I think she
15 ultimately admitting that State -- information from her --
16 that she is somebody -- but he left. He didn't say
17 anything. He left. But she wasn't done yet. She was still
18 upset, and she admitted that she and Kadeshia had words at
19 the time. That she felt Kadeshia should apologize to her
20 brother. But could Kadeshia was like, what you talking
21 about. And so they had words, Kadeshia left. Well,
22 initially, Trina said she went outside to smoke a cigarette.
23 But then she admitted that initially she did tell the
24 officer that she did follow Katrina -- or Kadeshia. That
25 her intent, at least what she had told Detective Tuttle, was

1 to apologize for overreacting essentially. But she did say
2 and she told us that it is possible that Montrelle hit her.
3 He could have been thinking that she was going after his
4 sister. And that's very likely what happened. The State
5 has made it sound like he's a monster and he just hit her
6 just because he was mad that she asked him to leave. While
7 a man should never hit a woman -- I mean, I'm not trying
8 it's appropriate or the right thing to do -- he was
9 defending his sister. And we heard again from Trina that
10 she can get -- that's very possible that she went out there,
11 she approached Trina to attack. So that's what happened
12 that night. Yes, she was hit. She fell down. But she
13 didn't grab any -- she didn't call police. And then we
14 heard typically people are not just going to call the police
15 just, you know, for something like that. But she also said
16 pretty much, you know, it was over, whatever. It wasn't a
17 big to do. She actually sad there weren't many people
18 outside. It wasn't a big deal. Why would he had to have
19 been so threatened or feel so much shame or be mad when he
20 was just defending his sister. It makes no sense, zero
21 sense, that that would be a motive. They kind of suggested
22 that maybe he looked to be reaching or something. But he
23 never presented a gun that night. He never threatened them.
24 He didn't say anything, you know, I'll be back to get you.
25 None of that. Nothing to indicate that he was going to come

1 back the next night to do this horrible thing.

2 The State's case against Montrelle primarily -- because
3 just an incident happening the day before obviously is not
4 evidence that he's the one who did this. And obviously you
5 can believe a man with a gun assuming that he is the shooter
6 if you do assume that, and we'll get to that later, but
7 there's -- identify that person as Montrelle but Trivell.
8 Detective Tuttle tried to act like they looked similar. I
9 mean, yes, they are black men. They have facial hair.
10 That's his description of the people. He tried to say, oh,
11 they're 6-feet tall. But there's no way you can see from
12 that video how tall that man was. Is not like a -- where
13 you can walk out and they have that ruler -- he tried to
14 act -- about Montrelle. The police talked to people. They
15 talked to his sister. They talked to Tomeka who you heard
16 from. Someone who sounds like they had not been dating
17 long, but they had known each other for quite some time.
18 And even though she was the person who testified in this
19 trial who probably knows him best, she did not identify that
20 man -- as Montrelle. She did not identify that shirt as
21 belonging to Montrelle. Only Trivell identifies that person
22 as being Montrelle. And did he do that back in 2015? No,
23 he didn't. Quite the contrary.

24 He adamantly denies that he was even downtown. He got
25 on the stand and he seems to take his testimony seriously.

1 He did. He swore on the Bible and he told his version of
2 what happened, or today's version. But we know from him and
3 Detective Tuttle that was not the version he gave over two
4 years ago. And while he swore on the Bible in court, back
5 then he swore on his -- on my kid, I was not there. He was
6 adamant. Even when he was shown pictures, even when they
7 said we have DNA evidence -- adamant he was not there. He
8 did eventually admit, well, okay, I was there. But that's
9 still -- but I was downtown. I walked there. I was
10 certainly not in that car. He talked to Detective Tuttle
11 several times after that. Still didn't admit that he was
12 there. That he had any knowledge of this. So a year and a
13 half goes by that he's sitting in jail under no bond. Even
14 if he was to get -- couldn't bond out because his bond has
15 been revoked from his previous charge, and he didn't have a
16 bond on the murder charge. So year and a half, over a year
17 and a half or about that, he decides to give the State what
18 they wanted to hear.

19 Now, I mean, obviously, I'm not suggesting that the
20 State said this is going to be mentioned here. Of course
21 not. And the State did not make comment with him that this
22 is what we'll give you. But he's a smart guy. I mean, he
23 knows what they want to hear. He's charged with -- he knows
24 what they're saying happened. I mean, obviously, he knows
25 Montrelle is charged. He knows what they want to hear.

1 And, yes, he said the bargain is dependent on telling the
2 truth. But what is the truth? Mr. Simpson wasn't there
3 that evening. Detective Tuttle wasn't there. They don't
4 know the truth. They can only speculate. So there's no way
5 they can ask a witness of the truth. There are certain
6 things that they can say, no, we know you're there and there
7 by the video of, you know, the phone maps. But they do not
8 know the truth because they were not there. And Mr. Simpson
9 pointed out that a lot of what he said was corroborated. It
10 is corroborated. It's corroborated that he was there, not
11 Montrelle. Nothing he said other than him pointing out at
12 the man and saying that's Montrelle. Nothing is
13 corroborated about Montrelle. It's just him, his
14 whereabouts.

15 You heard from Ms. President that she though Montrelle
16 was with Trivell. That they live -- like he basically lives
17 in the back, or she lived in some apartments. I think the
18 testimony said he pretty much lived behind her. Even as the
19 State argued that Montrelle lived in North Charleston, that
20 is actually -- there is no evidence of that. Tomeka said
21 that he stayed there once, actually. And you heard from
22 Tomeka and Detective Tuttle that his family home, you know,
23 is on Cedar Street downtown Charleston. So even though we
24 know he came down to North Charleston from Tomeka, no one
25 actually said he lived there. Tomeka said he had a couple

1 of outfits there. She was clear that he did not live there.
2 So it is possible that Trivell could have gotten this car
3 from someone giving him the key in North Charleston or very
4 possible that Montrelle did not leave with him. From
5 Montrelle records that night, I believe it shows that he
6 was -- Tomeka to testified he went to bed with her about
7 midnight. She wakes up later when she gets up for work --
8 and he's not there. But it's unknown when he left the
9 house. The record, I think, show that he was downtown at
10 5:50 a.m. But that's it. But we don't know exactly where
11 he was. We do know from the night before that it's not
12 unusual for Montrelle to be downtown. The State said, oh,
13 he was stewing for several hours. There's no evidence of
14 that. What the phone records show from the night before is
15 that Montrelle hangs out and stays out late. I think it was
16 almost 4:00 a.m. when he was last using his phone in
17 downtown Charleston. And then it was close to 7:00 a.m.
18 that he was back in North Charleston, but obviously awake
19 because he was using his phone that morning. So Montrelle
20 hanging out downtown in the early morning hours and then
21 going back to North Charleston fairly early in the morning,
22 the evidence actually suggests that's not unusual because
23 the same thing happened the night before.

24 Even though Trivell has not been promised anything yet,
25 we know that he has already gotten the benefit. And,

1 unfortunately, you know, he hasn't been able to make the
2 bond, he did get a very significant advantage -- initially
3 he had no bond. And yet after, and only after he talked to
4 the State, he came to court for a bond hearing to have the
5 bond reconsidered to see if the bond could be set. And the
6 judge set the bond for murder, two counts of attempted
7 murder, and then two other pending charges he had, for
8 \$50,000. And he told you -- and my point in asking him the
9 question, you've been in jail since -- which is he knows
10 from everybody talking about the low bond. He admitted
11 that. He as like I know that's a low bond, I just can't
12 make it. So he had gotten a benefit. And so he has every
13 reason to believe that if he got on the stand that he would
14 get a major benefit from doing so and from saying what he
15 knows the State wants to hear.

16 Trivell has also been charged with murder. But the
17 State made it clear that he was never accused of being the
18 shooter. He was charged more for being there, you know,
19 being in that car I guess with the other witness. But that
20 doesn't make sense from the evidence, the surveillance
21 video, or from his testimony. And I say that because --
22 like the State is mainly saying that Montrelle more or less
23 had some plan to go down there and do this. And that does
24 not add up. Even if you believe that the man in the jersey
25 is on trial, it doesn't make sense that he goes -- well,

1 first of all, he decides to go shoot up a house wearing a
2 very distinctive outfit. I mean, that is like the last
3 outfit that anybody would wear I would think to go shoot up
4 an apartment. You wear the basic black and white, whatever,
5 something generic; not something so very distinctive and
6 attention grabbing. But he tells Trivell to go move the
7 car. And so the surveillance shows that he moves the car,
8 but it doesn't show that there's anything suggesting that it
9 was done to get away. Because first of all, he didn't stay
10 in the car. He left. You can see he's just roaming about.
11 He doesn't look in a hurry. He didn't rush. He's just
12 chilling with Ace. And we also know the car was parked the
13 wrong way. So that's just a little unusual because if
14 you're trying to get away, just doesn't make sense you're
15 going to parking in a a way that could be difficult. But it
16 makes no sense that he's the getaway driver if he wasn't
17 sitting in the car. Like he just got out and was just
18 walking.

19 So, ultimately, Trivell doesn't even point to Montrelle
20 as being the shooter. He doesn't say he saw Montrelle shoot
21 anybody. He doesn't say that he heard Montrelle talk about
22 shooting anyone either before or after. He said that he and
23 Montrelle went downtown. They were supposed to go to the
24 store but didn't. The State tried to elicit that it was
25 enough concern, but he was like -- really didn't think

1 anything of it. They get downtown and -- so they got
2 downtown. Montrelle gets out of the car. Doesn't say
3 anything about seeing a gun, certainly not gun like you see
4 in the surveillance footage. But they get out of the car --
5 or Montrelle gets out and, you know, walks away. Tells him
6 to park and he does it. They stay in the car and anything
7 like that. And he says that -- and you see from the
8 surveillance, that the State showed you they do something
9 what looks like Ace and Trivell were walking. You know, you
10 get a shot from the distance. They had it zoomed in of him
11 going down there. And then they're trying -- see the shot.
12 You do not see a man with an Italia jersey shoot up [REDACTED]
13 Norman Street. That is not on the video. Obviously, if
14 that was on that video, there would be all kind of --
15 zooming. Something that -- it doesn't show that. Again,
16 it's people trying to see something that's not there.
17 Seeing what they want to see after not being able to find
18 something out. And again, it's not necessarily intentional.
19 I'm not suggesting that. It's just human nature. And it
20 doesn't look like from that -- surveillance video that
21 Trivell and Ace, again, they're just walking and chilling.
22 It doesn't look like they're, like, on the lookout. It
23 doesn't look like they stopped because they see someone like
24 Montrelle who they recognized. They're just walking past.
25 Doesn't make sense that if Montrelle was the shooter --

1 they're just walking past. There's no connect here from
2 that video to suggest that they saw somebody that they knew.

3 The State also -- another thing he provided was this so
4 called smoking gun. Okay. But that does not make any
5 sense. Mr. Simpson showed you -- so it would've been
6 several minutes before the man with the gun got to Trivell's
7 car. Several minutes after the shooting, at least a couple
8 of minutes. A gun does not smoke that long. You didn't
9 hear from a firearms expert -- but a gun does not smoke for
10 minutes longer. It just doesn't. That was said for
11 dramatization. It didn't happen. He said that because it
12 sounds good. Because it sounds like, just like Mr. Simpson
13 said, the smoking gun.

14 So in the end, Trivell doesn't even really offer actual
15 direct evidence against Montrelle. Again, if you believe
16 that that person is Montrelle, even though, again, no
17 evidence other than Trivell saying it's him, you have
18 someone in the general area there for an unknown amount of
19 time. Mr. Simpson indicated they weren't quite sure how
20 long or what time that he would've been dropped off on Nunan
21 Street. You have no talk of a plan, no hint of a plan. You
22 don't see anybody get out of the car with a gun, but it's
23 Trivell. There's no indication there's any conspiracy. You
24 have in the night before that it's typical for him to be
25 hanging out downtown at weird hours of the night and then

1 going up to North Charleston when he happened to come into
2 possession of a gun at some point. But you don't know how
3 it came to be. You know he left the car without it. He
4 came back with it, but who knows the circumstance. And I
5 know it's frustrating sometimes when you're talking in ifs
6 and who knows, but at the end of the day, the State has the
7 burden to prove to you of what happened. And he can't do it
8 in this case. They can't do it because there are many
9 unanswered questions . . .

10 Much of -- you may have heard me, I know I objected on
11 multiple times occasions throughout this trial. And one
12 objection was speculation. And that objection is just like
13 -- I am basically saying they're speculating and he
14 shouldn't be able to testify about it. Because in the court
15 of law, you're not supposed to speculate. A witness
16 certainly isn't suppose to speculate. They're supposed to
17 testify to that, to what they actually know from their
18 personal observation. And in this case, there is a lot of
19 speculation because they're simply isn't true. Detective
20 Tuttle, they made assumptions based on what they want to
21 believe. Detective Tuttle assumed that the man in the photo
22 with a gun was the shooter. And, yeah, I mean, obviously,
23 crazy suspicion. He was right when he was reviewing the
24 surveillance footage to say, wow, there's a man with a gun.
25 But it doesn't mean that there are no other possibilities.

1 And perhaps -- other things to look at like talking to other
2 people, them talking to Peggy Black instead of just brushing
3 her off like she's no one, may be something could have come
4 from that. It's simply, at the time, Montrelle Campbell was
5 just the lead that they had from Katrina. I mean, you're
6 looking at if the State has proven to you that Montrelle
7 Campbell is guilty beyond a reasonable doubt. You can look
8 to things such as credibility -- and he would argue that
9 Trivell is credible simply because the evidence backs it up.
10 Again, it backs up that he was there. But Trivell is not
11 credible. He has much to lose. He has everything to gain
12 by testifying against Montrelle. And while the two we're
13 friendly, they weren't great friends. The State asked about
14 their communication, like how they communicated. And
15 Trivell had indicated that Montrelle, he would call him if
16 he wanted -- and obviously Montrelle had just started dating
17 Tomeka about a month or so earlier. And Trivell lived
18 nearby, so they were probably talking then. But it's not
19 unusual that their conversations stopped or they wouldn't be
20 talking much. They were not great friends. Again, hey,
21 dude, cut my hair. That's the type of friends they were.
22 Chilling, hanging out, nothing suggests that they're tight
23 buddies. And that is a big deal for Trivell to testify
24 against Montrelle.

25 This is very much a circumstantial evidence case. and

1 Judge Jefferson will explain that as well to you. But I do
2 want to go over it again as well. So direct evidence is
3 that there's something directly, like someone were to say, I
4 saw Montrelle Campbell shoot at the apartment, if they
5 directly see that. We don't have that here. Sometimes you
6 are allowed to take different circumstances, a couple, and
7 if you put them together and say based on everything I
8 believe that he's -- guilty beyond a reasonable doubt. But
9 to the extent that the State relies on circumstantial
10 evidence, all the circumstances must be consistent with each
11 other, and when taken together point conclusively to the
12 guilt of the accused beyond a reasonable doubt. If the
13 circumstances merely portray the defendant's behavior as
14 suspicious, the proof has failed. So here, while things may
15 be suspicious, the evidence certainly does not lead
16 conclusively that he's guilty. And that's not consistent
17 because we have Peggy Blake. And again, even though some
18 may -- they think she's kooky, zero motive why she would
19 call the police that night and say that she saw a man with a
20 rifle get into a lime green car. She is the most credible
21 person you've heard because she has literally nothing to
22 gain or lose from this. If anything, to lose, you know,
23 nobody really wants to testify. She has nothing to lose.

24 Another legal concept the judge will instruct you on is
25 mere presence. And that does mean that mere presence is not

1 sufficient to establish guilt -- or better. Because that's
2 the other thing Mr. Simpson went into is the hand of one is
3 the hand of all. The tricky thing about that is there has
4 to be proof that there was some type of plan or conspiracy.
5 You have to believe that -- there has to be evidence that
6 more than one person -- here, they don't necessarily have to
7 be charged, but it does have to be evident. Peggy Blake is
8 another person. Clearly, that person was not the person in
9 the Italia shirt. Clearly, that man was dark-skinned,
10 wearing dark clothing with a hoodie. Clearly, not the
11 person in the Italia shirt. But she doesn't say I saw him
12 talking to another man. There's no evidence that that man
13 was . . .

14 And then you have Trivell Richardson. He's charged.
15 He's the codefendant, which no one else is charged in the
16 case. But according to his testimony, he didn't know
17 anything. He knew nothing; nothing at all. He didn't --
18 doesn't involve. And he didn't know anything. That's his
19 testimony. So he is saying that he's not guilty and the
20 State hasn't presented any evidence to the contrary that
21 he's guilty either. So there's no other person that you can
22 see that or that you heard of to establish that there was a
23 plan to do this. Nothing like that. There's no evidence
24 that he aided someone or contributed. Even though there is
25 a gun that, again, if you believe that person was Montrelle,

1 which it wasn't, but if you believe that person was
2 Montrelle, you don't know exactly when that person came into
3 contact with that gun. Yet there's a very short turnaround.

4 But things are crazy. Obviously, it was super crazy.
5 People in the apartment was shot at. You saw the video; it
6 was very traumatic inside. The outside was very scary too.
7 It was scary for people who called the police who heard all
8 those shots. Multiple people called the police. That's a
9 really scary thing to wake up to -- see someone that
10 something shot up, you're going to get the hell out of
11 there. Who's gonna stick around for that? So someone could
12 have just run to get away doesn't mean that they knew what
13 happened. Because that's the thing, he would've had to have
14 known beforehand what was going to happen -- but here we
15 don't have that. There's no testimony from anyone including
16 Trivell Richardson that there was any type of plan
17 beforehand. There's no evidence of a plan. And so to find
18 him guilty on the hand of one, the hand of all, makes no
19 sense at all. It's simply -- the State did not present any
20 evidence to that. And again, the person that Peggy talked
21 about, there's no indication that he was . . .

22 It is horrific -- obviously -- it's a tragic ending for
23 his mom -- for family and for all involved. It's very
24 difficult -- and I hope to never be in that position.
25 Something traumatic happened for Mr. Frost and the Browns

1 and other people in that apartment that night. It's natural
2 to them to -- to Antwan Frost. That's understandable. And
3 the State says that it's his day too. And it's natural to
4 feel that way, but at the end of the day this trial is not
5 about determining something-- this trial -- and we're not
6 disputing that there was a murder. This trial is not to
7 determine if he was murdered -- this trial is to determine
8 if the State has proven beyond a reasonable doubt, the
9 highest burden there is, that Montrelle Campbell is the one
10 who did it. The facts don't prove Montrelle did it. The
11 evidence shows Peggy Blake -- saw the shooter. Large black
12 man in a hoodie with a rifle. She saw him go to his lime
13 green car. That's the shooter. Not the man in the Italia
14 shirt and not Montrelle. Montrelle was shown to be downtown
15 at around 5:50 a.m. I believe was the time, 5:51 perhaps.
16 But there's no proof that he was downtown at that moment
17 other than Trivell's word -- and Trivelle -- someone who
18 swore on his family that he' telling the truth when he later
19 changed his mind. Someone who is adamantly deny -- someone
20 who tried to get his mom involved -- someone who sent the
21 police on a wild goose chase talking to the child's mother,
22 other people about his supposed whereabouts. He didn't
23 think -- so why would he think twice in falsely accusing
24 Montrelle. It just means at the end of the day that he
25 did -- that his charges are dismissed, which are all . . .

1 The facts do not conclusively point -- of Montrelle.
2 The reason they don't conclusively point to that is because
3 Montrelle Campbell is not guilty. And again, I totally
4 understand the nature of what you're going to have to do, we
5 ask you to please consider everything we talked about. And
6 after, you return a verdict of not guilty on all charges.
7 Because it's simply not true, and the State has not proven
8 his guilt.

9 THE COURT: Is everybody so comfortable. Does anybody
10 need a restroom break? (No response.) Okay. You may
11 proceed.

12 AST. SOL. SIMPSON: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 AST. SOL. SIMPSON: Ladies and gentlemen, it has been a
15 long week and it's been a long day. So I'm going to take
16 the opportunity -- to address some points -- take a few
17 moments to case in point to address this. One point made by
18 Ms. Ford is is he happens to -- presence of Katrina and
19 them. You didn't hear from them. You did hear, however,
20 testimony about Katrina being punched in the head the night
21 before and falling to the ground and her not calling the
22 police. And most of us -- like, why would -- why has he
23 knocked you to the ground in front of people -- you heard
24 it. It's not in dispute that happened -- why would you not
25 call the police? In the Gadsden Green area, I asked her and

1 she explained it to you, because contact with police is not
2 really encouraged down there. Okay. And the more serious
3 the event, the less likely people want to entangled in it.
4 And so in that respect, I -- it happens. And so we get the
5 witnesses that are willing to come in and cooperate. It's
6 not -- that community is not really . . .

7 Mary Ford keeps referring to that, however, getting
8 punched in the head by man, blindsided, knocked on to the
9 ground. It's a minor altercation. I don't think that's a
10 real minor altercation. In fact, I think that's a pretty
11 telling event. Because I had addressed with you in my
12 closing argument, murder is not rational. That's why we
13 punish it. That's why we call it murder. It's not about
14 the outfit of the shooter. Yeah, that was dumb. That's not
15 rational. Going in and shooting up a house because you were
16 disrespected is not rational. You know, a lot of this when
17 we're disrespected, we handle it by just ignoring it. Some
18 people handle it by, like Katrina and others, by speaking
19 her mind. That's a rational way to do it. Murder and
20 violence isn't. Punching someone in the head as Montrelle
21 did and then shooting up a house as Montrelle certainly did
22 isn't -- the murder isn't rational. That's why we punish
23 it. You don't look at it and say, oh, that doesn't make
24 sense; you must not be guilty of that.

25 And so we really get through and sum up the defense's

1 closing. To really whittle it down, it comes down to this:
2 Only Trivell identified Montrelle. Only Trivell. In order
3 to go back there and find him guilty, you just have to take
4 Trivell's word for it. Wasn't that sort of the basic
5 closing that you just got from Ms. Ford? But don't forget
6 how I went through slide by slide, point by point, only
7 Trivell, only Trivell, points to the gunman as Montrelle
8 Campbell? You have to believe Trivell? Only Trivell and
9 Montrelle's phone calls, contact between the two while
10 Trivell is parking the car. Only Trivell in the car that
11 belongs to Tomeka President. The car who the only people
12 who had access to were Tomeka President and the gentleman
13 sitting right there because the keys were in his
14 apartment -- her apartment on her counter. But only
15 Trivell; just take Trivell's word for it. Only Trivell and
16 the cell tower records that showed Montrelle right there in
17 the area of Gadsden Green not the area of his grandmother's
18 house downtown, but the area of Gadsden Green. Only Trivell
19 and the cell tower record that show him down right in the
20 area at 5:51 and then right after, right backs up there was
21 Trivell back to where he had -- he better have gotten that
22 Buick back because his girlfriend had to get to work an hour
23 and nine minutes later. But you only have to rely on the
24 word of Trivell. And Tomeka President at the time, no dog
25 in the fight, wakes up, Montrelle's gone. Her car is gone.

1 The car we see downtown that show up mysteriously late.
2 Only Trivell and all the other evidence we have spent a week
3 of your time presenting to you pointing to the guilt of
4 Montrelle Campbell.

5 When you hear testimony, you don't hear it in a vacuum.
6 You take and you're like, I wonder if I believe this or not.
7 And you fit it with the other evidence. And when it fits
8 and when it corroborates, you know it is the truth. What's
9 required of hand of one, this is not a conspiracy case, but
10 what is required for guilt under hand of one is knowing
11 participation in something. You know, you don't have to
12 have evidence that, oh, at 9:00 a.m. we met at a conference
13 room and discussed the pros and cons of committing a murder
14 and decided that after two deliberations we decided to
15 commence this offense. What's required for hand of one is
16 participation. Participation like, hey, drive me downtown.
17 Participation like caring AR15 on a video. Participation
18 like talking on the phone to other participants.
19 Participation like getting in the car and saying, go, drive.
20 That's the kind of thing required in evidence for guilt
21 under hand of one. You don't have to rely on Trivell.
22 Please do rely on Trivell, but rely on Trivell confidently
23 knowing that you're relying on Trivell and all of this which
24 points to the guilt of Montrelle Campbell.

25 People in different situations have some type --

1 theories. Peggy Blake gave a statement about a lime green
2 car. I would suggest to you -- you heard some phrases from
3 Ms. Ford. She's doing her job. She's doing a good job.
4 You head her say a couple of phrases that I want you to
5 think about. She said, they just thought she was a liar;
6 they just went and wrote her off; and, finally, they just
7 brushed her off like a no one. We heard testimony. There
8 as skepticism. There was some healthy skepticism. But we
9 heard testimony that they spent hours -- they're looking for
10 a lot of things -- but one of the things they're looking
11 for, a lime green car, hours scouring the city cams. And
12 you saw them. They rotate. But we're not talking about a
13 rotating camera. We're talking about five rotating cameras
14 that even when they rotate down one street, we'll see it in
15 the clip, they did turn and rotate down the other. And you
16 see the map, in the map there of, of Gadsden Green -- on all
17 these corners. And this -- this fictitious lime green car
18 drives past, depending on where they went, anywhere between
19 two and all five of them, no lime green car. No one wrote
20 her off. No one brushed her aside like she was no one. It
21 was -- I believe Ms. Ford said something like, oh, just
22 because she's little kooky doesn't mean she's a liar. You
23 know who agrees with that statement? Me, Detective Tuttle,
24 the Charleston Police Department. They thought she was
25 little kooky, but nobody wrote her off like a liar. They

1 went and followed up. And it's a great contrast. It's such
2 a contrast. Trivell's story, everything fitting: cell tower
3 Records, video surveillance, timing, everything coming
4 together. Peggy Blake's story, none of that. Peggy Blake
5 who even in the 15 minutes she was on the stand couldn't
6 keep her story straight. I looked out the front window of
7 that great view. No, it wasn't in the front window; it was
8 the back room. I told the police. I called 911. I told
9 them I saw a guy in a hoodie with a gun. You heard the 911
10 tape. She didn't mention the lime green car. She didn't
11 mention anything. She just has a hard time keeping things
12 together. And you've gotta see it in a ten-minute span, not
13 to mention a two-year span. The one way you determine truth
14 is to take what you hear and put it with the evidence. If
15 it fits, believe it. And when nothing fits, as with Peggy
16 Blake, to not believe it. Sweet lady, but it's . . .

17 Thank you so much for your time -- it's Montrelle
18 Campbell's day. I know you are going to take it seriously.
19 It's also Antwan Frost's day, Brother Dusty. You have to do
20 something hard. But go there, work hard, do your duty, and
21 I am confident you will return a just, a difficult, but just
22 and fair verdict in this case which is Montrelle Campbell is
23 guilty of murder and two counts of attempted murder. Thank
24 you.

25 THE COURT: Mr. Foreman, ladies and gentlemen, I'm

1 going to give you a brief comfort break. During this break,
2 please do not discuss the case. Please leave your notepads
3 in your seats. As soon as everyone is refreshed we will
4 resume with the Court's instruction. If you will go with
5 the bailiff, please.

6 (The jury exits the courtroom.)

7 THE COURT: You may take your seats. I'm thinking I'll
8 take them probably five minutes depending on how many
9 restrooms are available. And I think they needed to walk
10 around a bit. They looked a little sleepy. So we'll resume
11 as soon as indicate to me they're ready which I think should
12 be about five minutes. We'll be at ease. I had no.

13 (Brief recess.)

14 THE COURT: You may be seated. State ready to proceed?

15 AST. SOL. SIMPSON: Yes, Your Honor.

16 THE COURT: Defense ready to proceed.

17 MS. FORD: Yes, Your Honor.

18 (The jury enters the courtroom.)

19 JURY CHARGE

20 THE COURT: You may be seated. During this trial
21 ladies and gentlemen, you and I have certain duties to
22 perform. As the trial judge, it is my responsibility to
23 preside over the trial of the case. I also have the duty to
24 rule on the admissibility of evidence offered during this
25 trial. You are to consider only the competent evidence that

1 is before you. And you are to disregard and disabuse from
2 your mind any testimony ordered stricken from the record in
3 this case during the progress of this trial. You are to
4 consider only the testimony which has been presented from
5 the witness stand together with any exhibits which have been
6 introduce or made a part of the record in this case.

7 I also have the additional duty to charge or instruct
8 you on the law applicable to this case. As the presiding
9 judge, I'm the sole judge of the law in this case, and it is
10 your duty as jurors to accept and apply the law as I now
11 state it to you. If you have a preconceived ideas as to
12 what the law is or what the law ought to be in a case, or in
13 this case, and it should not agree with what I now tell you
14 the law is, you are obligated under your oath to abandon
15 this preconception on your part because you are sworn to
16 accept the law and apply the law precisely as I now state it
17 to you.

18 In every case tried in this court before a jury, the
19 jury becomes the sole and the exclusive judges of the facts.
20 You the jury are the judges of the facts in this case. This
21 court is the judge of the law. The constitution of our
22 State has declared that a trial judge shall not intimate,
23 state, comment upon, or make any statement to a trial jury
24 about the facts in a case. Since you the jury are the sole
25 judges of the facts in this case, you are not to infer

1 anything from what I've said during the progress of this
2 trial in ruling upon the admissibility of evidence or
3 otherwise, or anything that I say now to you during the
4 course of this instruction that I have any opinion about the
5 facts. The law does not permit me to have an opinion about
6 the facts. This is a matter solely for you the jury to
7 determine.

8 As jurors then it is your duty as I've instructed to
9 determine the effect, the value, the weight, and the truth
10 of the evidence presented during this trial. Necessarily,
11 you must assess the credibility of witnesses who have
12 testified in this case. Credibility is simply a legalistic
13 term which means believability. It becomes your duty as
14 jurors to analyze and to evaluate the evidence. Some of the
15 things you may consider as you decide whether or not to
16 believe a witnesses testimony about a particular matter
17 include: What was the manner and appearance of the witness
18 who testified? Was he or she straight forward or hesitant
19 in answering? Was the testimony of a witness consistent or
20 inconsistent? How did the witness come to know the facts
21 that he or she testified to? Or what was his or her ability
22 to know these facts? Is there some reason a witness would
23 want to give testimony which would help or hurt one fact or
24 the other? In other words, was the witness biased or
25 prejudiced? And was the testimony of a witness strengthened

1 or weakened by other testimony or evidence?

2 I further instruct you that in determining the
3 questioning of the credibility or believability of witnesses
4 who have testified, you may believe one witness as against
5 several witnesses, or several witnesses as against one
6 witness. You may believe a part of the testimony of a
7 witness and reject the remaining part of the testimony of
8 that same witness. If you have good and sound reason, you
9 may believe the testimony of a witness in its entirety or
10 reject the testimony of a witness in its entirety. You can
11 believe as much or as little of each witnesses testimony as
12 you think proper. You may consider the demeanor of a
13 witness. That is the manner and the appearance of the
14 witness from the witness stand.

15 I further instruct you that a person who has a past
16 criminal record is competent to testify. A past record does
17 that affect the ability of that witness to testify. The
18 past record may only be considered by you if at all in
19 determining the witnesses believability. Remember, ladies
20 and gentlemen, you are the sole judges of the facts in this
21 case and the believability of any and all of the witnesses.

22 Our rules of evidence ordinarily do not permit
23 witnesses to testify to opinions or conclusions. An
24 exception to this rule exists for witnesses we call expert
25 witnesses. A witness who by their education, training, and

1 experience has become an expert in some art, science,
2 profession, or calling may state an opinion as to relevant
3 and material matters in which the witness claims to be an
4 expert. And they also state the reasons for the opinion.
5 You should consider any expert opinion received in evidence
6 in this case like any other evidence, give it the weight
7 that you think it deserves. If you decide that the opinion
8 of an expert witness is not based on sufficient education,
9 training, and experience, or if you conclude that the
10 reasons given in support of the opinion are not sound, or
11 that the opinion is outweighed by other evidence, you may
12 disregard the opinion entirely. An expert witness's
13 testimony is to be given no greater weight than that of
14 other witnesses simply because the witnesses is an expert.
15 Further, you are not required to accept an expert's opinion
16 even though it is uncontradicted.

17 Ladies and gentlemen, there are two types of evidence
18 which are generally presented during a trial: direct
19 evidence and circumstantial evidence. Direct evidence is
20 the testimony of a person who asserts or claims to have
21 actual knowledge of a fact such as an eyewitness.
22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. The law
24 makes absolutely no distinction between the weight or value
25 to be given to either direct or circumstantial evidence. Nor

1 is a greater degree of certainty required of circumstantial
2 evidence than of direct evidence. And as I instruct it,
3 crimes may be proven by circumstantial evidence. And again,
4 the law makes no distinction between the weight or value to
5 be given to either direct or circumstantial evidence.

6 However, to the extent the State relies on
7 circumstantial evidence, all of the circumstances must be
8 consistent with each other. And when taken together quite
9 conclusively to the guilt of the accused beyond a reasonable
10 doubt. If these circumstances merely portray the
11 defendant's behavior as suspicious, the proof has failed.
12 The State has the burden of proving the defendant guilty
13 beyond a reasonable doubt. This burden rests with the State
14 regardless of whether the State relies on direct evidence,
15 circumstantial evidence, or some combination of the two.

16 Ladies and gentlemen, you should weigh all of the
17 evidence in the case. After weighing all of the evidence,
18 if you are not convinced of the guilt of the defendant
19 beyond a reasonable doubt, you must find the defendant not
20 guilty. Conversely, if you convinced of the guilt of the
21 defendant beyond a reasonable doubt, then you must find him
22 guilty.

23 I instruct you that the fact that the defendant was
24 arrested, charged and indicted is not evidence in this case,
25 and cannot be considered by you as evidence of guilt in this

1 case, nor, does it create any presumption or inference of
2 guilt. This documentation, ladies and gentlemen, are simply
3 the formal written instrument which contain the charge or
4 charges made against the defendant. They simply serve as
5 the formal documentation by which the case is processed or
6 brought into the court. The defendant has pled not guilty
7 to the indictments. And that plea casts the burden on the
8 State to prove the defendant guilty. Because the person
9 charged with committing a criminal offense in South Carolina
10 is never required to prove himself innocent. I instruct you
11 that it is an important rule of the law of evidence. That a
12 defendant in a criminal trial, no matter what the
13 seriousness of the charge or charges made against him may
14 be, will always be presumed to be innocent of the crime for
15 which he is indicted unless his guilt has been proven by
16 evidence satisfying you that guilt beyond a reasonable
17 doubt. This presumption of innocence does not cease when
18 you retire to deliberate, but it accompanies the defendant
19 from the time of his appearance throughout the trial until
20 you reach a verdict in this case. Our Supreme Court has
21 said that the presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the defendant,
23 and it remains with him and it -- him -- the innocent until
24 the presumptive robe of righteousness has been stripped from
25 his person by evidence satisfying view that guilt beyond a

1 reasonable doubt. The presumption of innocence is not a
2 mere legal theory. It is not just a legal phrase. It is a
3 substantial right to which every defendant is entitled
4 unless you the jury are satisfied from the evidence of his
5 guilt beyond a reasonable doubt.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told that it
9 is only necessary to prove that a fact is more likely true
10 than not true such as by the greater weight or the
11 preponderance of the evidence. In criminal cases, the
12 State's proof must be more powerful than that. It must be
13 beyond a reasonable doubt. Proof beyond a reasonable doubt
14 is proof that leaves you firmly convinced of the defendant's
15 guilt. There are very few things in this world that we know
16 with absolute certainty. And in criminal cases, the law
17 does not require proof that overcomes every possible doubt.
18 If based on your consideration of the evidence you are
19 firmly convinced that the defendant is guilty of the crime
20 charged, you must find the defendant guilty. If on the
21 other hand you think there is a real possibility that the
22 defendant is not guilty, you must give the defendant the
23 benefit of the doubt and find him not guilty.

24 I instruct you and emphasize that the fact that the
25 defendant did not testify is not a factor to be considered

1 by you in any manner whatsoever in your deliberation of this
2 case, and in your consideration on the question of whether
3 the State has met its burden of proof in this case. It must
4 not be considered by you in any manner whatsoever. A
5 defendant has the constitutional right to remain silent.
6 And the assertion of this right must not be considered by
7 you in your deliberations. I repeat, under your oath, you
8 are to draw no conclusion whatsoever from the fact that the
9 defendant in this case did not testify. The fact that this
10 defendant did not test should not be discussed in any manner
11 whatsoever during your jury deliberations. The burden of
12 proof as I have instructed to you is on the State. The
13 defendant is not required to prove his innocence. The
14 burden of proof remains on the State to prove his guilt
15 beyond a reasonable doubt.

16 The defendant is charged with murder. The State must
17 prove beyond a reasonable doubt that the defendant killed
18 another person with malice aforethought. Malice is hatred,
19 ill will, or hostility towards another person. It is the
20 intentional doing of a wrongful act without just cause or
21 excuse and with an intent to inflict an injury or under
22 circumstances that the law will infer an evil intent.
23 Malice aforethought does not require that malice exists for
24 any particular time before the act is committed. But malice
25 must exit in the mind of the defendant just before and at

1 the time the act is committed. Therefore, there must be a
2 combination of the previous evil intent and the act.

3 Malice aforethought may be expressed or inferred.
4 These terms express and infer do not mean different kinds of
5 malice but merely the manner in which malice may be shown to
6 exist. That is either by direct evidence or by inference
7 from the facts and circumstances which are proven.

8 Expressed malice is shown when a person speaks words
9 which express hatred or ill will for another or when the
10 person prepared beforehand to do the act which was later
11 accomplished. For example, lying in wait for a person or
12 any other acts of preparation going to show that the deed
13 was within the defendant's mind would be expressed malice.
14 Malice may be inferred from conduct showing a total
15 disregard for human life. Inferred malice may also arise
16 when the deed is done with a deadly weapon. A deadly weapon
17 is any article, instrument, or substance which is likely to
18 cause death or great bodily harm. Whether an instrument has
19 been used as a deadly weapon depends on the facts and
20 circumstances of each case. The following are examples of
21 instruments which may be a deadly weapons: a pistol, a
22 shotgun, a riffle, a dirk, a dagger, a knife, a slingshot,
23 metal knuckles, a razor, gasoline, a firebomb or Molotov
24 cocktail, and lighter fluid. A gun may be a deadly weapon
25 even if it is not operating. If facts are proven beyond a

1 reasonable doubt sufficient to raise an inference of malice
2 to your satisfaction, this inference, ladies and gentlemen,
3 would be simply an evidentiary fact to be taken into
4 consideration by you along with all the other evidence in
5 this case. And you may give it the weight, value, and
6 effect you decide it should received.

7 I further instructed that if the defendant with malice
8 aforethought attempts to kill another person that by mistake
9 injures or kills of different person, the defendant still
10 has -- I apologize. If the defendant with malice
11 aforethought attempts to kill another person that by mistake
12 injures or kills another person, the intent is transferred
13 from the original person the defendant intended to kill or
14 killed or injured. The defendant would be guilty of murder
15 as if it had resulted in the death or injury of the person
16 the defendant intended to kill.

17 Bear with me one second, ladies and gentlemen. (Brief
18 pause.)

19 I want you to disregard, ladies and gentlemen, any
20 reference I made to transferred intent because I think I
21 inadvertently made a mistake that I'm going to need to
22 correct. And I would ask that you bear with me. However,
23 I'm going to continue with the remainder of the instruction.
24 And that is as follows:

25 The defendant is charged with attempted murder. In

1 order to prove this crime the State must prove the defendant
2 attempted to kill another person with malice aforethought
3 either expressed or implied. Malice is hatred ill will or
4 hostility towards another person. It is the intentional
5 doing of wrongful act that just cause or excuse and with an
6 intent to inflict an injury or under circumstances that the
7 law will infer an evil intent. Malice aforethought does not
8 require that malice exist for any take your time before the
9 act is committed.. That malice must exist in the mind of the
10 defendant just before and at the time the act is committed.
11 Therefore, there must be a combination of the previous evil
12 intent and the act. Malice aforethought may be expressed or
13 inferred by as I've explained. These terms express and
14 inferred do not mean different kinds of malice. But merely
15 the manner in which malice may be shown to exist. That is
16 either by direct evidence or by inference from the facts and
17 circumstances which are proven. Express malice is shown
18 when a person speaks words which express hatred or ill will
19 for another, or when the person prepared beforehand to do
20 the act which was later accomplished. For example lying in
21 wait for person or any other acts of preparation going to
22 show that the deed was within the defendant's mind would be
23 expressed malice. Malice may be inferred from conduct
24 showing a total disregard for human life. Inferred malice
25 may also arise when the deed is done with a deadly weapon.

1 A deadly weapon is any article, instrument, or substance
2 which is likely to cause death or great bodily harm.
3 Whether an instrument has been used as a deadly weapon
4 depends on the facts and circumstances of each case. Is
5 I've instructed, the following are examples of instruments
6 which may be deadly weapons: of pistol a shotgun, a rifle,
7 dirk, a dagger, a knife, a slingshot, metal knuckles, a
8 razor, gasoline, a firebomb or Molotov cocktail, and lighter
9 fluid. A gun may be a deadly weapon even if it is not
10 operating. If the facts are proven beyond a reasonable
11 doubt sufficient to raise an inference of malice to your
12 satisfaction this inference would simply -- would simply be
13 an evidentiary fact to be considered by you the jury along
14 with the other evidence in the case. And you may give it
15 the weight, value, and effect if any you decide it should
16 receive.

17 Intent means intending the result which actually
18 occurs, not accidentally or involuntarily. Intent may be
19 shown by acts and conduct of the defendant and of the
20 circumstances from which you may naturally and reasonably
21 infer intent. Evidence of the character of the act,
22 character of the instrument used, the manner in which it was
23 used, the purpose to be accomplished, and the resulting
24 wounds or injuries may be considered in determining the
25 intent for which the act was committed. Intent may also be

1 inferred when it is demonstrated that the defendant
2 voluntarily and willfully commits an act the natural
3 tendency of which is to destroy another's life.

4 I further instructed that an attempt is an effort to
5 accomplish a crime which does not succeed. And attempt
6 includes a specific intent to do a particular criminal act
7 along with an act falling short of the act intended. The
8 State must show more than mere preparation and intent.
9 There must be some overt act committed in the effort to
10 commit the crime. Intent means intending a result which
11 actually occurs, not accidentally or involuntarily. Intent
12 may be shown by acts and conduct of the defendant and other
13 circumstances in which you may naturally and reasonably
14 infer intent.

15 I further instruct, ladies and gentlemen, that criminal
16 intent is a mental state, a consciousness of wrongdoing. It
17 is up to you the jury to determine what the defendant
18 intended to do based on the circumstances shown to have
19 existed. I further instruct you to find the defendant
20 guilty of attempted murder, the State prove beyond a
21 reasonable doubt that the defendant had an intent to kill
22 the alleged victim.

23 (Brief pause.)

24 THE COURT: Would counsel approach for me, please. And
25 ladies and gentlemen, I apologize for this delay. It's my

1 oversight and I take full responsibility.

2 (A bench conference was held off the record and out of
3 the hearing of the jury panel.)

4 THE COURT: Ladies and gentlemen, we appreciate your
5 indulgence. And I further instruct you as follows:

6 If the defendant with malice aforethought attempts to
7 kill another person but by mistake injures or kills a
8 different person, the defendant still has the intent to
9 kill. The intent to kill is merely transferred from the
10 original person the defendant attempted to kill to the
11 actual person he killed or injured. The defendant would be
12 guilty of murder just as if he attempted -- just as if the
13 attempt had resulted in the death or injury of the person
14 that the defendant attempted to kill.

15 I further instructed, ladies and gentlemen, that if a
16 crime is committed by two or more people who are acting
17 together and committing a crime, the act of one is the act
18 of all. A person who joins with another to commit an
19 unlawful act is criminally responsible for everything done
20 by the other person which happens as a probable or natural
21 consequence of the act done in carrying out the common plan
22 and purpose. For example, two people can be guilty of
23 killing another person. When only one of the two had a gun,
24 there is only one bullet, and only one of the two fired the
25 shot that caused the death. If two or more people are

1 acting together, are together, acting together, assisting
2 each other and committing the offense, the act of one is the
3 act of all. Or it is sometimes said, the hand of one is the
4 hand of all.

5 Prior knowledge that a crime is going to be committed
6 without more is not sufficient to make a person guilty of
7 that crime. Mere knowledge that another person is going to
8 commit a crime, even if the defendant is present when the
9 crime is committed, is not sufficient to convict the
10 defendant as a principal. Guilt as a principal is shown by
11 actual or constructive presence at the scene as a result of
12 prior arrangement. Therefore, a finding of a prior arrange
13 plan or common scheme is necessary for a finding of guilt as
14 a principal. The State must prove beyond a reasonable doubt
15 by confident evidence the theory of the hand of one is the
16 hand of all. Principle of a crime is one who either
17 actually commits a crime or who was present aiding and
18 abetting or assisting in committing the crime. When a
19 person doesn't act in the presence of and with the
20 assistance of another, the act is done by both. Where two
21 or more acting with the common plan or intent to present at
22 the commission of a crime, does not matter who actually
23 commits the crime. All are guilty. The hand of one is the
24 hand of all.

25 Present at the commission of a crime means to be

1 sufficiently near to aid in the bed and assist in the
2 commission of the crime. However, mere presence at the
3 scene of the crime is not sufficient to convict one as a
4 principal on the theory of aiding and abetting. Intent is
5 also a necessary element, but there must be a common design
6 or intent to commit the crime. And the crime must've been
7 committed pursuant thereto with the person aiding and
8 abetting by some overt act. Intent means intending the
9 result which actually occurs, not accidentally or
10 involuntarily. Intent may be shown by acts and conduct of
11 the defendant and other circumstances from which you may
12 naturally and reasonably infer intent. The State must prove
13 these elements beyond a reasonable doubt.

14 Another issue in this case, ladies and gentlemen, is
15 the identification of the defendant as the person who
16 committed this crime charged. The State has the burden of
17 proving identity beyond a reasonable doubt. You must be
18 satisfied beyond a reasonable doubt that the accuracy of the
19 identification of the defendant before you may convict the
20 defendant. Identification testimony is an expression or
21 belief or an impression by a witness. You must determine
22 the accuracy of the identification of the defendant. You
23 must consider the believability of each identification
24 witness in the same way as any other witness. You may
25 consider whether the witnesses had an adequate opportunity

1 to observe the offender at the of the offense. This will be
2 affected by things like how long or short a time was
3 available, how far or close the witness was, the lighting
4 conditions, and whether the witness had a chance to see or
5 know the person in the past. Once again, I instruct you the
6 burden of proof on the State extends to every element of the
7 crime charged. And this specifically includes the burden of
8 proving beyond a reasonable doubt the identity of the
9 defendant as the person who committed the crime. If after
10 examining the testimony you have a reasonable doubt as to
11 the accuracy of the identification, you must find the
12 defendant not guilty.

13 I further instructed that mere presence at the scene is
14 not sufficient to prove someone guilty of a crime. And
15 defendants presence where crime is being committed or mere
16 association with the person who commits the crime does not
17 make a defendant and accomplice or aider and abettor of the
18 person committing the crime. The burden is on the State to
19 prove every element of the crime charged, that if you find
20 after viewing all of the evidence that the State has proven
21 that the defendant was only present at the scene of a crime
22 and that they have not proven beyond a reasonable doubt any
23 other participation in the crime, then you must find the
24 defendant not guilty. The law is that proof of at the scene
25 of the crime is not sufficient to find someone guilty.

1 Ladies and gentlemen, there are multiple indictments in
2 this case. They are indictments 2016-GS-10-2070, murder;
3 and 2071 and 2072 which are attempted murder. Each
4 indictment charges a separate and distinct offense. You
5 must decide each indictment separately on the evidence and
6 the law applicable uninfluenced by your decision as to any
7 other indictment. The defendant may be convicted or
8 acquitted on any or all of the offenses charged. And you
9 will be asked to write a separate verdict of guilty or not
10 guilty for each indictment.

11 Ladies and gentlemen, you've also heard reference to a
12 penalty a person can serve for the crimes alleged in the
13 indictments. In determining whether the State has met their
14 burden of proof regarding the defendant, you cannot consider
15 any possible penalty for any particular crime. The
16 punishment for crime is a matter of law for the Court
17 to determine and should never be considered by you in any
18 manner whatsoever in arriving at a fair and impartial
19 verdict in this case.

20 There are two possible options for verdicts on each of
21 the indictments. And I will go through each of them with
22 you -- you don't have to try to write this down -- you don't
23 have to try and write it down. The verdict form will go
24 into the jury room with you. And I emphasize that there's
25 absolutely no significance to the order in which I state

1 these potential verdicts. It is simply that one must be
2 stated first. And the options for the verdicts are as
3 follows:

4 As to indictment 2016-GS-10-2070, we the jury by
5 unanimous consent find the defendant guilty of murder or not
6 guilty. And as to indictments 2071 and 2072, they both read
7 identically which is, "We the jury by unanimous consent find
8 the defendant guilty of attempted murder or not guilty."
9 Again, there is no significance whatsoever to the order in
10 which I state these potential verdicts. One simply must be
11 stated first.

12 Ladies and gentlemen, instructed that your verdict must
13 be unanimous which means all 12 of you must agree in order
14 to reach a verdict on each indictment. Mr. Foreman, once
15 the jury has reached a verdict, it will be your
16 responsibility to fill each verdict form out and sign and
17 date the form, and also knock on the door and advise the
18 bailiffs that the jury has reached a verdict on each
19 indictment.

20 It is also your responsibility to write out any
21 questions that the jury may have during deliberations. And
22 you should write those out on the notebook that you've been
23 provided and sign and date the note. Also, I will instruct
24 you that no note should ever reveal any numerical breakdown
25 of the jury. As jury deliberation should remain within the

1 confine of the jury room. Ladies and gentlemen, if you have
2 any questions during deliberations, please note that there
3 will be a delay in our response and that's because there's a
4 process that we have to follow in answering your questions.
5 So know if you have a question, there will be a delay.

6 Again ladies and gentlemen, I've instructed that your
7 verdict must be unanimous which means all 12 of you must
8 agree. I'm going to ask that you return to your jury room
9 but do not yet begin your deliberations. There are some
10 brief matters of law that I need to take it with counsel
11 that may require the Court to give an additional instruction
12 or to correct an instruction. However, if there's no
13 further instruction, we will send in your notebooks and the
14 evidence, and at that time will excuse the alternate, and
15 you will be allowed to begin your deliberation.

16 I also tell you advance that I know it's 4:33, we do
17 not have any options for dinner. I also recognize that you
18 all have may have familial or other obligations in the
19 evening. If you reach a point where you would like go home,
20 just let us know. And at that time you'll be allowed to
21 recess for the evening and return in the morning to resume
22 your deliberations. I just want you to know you're not
23 going to be held captive at the courthouse against her
24 wishes. So if you desire -- you know once you reached a
25 point where you think you may want to recess for the

1 evening, please let us know and we will accommodate that
2 request.

3 Again, if you'll go with the bailiffs, please. Please
4 do not yet begin your deliberations and leave your notepads
5 in your seats.

6 (The jury exits the courtroom.)

7 THE COURT: You can take your seats. I'm sorry. other
8 than what we covered in charge conference, any exceptions
9 from the State.

10 AST. SOL. SIMPSON: No, Your Honor.

11 THE COURT: From the defense?

12 MS. FORD: Not in addition to my prior objections.

13 THE COURT: Can y'all just one more time make sure for
14 me all of the evidence -- have y'all already done that
15 again?

16 AST. SOL. SIMPSON: We probably need to tidy it up a
17 little bit, Your Honor.

18 THE COURT: If you all can go ahead and get through
19 with court reporter. You might want to go get a cart
20 because it's a lot of it and go ahead and start putting it
21 on their. Go ahead and get the notebooks but the
22 alternate's on the banister so that we can excuse the
23 alternate and allow the jury to begin the deliberations.

24 (Brief pause.)

25 THE COURT: -- you time and your attention to this

1 case. I know being an alternate can seem thankless. You do
2 all the work that you don't, as they say, don't get any of
3 the glory I guess. That you've been attentive. Even
4 timely. And we appreciate your service. I hope it's been
5 educational for you. I hope you learned it's nothing like
6 what you see on TV and how very valuable you are, your
7 service, is to us. But you're welcome to hang around with
8 us if you want. We can put you in a room back here, one of
9 the we multipurpose rooms, so that you can relax while the
10 jury is deliberating. But you're also welcome to leave if
11 you'd like. The bailiffs will destroy your notes unless you
12 want to do it. It's up to you. They're adept at it. Do
13 you need a work excuse today?

14 JUROR: No, ma'am.

15 THE COURT: Okay. We'll mail that to you along with
16 your check. You're welcome to discuss this case if you
17 would like. But I would ask that you not do it until the
18 entire panel is excused. I hope you have a wonderful
19 afternoon and a wonderful rest of the year, and we thank you
20 for your time on behalf of both the State and the defense
21 for your service to his. Have a great day.

22 JUROR: Thank you.

23 THE COURT: You're welcome, ma'am. Okay. The record
24 should reflect that the alternate was excused at 4:40 and
25 the jury has begun his deliberations. Y'all stay close for

1 me, I'd appreciate it, in case they have any questions.

2 (Jury begins deliberations at 4:40 p.m.)

3

4 THE COURT: -- as follows: The jury has established the
5 process for deliberation but would like to start fresh on
6 Friday morning. Is this okay?

7 So they're in the hallway. I'm going to let them go
8 home and resume in the morning. Any exception from the
9 State?

10 AST. SOL. SIMPSON: No, Your Honor.

11 THE COURT: From the defense.

12 MS. FORD: No, Your Honor.

13 THE COURT: And I've had the note marked as a Court's
14 exhibit.

15 (Court's Exhibit No. 11, Jury Note, was marked for
16 identification.)

17 (The jury enters the courtroom at 5:07 p.m.)

18 THE COURT: You may be seated. We received your note,
19 ladies and gentlemen. And absolutely it is okay for you all
20 to start fresh in the morning. So I will excuse you for the
21 afternoon. I would emphasize that you should have no
22 discussion about this case with anyone else were among
23 yourselves. Please do not watch, read, or listen to any
24 media accounts about this case if there would be any in the
25 newspaper, on the radio, television, or Internet. And don't

1 do any independent of any type on the Internet. When you
2 return in the morning at 9:00, you will come directly to
3 your jury room. And again, please don't have any contact
4 with anyone in or about the courthouse. We would not want
5 an innocent conversation to be observed and misinterpreted.
6 Everything will be left in your jury room undisturbed. That
7 room will be locked. And as soon as all 12 have returned
8 then you'll be allowed to begin -- resume your
9 deliberations. Again, you will return in the morning at
10 9:00. Have a great evening.

11 (The jury exits the courtroom at 5:08 p.m. and are
12 excused for the evening.)

13 THE COURT: Anything before we break for the evening?
14 From the State?

15 AST. SOL. SIMPSON: No, Your Honor.

16 THE COURT: From the defense?

17 MS. FORD: No, Your Honor.

18 (The proceedings adjourned for the evening at 5:08 p.m.)

19 - - - - -

20 (The proceedings resume with deliberations on Friday,
21 January 12, 2018, at 9:04 a.m.)

22 (Questions from the jury at 11:05 a.m.)

23 THE COURT: All right. We have four notes from the
24 jury debt. Three are dated and have the times attached.
25 One is dated and doesn't have the time attached. I will

1 have each marked as court's exhibits:

2 Were fingerprints taken from shell casings? Is
3 evidence available? That is timed at 10:40.

4 Was the DNA from the two cigarettes but analyzed? Did
5 the DNA match that of Trivell Richardson? That's at 10:55.
6 Although they gave it to me all at one time.

7 Is the photograph Montrelle Campbell during the time of
8 the shooting and his arrest available to the jury? That is
9 timed eleven o'clock.

10 And the last: For the two cell phones collected at the
11 scene by Ms. Gladwell analyzed and identified?

12 My response to all four of these notes will be as
13 follows: Ladies and gentlemen of the jury, all of the
14 evidence in this case has been presented to you. The Court
15 cannot answer factual questions. You must only consider the
16 testimony and evidence that has been submitted into the
17 record for the purposes of your deliberations. You cannot
18 conduct your own independent investigation or fact-finding
19 outside of the evidence and testimony presented to you
20 during the course of this trial. You are not to speculate
21 or draw any inferences or conclusions from this response to
22 your inquiry during your deliberations. If you desire to
23 have any testimony -- to have the testimony of any witness
24 replayed or rehear any portions of the law, please advise
25 the bailiff and we will accommodate you your request

1 immediately.

2 Any exception from the State?

3 AST. SOL. SIMPSON: No, Your Honor.

4 THE COURT: From the defense?

5 MS. FORD: No, Your Honor.

6 THE COURT: Okay. I will mark each of those
7 individually. And then I'm going to attach --/well, I don't
8 know. All of these need to be marked individually. And
9 then I'll put them all together as court's exhibits.

10 (Court's Exhibit Numbers 12-15, Jury Notes, were
11 marked for identification.)

12 (Court's Exhibit No. 16, Judge's Response, was marked
13 for identification.)

14 (Proceedings at ease while deliberations continue.)

15 THE COURT: Please be seated. Okay. We have another
16 note. It says: Can the jury review the testimony of Tomeka
17 President?

18 I've already instructed the court reporter to queue up
19 both days of her testimony. Is there any exception from the
20 State?

21 AST. SOL. SIMPSON: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, ma'am.

24 THE COURT: How long is each part of the testimony?

25 COURT REPORTER: The first day was about 40 minutes.

1 The second day ---

2 THE COURT: Was about five minutes? Three minutes?

3 Something like that?

4 COURT REPORTER: Yeah.

5 THE COURT: And none of it would include any matters of
6 law? I can't remember. I left my notes in my office.

7 COURT REPORTER: I know yesterday didn't. But let me
8 look back at Wednesday. There was a short bench conference
9 on the first time. Real short. But it's at the end.

10 THE COURT: It's at the end?

11 COURT REPORTER: Uh-huh.

12 THE COURT: But there are no matters of law in her
13 testimony?

14 COURT REPORTER: No.

15 THE COURT: Okay. What I will do -- I'm going to send
16 the court reporter in with the bailiff to replay the
17 testimony. Any exception from the State?

18 AST. SOL. SIMPSON: No, Your Honor.

19 THE COURT: From the defense?

20 MS. FORD: No, Your Honor, as long as it's played in
21 full.

22 THE COURT: It will play until they indicate they don't
23 want to hear it anymore. I'm not going to tell them what to
24 do. They're entitled to relisten to the testimony, and if
25 they say to the court reporter we've heard all we want to

1 hear, that's going to be the end of it. I'm not going to
2 make them -- they're deliberating. It's deliberate process.
3 And if they were in the courtroom and they raised their hand
4 and said that's all we want to hear, they don't have to
5 listen to all of it. I don't have -- but the bailiff will
6 be in there. They will be instructed that they are not to
7 discuss the case at all. But if they tell her they want to
8 hear, then that's in the short of it -- then that's on them.

9 MS. FORD: Yes, Your Honor.

10 THE COURT: All right. And we'll have the note marked
11 as a court's exhibit.

12 (Court's Exhibit No. 17, Jury Note, was marked for
13 identification.)

14 (Proceedings at ease while deliberations continue.)

15 (Replay of Tomeka President's testimony begins play at
16 12:30 p.m.)

17 (The proceedings resume at 3:15 p.m.)

18 THE COURT: Is the State ready to proceed? Is the
19 State ready to proceed?

20 AST. SOL. SIMPSON: Yes, Your Honor.

21 THE COURT: Is a defense ready to proceed?

22 MS. FORD: Well, other than Mr. Williams.

23 THE COURT: He's second chair. Is he essential to the
24 proceedings to be taking a break?

25 MS. FORD: Well, I guess not, Your Honor.

1 (Brief pause.)

2 THE COURT: And I know that this might-- well not --
3 that this could be emotional for those in the gallery.
4 However, I do not expect there to be any audible responses
5 upon publication of the verdict. If you feel that this is
6 too difficult for you to handle, I would ask that you excuse
7 yourselves from the gallery at this time.

8 (The jury enters the courtroom at 3:15 p.m.)

9 VERDICT OF THE JURY

10 THE COURT: You may be seated. Mr. Foreman, is it
11 correct that the jury has reached a verdict?

12 FOREMAN: Yes, ma'am.

13 THE COURT: If you will give the verdict forms to the
14 bailiff for me, please.

15 Sir, if you would stand for the publication of the
16 verdicts.

17 THE CLERK: In the matter of state of South Carolina,
18 County of Charleston, Ninth Judicial Circuit, versus
19 Montrelle Lamont Campbell, as to indictment number
20 2016-GS-10-2070, we the jury unanimously -- by unanimous
21 consent find the defendant guilty of murder signed this day
22 January 12th by the foreperson of the jury.

23 In the matter of indictment number 2016-GS-10-2071,
24 the State of South Carolina versus Montrelle Lamont
25 Campbell, we the jury by unanimous consent find the

1 defendant guilty of attempted murder signed this day
2 January 12th by the foreperson -- 2018 by the foreperson of
3 the jury.

4 In the matter of the State of South Carolina versus
5 Montrelle Campbell as to indictment number 2016-GS-10-2072,
6 we the jury by unanimous consent from the defendant guilty
7 of attempted murder signed this day January 12, 2018,
8 foreperson of the jury.

9 THE COURT: Ladies and gentlemen, if this is your
10 verdict or these are your verdicts, please indicate by
11 raising your right hands.

12 (Jurors comply.)

13 THE COURT: Let the record reflect that all have raised
14 her right hands and the verdict stands. You may put your
15 right hand down. You may take your seat.

16 Is there any request for the State to poll the jury?

17 AST. SOL. SIMPSON: No, Your Honor.

18 THE COURT: From the defense?

19 MS. FORD: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen, the clerk is going to
21 ask you two questions after calling your name and/or juror
22 number. One is, "Is this your verdict and is this still
23 your verdict?" And I would ask that that you follow his
24 instructions. You may proceed.

25 CLERK: Ladies and gentlemen of the jury, as Your Honor

1 MS. FORD: Just a moment. No, Your Honor.

2 THE COURT: Sir, is there anything that you'd like to
3 say for the record on your behalf?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: I can't hear you, sir.

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Sir, if would stand for sentencing. On
8 both attempted murder charges, you're sentenced to the State
9 Department of Corrections for a period of 30 years. On the
10 murder charge, you're sentenced to the State Department of
11 corrections for a period of life. The sentences run
12 concurrent with one another. You'll get credit for any time
13 that you served to be calculated and abided by the
14 Department of Corrections. Thank you very much.

15

(End of Record)

16

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BCS/0310557
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-16094

ARREST WARRANT NUMBER

2015A1010500010

DATE OF ARREST

11/02/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-02070

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

MONTRELLE LAMONT

CAMPBELL

B/M DOB: [REDACTED]-1981

Indictment for

MURDER

SC Code: § 16-03-0010

CDR Code: 0116

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2016, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about September 19, 2015, the defendant, Montrelle Lamont Campbell, with malice aforethought, did kill and murder Antwan Lamont Frost by means of shooting him, and Antwan Lamont Frost did die in Charleston County as a proximate result thereof on or about September 19, 2015; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

BCS/0310557
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER
2015-16094

ARREST WARRANT NUMBER

2015A1010900656

DATE OF ARREST

11/02/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

APR 11 2016

Date:

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

01/12/18

Date:

DOCKET NO. 2016-GS-10-02071

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

MONTRELLE LAMONT
CAMPBELL
B/M DOB: [REDACTED]-1981

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

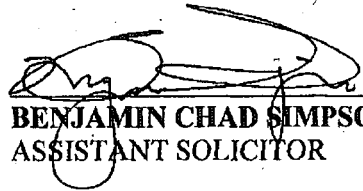
INDICTMENT

At a Court of General Sessions, convened April 2016, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about September 19, 2015, the Defendant, Montrelle Lamont Campbell, did, with intent to kill and malice aforethought, attempt to kill Tierre Brown. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

BCS/0310557
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-16094

ARREST WARRANT NUMBER

2015A1010900660

DATE OF ARREST

11/02/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

APR 17 2016

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-02072

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

MONTRELLE LAMONT

CAMPBELL

B/M DOB: [REDACTED]-1981

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED

4/15/2016 9:25:46 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened April 2016, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about September 19, 2015, the Defendant, Montrelle Lamont Campbell, did, with intent to kill and malice aforethought, attempt to kill Kerri Brown. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

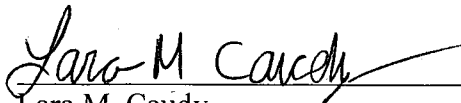
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 29th day of July, 2019.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

RECEIVED

AUG 16 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2018-000115

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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ATTORNEY FOR APPELLANT

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2.	
The trial judge erred by instructing the jury on the hand of one is the hand of all theory of accomplice liability when there was no evidence to support the charge, specifically there was no evidence Appellant was acting with another during the shooting or that the murder was committed pursuant to a common design or plan, particularly where the state's theory of the case was that Appellant was the shooter and acted alone.	13
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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial judge err by instructing the jury that malice may be inferred from the use of a deadly weapon as to the offense of attempted murder, a specific intent crime, where implied malice is inconsistent with a specific intent crime and, as our Supreme Court held in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), there must be evidence that one charged with attempted murder had both express malice and a specific intent to kill?

2.

Did the trial judge err by instructing the jury on the hand of one is the hand of all theory of accomplice liability when there was no evidence to support the charge, specifically there was no evidence Appellant was acting with another during the shooting or that the murder was committed pursuant to a common design or plan, particularly where the state's theory of the case was that Appellant was the shooter and acted alone?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant on April 11, 2016 for murder and two counts of attempted murder. R. 557-562. His case was called to trial on January 8, 2018 before the Honorable Deadra L. Jefferson, and a jury. App. 1. Assistant Solicitors Chad Simpson and Alex Ginsberg represented the state. App. 1. Mary Ford and Michael Williams represented Appellant. App. 1. On January 12, 2018, the jury found Appellant guilty as indicted. R. 554, l. 9 – 555, l. 14. He was sentenced to life without parole for murder and thirty years concurrent for each count of attempted murder. R. 556, ll. 7-14.

This appeal follows.

STATEMENT OF FACTS

On Friday, September 18, 2015, Katrina Brown hosted a party that carried over into the early morning hours. Numerous friends and family members were in and out throughout the night. R. 37, l. 3 – 40, l. 9. Katrina lived in Gadsden Green, a government housing community in Charleston. R. 106, ll. 19-25. Around 6:30 in the morning on September 19, 2015, at least fourteen bullets were fired in rapid succession into Katrina's apartment. R. 42, l. 7 – 43, l. 7; R. 75, ll. 3-19; R. 95, l. 10 – 96, l. 9; R. 131, ll. 5-7; R. 137, l. 4 – 138, l. 3. No one saw the shooter. Antwan Frost, an old friend who arrived at the apartment sometime between 5:30 and 6:00 a.m., was fatally wounded. R. 39, l. 6 – 40, l. 23; R. 193, l. 22 – 194, l. 19. Kerri Brown, Katrina's sister, was shot in the head. R. 76, l. 23 – 77, l. 1. Tierra Brown, a cousin, was shot in the arm. R. 97, ll. 3-13. Both women survived.

During the early stages of the investigation, law enforcement asked Katrina if she “[knew] of anybody who would want to hurt [her]” and whether she had any “enemies in the neighborhood.” R. 46, ll. 9-20. Katrina remembered an incident that occurred on Thursday night, September 17, 2015, and told the police about it. That evening, Katrina was at her apartment with her sister, Kerri. They were sitting in the kitchen around midnight when an old friend named Kadeshia, who turned out to be Appellant's sister, walked inside. R. 27, l. 10 – 30, l. 2. While they were talking to Kadeshia, someone knocked on the door and told Kadeshia that her brother was outside. Kadeshia told the person to tell her brother “she was coming.” R. 30, ll. 3-11. However, Kadeshia continued talking to the women inside.

Eventually, a man who Katrina did not know or recognize walked into the apartment without permission and sat down. He never said a word. After a few minutes, Katrina asked the man, who she later learned was Appellant, to leave. R. 30, l. 9 – 31, l. 2. After Appellant left,

Katrina had a “verbal altercation” with Kadeshia because she was upset Kadeshia did not apologize for her brother. After this dispute, Kadeshia also left the apartment. R. 54, ll. 3-22.

Later when Katrina went outside to smoke a cigarette, she saw Kadeshia standing by a car. Katrina claimed that all of a sudden Appellant knocked her to the ground. He was about to “knock” her again when her sister came outside. Appellant ultimately walked away never having said a word. R. 31, l. 16 – 33, l. 25; R. 54, ll. 3-22. Katrina did not report this incident to the police because “where [she is] from, it’s not something that you do.” R. 35, ll. 9-16.

After the shooting on Saturday morning, Appellant immediately became a suspect due to this prior altercation. The police focused its investigation on him.

Law enforcement obtained surveillance footage from five security cameras operated by the City of Charleston that were spread throughout Gadsden Green as well as from three security cameras outside Lee Lee’s Hot Kitchen, a nearby restaurant. R. 169, l. 11 – 171, l. 20; R. 182, l. 1 – 187, l. 15. They also obtained footage from a private residence, which had a camera that captured what occurred outside its front door and the street immediately in front of the house. R. 173, l. 7 – 176, l. 5.

The footage from the private residence showed a gold Buick park on nearby Nunan Street shortly before the shooting. Two men left this vehicle and began walking towards Gadsden Green, where Katrina lived. The cameras in front of Lee Lee’s Kitchen as well as several of the city cameras captured the men walking. Eventually one of the men is seen running back to the car parked on Nunan Street. A third man is also seen walking toward the car carrying a rifle. R. 335, l. 20 – 350, l. 21; See State’s Exhibit No. 95.

Law enforcement determined the gold Buick in the surveillance footage was registered to Tomeka President. When interviewed, President claimed Appellant was at her apartment that

night when she went to bed but was gone when she woke up the next morning. She testified that she discovered her car was also gone when she went to leave for work shortly before 7:00 a.m. R. 237, l. 10 – 243, l. 9.

Law enforcement was able to identify the two men originally walking from the car on Nunan Street as Trivell Richardson and Andrew “Ace” Rivers. R. 338, ll. 1-9. Richardson was the driver who was seen running back to the car after the shooting. Law enforcement interviewed Richardson. He was ultimately charged with murder and two counts of attempted murder related to this case. R. 254, ll. 10-25.

Richardson testified against Appellant at trial. He claimed he ran into Appellant, who was driving Tomeka President’s car, in North Charleston during the early morning hours of Saturday, September 19, 2015. Appellant asked Richardson to accompany him to the store to buy cigarettes. However, Richardson claimed instead of stopping at a nearby store Appellant drove downtown and parked near Gadsden Green. R. 263, l. 1 – 267, l. 4. According to Richardson, Appellant got out of the car and asked Richardson to park the car on Nunan Street, which was around the corner. Andrew “Ace” Rivers was there and got into the car with Richardson before he moved it. R. 268, l. 13 – 271, l. 4. After parking the car on Nunan Street as instructed, Richardson testified he began to walk towards Gadsden Green with Rivers to find Appellant and give him the keys to the vehicle. R. 273, l. 20 – 274, l. 11. While they were walking, he heard gunshots and ran back to the car. Rivers ran in a different direction. R. 275, l. 2 – 276, l. 7. As Richardson was about to leave, he claimed Appellant opened the passenger door and got into the car. Appellant was carrying an AR-15 “assault” rifle. Richardson claimed the rifle was still “smoking.” R. 276, l. 8 – 278, l. 20. Appellant allegedly told him to “go” and Richardson drove back to North Charleston. R. 278, l. 24 – 279, l. 9.

Appellant presented the testimony of Peggy Blake, who lived across the street from Katrina Brown in September 2015. Blake testified that immediately after the shooting, she looked out her window and saw a black man wearing a "hoodie" with a rifle in his hand. She saw this man get into a lime green car, which proceeded to drive away. R. 432, l. 2 – 452, l. 8.

ARGUMENT

1.

The trial judge erred by instructing the jury that malice may be inferred from the use of a deadly weapon as to the offense of attempted murder, a specific intent crime, where implied malice is inconsistent with a specific intent crime and, as our Supreme Court held in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), there must be evidence that one charged with attempted murder had express malice and a specific intent to kill.

How the Issue was Presented Below

During the charge conference, the trial judge indicated that she intended to charge malice may be inferred from the use of a deadly weapon as to both murder and attempted murder since “there has been no mitigation presented or raised.” R. 469, l. 21 – 470, l. 3. Defense counsel objected to this implied malice instruction as to the offense of attempted murder pursuant to *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).¹ However, in support of her objection, counsel argued attempted murder has a different, “higher” burden than murder. She asserted, “I think having that [inferred malice] instruction basically is counter somewhat to that different burden.” R. 473, l. 11 – 474, l. 1. The assistant solicitor made no argument besides agreeing with the trial judge that the instruction was proper. R. 475, ll. 22-24.

The trial judge found the holding in *Belcher* is “only applicable when there is some mitigation” such as self-defense. She concluded, “*Belcher* very clearly articulates that where there’s no mitigation, the inference is still appropriate.” R. 473, ll. 16-20. In overruling

¹ In *State v. Belcher*, our Supreme Court held “where evidence is presented that would reduce, mitigate, excuse, or justify a homicide caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon.” 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009).

Appellant's objection, the trial judge asserted, "I'm not aware of any recent cases that [have] come out that have said anything differently other than what has been articulated by the Supreme Court regarding that precedent [Belcher]: . . . *I'm not aware of . . . any case law that has come out recently or within the period of Belcher and King*² *that has inferred malice is not appropriately instructed on an attempted murder charge. Because attempted murder and murder basically are the same with the exception of the murder . . . actually being accomplished.*" R. 476, l. 24 – 477, l. 20 (emphasis added). Therefore, the trial judge overruled Appellant's objection. R. 477, ll. 14-20.

Jury Charge

During her jury instructions, the trial judge charged in part:

The defendant is charged with attempted murder. In order to prove this crime the State must prove the defendant attempted to kill another person *with malice aforethought either expressed or implied*. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of [a] wrongful act [without] just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exist for any [particular] time before the act is committed. [But] malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred by as I've explained. These terms express and inferred do not mean different kinds of malice. But merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proven. Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for [a] person or any other acts or preparation going to show that the deed was within the defendant's mind would be expressed malice. *Malice may be inferred from conduct showing a total disregard for human life.* **Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which [is] likely to cause death or greatly bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and**

² State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).

circumstances of each case. [As] I've instructed, the following are examples of instruments which may be deadly weapons: [a] pistol[,] a shotgun, a rifle, dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a firebomb or Molotov cocktail, and lighter fluid. A gun may be a deadly weapon even if it is not operating. If the facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this inference would simply - - would simply be an evidentiary fact to be considered by you the jury along with the other evidence in the case. And you may give it the weight, value, and effect[,] if any[,] you decide it should receive.

R. 535, l. 25 – 537, l. 16 (emphasis added).

Standard of Review

“In reviewing jury charges for error, this Court considers the trial courts jury charge as a whole and in light of the evidence and issues presented at trial.” State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (quoting State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011)) (internal quotation marks omitted). “A jury charge is correct if, when read as a whole, the charge adequately covers the law.” Id. at 90-91, 747 S.E.2d at 448 (citing Brandt, 393 S.C. at 549, 713 S.E.2d at 604) (internal quotation marks omitted). “A jury charge that is substantially correct and covers the law does not require reversal.” Id. (quoting Brandt, 393 S.C. at 549, 713 S.E.2d at 604); See State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996).

Discussion

The offense of attempted murder is codified in S.C. Code Ann. § 16-3-29. This statute states in relevant part, “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.” (emphasis added).

In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), which was published three months before this trial and referenced by the trial judge,³ our Supreme Court held attempted murder requires a specific intent to kill as opposed to a general intent. The Court found our legislature “created the offense of attempted murder by purposefully adding the language ‘with intent to kill’ to ‘malice aforethought, either expressed or implied’ to require a higher level of *mens rea* for attempted murder than that of murder.” Id. at 61, 810 S.E.2d at 25. The Court concluded “the additional language of ‘with intent to kill’ clearly elevates the required mental state above a general-intent crime.” Id.

In reaching this conclusion, the Supreme Court cited favorably to Keys v. State, 104 Nev. 736, 766 P.2d 270 (1988). In Keys, the Supreme Court of Nevada held it was error for the trial court to refuse to instruct the jury that the specific intent to kill is an essential element of attempted murder. In support of its holding, the court distinguished the crimes of murder and attempted murder by analogizing express malice to a specific intent to kill. The court explained:

Attempted murder can be committed only when the accused’s acts are accompanied by *express malice*, malice in fact. One cannot *attempt* to kill another with implied malice because there “‘is no such criminal offense as an attempt to achieve an unintended result.’” An attempt, by nature, is a failure to accomplish what one *intended* to do. Attempt means to try; it means an effort to bring about a desired result. Thus one cannot *attempt* to be negligent or *attempt* to have the general malignant recklessness contemplated by the legal concept, “implied malice.” One cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill.

An attempt to kill with express malice is, on the other hand, completely consistent with the specific intent requirement of the crime of attempt. Express malice is the “deliberate intention unlawfully” to kill a human. Attempted murder, then, is the attempt to kill a person with express malice, or more completely defined: Attempted murder is the performance of an act or acts which

³ During her ruling, the trial judge asserted, “I’m not aware of . . . any case law that has come out recently or within the period of Belcher and King that has inferred malice is not appropriately instructed on an attempted murder charge.” R. 477, l. 7-13. By citing to King, it is obvious the trial judge was aware of the opinion.

tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

King, 422 S.C. at 57, 810 S.E.2d at 23 (quoting Keys v. State, 104 Nev. 736, 740, 766 P.2d 270, 273 (1988)).

While our Supreme Court in King refused to address the issue raised in this brief because it affirmed the Court of Appeals' decision reversing King's conviction based on its holding regarding the requisite *mens rea* for attempted murder, in a footnote, the Supreme Court stated:

While we find it unnecessary to address King's additional sustaining ground, **we would respectfully suggest to the General Assembly to re-evaluate the language following "malice aforethought" as the inclusion of the word "implied" in section 16-3-29 is arguably inconsistent with a specific-intent crime.** See Keys v. State, 104 Nev. 736, 766 P.2d 270, 273 (1988) (stating, "[o]ne cannot *attempt* to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result.") Moreover, **if there is no evidence that one charged with attempted murder had express malice and a specific intent to kill, we believe the crime would involve a lower level of intent and, thus, would fall within the lesser degrees of the assault and battery offenses** codified in section 16-3-600. See S.C. Code Ann. § 16-3-600 (2015 & Supp. 2016) (identifying levels and degrees of assault and battery offenses).

King, 422 S.C. at 64 n.5; 810 S.E.2d at 27 n.5 (emphasis added).

The dissent in King agreed with the majority that, after its holding, the notion of implied malice for specific intent crimes, such as attempted murder, would be problematic. Id. at 74, n.13; 810 S.E.2d at 32, n.13. Specifically, the dissent asserted, "For the reasons pointed out by the majority, it seems to me that **the concept of implied malice has no place in a prosecution for a specific intent crime.** The majority has wisely suggested that the General Assembly reevaluate the implied malice language in the statute in light of the Court's holding that attempted murder requires a specific intent to kill." Id. (emphasis added).

Based on our Supreme Court's holding in King that attempted murder is a specific intent crime and that both express malice and a specific intent to kill are required for attempted murder,

it is clear that the implied malice instruction given in this case over Appellant's objection was erroneous. Defense counsel properly asserted that the offenses of murder and attempted murder have "a different burden," i.e. a different required *mens rea*, and given the "higher burden" required for attempted murder the instruction that malice may be inferred from the use of a deadly weapon was improper. See R. 473, l. 21 – 474, l. 1. Moreover, in light of our Supreme Court's holding in King, the trial judge's assertion that "attempted murder and murder basically are the same with the exception of the murder . . . actually being accomplished" was also erroneous. See R. 477, ll. 11-13. Murder is a general intent crime while attempted murder is a specific intent crime. See King, 422 S.C. at 61, 810 S.E.2d at 25 ([T]he General Assembly created the offense of attempted murder by purposefully adding the language 'with intent to kill' to 'malice aforethought, either express or implied' to require a higher level of *mens rea* for attempted murder than that of murder."). Consequently, while the inferred malice instruction was proper as to the offense of murder, as the trial judge correctly noted there was no evidence presented to reduce, mitigate, excuse, or justify the homicide, it was error for the trial judge to instruct the jury that malice may be inferred from the use of a deadly weapon as to attempted murder.

Based on the trial judge's error, Appellant respectfully requests this Court reverse his convictions and sentence for attempted murder and remand for a new trial.

2.

The trial judge erred by instructing the jury on the hand of one is the hand of all theory of accomplice liability when there was no evidence to support the charge, specifically there was no evidence Appellant was acting with another during the shooting or that the murder was committed pursuant to a common design or plan, particularly where the state's theory of the case was that Appellant was the shooter and acted alone.

How the Issue was Presented Below

During the charge conference, Appellant objected to the trial judge charging the jury with the hand of one is the hand of all theory of accomplice liability since there was no evidence to support the charge. Defense counsel emphasized that Trivell Richardson testified "that he had no involvement in anything, didn't know of anything beforehand. At most, accessory after the fact, if that. But he [Richardson] clearly said he had no knowledge of anything. He never saw anything. He never saw Montrelle [Appellant] leave with the gun. He didn't know anything. He actually was told to park the car around the corner. He clearly wasn't instructed to stay at the car to be a getaway driver since he left and was walking on the street with the other gentleman [Andrew "Ace" Rivers], Your Honor." R. 472, ll. 13-24.

Counsel continued, "- - from the evidence [at] the crime scene, there's no suggestion that a second party was involved. There's no witness to say they saw two parties shooting or that two people we're there. The only evidence is the second person, Trivell. And again, the State's own evidence says that he [Trivell Richardson] had no knowledge - - so he would not of been an accomplice to Mr. Campbell [Appellant] under his testimony. And so I think it would be inappropriate. It would be based merely on just speculating on, well, maybe this could've

happened. It would be inappropriate because there is no evidence [at] all of a second party, Your Honor.” R. 472, l. 25 – 473, l. 10.

After emphasizing the “proper analysis” is an “any evidence standard,” the assistant solicitor argued this was “a codefendant case where we have three individuals that some could infer were involved in this case: Mr. [Trivell] Richardson, Mr. [Andrew “Ace”] Rivers, and Mr. Campbell [Appellant].” While the solicitor maintained the state presented substantial evidence that Appellant was the shooter, he argued the jurors “could assume otherwise” based on the evidence presented and the comments and argument by defense counsel in her opening statement and closing argument. R. 474, ll. 6-21. He continued, “[R]easonable jurors could be asking the question based on the defense[’s] own arguments, no one saw Montrelle [Appellant] shoot, so couldn’t have one of these other people have shot. And it’s very, very crucially important that the jurors understand that does not necessarily relieve Mr. Campbell [Appellant] of the murder charges that he stands here. And the hand of one is how you accomplish that in the jury’s mind.” R. 474, l. 22 – 475, l. 4.

Lastly, the assistant solicitor argued that Appellant’s presentation of Peggy Blake as a witness further supported a charge on accomplice liability. He asserted, “We now injected a hooded person carrying a sporty rifle away from the scene. So by their own case, we have two people fleeing the scene, both [carrying] rifles. Ms. Ford [defense counsel] just said to the Court there’s been no evidence presented that there were two people shooting at the scene. To the contrary. There was a second person introduced into this case that could’ve also played a role by their own case. We have video of one individual carrying an assault rifle, Montrelle Campbell, [a] minute and a half after the shooting. And we have evidence now presented by the defense of a hooded individual getting into a lime green car with a sporty rifle minutes after the shooting. I

think under that presentation of evidence from both the State and the defense, certainly the hand of one charge is appropriate.” R. 475, ll. 5-21.

The trial judge ultimately overruled the objection. She found the instruction was “clearly, factually supported as the case has been presented to the jury.” Her ruling mostly restated the law of accomplice liability. However, the trial judge also found, “While it is correct regarding the testimony of Mr. [Trivell] Richardson, the jury doesn’t have to believe his testimony. They can believe the truth lies somewhere between. They can believe he is being dishonest and [that] he [and] Mr. Campbell [Appellant] equally participated in this crime.” R. 475, l. 1 – 476, l. 23.

Jury Charge

Over Appellant’s objection, during her jury instructions, the trial judge charged in part:

I further instruct[], ladies and gentlemen, that if a crime is committed by two or more people who are acting together and committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the act done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person. When only one of the two had a gun, there is only one bullet, and only one of the two fired the shot that caused the death. If two or more people are acting together, assisting each other and committing the offense, the act of one is the act of all. Or it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arrange[ment], plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by confident evidence the theory of the hand of one is the hand of all. Principle [sic] of a crime is one who either actually commits a crime or who was present aiding and abetting or assisting in committing the crime. When a person [does an] act in the presence of and with the assistance of another, the act is done by both. Where two or more people acting with the common plan or intent to present at the commission of a crime,

does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid [and abet] and assist in the commission of the crime. However, mere presence at the scene of the crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, but there must be a common design or intent to commit the crime. And the crime must've been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

R. 539, l. 15 – 541, l. 13.

Standard of Review

“The trial court is required to charge only the current and correct law of South Carolina.” Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011) (citing Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). “The law to be charged must be determined from the evidence presented at trial.” Id. (quoting State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)) (internal quotation marks omitted). “In reviewing jury charges for error, we must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” Id. (quoting State v. Mattison, 388 S.C. 469, 478-479, 697 S.E.2d 578, 583 (2010)). (internal quotation marks omitted).

Discussion

The trial judge erred by charging the jury with the hand of one is the hand of all theory of accomplice liability because there was no evidence to support the charge.

“Under the ‘hand of one is the hand of all’ theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” Barber, 393 S.C. at 236-237,

712 S.E.2d at 439 (quoting Mattison, 388 S.C. at 479, 697 S.E.2d at 584). Under the accomplice liability theory, “a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” Mattison, 388 S.C. at 479-480, 697 S.E.2d at 584 (quoting State v. Langley, 334 S.C. 643, 648-649, 515 S.E.2d 98, 101 (1999)); See State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989).

“In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal’s criminal conduct.” Id. at 480, 697 S.E.2d at 584 (quoting State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)) (internal quotation marks omitted); See Wilson v. Wilson, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995) (“Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime.”). “Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” Id. (quoting Leonard, 292 S.C. at 137, 355 S.E.2d at 272). However, “presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle.” Id. (quoting State v. Hill, 268 S.C. 390, 395-396, 234 S.E.2d 219, 221 (1977)).

“Any person who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal, even though another does the killing.” Id. (quoting State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct.App.2005)).

Because there was no evidence Appellant was acting together with the shooter at the time of the murder, the trial judge erred in instructing the jury on accomplice liability. The critical determination for the jury was the identity of the shooter. The physical evidence at the scene showed there was only one shooter. There was no evidence that any one else was involved or

that there was a common design or plan agreed upon by two parties. Even if the jury were to believe the state's theory of the case that Appellant was the shooter, there was no evidence that Appellant acted with anyone else under a common design to support the instruction on accomplice liability.

In State v. Dickman, 341 S.C. 293, 341 S.E.2d 268 (2000), our Supreme Court held the trial court properly instructed the jury with accomplice liability where there was some evidence Dickman and John Seals were acting pursuant to a plan to kill the decedent at the time of the murder. Id. at 296, 341 S.E.2d at 269. Seals testified that Dickman shot the decedent while the three of them were in Dickman's car and then directed Seals to drive to a remote area where they removed the body from the car and dragged it into the woods. Id. at 295, 341 S.E.2d at 268. Seals admitted he emptied the decedent's pockets and threw his wallet into the river on their way home. Id. Dickman, on the other hand, testified that Seals was the shooter. Id.

The Court asserted, "The critical question is whether there is any evidence [Dickman] and Seals were acting together at the time of the killing if Seals was the shooter as [Dickman] claimed." Id. at 295-296, 341 S.E.2d at 269. The Court summarized the evidence as follows:

[Dickman] testified Seals asked him to kill [the decedent] because [the decedent] was always behind on the rent. [Dickman] told another friend the murder would be on a Sunday and the murder did in fact occur on a Sunday. On the day of the murder, Seals tried to collect the rent from [the decedent] without success. When he subsequently saw [Dickman], Seals's first words to [Dickman] were "do it." [Dickman] testified, "I knew what he intended at that time." *Immediately thereafter*, Seals called [the decedent] on the telephone and arranged to pick him up for the fatal car ride.

While they were driving, [Dickman] found the gun wrapped in a towel under the front seat where Seals had put it. He picked up the gun and held it up for Seals to see in the rear view mirror. [Dickman's] nerve failed him and he did not shoot. When [the decedent] briefly left the car, [Dickman] apologized for not shooting and gave Seals the gun. The two had no further communication between them before Seals allegedly shot [the decedent].

Id. at 296, 534 S.E.2d at 269 (emphasis in original).

Based on this evidence, the Supreme Court concluded there was sufficient evidence that Dickman and Seals were acting pursuant to a plan to kill the decedent at the time of the murder and, therefore, the charge on accomplice liability was proper. Id.

In Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011), our Supreme Court held there was sufficient evidence to support the trial court's accomplice liability instruction. The state alleged Barber and three others conspired to rob a minor drug dealer. Id. at 234, 712 S.E.2d at 437. The men gathered together and discussed the plans for the robbery, procured a semi-automatic handgun, and later a rifle, and drove to the dealer's house. Id. One of the men waited in the car, while Barber and two others allegedly entered the home to rob the dealer. The men demanded money and drugs. Id. One of the suspects armed with the handgun shot and killed the dealer and shot and wounded another occupant of the home. Id. at 234, 712 S.E.2d at 438. Barber's three codefendants implicated Barber in the planning and execution of the robbery, and said he was the gunman who shot the dealer. Id. at 234-235, 712 S.E.2d at 438.

The Court found there was evidence to support the conclusion that Barber was acting with the other men during the robbery. Id. at 237, 712 S.E.2d at 439. Barber's three codefendants "all testified to substantially the same version of the planning and execution of the robbery—that Barber was involved and was the shooter." Id. Accordingly, the Court held the trial court did not err by instructing the jury on the hand of one is the hand of all theory of accomplice liability. Id. at 239, 712 S.C. at 440.

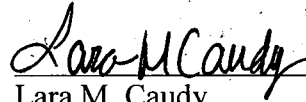
As seen, there was evidence in both Dickman and Barber of a prearranged plan and that the defendants were acting together with co-conspirators. Here, however, there is no evidence that Appellant acted together with another to support the instruction on accomplice liability.

Because the trial judge erred by instructing the jury with the hand of one is the hand of all theory of accomplice liability, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lara M. Caudy", is written over a horizontal line.

Lara M. Caudy
Appellate Defender

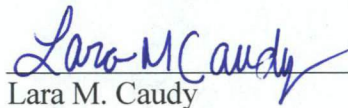
ATTORNEY FOR APPELLANT

This 16th day of August, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 16, 2019



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AUG 16 2019

SC Court of Appeals

589
ORIGINAL

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

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

RECEIVED

AUG 16 2019

SC Court of Appeals

THE STATE

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT,

APPELLATE CASE NO. 2018-000115

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err by instructing the jury that malice may be inferred from the use of a deadly weapon as to the offense of attempted murder, a specific intent crime, where implied malice is inconsistent with a specific intent crime and, as our Supreme Court held in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), there must be evidence that one charged with attempted murder had both express malice and specific intent to kill?
- II. Did the trial judge err by instructing the jury on the hand of one is the hand of all theory of accomplice liability when there was no evidence to support the charge, specifically there was no evidence Appellant was acting with another during the shooting or that the murder was committed pursuant to a common design or plan, particularly where the state's theory of the case was that Appellant was the shooter and acted alone?

RESPONDENT'S STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court err in charging the jury that malice may be inferred from the use of a deadly weapon for the crime of attempted murder, wherein the statutory definition of attempted murder under § 16-3-29 explicitly denotes that the requisite malice aforethought may be established via either express or implied malice, and where no South Carolina court has ruled that such an instruction is in error?
- II. If the trial court did err in instructing the jury as to inferred malice from the use of a deadly weapon, was that error harmless given the fact that the circumstances of this case, including Appellant's use of a deadly weapon, all demonstrate express malice without the need for inference by the jury?
- III. Did the trial court err in instructing the jury as to the hand-of-one is the hand-of-all theory of accomplice liability where the facts of the case demonstrate that both Appellant and

co-defendant Richardson were involved in the crime, and the Appellant's case-in-chief introduced evidence of a different or additional gunman dressed in different clothing leaving in a different vehicle than that demonstrated in the State's case-in-chief?

BRIEF ARGUMENT

The trial court did not err in instructing the jury as to inferred malice from use of a deadly weapon, as the statutory definition for attempted murder explicitly includes the use of inferred malice. As there has never been a decision from South Carolina courts that rules such an instruction in error, there was nothing to instruct the trial court differently. The trial court complied with the statutory definition of attempted murder, and the existing relevant case law.

Even if the inferred malice charge were to be found in error, such error would be harmless because the evidence of the case does not require inference of malice by the jury. The efforts taken by Appellant to complete the shooting were premeditated, prepared in advance, and performed against a woman he had a physical and public confrontation with the evening prior. Appellant brought himself to the confrontation, gave no warning to his anger, used a high caliber automatic or semi-automatic AR-15 rifle, attacked by ambush, fired fourteen bullets into a crowded apartment from the outside window, and then returned to the getaway car he had co-defendant Richardson park and watch for him in his absence. These actions are each elements of express malice, such that no inference need be drawn by the jury. Consequently, the jury charge instruction the jury as to inferred malice constitutes harmless error, to the extent it is error at all.

Lastly, given the presence and involvement of three different individuals under the state's theory of the case, the potential for the jury to not believe co-defendant Richardson's innocent participation in driving away from the scene, and the defense's case-in-chief which sets forth evidence of a separate hooded assailant carrying a sporty rifle, escaping the scene in a different

getaway vehicle, the jury may find that Appellant did not act alone in perpetrating the shooting. A hand-of-one is the hand-of-all charge was appropriate and necessary under the facts presented at trial.

STATEMENT OF THE CASE

Appellant was indicted on April 11, 2016, by a Charleston County Grand Jury for murder and two counts of attempted murder. Appellant proceeded to trial on January 8, 2018, before the Honorable Deadra L. Jefferson, and a jury. (R. p. 1). The State was represented at trial by Assistant Solicitors Chad Simpson and Alex Ginsberg. (R. p. 1). Attorneys Mary Ford and Michael Williams represented Appellant. (R. p. 1). At the conclusion of trial on January 12, 2018, the jury found Appellant guilty as indicted. (R. p. 554, line 9 through p. 555, line 14). Appellant was sentenced to life without parole for murder and to concurrent thirty year sentences for each count of attempted murder. (R. p. 556, lines 7-14). This appeal now follows.

STANDARD OF REVIEW

“An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion.” *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). Generally, the trial judge is required to charge only the current and correct law of South Carolina.” *State v. Adkins*, 353 S.C. 312, 317, 577 S.E.2d 460, 463 (Ct. App. 2003). “In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.” *Id.* “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” *Id.* “A jury charge which is substantially correct and covers the law does not require reversal.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (citing *State v. Foust*, 325 S.C. 12, 479

S.E.2d 50 (1996)). ‘The law to be charged must be determined from the evidence presented at trial.’ *Brandt*, at 549, 713 S.E.2d at 603 (2011) (citing *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). “If there is any evidence to support a charge, the trial court should grant the request.” *Id.* (citing *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)). “Errors, including erroneous jury instructions, are subject to harmless error analysis.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009).

FACTS

The Crime

At approximately 6:30am, Katrina Brown (hereinafter “Katrina”) was hosting numerous friends at her home located at *-* Norman Street, an area known as Gadsden Green in downtown Charleston. (R. p. 98, line 25 through p. 99, line 2). They were listening to music, playing cards, and enjoying each other’s company. One such friend was victim Antwan Frost, (aka “Brother Dusty”, herein after referred to as Victim). Without warning, Katrina, along with her guests, were shot at from the backdoor window by a high caliber assault rifle. A total of 14 rounds were fired into the home. (R. p. 137-138). Kerri Brown, and her cousin, Tierra Brown were injured in the attack. (R. p. 43-44; p. 46). Victim was struck by multiple pieces of shrapnel from fragmented bullets. Both women survived the attack, but the fragmented bullet that struck Victim pierced his heart and caused him to bleed internally. (R. p. 194). He died shortly after the attack.

The evidence and testimony presented at trial demonstrated the following facts:

Investigation and Forensics

Crime scene investigator Sarah Gladwell testified that she began her investigation and processing of evidence on the outside of the home, as police were still in the process of acquiring a search warrant for the home itself. She recovered a total of fourteen (14) fired shell casings

from the rear porch and courtyard area. (R. 122, line 20 through p. 123, line 9). Though she was confident that the ammunition was fired from a rifle, Investigator Gladwell could not identify the caliber of the round, as it was a large-caliber bullet that she had not encountered despite her extensive prior experience with murder scenes. (R. p. 133, line 13 through p. 134, line 4). She likewise uncovered what she believed to be 14 bullet holes in the walls of the home. (R. p. 137-138). She concluded that the bullets entered from the back and went through to the front of the apartment. (R. p. 140, lines 1-19; p. 142, lines 1-24; p. 144-145).

Security camera footage was taken from numerous different sources in the case. (R. p. 465, lines 3-5). These sources included city maintained cameras, private residences, and local businesses. (R. p. 167-169; p. 174-175; p. 186-188; p. 206-208). The footage from a nearby restaurant called Lee Lee's Hot Kitchen provided some of the most useful footage. Officer Rebecca Gregg testified that in review of the video footage, they noticed two parties of interest who passed directly in front of the cameras shortly before the shooting. *One of these subjects was shown carrying a rifle while walking up President Street toward the restaurant and rounding the corner at Nunan Street.* (R. p. 207, lines 4-14). This footage also showed a second individual driving a vehicle; he appeared to be waiting and discarded a couple of cigarette butts during that time. (R. p. 207, lines 21-25). These were collected by crime scene investigators. (R. p. 208, lines 21-23; 216, line 16 through p. 217, line 10). These individuals were later believed to be identified as Trivell Richardson (hereinafter "co-defendant Richardson") and Appellant. (R. p. 348-349). The videos showed that the vehicle used by the two individuals was a Gold Buick. (R. p. 337, lines 1-17). Police acquired still photographs from the surveillance videos that depicted the license plate of the Buick; they interviewed its owner, Tomeka President, who confirmed that the gold Buick was her vehicle. (R. p. 233, lines 12-15). She also testified that Appellant was a

love interest of hers who had stayed with her the night before the shooting. (R. p. 237, lines 3-14).

Detective Tuttle acquired the cell phone numbers associated to both Appellant and co-defendant Richardson and obtained a search warrant for both numbers, which provided authorities with various information including incoming calls, outgoing calls, text messages, and tower/sector data. (R. p. 356, line 2 through p. 357, line 1; p. 381, line 15 through 382, line 8; p. 384, lines 5-13). FBI Special Agent Clayton Simmonds testified that these two phones contacted each other just prior to the time of the murder. (R. p. 390, lines 7-25; p. 412, lines 15-21). Agent Simmonds testimony also demonstrates that the tower/sector usage history from these phones is consistent with the phones being located in the downtown area at the time of the murder. (R. p. 408, line 17 through 409, line 23; p. 410, lines 4-20).

Detective Tuttle testified that he spoke with Ms. Peggy Blake, a potential witness, many times over the course of the investigation. (R. p. 454, lines 4-9). He testified that he was aware of the possible involvement of a lime green getaway car. (R. p. 455, lines 9-11). He testified that in his investigative efforts, which included review of all surveillance camera footage, he did not witness any car matching the lime green car description provided by Ms. Blake. (R. p. 456, lines 7-10). He testified that the camera footage clearly refuted the information provided by Ms. Blake. (R. p. 463, lines 1-7).

Testimony of Katrina Brown

In September 2015, Ms. Katrina Brown (hereinafter “Katrina”) lived at **-* Norman Street. (R. p. 23, line 7). She testified that she had guests over at her home starting on Thursday night, September 17, 2015, while her kids were at the local school’s football game. Those guests included her sister, Kerri, her neighbor, her cousin, and others. (R. p. 27, 14-20; p. 28,

line 10-18). At around 11:30 or midnight her son returned from the game and a friend of her sister's, named Kadeshia, also came over. (R. p. 29, lines 12-25). Katrina testified that soon after, there was a knock at her door. Kadeshia's never made it to the door, but moments later a man introduced to Katrina as "Troll" had entered the home. (R. 30, lines 1-25). Katrina did not know "Troll" and did not know that the man was Kadeshia's brother. (R. 30, lines 5-6; 31, line 5-11)

Ms. Katrina Brown asked the man who he was, and he did not respond, and soon after she asked him to leave her home. He did not respond and did not immediately leave. However, he ultimately left on his own. (R. p. 31, line 1-11). Once "Troll" had exited the home she soon stepped outside her home to smoke a cigarette. While outside her kitchen door "Troll" hit her on the left side of the head and knocked her to the ground. She testified that he was standing over her in way that she feared he was about to hit her again. (R. p. 31, lines 14-23; p. 32, lines 3-4). Katrina identified Appellant in the courtroom as the assailant from that evening. (R. p. 34, line 1-9).

Her sister and friend saw the commotion and intervened, after which Appellant left toward the street. (R. p. 31, line 23-25; p. 72, line 13-16). Katrina, her sister, and her friend all together went to the street to confront Appellant about his actions. However, Katrina testified that he was backing up to his car and that he looked like he was reaching for something. This spurred Katrina to take herself and her friends back into the house without further confrontation. (R. p. 32, line 4-10). Katrina testified that they really did not have much of an argument; it amounted to "What's going on?" and "Why did you just do that?" Neither of these questions provoked a response from Appellant and he then left with his sister Kadeshia. (R. p. 33, line 1-

24). Katrina put up her windows, but did not call the police, noting that calling the police is just not what she learned to do growing up. (R. p. 33, line 5-8; p. 34, line 18 through p. 35, line 16).

Katrina learned the following day that Appellant hitting her in the head had become the local gossip of the area when people at the store spoke to her about “Troll” hitting her. (R. p. 36, lines 15-24). Later that evening, Friday, September 18, 2015, Katrina hosted friends and family at her home again. (R. p. 38, lines 1-23). The gathering progressed into the morning hours and Victim arrived at approximately 6:00am. (R. p. 39, lines 16-25; p. 40, lines 1-16). Victim was a longtime friend of the Brown family. (R. p. 39; p. 73). Katrina was not aware of any social media postings that would have made the gathering public knowledge. (R. p. 50, lines 16-21).

Katrina testified to where people were in the house at that time, and then she described the shooting. She testified that as soon as they heard gunfire everyone just dropped to the floor because there were bullets flying all over the place. (R. p. 41-42). She testified that the gunfire was fast and could tell the shots were coming into the home because they were striking various things in the house. (R. p. 42, lines 17-25). She testified that her sister attempted to hide underneath the chair, and recalls hearing her say that she had been hit. (R. p. 43, lines 7-12). She also heard her cousin Tierra Brown yell that she had been hit. (R. p. 43, line 16 through p. 44, line 5).

Katrina testified that she had lived at the address for five years and did not have any enemies in the neighborhood, and other than what had occurred with Appellant, she was not aware of a conflict she had with anyone. (R. p. 46, lines 7-11). On cross examination Katrina denied having a conversation where she learned of Appellant’s relationship to Kadeshia prior to forcing Appellant to leave her home. (R. p. 53, lines 7-10). She further denied apologizing to Kadeshia, and denied knowing Appellant’s relationship to Kadeshia prior to the assault. (R. p.

52, line 24 through p. 53, line 17). However, she did admit to having an argument with Kadeshia prior to leaving the home to smoke a cigarette. (R. p. 54, lines 3-15).

Testimony of Kerri Brown

Kerri Brown is Katrina's sister. (R. p. 64, 21-23). Kerri testified that Appellant came to the door and just walked into the home. (R. p. 67, lines 16-23). She did not know who Appellant was, and that her sister's friend likewise did not know Appellant when he walked into the house. (R. 67, line 24 through p. 68, line 7). However, on cross-examination she testified that Appellant arrived and asked to speak to Kadeshia, claiming to be her brother. She testified however that she did not know him. (R. p. 82, lines 9-21). Kerri testified that her sister Katrina asked Appellant to leave, and commented that he ultimately did leave. She testified that her sister "said a few words" to Kadeshia and asked her to leave. (R. p. 69, lines 5-11).

Kerri testified that she could not see Appellant hit her sister, but that she saw her sister go to the ground through the window. When she went outside Appellant was standing over Katrina like he was going to hit her. (R. p. 69, line 16 through p. 70, line 9). She came to her sister's aid and asked why Appellant did that. He never responded and was backing away. She testified that her sister noticed he seemed to be reaching for something, and her sister told her and others to let it go and go back inside. (R. p. 70, lines 17 through p. 71, line 9). Kerri identified Appellant as the man responsible for hitting Katrina that evening. (R. p. 79, line 22, through p. 80, line 6). She characterized Appellant as appearing arrogant as he stood over Katrina, having just hit her. (R. p. 90, lines 9-20).

Kerri testified that she was good friends with victim, and recalled that Victim arrived around 5:00 or 5:30 that morning. (R. p. 73, lines 11-25). She testified that everyone was in the house, when out of the blue she started hearing gunshots. She testified that everyone tried to get

undercover in reaction. (R. p. 75, 2-12). She testified further that she was trying to protect her son and nephew during the shooting and that she was shot in the head in the process. (R. p. 76, line 16 through p. 78, line 3). She testified that she did not have any enemies in the neighborhood. (R. p. 79, lines 22-24).

During cross-examination, she admitted that she never saw anyone with a gun during the shooting. (R. p. 80, lines 20-22). On cross-examination Kerri testified that Kadeshia apologized for her brother hitting Katrina the night before. (R. p. 85, lines 5-10).

Testimony of Tierra Brown

Tierra Brown is Katrina's cousin. (R. p. 64, line 24 through p. 65, line 1). Tierra testified that she was shot in the arm during the shooting. (R. p. 95, lines 11-17). She could not recall how many shots were fired, but testified that there was a lot of gunshots fired in rapid succession. (R. p. 96, lines 5-9). She did not see who was shooting into the home. (R. p. 99, lines 10-11).

Officer Timothy O'Leary

Officer O'Leary testified that he was a regular patrol officer working the overnight shift on September 19, 2015. (R. p. 103, lines 23-24). He responded to the shooting at 6:37am. (R. p. p. 105 through 106, line 17). He was first to find Victim and attempted to render aid to Victim.

Testimony of Tomeka President

Ms. President identified Appellant at trial and testified that his nickname is "Troll". (R. p. 229, lines 1-7). She testified that she came to know Appellant through her brother and another individual named "Vell", full name "Trivell Richardson" (co-defendant Richardson). (R. p. 229, lines 8-15; p. 247). For a short time, Ms. President was Appellant's romantic partner. (R. p. 230, lines 11-24). She testified that co-defendant Richardson used to cut her son's hair. He was familiar with her, knew her car at the time, and she testified that she was driving a Goldish Buick

Century in September, 2015. (R. p. 231, line 12 through p. 232, line 16). Ms. President testified that she recognized exhibits as photos of her car and license plate from 2015. (R. p. 232, line 19 through p. 233, line 15). In September of 2015, Ms. President was living in apartment complex on Austin Avenue.

She testified that she recalled the police coming to talk to her in October of 2015 regarding incidents involving the car. (R. p. 233, line 16 through p. 234, line 2). She was taken to an interview room for the interview and was later taken to a computer in order to show her video footage of her vehicle. At the time she confirmed that the car was consistent with her car. (R. p. 235, line 3 through p. 236, line 20). She testified that she told police around that time that Appellant stayed with her on that Friday night and Saturday morning. (R. p. 237, lines 3-14). She also explained that she worked that night, had to be back at work on Saturday by 7am to open the cash registers, and usually drove to work using her gold Buick. (R. p. 237, line 15 through p. 239, line 7). Ms. President testified that she was late to work Saturday because she was waiting on a taxi-cab because her car was not in the parking lot. She was angry because the car was not where she had left it the night before. (R. p. 240, line 4-24). She also testified that Appellant was at her home when she went to bed, but he was gone when she woke up that morning before work. (R. p. 241, lines 4-10).

Ms. President called the cab for work, as the cab was picking her up, she saw her car parked in a different space than where she had left it, and the keys were in the driver seat. (R. 242, line 2 through p. 243, line 9). She testified that the fact her car had been used and returned that morning made her nervous, so she took the cab out of concern despite having found her car. She also expressed that she was nervous about discussing her car with police because getting mixed up with things can have consequences, and she had kids to think about and care for. (R. p.

243, line 2 through p. 244, line 17). As she was beginning to date Appellant, Ms. President had his cell phone number. Following her interview, she provided to police officer's Appellant's phone number that he was using back in September of 2015. (R. p. 244, line 18 through p. 245, line 12).

On cross-examination Ms. President testified that Appellant stayed with her just that one night and that he did not have access to her home. (R. p. 246, lines 13-25). She testified that she never saw Appellant or co-defendant Richardson that morning. (R. p. 247, lines 10-13). She testified on cross-examination that she did all she could to cooperate.

Testimony of Trivell Richardson

Co-defendant Richardson testified that he is incarcerated due to his involvement in the case at issue and is facing one count of murder, and two counts of attempted murder as a result of involvement with Appellant. (R. p. 254, lines 19-25). He confirmed that his nickname is "Vell" and identified Appellant as "Troll". (R. p. 255, lines 18-20; p. 258, lines 6-16). He also testified that he knows Tomeka President, and had on prior occasions ridden in her Buick. (R. p. 257, lines 11-25).

Co-defendant Richardson testified that on the night of September 18, 2015, he went to a party for a friend who had been killed and then went to a strip club. He testified that he left the strip club at about 4:00am, and was then dropped off by a friend. (R. p. 260, line 1 through p. 262, line 14). He then walked toward his house located in Austin Lakes; he testified that Austin Lakes was near Austin Avenue, where Ms. President lived. (R. p. 261, line 18; p. 230, line 1-10).

Before getting home he was approached by Appellant, whom he was friends with. (R. p. 263, lines 1-9). His conversation with Appellant suggested they would go get cigarettes from the store, but co-defendant Richardson testified that they ultimately never made it there. He testified

that Appellant took him to a car to go get cigarettes, and testified that he recognized the car as Ms. President's Buick. (R. p. 262, line 15 through p. 264, line 17). Once in the car Appellant drove past the Kangaroo gas station where co-defendant Richardson anticipated they would stop for cigarettes, and instead went downtown. Co-defendant Richardson testified that he asked where they were going; Appellant told him to "chill" and told him that "it'll be all right." (R. p. 264, line 18 through p. 265, line 3).

Co-defendant Richardson testified that Appellant drove to the corner of Kennedy Street and President Street in downtown; Appellant then parked the car on Nunan Street with co-defendant Richardson still riding as a passenger. (R. p. 266, line 18 through p. 268, line 16). Co-defendant Richardson then explained that Appellant exited the vehicle and instructed him to park the car on Nunan Street. Co-defendant Richardson did as instructed by sliding across to the driver seat. (R. p. 270, line 2 through p. 271, line 4). He testified that once he and Appellant arrived they were met by a third individual whom he knew from growing up, named Andrew Rivers (aka Ace). Co-defendant Richardson testified that he told Ace to get in the car and ride with him. (R. p. 269, line 1 through p. 271, line 2). Co-defendant Richardson did not see where exactly Appellant went, but agreed that he walked back toward "Green", also called Gadsden Green, which was a government housing community in the area. (R. p. 271, line 5-10; p. 88, lines 15-17; 98-99; p. 106, line 24-25). He testified that there was a restaurant "something Kitchen" where he parked, and confirmed that he was the individual depicted in the video flicking a cigarette butt out of the driver's side of the Buick. (R. p. 271, line 21 through p. 272, line 24). Co-defendant Richardson then testified that he and Ace got out of the car and walked toward the Gadsden Green projects. (R. p. 273, line 20 through p. 274, line 11). He testified that he tried to call Appellant and ask where to leave the keys, as he was leaving the car. (R. p. 279,

line 20 through p. 281, line 2). He testified on cross-examination that he got out of the car and wanted to leave the keys for Appellant because he had issues with a couple of people in the area, and did not want to be around that area. (R. p. 304, line 1-11). Soon after his phone call, co-defendant Richardson heard multiple gunshots. He testified that Ace ran away and he ran back to the car. (R. p. 273, line 20 through p. 276, line 5). He tried to start the car using the spare key on the keychain, but it would not start. By the time he switched to the other car key to start the vehicle Appellant had returned and gotten into the vehicle. Mr. Richardson testified that Appellant was in possession of an AR-15 rifle that was still smoking. (R. p. 277, line 18 through p. 278, line 15).

Co-defendant Richardson testified that Appellant instructed him to drive away and back to the Austin Lake apartments. (R. p. 278, line 24 through p. 279, line 9). He testified that he voluntarily went to the police when he learned they wanted to speak with him about the shooting. (R. p. 281, line 16 through p. 282, line 1). At first he claimed he was not at the scene, but confirmed that it was him sitting in the car as demonstrated in the State's photo and video evidence. (R. p. 282, lines 2-23). He identifies himself and Ace in State's exhibit 97. (R. p. 284, lines 8-19). In State's exhibit 106 & 115 he identified Appellant holding the gun that he saw Appellant in possession of soon after hearing the gunshots. (R. p. 285, lines 14-25). In State's exhibit 116, he identifies himself running back to the car after hearing gunshots. (R. p. 286, lines 11-15). Co-defendant Richardson testified that he provided his cell phone number, and confirmed that he had Appellant's number in the phone as well. (R. p. 288, lines 5-25).

Appellant's cross-examination focused on impeachment of his credibility based on prior record and bias to not be truthful given his pending charges. (R. p. 289-292). Co-defendant Richardson confirmed that he did not tell the State the whole truth of events until 2017, a long

time after his arrest. (R. p. 292, lines 1-6). He was also cross-examined on the fact that he initially denied that the photo evidence depicting him on Nunan Street. In his communications to police *before* confessing involvement, co-defendant Richardson told police he was not there; he then stated he was there, but just walking through; he then told police he had alibi witnesses who could attest to his whereabouts. (R. p. 294-301). Mr. Richardson confirmed that he did not inform authorities of the testimony he provided at trial until after being in jail for approximately a year and a half. (R. p. 301, line 22 through p. 302, line 3).

Testimony of Peggy Blake

Appellant called Katrina Brown's neighbor, Peggy Blake, as his sole witness for the defense's case-in-chief. (R. p. 432, lines 1-5). She testified that she was at home and had just laid down to rest when she was disturbed by a noise that she stated "sounded like a bomb." (R. p. 433, line 3-6). She testified that she peaked out between her blinds to see what was causing the commotion. In doing so she testified that she saw a man "about five-eight or eleven. I'm not really good with measurements." (R. p. 433, lines 10-12). She noted that it was kind of dark, but testified that the man was dressed in all black and was wearing a hoodie, and could not see him well enough to identify him because he was hiding. (R. p. 433, lines 12-15; p. 434, lines 8-10). She further testified that she saw this hooded individual approach from the projects and leave after the shooting in a lime green car that drove off slowly, as if "nobody saw anything." (R. p. 434, lines 2-5). Ms. Blake testified that the individual was an African American with dark skin tone, and appeared to be carrying what she described as a "sporty rifle". (R. p. 434, line 11-18).

She called 911 to report the shooting. No written or recorded statement was given of Ms. Blake's eye-witness accounts, as she testified that she "didn't really want to be involved." (R. p. 436, lines 1-17). On cross-examination, Ms. Blake was adamant that she told the 911 operator all

of the information she gathered from what she had witnessed. (R. p. 443, line 1 through p. 445, line 24). However, the 911 phone recording was played, Ms. Blake agreed that it was her voice on the call, and then changed her testimony that she provided the information to “crime scene personnel.” (R. p. 447, line 12 through p. 448, line 12).

ISSUES AS THEY WERE PRESENTED AT TRIAL

The trial court provided a summary of his intended charges to the jury, including the elements relating to murder and attempted murder. (R. p. 469). For murder the trial court informed the parties that he would instruct on the inference of malice from the use of a deadly weapon. (R. p. 469). She then informed the parties that pursuant to the statutory definition provided in § 16-3-29, she would instruct the jury as to the elements of attempted murder. She commented that the inference of malice would likewise be applicable as there had been no mitigation presented during trial. (R. p. 469, line 25 through p. 470, line 3).

The trial court then informed the parties that she would instruct on criminal intent pursuant to *State v. King*. The trial court stated:

In conjunction with that, though, I will likewise instruct that the intent means intending the result which actually occurs not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent – for intent. Evidence of the character of the acts, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in determining the intent of which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, an natural tendency of which is to destroy another’s life. I will then instruct a criminal intent is a mental state; a consciousness of wrongdoing. It is up to you determine what the defendant intended to do based on the circumstances shown to have existed. To find the defendant guilty of attempted murder, the

State must prove beyond a reasonable doubt that the defendant had an intent to kill the victim.

The trial court then informed the parties that she would instruct the jury regarding accomplice liability theory that the hand-of-one is the hand-of-all. (R. p. 471, lines 13-14).

After the trial court completed her review of the intended charges, Defense counsel raised objection to accomplice liability, arguing that co-defendant Richardson's testimony demonstrated that he had no involvement and did not know of Appellant's intentions beforehand. Defense counsel also argued that there was "no suggestion that a second party was involved." (R. p. 473, lines 1-2). Next, Defense counsel argued under *Belcher* that the inference of malice would be improper in this case. The Court immediately commented that *Belcher* would have no application to the case at hand, as there had been no demonstration of mitigation. (R. p. 473, lines 11-20). Defense counsel maintained her objection, adding that such a charge is counter to the higher burden required for attempted murder. (R. p. 473, line 21 through p. 474, line 1).

The State responded to the objection by pointing out to the court the hand-of-one is the hand-of-all charge is not married to one particular theory of the case. It is based on an "any evidence" standard, and that a reasonable juror could infer multiple participants from the evidence presented by both the State and the defense. (R. p. 474, lines 6-12). Particularly, Assistant Solicitor Simpson noted that the facts involved three different individuals, Appellant, co-defendant Richardson, and Mr. Rivers. (R. p. 474, lines 6-14). The Solicitor commented that she certainly believed there was substantial evidence to prove Appellant was the shooter, but no one saw Appellant fire the gun. In addition the arguments of the defense attempt to put into question Appellant's participation and introduce alleged evidence of a completely different person, a "hooded person carrying a sporty rifle away from the scene" who fled the scene separate from Appellant. (R. p. 474, line 16 through p. 475, line 10). These matters all make

reasonable the hand-of-one charge. (R. p. 475, lines 14-21). In response to the objection to inferred malice and *Belcher* arguments, the Solicitor had nothing further to add, noting that the Court was correct in its analysis of the charge. (R. p. 475, lines 22-24).

The trial court found that the hand-of-one charge was factually supported based on the case presented to the jury, and specifically noted that jury is under no obligation to believe the testimony of co-defendant Richardson, and that the truth may lie somewhere in the middle that both he and Appellant participated in the crime. (R. p. 476, lines 1-9). The trial court likewise, found that if the defense's theory is believed, then the charge is inapplicable anyway. (R. p. 476, lines 21-23). The trial court likewise reaffirmed its interpretation of *Belcher*, and noted specifically that she was not aware of any case law, including *King*, that renders inferred malice as an inappropriate charge. (R. p. 476, line 24 through p. 477, line 10).

At the conclusion of closing arguments, the trial court delivered its jury charges. Pertinent to the issues raised on appeal, the charges were given as follows:

The defendant is charged with attempted murder. In order to prove this crime the State must prove the defendant attempted to kill another person with malice aforethought either express or implied. Malice is hatred ill will or hostility towards another person. It is the intentional doing of a wrongful act hat just cause or excuse and with an intent to inflict an injury or under circumstances that the law ill infer an evil intent. Malice aforethought does not require that malice exist for any take (sic) your time before the act is committed. That malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the pervious evil intent and the act. Malice aforethought may be expressed or inferred by as I've explained. These terms express and inferred do not mean different kinds of malice. But merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proven. Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example lying in wait for person or any other acts of preparation going to show that the deed

was within the defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

...
If the facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction this inference would simply – would simply be an evidentiary fact to be considered by you and the jury along with the other evidence in the case. And you may give it the weight, value, and effect if any you decided it should receive.

Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant of the circumstances from which you may naturally and reasonable infer intent. Evidence of the character of the act, character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in determining the intent for which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act that natural tendency of which is to destroy another's life.

I further instructed that an attempt is an effort to accomplish a crime which does not succeed. And attempt includes a specific intent to do a particular criminal act along with an act falling short of the act intended. The State must show more than mere preparation and intent. There must be some overt act committed in the effort to commit the crime. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances in which you may naturally and reasonable infer intent.

I further instruct, ladies and gentlemen, that criminal intent is a mental state, a consciousness of wrongdoing. It is up to you the jury to determine what the defendant intended to do based on the circumstances shown to have existed. I further instruct you to find the defendant guilty of attempted murder, the State prove beyond a reasonable doubt that the defendant had an intent to kill the alleged victim.

(R. p. 535, line 25 through p. 538, line 22; errors in original). The court then instructed the jury

as to the theory of transferred intent. Lastly, the trial court instructed the jury that:

[I]f a crime is committed by two or more people who are acting together and committing a crime, the act of one is the act of all. A

person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the act done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person. When only one of the two had a gun, there is only one bullet, and only of the two fired the shot that caused the death. If two or more people are acting together, are together, acting together, assisting each other and committing the offense, the act of one is the act of all. Or it is sometimes said, the hand of one is the hand of all.

ARGUMENT

- I. The trial court did not err in charging the jury that malice may be inferred from the use of a deadly weapon for the crime of attempted murder, wherein the statutory definition of attempted murder under § 16-3-29 explicitly denotes that the requisite malice aforethought may be established via either express or implied malice, and where no South Carolina court has ruled that such an instruction is in error.**

The trial court did not commit error in instructing the jury as to inferred malice from the use of a deadly weapon for the charge of attempted murder. The trial court abided by the statutory language set forth in § 16-3-29, and it likewise explicitly instructed the jury that attempted murder requires the State to prove specific intent to kill so as to comply with the holding of *State v. King*. There is no basis in which to find error in the court's charge to the jury regarding inferred malice, as it contravened neither statute nor existing precedent.

The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *State v. Sweat*, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) (citing *Durham v. United Cos. Fin. Corp.*, 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998)). The plain language of the statute cannot be contravened. *State v. Leopard*, 349 S.C. 467, 473, 563 S.E.2d 342, 345 (Ct. App. 2002) (citing *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct. App. 1997)). Moreover, our Supreme Court has cited with approval that 'As a general rule where the law governing a case is expressed in a statute, the court in its charge not only may, but should,

use the language of the statute, and may, indeed, be guilty of error if it employs language which constitutes a departure in an essential respect from the statute. However, it is not error to qualify the wording of the statute so as to conform it to construction given by the reviewing courts.’ *Field v. Gregory*, 230 S.C. 39, 47–48, 94 S.E.2d 15, 20 (1956) (citing 53 Am. Jur. Trial, para. 542, at page 433); (See 75A Am. Jur. 2d Trial § 908).

In the case at hand, Appellant was indicted for attempted murder, codified by South Carolina Code of Laws § 16-3-29. The statute reads in pertinent part: “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 (2010). Of particular import is that the statute explicitly states that the requisite malice aforethought may be satisfied by either express or implied malice.

At the conclusion of evidence the trial court informed the parties that it would charge the jury on the law of attempted murder so as to conform to the established statutory language. (R. p. 469, line 25 through p. 470, line 2). This included a charge on the inference of malice from the use of deadly weapon. (R. p. 470, line 2). The charge for inferred malice from the use of deadly weapon drew objection from the defense. (R. p. 472, line 13 through p. 474, line 1). The defense first argued under *Belcher* that such a charge should not be given.

As was correctly concluded by trial court, *Belcher* has no applicability to the case at hand. In *Belcher*, our Supreme Court took the opportunity to carve out exceptions to the universal instruction that inference of malice may be found from the use of a deadly weapon. *State v. Belcher*, 385 S.C. 597, 600, 685 S.E.2d 802, 804 (2009). Therein the Supreme Court in *Belcher* was confronted with conflicting versions of the facts. The prosecution argued that Belcher obtained a firearm and without justification or excuse fatally shot victim. The defense

theory of the case argued that victim confronted Belcher with a gun; Belcher fled to a nearby truck and retrieved an acquaintance's gun. Belcher argued that he fired and killed victim as victim was approaching him, gun in hand. *Id.* at 804. Under the disputed facts, the *Belcher* court found that the “use of a deadly weapon” implied malice instruction has no place in a murder (or ABWIK) prosecution “where evidence is presented that would reduce, mitigate, excuse, or justify” the killing or assault. *Id.* at 809.

As the trial court noted, there is absolutely no evidence of mitigation that would bring Appellant's case into the realm that *Belcher* sought to make exception for. The evidence at trial was clear, Appellant open fired on an apartment full of people with an AR-15, and discharged fourteen rounds of ammunition. There are no facts which reduce, mitigate, excuse, or justify such an action. As such, an inference of malice from the use of a deadly weapon is not improper under *Belcher*.

In response, Defense counsel maintained her objection and argued alternatively that the inference of malice charge for use of a deadly weapon was inappropriate in light of the “higher burden” associated with attempted murder. Counsel's argument addressed the recent holding that attempted murder constitutes a “specific intent crime”. Prior to the charge conference between the parties, a discussion between the court and the parties occurred and the Court acknowledged that attempted murder was a specific intent crime, and should be charged as such as a factual consideration for the jury. (R. p. 430, lines 1-15; p. 470, lines 3-7).

The recognition of attempted murder as a specific intent crime by the court is an acknowledgment of the holding from the South Carolina Supreme Court decision in *State v. King*. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), reh'g denied (Mar. 9, 2018). Therein the Court took extensive efforts to investigate the legislative intent behind the codification of

attempted murder, and whether such a crime should constitute a general intent crime, same as murder, or if it should be considered a specific intent crime. *Id.* at 22. Our Court found that the legislative intent demonstrates that attempted murder be considered a specific intent crime; this conclusion was reached in recognition that the addition of language requiring “intent to kill” to the “malice aforethought, either express or implied” language rendered the statute more than just a codification of ABWIK and elevated the level of *mens rea* needed in comparison to that of murder. *Id.* at 25-27. *The conclusive ruling of the Court was that the trial court erred in charging the jury that a specific intent to kill is not an element of attempted murder.* *Id.* at 27. This was charged here. This is not at issue.

Appellant argues that *State v. King* also establishes South Carolina precedent that a trial court errs in charging inferred malice for the crime of attempted murder. This is a misapplication of the *King* decision, as the ruling did not extend so far as to rule on the question of inferred malice. Respondent acknowledges that the Court referenced other jurisdiction’s discussions of the potential incongruence of a specific intent crime proven via inferred malice. However, the *State v. King* decision did not reach this issue for discussion, did not make an accompanied ruling on the issue, and in fact explicitly stated that it declined to reach the issue, having affirmed the decision of the Court of Appeals on other grounds. *State v. King*, 422 S.C. 47, 64, 810 S.E.2d 18, 27 (2017), reh’g denied (Mar. 9, 2018) (Footnote 5 recognized Appellant’s additional sustaining argument, but declined to reach the argument having already affirmed the decision of the Court of Appeals).

Absent an actual ruling on the question of law, the trial court was correct in concluding that there is no precedent, *King* or otherwise, that would render inferred malice charge in an attempted murder case as an error. As our case law and rules of statutory construction

demonstrate, a court cannot disregard a statutory directive absent a clear precedent to do so. *Field v. Gregory*, 230 S.C. 39, 47–48, 94 S.E.2d 15, 20 (1956) (citing 53 Am. Jur. Trial, para. 542, at page 433); (See 75A Am. Jur. 2d Trial § 908).

In further argument that the trial court was correct to give the inferred malice instructions, South Carolina precedent demonstrates that it is particularly perilous to omit those charges. In *Gibson v. State*, 416 S.C. 260, 264, 786 S.E.2d 121, 123 (2016), our Supreme Court made clear that permissive inference language set forth in *State v. Elmore* is mandatory to avoid reversible error, and only slight deviation from the provided charging language would be tolerated. *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). In reference to the *Elmore* language, wherein the trial court omitted the permissive inference charge, the defendant was awarded a new trial on the basis of counsel's failure to object during trial. *Id.*

In the case at hand, the trial court explicitly instructed the jury that finding guilt for attempted murder requires specific intent to kill; in doing so it satisfied *State v. King*. (R. p. 538, lines 4-22). The trial court explicitly charged inferred malice; in doing so it satisfied the clear statutory language set forth in § 16-3-29. (R. p. 536, line 23 through p. 537, line 16). Moreover, in so charging the jury, the trial court satisfied both *Elmore* and *Gibson*. To hold that the trial court erred to instruct the jury as it did would be to hold an impossible standard where the judge must disregard precedent and statutory case law on the subject. As such no error exists, and Appellant's convictions should be affirmed.

- II. If the trial court did err in instructing the jury as to inferred malice from the use of a deadly weapon, such error was harmless given the fact that the circumstances of this case, including Appellant's use of a deadly weapon, all demonstrate express malice without the need for inference by the jury.**

If the jury charge for inferred malice is to be found in error, *which Respondent argues would be improper*, the circumstances of this case demonstrate that such error is harmless. The circumstances of the case present substantial evidence of express malice, such that the jury need not rely upon inferred malice to satisfy the elements of attempted murder. Moreover, the nature of Appellant's use of a deadly weapon in this case specifically constitutes an example of express malice. There is no need for inference. Any reference to inferred malice from the use of a deadly weapon is harmless in light of the undisputed evidence of express malice demonstrated in the State's case-in-chief.

Express malice is commonly said to exist "when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished." A common example is where a defendant lies in wait for his victim. This was the explanation provided by the trial court in Appellant's case. Moreover, the use of a deadly weapon is not strictly a basis for only inferred malice. The circumstances in which a deadly weapon is utilized can easily constitute express malice. Just as "lying in wait" outwardly demonstrates evil intent, the type of weapon, the number of times it is fired, the manner in which it is fired, and the circumstances existing before being fired all can constitute express malice, and in this case all of these factors do constitute express malice.

"Errors, including erroneous jury instructions, are subject to harmless error analysis." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). Specific to the issue at hand, our Supreme Court has also ruled that in circumstances involving improper "presumption" of malice instruction, such erroneous instruction must be weighed against the other evidence of malice to determine whether prejudice resulted from the erroneous charge. *Gibson v. State*, 416 S.C. 260, 265, 786 S.E.2d 121, 124 (2016).

The evidence presented in the State's case-in-chief provided numerous examples of express malice of Appellant. The evidence presented at trial demonstrated the following:

- Without provocation and without warning, Appellant physically struck the intended victim, Katrina Brown, in the head while standing outside her home on the evening prior to the murder. Although not verbal, this action demonstrates a recent *expression of ill-will and hostility* against the intended victim;
- Appellant took his love interest's vehicle without her knowledge at approximately 4am and drove to downtown Charleston to commit the murder. This is a clear demonstration of preparation and intent to commit the murder, as the facts show that the shooting was the only purpose for driving into downtown Charleston on the morning of September 19, 2015;
- Appellant convinced his friend Trivell Richardson to accompany him into downtown to watch the car and serve as a getaway driver. This action also demonstrates clear preparation for the murder;
- Appellant acquired in advance an AR-15 assault rifle to accomplish the murder. This demonstrates a clear preparation for the murder, as well as the intent to commit murder, given the nature of the gun itself. The nature of a high caliber assault rifle demonstrates an intent to kill more so than other types of firearms.
- Appellant instructed co-defendant Richardson to park the car on Nunan Street, while he then consciously walked with his assault rifle to the home of Katrina Brown. This further demonstrates preparation for the intended murder, as it allows him a getaway vehicle that would not be seen by any of the victims in the apartment, or by any neighbors of the victims.

- Appellant gave no warning of his anger, gave no confrontation, and gave no warning of his presence prior to shooting, effectively committing an ambush.
- Appellant chose to fire an assault rifle from a window into the crowded home of Katrina Brown. The nature of this crime speaks volumes as to the express malice of Appellant. Appellant arrived in the early morning hours of a Saturday morning, gave no indication of his presence, and then fired his assault rifle into a crowded apartment of the women he physically punched a day earlier.
- Appellant did not fire once or twice, but instead fired fourteen rounds of ammunition into the apartment. Again, the nature of the shooting itself demonstrates express malice. Shooting fourteen rounds of ammunition into a closed space with numerous occupants can demonstrate no other intent but the intent to kill. It is the very definition of express malice.
- Appellant then ran away from the scene, without concern for the wellbeing of the apartment's occupants. Petitioner's fleeing the scene without concern for the wellbeing of the numerous people in the home he just fired into demonstrates an intent to kill;
- Appellant jumped back into the car he stole from his girlfriend and instructed co-defendant Richardson to drive back to the area where he that he stolen the car. This demonstrates the last portion of planning to perpetuate the murder. Petitioner had a getaway car and getaway driver located away from the scene of the crime ready for his return in order to flee the area.

Express malice was satisfied the moment Appellant drove himself across town to Katrina Brown's home with an AR-15. Our Supreme Court has in the past upheld with approval instruction as to express malice, wherein the trial court explained: "If the lives of two men had

been threatened, each by the other, and one man went where he knew another was going to be, and he went there with the intent and purpose in his heart to do harm or injury to the other, then there would be express malice in his very act of going there. . .” *State v. Jones*, 113 S.C. 134, 101 S.E. 647, 647 (1919). There is little distinction here, as a prior physical confrontation existed between Katrina Brown and Appellant, and Appellant went to where he knew Katrina would be while armed with an AR-15. Moreover, our Supreme Court has reviewed favorably the recognition that shooting at an individual on the basis of a grudge or hatred, and doing so in the form of an ambush are both demonstrations of express malice. “‘Malice’ is a technical term. Ordinarily we use the term as if it was a grudge or hatred. If there was any grudge or hatred, and the killing is upon that grudge or hatred, that is express malice; and that express malice is evidenced by certain deliberation,-by such deliberation as lying in wait and shooting from ambush. That would be a very great evidence of express malice.” *State v. McIntosh*, 40 S.C. 349, 18 S.E. 1033, 1034, 1039 (1894), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (noting that the court could find no error in the instruction of the trial court for the charge of murder).

There is little distinction here, and frankly the actions of Appellant are far more egregious expressions of malice. Every aspect of planning and execution of this crime demonstrates that this crime was precisely that: an execution. When an individual fires a high powered rifle into a crowded apartment fourteen times there is only one reasonable intent, and that is the intent to kill. As such, the charge of inferred malice from use of a deadly weapon did not prejudice Appellant, as the facts presented to the jury satisfied the express malice requirement, many times over. Appellant’s conviction should therefore be affirmed.

III. The trial court did not err in instructing the jury as to the hand-of-one is the hand-of-all theory of accomplice liability because the facts of the case demonstrate that that both Appellant and co-defendant Richardson were involved in the crime, and the Appellant's case-in-chief introduced evidence of a different gunman, dressed in different clothing, leaving in a different vehicle than that demonstrated in the State's case-in-chief, such that multiple participants was a reasonable conclusion of the jury.

The trial court did not err in giving a "hand-of-one is the hand-of-all" instruction the jury in light of the evidence presented at trial. As there was evidence to support the possibility that two individuals participated in the shooting, an accomplice liability charge was proper.

A jury charge which is substantially correct and covers the law does not require reversal." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996)). 'The law to be charged must be determined from the evidence presented at trial.' *Brandt*, at 549, 713 S.E.2d at 603 (2011) (citing *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). "If there is any evidence to support a charge, the trial court should grant the request." *Id.* (citing *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)).

Appellant's argument suggests that while the hand-of-one charge to the jury was technically accurate, it should not have been given due to lack of supporting evidence presented at trial. The testimony and evidence at trial more than satisfied the "any evidence" standard necessary to merit instruction on accomplice liability. As was argued by the Assistant Solicitor at trial, the standard is satisfied, both by evidence presented during the State's case-in-chief, as well as by the defense's case-in-chief.

The State's theory of the case demonstrated that three separate individuals were present in the gold Buick leading up to the murder: Appellant, co-defendant Richardson, and Mr. Rivers. The State argued that co-defendant Richardson ultimately stayed with the car while

Appellant took the rifle and committed the murder, and that co-defendant Richardson then served as a getaway driver. While this is the State's theory of the case, the jury is not bound to believe the testimony in full and could conclude that there is a possibility that identities and roles within the crime are reversed. Moreover, as there is no video or eye-witness to the actual shooting, the jury should be informed that if two or more people are acting together toward committing a crime, both are criminally liable.

The bottom line is that the evidence demonstrates, at a minimum, that two different individuals arrived together in a gold Buick, and both individuals knew the Buick did not belong to either of them. One individual stays with the car while the other walks down the road and around the corner carrying a rifle. Soon after and briefly before the shooting, a phone call is shared between the two phones of these individuals. The individual who had stayed with the car then gets out of the car and walks in the same direction that the man carrying the rifle had headed. When gunshots are heard, the man who had initially stayed in the car runs back to the car, cranks it up, and drives away, but only after the second individual returns carrying the rifle. If the jury does not fully believe co-defendant Richardson's explanation for his involvement, the facts clearly demonstrate two individuals acting in concert together in the presence of an AR-15, at approximately 6:30am. Such is sufficient to inform the jury that criminal liability of one, is the criminal liability of all when acting together.

Moreover, the defense's case-in-chief makes the charge all the more necessary, as it introduced the possibility of a second and separate individual, carrying a rifle, leaving the scene of the shooting. The State's theory demonstrated the actions of Appellant and co-defendant Richardson. The defense's sole witness, Peggy Blake, testified that she lived in view of Katrina Brown's home and was at home when the shooting occurred. She testified that she saw from her

window a “hooded man” carrying a “sporty rifle” leaving the scene of the shooting, and getting into a slow moving “lime green” car to getaway. Outside of Ms. Blake’s own testimony, there was nothing to support her version of events, and her testimony certainly does not match the participants and details set forth by the State which demonstrated Appellant’s guilt for the crime.

However, her testimony does put into the mind of the jurors the possibility that there was *another* individual, armed with a rifle, potentially involved in the shooting. While the surveillance video did not capture a “lime green” getaway car, it is possible for the jury to conclude that both the State’s theory of the case is accurate, so as to put Appellant at the scene with an AR-15 rifle, *and* that the defense’s theory of the case is also accurate, such that a “hooded man” with a sporty rifle was also at the scene of the shooting. It is not implausible that the jury might believe the unidentified hooded man was an unknown accomplice of Appellant, either backing him up or otherwise participating in the shooting. As such, the hand of one instruction would again be necessitated and proper under the low “any evidence” standard.

These are the two arguments made by the Assistant Solicitor Simpson during the charge conference in response to defense counsel’s objection. (R. p. 474, line 6 through p. 475, line 21). Likewise, the trial court agreed and found that the charge was factually supported. (R. p. 476, lines 1-23). In light of the evidence from both parties presented at trial, the “any evidence” standard was more than satisfied regarding accomplice liability. Additionally, if the jury were to not accept the theory of the case from the State, and believed the defense’s theory, the charge would ultimately be inapplicable, and arguably harmless. As “erroneous jury instructions, are subject to harmless error analysis,” the same would be applicable in in the instant case if the reasonable doubt still existed as to the State proving identity. *State v. Belcher*, 385 S.C. 597,

611, 685 S.E.2d 802, 809 (2009). The trial court set forth the same conclusion in her final discussion of the charge conference. (R. p. 476, lines 21-23).

There was no error in the trial court instructing the jury as to hand-of-one is the hand-of-all. Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

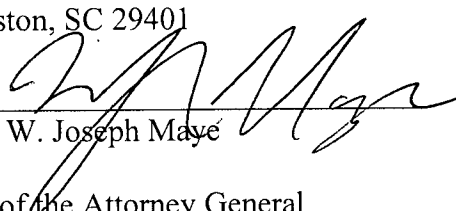
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August 16, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED

AUG 16 2019

SC Court of Appeals

THE STATE

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

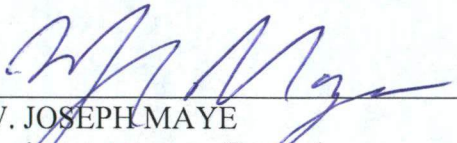
APPELLANT,

APPELLATE CASE NO. 2018-000115

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 16th day of August, 2019.


W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Montrelle Lamont Campbell, Appellant.

Appellate Case No. 2018-000115

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Opinion No. 5885
Heard September 15, 2021 – Filed December 22, 2021

REVERSED AND REMANDED

Appellate Defender Lara Mary Caudy and Appellate
Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General W. Jeffrey Young, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody Jane Brown, and Assistant
Attorney General William Joseph Maye, of Columbia;
and Solicitor Scarlett Anne Wilson, of Charleston, all for
Respondent.

KONDUROS, J.: Montrelle Lamont Campbell appeals his convictions for murder and attempted murder. He contends that because attempted murder is a specific intent crime, the trial court erred in charging the jury that malice may be inferred when a deadly weapon is used. Additionally, he maintains that because no evidence supported an accomplice liability charge, the trial court erred by instructing the jury on "the hand of one is the hand of all" theory of accomplice liability. We reverse and remand.

FACTS/PROCEDURAL HISTORY

On September 17, 2015, Katrina Brown was at her apartment in Gadsden Green¹ with her sister Kerri Brown and her friend Tonya Mosely when a woman named Kadeshia arrived around 11:30 p.m. Kadeshia was an old friend of Kerri's, but Katrina knew her. While the women were visiting, a man knocked on Katrina's door and told Kadeshia that someone was waiting for her outside. Kadeshia told the man to "[t]ell them I'm coming" but continued her conversation in Katrina's apartment. Eventually, Kadeshia's brother, Campbell, walked into Katrina's apartment without permission. Campbell, also known as "Troll," sat down without saying anything.

Katrina asked Campbell to leave because she did not know him,² and Campbell eventually left without saying a word. Katrina and Kadeshia then had a verbal altercation because Katrina believed Kadeshia should have apologized. Shortly after Kadeshia left, Katrina walked outside to smoke a cigarette. While Katrina was outside, Campbell hit her, knocking her to the ground. Campbell then stood over her and looked prepared to hit her again. Instead, Campbell moved back into the middle of the street while Kerri and Tonya helped Katrina up. Katrina, Kerri, and Tonya then followed Campbell into the middle of the street and "had a few words" with him. The women went back inside Katrina's apartment after she noticed Campbell looked prepared to reach for something inside of a car.

The next night, September 18, 2015, Katrina hosted a party at her apartment in Gadsden Green. The party ended around 6:30 a.m. on September 19, 2015, when a gunman shot at least fourteen bullets from a rifle into Katrina's apartment. The bullets struck Kerri in her head, Katrina's cousin Tierra Brown in her arm, and

¹ Gadsden Green is a government housing community in Charleston.

² Katrina did not learn Campbell was Kadeshia's brother until the next day.

Katrina's friend Antwan Frost in the chest. Kerri and Tierra survived but Frost did not.

Because no one saw the shooter, police asked Katrina if she knew whether anyone wanted to harm her. Katrina testified she did not have a conflict with anyone in the neighborhood other than Campbell. While processing the crime scene, police recovered fourteen rifle shell casings and obtained security camera footage of the area around the time of the shooting from multiple locations.

The security footage showed a gold Buick parking on Nunan Street. Police determined Tomeka President owned the gold Buick in the security footage and identified Trivell "Vell" Richardson and Andrew "Ace" Rivers as the individuals exiting the car. The footage showed Richardson and Rivers walking toward Gadsden Green and Richardson eventually walking back to the car followed by a third individual holding a rifle. Richardson and Campbell were both charged with murder and two counts of attempted murder for the shooting at Katrina's apartment.

At Campbell's trial, President testified that Campbell was at her Austin Lakes apartment in North Charleston when she went to sleep around 11:45 p.m. the night before the shooting. President also stated Campbell was not there when she woke up the next morning³ and her car and car keys were missing.

Richardson testified⁴ he was at the Austin Lakes apartment complex in North Charleston during the early morning hours⁵ on the day of the shooting when Campbell approached him in President's gold Buick. Campbell asked Richardson to go with him to get cigarettes, and Richardson got in the car. However, Richardson recalled that instead of stopping at the gas station, Campbell got on the interstate and drove downtown.

³ President did not state what time she woke but testified she had to be at work by 7:00 a.m.

⁴ Richardson was not tried with Campbell; he testified he was still facing charges but was hoping for leniency for testifying on behalf of the State.

⁵ Richardson stated he left a strip club around 4:00 a.m. before going to Austin Lakes.

After parking on Kennedy Street, Campbell exited the car, told Richardson to park it on Nunan Street, and began walking towards Gadsden Green. Richardson asked Rivers, who was on Kennedy Street when they arrived, to ride with him while he parked the car. Richardson and Rivers began walking towards Gadsden Green after parking the car on Nunan Street.

Richardson explained that he called Campbell to ask where he should leave the car keys because Richardson was uncomfortable being in Gadsden Green and wanted to leave. As Richardson and Rivers were walking toward Gadsden Green, Richardson said they heard gunshots. Richardson stated he returned to the car but Rivers ran in the opposite direction. While Richardson was trying to start the car, Campbell got in with a rifle and told him to "go." Richardson testified he then drove back to Austin Lakes in North Charleston.

Following the close of the State's case, the trial court denied Campbell's motion for a directed verdict. Campbell did not testify but presented testimony from Peggy Blake, who lived across the street from Katrina at the time of the shooting. Blake testified she heard the shooting and saw a black man wearing a hoodie and holding a "sporty rifle" get into a lime green car that drove away. However, police were unable to find a lime green car on the security camera footage.

Following the close of Campbell's case and the State's rebuttal, Campbell renewed his motion for a directed verdict, which the trial court also denied. The trial court then held a charge conference and informed the parties it planned to charge the jury that malice may be inferred by the use of a deadly weapon and instruct the jury on the hand of one is the hand of all theory of accomplice liability. Campbell first objected to the accomplice liability jury instruction, arguing no evidence implicated a second party. Campbell also objected to the inferred malice jury instruction, asserting it was inappropriate under *Belcher*.⁶ After the trial court stated that *Belcher* did not apply because Campbell presented no evidence of

⁶ *State v. Belcher*, 385 S.C. 597, 611, 685, S.E.2d 802, 809 (2009) ("[I]nstructing a jury that 'malice may be inferred by the use of a deadly weapon' is confusing and prejudicial where evidence is presented that would reduce, mitigate, excuse[,] or justify the homicide."), *overruled by State v. Burdette*, 427 S.C. 490, 493, 832 S.E.2d 575, 577 (2019) (holding "regardless of the evidence presented at trial, a trial court shall no longer instruct a jury that malice may be inferred from the use of a deadly weapon").

mitigation such as self-defense, Campbell maintained his objection, arguing that "attempted murder does have a different burden. Since it[s] burden is higher, I think having that instruction basically is counter somewhat to that different burden."

The State argued both it and Campbell presented sufficient evidence for an accomplice liability charge because the charge has an any evidence standard. Regarding Campbell's objection to the inferred malice charge, the State "ha[d] nothing further to add" but asserted that the charge was proper. Ultimately, the trial court noted Campbell's objections but decided to give both the inferred malice and accomplice liability instructions.

The trial court charged the jury that "[m]alice aforethought may be expressed or inferred Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon" The trial court also instructed the jury regarding accomplice liability:

[I]f a crime is committed by two or more people who are acting together and committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the act done in carrying out the common plan and purpose If two or more people are acting together . . . assisting each other and committing the offense, the act of one is the act of all. Or it is sometimes said, the hand of one is the hand of all.

Following deliberations, the jury convicted Campbell of murder and attempted murder. The trial court sentenced him to life in prison for murder and thirty years' imprisonment for each attempted murder charge with the sentences running concurrently. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate "[c]ourt

is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* "An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

LAW/ANALYSIS

I. Inferred Malice

Campbell argues the trial court erred by giving an inferred malice jury instruction because attempted murder is a specific intent crime and requires both express malice and a specific intent to kill pursuant to our supreme court's ruling in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). We agree.

"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). "[A] specific intent to kill is an element of attempted murder as codified in section 16-3-29." *King*, 422 S.C. at 56, 810 S.E.2d at 22.

In *Burdette*, our supreme court held the trial court erred by giving an inferred malice jury instruction because, pursuant to *Belcher*, "[t]here was evidence presented at trial that tended to reduce, mitigate, excuse, or justify" the defendant's killing of the victim. 427 S.C. 490, 495, 832 S.E.2d 575, 578 (2019). The supreme court further "consider[ed] whether the permissive inference charge may be given in any setting, even those in which no evidence is presented that would reduce, mitigate, excuse, or justify the commission of an offense containing the element of malice." *Id.* at 502, 832 S.E.2d at 582 (emphasis omitted).

The supreme court noted "[i]t is always for the jury to determine the facts, and the inferences that are to be drawn from th[o]se facts." *Id.* (quoting *State v. Cheeks*, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013)). The supreme court observed that "[w]hen the trial court tells the jury it may use evidence of the use of a deadly weapon to establish the existence of malice, . . . the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to

the jury." *Id.* The supreme court determined that "[e]ven telling the jury that it is to give evidence of the use of a deadly weapon only the weight the jury determines it should be given does not remove the taint of the trial court's injection of its commentary upon that evidence." *Id.* at 502-03, 832 S.E.2d at 582.

The supreme court concluded that "[a] jury instruction that malice may be inferred from the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence" and held that "[r]egardless of the evidence presented at trial, trial courts shall not instruct a jury that the element of malice may be inferred when the deed is done with a deadly weapon." *Id.* at 503-05, 832 S.E.2d at 582-83.

Additionally, the supreme court stated that its ruling was effective in all cases pending on direct review or not yet final if the issue was preserved. *Id.* at 505, 832 S.E.2d at 583.

In the present case, the trial court instructed the jury that malice could be inferred by the use of a deadly weapon over Campbell's objection. *Burdette* made clear that trial courts cannot instruct the jury that malice may be inferred by the use of a deadly weapon, regardless of the evidence presented. Although our supreme court decided *Burdette* after Campbell's trial, its holding applies to all cases that were pending on direct appeal if the issue was preserved, which it was in this case.⁷ *Id.* Accordingly, the trial court erred by giving the charge.

The State argues any error by the trial court instructing the jury on inferred malice was harmless. The State asserts the jury could have found Campbell had express malice based on the evidence that Campbell had recently hit Katrina, Campbell drove across town in his girlfriend's car, and fourteen rounds were fired from a rifle into Katrina's apartment. We disagree.

"An erroneous instruction alone is insufficient to warrant this [c]ourt's reversal." *Id.* at 496, 832 S.E.2d at 578. "[E]rroneous jury instructions are subject to a harmless error analysis." *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (quoting *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014)). "In

⁷ Campbell filed his notice of appeal on January 23, 2018, and *Burdette* was decided on July 31, 2019.

making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *Id.* at 496, 575 S.E.2d at 578-79 (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998)).

In *State v. Brooks*, this court held the trial court's error in giving an inferred malice jury instruction was harmless because "the jury could have found that [the defendant]'s conduct showed a total disregard for human life, allowing the jury to infer malice from this conduct." 428 S.C. 618, 632, 837 S.E.2d 236, 243 (Ct. App. 2019), *cert. denied*, S.C. Sup. Ct. order dated Aug. 10, 2020. The court of appeals noted the defendant in *Brooks* displayed his gun, taunted his targets, ignored a hands up gesture by one of his targets, and ignored his friend's "no" plea. *Id.* at 630-31, 837 S.E.2d at 242-43. Additionally, the court of appeals interpreted the defendant's attempts to cover up his guilt as indications of malice. *Id.* at 631, 837 S.E.2d at 243.

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 previous altercation with Katrina and Campbell driving across town is not a total disregard for human life like the defendant in *Brooks* displayed.

Moreover, we cannot state beyond a reasonable doubt that the erroneous instruction did not contribute to the verdict. The jury could have reasonably found malice partially based on the use of a weapon. Indeed, the jury may have found malice based solely on the use of a weapon. Therefore, the error in giving the inferred malice instruction was not harmless. Accordingly, we reverse the trial court giving the instruction.

II. Accomplice Liability

Campbell asserts the trial court erred by instructing the jury on the hand of one is the hand of all theory of accomplice liability because no evidence supported the charge. Campbell argues neither party presented evidence he acted with another pursuant to a common design or plan. We agree.

"[T]he trial court is required to charge only the current and correct law of South Carolina." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (alteration in original) (quoting *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). "The law to be charged to the jury is determined by the evidence presented at trial." *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (quoting *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). "If there is any evidence to support a jury charge, the trial [court] should grant the request." *Id.*

[A] person who joins with another to commit a crime is criminally responsible for everything done by the other person which happens as a natural and probable consequence of the act; if two or more are together, acting together, and assisting each other in committing the offense, all are guilty; a finding of a prior arranged plan or scheme is necessary for criminal liability to attach to the accomplice who does not directly commit the criminal act; when an act is done in the presence of and with the assistance of others, the act is done by all.

State v. Washington, 431 S.C. 394, 406, 848 S.E.2d 779, 785 (2020).

In *Washington*, our supreme court affirmed in part, reversed in part, vacated in part, and remanded to the trial court for a new trial this court's decision to affirm the conviction of a defendant who had been indicted for murder and convicted of the lesser included offense of voluntary manslaughter. *Id.* at 397, 848 S.E.2d at 781. The supreme court observed that the trial court's instruction "convey[ed] the gist of the accomplice liability theory" and was correct for a case that warranted the instruction. *Id.* at 406, S.E.2d at 785.

The supreme court acknowledged, "an alternate theory of liability may not be charged to a jury 'merely on the theory the jury may believe some of the evidence and disbelieve other evidence.'" *Id.* at 409, 848 S.E.2d at 787 (quoting *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011)). The supreme court noted that "[f]or an accomplice liability instruction to be warranted, the evidence must be 'equivocal on some integral fact and the jury [must have] been presented with evidence upon which it could rely to find the existence or nonexistence of that

fact.'" *Id.* at 407, 848 S.E.2d at 786 (alteration in original) (quoting *Barber*, 393 S.C. at 236, 712 S.E.2d at 439). After observing that the record contained evidence the defendant was both the shooter and not the shooter, the supreme court reasoned that "[t]he question becomes whether there was equivocal evidence the shooter, if not [the defendant], was an accomplice of [the defendant]." *Id.*

The supreme court compared Washington's case to *Wilds v. State*, in which this court affirmed the post-conviction relief court's grant of relief on the issue of accomplice liability. 407 S.C. 432, 440, 756 S.E.2d 387, 391 (Ct. App. 2014). In *Wilds*, this court found the post-conviction relief court correctly determined the trial court erred in charging accomplice liability because neither party presented evidence that anyone besides the defendant was the shooter. *Id.* at 440, 756 S.E.2d at 791. The supreme court in *Washington* reasoned that, like the jury in *Wilds*, the jury in *Washington* may have doubted the possible accomplice's testimony he did not shoot the victim. *Washington*, 431 S.C. at 410, 848 S.E.2d at 787. Still, the supreme court found some evidence must have been presented that the only possible accomplice shot the victim to warrant an accomplice liability jury instruction. *Id.* Because no evidence of that kind was presented, the supreme court determined the trial court erred by instructing the jury on accomplice liability. *Id.* at 403, 410, 848 S.E.2d at 784, 787.

Here, the trial court erred by charging the jury on accomplice liability. Blake's testimony that she saw a man wearing a hoodie and holding a rifle leave the scene of the shooting in a lime green car is evidence that someone other than Campbell may have been the shooter, as Campbell was allegedly wearing a jersey and the video footage and Richardson's testimony indicate he left in President's gold Buick. Because Richardson's testimony presented evidence that Campbell was the shooter, like *Washington*, the question is whether the Record contains equivocal evidence the man seen by Blake was Campbell's accomplice.

Based on the evidence presented at trial, only Richardson could have been Campbell's accomplice. On the day of the shooting, Richardson rode with Campbell from North Charleston to Gadsden Green, parked the car for Campbell, and drove Campbell back to North Charleston. Like in *Wilds* and *Washington*, the jury could have doubted Richardson's testimony that he was not involved in a common plan or scheme with Campbell to carry out the shooting. Nevertheless, neither party presented evidence that Richardson and Campbell had joined together in a common plan or scheme to carry out the shooting. Indeed, Richardson

testified he did not know Campbell was going to drive to Gadsden Green or why Campbell asked him to park the car on Nunan Street.

Even if Richardson's involvement was equivocal evidence he and Campbell worked together to carry out the shooting, the Record must have also contained some evidence Richardson was the shooter for the accomplice liability instruction to be proper; it did not. Again, the jury could have doubted Richardson's testimony that he was not the shooter. Still, while security footage showed Richardson walking in Gadsden Green around the time of the shooting, it also showed him walking without a rifle, wearing a white T-shirt and ball cap rather than a hoodie, and getting into the gold Buick rather than a lime green car. Consequently, Richardson does not meet the description of the man seen by Blake.

Thus, neither party presented evidence that either Campbell was working with the man seen by Blake or that Richardson was the shooter. Therefore, the trial court erred by giving an accomplice liability jury instruction. Accordingly, we reverse the trial court and remand for a new trial on the murder and attempted murder charges.

CONCLUSION

The trial court committed reversible error by giving both inferred malice and accomplice liability jury instructions. Therefore, Campbell's convictions of murder and attempted murder are

REVERSED AND REMANDED.

HILL and HEWITT, JJ., concur.

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

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

THE STATE,

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT,

APPELLATE CASE NO. 2018-000115

Opinion No. 5885 (Filed December 22, 2021)

PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT

Pursuant to Rule 221(a), SCACR, counsel for Respondent petitions this Court for rehearing. Counsel respectfully submits that this Court has misapprehended certain factual and legal matters in arriving at its holdings. Respondent would respectfully argue:

Section I. Inferred Malice

1. In Section I of the Opinion, due to the Court's focus upon *Brooks*, it is not clear as to whether this Court's consideration and reversal of the trial court's inferred malice by use of a deadly weapon instruction applies strictly to the attempted murder conviction, or to both the attempted murder conviction and the murder conviction. The issue asserted by Appellant was explicitly limited to the charge of attempted murder. Respondent would argue that the opinion should be so limited, but would request clarity as to the matter.
2. This Court's application of law for attempted murder is in contradiction with its recent decision reached four months ago in *State v. Taylor*, 434 S.C. 365, 370, 862 S.E.2d 924, 927 (Ct. App. 2021), reh'g denied (Sept. 28, 2021) and is in contradiction to the clear language of S.C. Code Ann. § 16-3-29 (2015). In this Court's Opinion, the Court "agreed" with its summarized argument of Appellant that attempted murder "requires both express malice and a specific intent to kill. . ." However, in *Taylor*, this Court noted that "when our supreme court spoke of implied malice in *King*, it was speaking of malice implied by operation of law, not of the jury's ability to infer malice based on its view of certain facts."
3. This Court considered Respondent's arguments for express malice to be limited to "evidence that Campbell had recently hit Katrina, Campbell drove across town in his girlfriend's car, and fourteen rounds were fired from the rifle into Katrina's apartment."

This Court misapplied the standard for express malice and undercut the presence of express malice set forth within the record in a number of critical ways:

- a. This Court held that “Campbell’s previous altercation with Katrina and Campbell driving across town is not a total disregard for human life like the defendant in *Brooks* displayed.” Such language is one of the ways in which malice may be *inferred*, it is not the standard for which express malice is judged. “Express malice exists as positive evidence of a deliberate intention to unlawfully take the life of another”, and our courts have for more than a century instructed that evidence of prior grudges, lying in wait, lying in ambush, and evidence of preparation are evidence of express malice. See *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020); *State v. Judge*, 208 S.C. 497, 506, 38 S.E.2d 715, 720 (1946); *State v. Strickland*, 147 S.C. 514, 145 S.E. 404, 405 (1928), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *State v. Alford*, 264 S.C. 26, 32, 212 S.E.2d 252, 254 (1975), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (citing 40 C.J.S. Homicide s 209). Suggesting that Appellant’s prior physical attack upon Katrina and his driving across town do not satisfy a “total disregard for human life” standard is to misconstrue the nature of evidence demonstrating express malice.
- b. Though this Court itemized “someone firing a weapon fourteen times” as one of the State’s many examples of express malice, this Court provided no explanation for why it is or is not evidence of express malice – effectively disregarding it entirely in its reasoning. Shooting 14 times into a crowded apartment *is express malice*.

c. Having listed only the above three indications of express malice, this Court disregards the additional evidence of preparation in that the shooter 1) took someone else's car without permission during the early morning hours so as to commit the crime, 2) acquired the services of a friend¹ to park his getaway car away from the scene, 3) arranged it so that his friend would serve as a getaway driver, 4) walked on foot in the early morning hours to Katrina's location while carrying with him a rifle, 5) committed the crime in a "lying in wait/lying in ambush" manner, such that the victims were unaware of his presence and intentions, 6) ran from the scene without concern for the well-being of the apartment's occupants – constituting positive evidence of his deliberate intention to take life, and 7) ran back to the getaway vehicle and had his friend drive from the scene.

i. Each of these actions is a separate and distinct portion of the shooter's planning and preparation for the shooting, and they each constitute evidence of express malice. However, none of these facts were considered by this Court.

ii. To conclude that the jury "may have found malice based solely on the use of a weapon" is to presume that the jury disregarded its instruction by the court as to the nature of express malice. This is inconsistent with the well-settled presumption that the jury will obey the instructions of the court.

Parker v. Randolph, 442 U.S. 62, 73, 99 S. Ct. 2132, 2139, 60 L. Ed. 2d

¹ The State's theory of the case is that this friend is Trivell Richardson, but Respondent argues the video does not provide absolute proof as to which culprit is which, leaving Richardson the possibility of switching his role in the crime with that of Appellant's, and making an accomplice liability charge necessary. (*Infra*).

713 (1979), abrogated on other grounds by *Cruz v. New York*, 481 U.S. 186, 107 S. Ct. 1714, 95 L. Ed. 2d 162 (1987) (“A crucial assumption underlying that system [of trial by jury] is that juries will follow the instructions given them by the trial judge.”); See also *Aldrich v. S. Ry. Co.*, 95 S.C. 427, 79 S.E. 316, 320 (1913); *Coogler v. Thompson*, 286 S.C. 168, 169, 332 S.E.2d 215, 216 (Ct. App. 1985).

- iii. This Court has reached a conclusion that an undeniable, premediated, ambush style, “hail of gunfire” attack upon a crowded apartment of unsuspecting victims – lacks evidence of malice beyond the mere fact that the culprit used a deadly weapon. The law should not stand for such a conclusion, and such a conclusion is not supported by the record.

- 4. This Court *explicitly conceded the fact that evidence of express malice was presented by the State*, when it stated: “In the present case, the evidence of express malice is significantly less than the amount in *Brooks*.” The element of malice is not one that must be satisfied “by degree”. The satisfaction of the element is judged strictly by its existence or nonexistence in the evidence. Thus, a charge on inferred malice cannot be said to have contributed “to the verdict” when the record has been said to include evidence of express malice. The jury does not need both for its verdict. See *State v. Smith*, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020) (parenthetically summarizing its holding in *Wilds* that “malice need be implied *only if there is no positive evidence of express malice*.”) (emphasis added).

5. This Court improperly compared Respondent's arguments for express malice to the analysis and reasoning set forth in *State v. Brooks*, which discusses exclusively the presence of inferred malice. Thus, the comparison was improper as a matter of law.
6. However, even if *Brooks* were to be compared to the case at hand, this Court in *Brooks* reasoned that since the trial court also instructed the jury that malice could be inferred from conduct showing a total disregard of human life, the record did not demonstrate that the "only" evidence of malice was derived from the improper "implied by use of a deadly weapon charge." This Court further reasoned that "[a]side from his mere use of a deadly weapon, Appellant's reckless behavior began with a hail of gunfire" upon multiple targets.² Though clearly present in *Brooks*, this Court gave no such consideration or reasoning to the case at hand. This Court also gave consideration to Brook's effort to flee the scene, but failed to give any consideration to Appellant's effort to flee. The most stark differentiation between the two cases is that in *Brooks* this court concluded: "[T]he circuit court's "commentary" on the use of a deadly weapon in the present case could not have eclipsed the impact of Fred's powerful testimony that he raised his hands to show he was unarmed and this capitulation had no effect on Appellant." This Court seemed quite moved by such circumstances, but was apparently unmoved by the fact that the victims in this case were all unarmed and completely unaware of the "hail of gunfire" that was to fall upon them.

² The facts in *Brooks* arguably demonstrate *less malice* as the number of potential victims was far less than those present at Katrina's crowded apartment, and the victims in *Brooks* were able to see Brooks approach and see his actions to shoot at them. The shooter in this case made concerted efforts to ensure that his attack was purely by ambush.

Section II. Accomplice Liability

1. This Court concludes that Richardson was the driver and that Appellant was the shooter, when the only distinguishing proof as to which culprit performed the role of shooter, is the testimony of Richardson himself, who has every reason to try and limit his own culpability. This Court disregards the possibility that if the jury were not convinced beyond a reasonable doubt as to which culprit on video was carrying the gun toward the scene of the crime, they need not differentiate if they were certain both men were aware of and perpetuating the crime together. The record is “equivocal” as to this point, as Richardson’s various statements to police demonstrate prior dishonesty on the question of his identity. Such, by itself, satisfies the minuscule “any evidence standard” that would warrant the charge from the court.
2. In addition to the clear accomplice relationship between Appellant and Richardson, that lacks indisputable proof of the identity of the shooter, the record also contains evidence of the unidentified hooded individual who was seen leaving the shooting carrying a rifle and fleeing in a different car. Despite the “any evidence” and the “abuse of discretion” standards it must overcome to find reversible error by the trial court, this Court concluded that there was no equivocal evidence that that Appellant was working with the man seen by Ms. Blake. This Court appears to infer that “direct” evidence of an accomplice relationship is required. It is not; circumstantial evidence will suffice. *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (noting that no “formally expressed agreement” is necessary and that the conspiracy may be shown through circumstantial evidence and the conduct of the parties. Here, the remarkable fact that two

different individuals were seen fleeing the same scene while carrying rifles, *at the precise moments following a massive shooting committed by rifle fire*, is undeniable circumstantial evidence that the two individuals could have been working together. To suggest the jury could not believe both the video evidence and the testimony of Ms. Blake is to disregard the maxim that “it is always for the jury to determine the facts, and the inferences that are to be drawn from th[o]se facts. *State v. Burdette*, 427 S.C. 490, 502, 832 S.E.2d 575, 582 (2019)(quoting *State v. Cheeks*, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013)).

3. Moreover, that particular inference – that there were two shooters at the scene – is corroborated by other evidence that this Court omitted from its analysis and conclusion. Two separate cell phones were found at the scene of the crime. (R. p. 157-158). This bolsters the inference that *two people were at the scene* of the crime. Additionally, the 14 recovered shell casings were not all of the same manufacturer, which bolsters the inference that *two guns were at the scene* of the crime. (R. p. 134-135). Lastly, the evidence in the record does not inform the jury that these 14 rounds were all fired from the same firearm, permitting the *inference that two guns were fired* at the scene of the crime. Any and all of which are sufficient to satisfy the any evidence standard warranting the charge given by the trial court in this case.

CONCLUSION

Based upon the above arguments, Respondent asserts that this Court has misapprehended certain facts and law that led to an improper result in this case. Respondent respectfully petitions for rehearing on this matter, and that for all of the foregoing reasons, the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

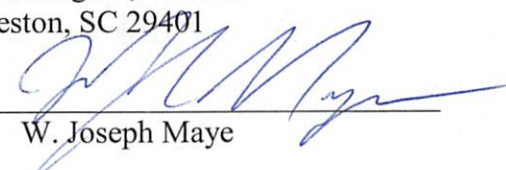
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January 6, 2022.

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

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

THE STATE,

Respondent,

v.

MONTRELLE LAMONT CAMPBELL,

Appellant.

Appellate Case No. 2018-000115
(Opinion No. 5885 (Filed December 22, 2021))

PROOF OF SERVICE

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 has been forwarded to Petitioner's counsel, Lara M. Caudy, Esq. via email today, January 6, 2022, to lcaudy@sccid.sc.gov, and to her assistant, lmattthews@sccid.sc.gov.

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

This 6th day of January, 2022.


Donna D'Alessio,
Legal Assistant to W. Joseph Maye,
Assistant Attorney General

ATTORNEY FOR RESPONDENT

Donna D'Alessio

From: Donna D'Alessio
Sent: Thursday, January 6, 2022 3:09 PM
To: Lara Caudy (lcaudy@sccid.sc.gov)
Cc: 'lmatthews@sccid.sc.gov'
Subject: Campbell, Montrelle L. - Appellate Case No. 2018-000115 - Petition for Rehearing
Attachments: Petition for rehearing 1-6-22 - Montrelle L. Campbell (02866427xD2C78).pdf

Dear Ms. Caudy:

Attached is a scanned copy of the Respondent's Petition for Rehearing in the above matter. The Petition for Rehearing and Proof of Service is being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email, together with hand delivery.

Hope you are well and thank you.

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The South Carolina Court of Appeals

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January 07, 2022

Mr. William Joseph Maye, Esquire
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Capital And Collateral Litigation Div.
Columbia SC 29201

Re: The State v. Montrelle Lamont Campbell
Appellate Case No. 2018-000115

Dear Counsel:

This will acknowledge receipt of your petition for rehearing.

By copy of this letter, opposing counsel is requested to file a return to this petition no later than ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Lara Mary Caudy, Esquire
W. Jeffrey Young, Esquire
Donald J. Zelenka, Esquire

Scarlett Anne Wilson, Esquire
David Alexander, Esquire
The Honorable Deadra L. Jefferson

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT.

APPELLATE CASE NO. 2018-000115

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

Opinion No. 5885 (Filed December 22, 2021)

RETURN TO
PETITION FOR REHEARING

On December 22, 2021, this Court reversed Appellant’s convictions for murder and attempted murder in a published opinion. State v. Campbell, Op. No. 5885 (S.C. Ct. App. filed December 22, 2021) (Howard Adv. Sh. No. 45 at 39). Pursuant to Rule 221(a), SCACR, the state filed a petition for rehearing on January 6, 2022, alleging this Court “misapprehended certain factual and legal matters in arriving at its holdings.” Pet. for Reh’g at 1. On January 7, 2022, this Court requested Appellant file a return to the petition for rehearing. This return follows.

The state asserted it was unclear whether this Court’s “consideration and reversal” of the trial judge’s instruction that the jury could infer malice from the use of deadly weapon applies strictly to Appellant’s attempted murder convictions, or to both his attempted murder and murder convictions. Pet. for Reh’g at 1. However, it is apparent that this Court’s consideration of the erroneous jury charge applied to both Appellant’s murder and attempted murder convictions based on the Court’s analysis of State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), which held a trial court should never instruct a jury that it may infer malice from the use of a deadly weapon regardless of the evidence presented at trial, and State v. Brooks, 428 S.C. 618, 837 S.E.2d 236 (Ct. App. 2019), *cert. denied*, S.C. Sup. Ct. Order dated Aug. 10, 2020. Malice is a critical element of both attempted murder and murder. Therefore, it is obvious that this Court’s holding applied to both offenses. No clarification is needed.

Additionally, after emphasizing that this Court “agreed” with Appellant that attempted murder “requires both express malice and a specific intent to kill,” the state claimed “[t]his Court’s application of law for attempted murder is in contradiction with its recent decision reached four months ago in State v. Taylor, 434 S.C. 365, 370, 862 S.E.2d 924, 927 (Ct. App. 2021), reh’g denied (Sept. 28, 2021).” Pet. for Reh’g at 1; See Campbell, Op. No. 5885 (S.C. Ct. App. filed December 22, 2021) (Howard Adv. Sh. No. 45 at 44). The state quoted the following language from Taylor in support of its argument: “When our supreme court spoke of implied malice in King, it was speaking of malice implied by operation of law, not of the jury’s ability to infer malice based on its view of certain facts.” Pet. for Reh’g at 1 (citing Taylor, 434 S.C. at 370, 862 S.E.2d at 927); See State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).

It appears the state misapprehended this Court’s holding in Taylor, which is consistent with the Court’s decision in this case. In Taylor, the appellant was convicted of attempted

murder after she hid her pregnancy, gave birth to a baby girl in the bathroom of her apartment, placed the newborn inside a trash bag, put the bag in the apartment's shared trash dumpster, and then proceeded with her day as though nothing had happened. Taylor, 434 S.C. at 367, 862 S.E.2d at 926. At trial, the state argued the only logical inference from the evidence was that Taylor intended to kill the child. Id. at 369, 862 S.E.2d at 926. Taylor maintained she did not intend to kill the newborn. Id. at 368, 862 S.E.2d at 926. She presented evidence that the event occurred during a state of Transient Peripartum Psychosis, meaning it happened while she was temporarily delusional. Id. On appeal, Taylor claimed the trial judge erred by instructing the jury on inferred malice given our Supreme Court's holding in King that attempted murder is a specific intent crime, and that implied malice is arguably inconsistent with a specific intent crime.

This Court determined that nothing in King or any other case prevents a jury from being charged that it can look at a defendant's actions and imply or infer from those actions that the defendant in fact had the specific intent to kill. Taylor, 434 S.C. at 370, 862 S.E.2d at 927. The trial judge in Taylor "charged the jury that malice could be expressed or inferred—but that those terms referred to whether malice was proven by direct evidence or by the jury's inferences from other facts." Id. at 371, 862 S.E.2d at 927. This Court emphasized that "there were no charges regarding the circumstances under which *the law* may imply malice." Id. at 371, 862 S.E.2d at 928 (emphasis in original). The Court reiterated that it understood "implied malice as prohibited in King to mean malice *implied by the law*, not malice found by the jury based on the circumstances." Id. at 372, 862 S.E.2d at 928 (emphasis added).

Unlike in Taylor, in this case, the trial judge charged the jury that it could infer malice from the use of a deadly weapon *as a matter of law* in violation of the Supreme Court's holding

in King. Consequently, this Court’s holdings in Taylor and Campbell are consistent, not contradictory as claimed by the state.

The state further claimed this Court “misapplied the standard for express malice and undercut the presence of express malice set forth within the record ” in reaching its conclusion that the error in giving the inferred malice instruction was not harmless. Pet. for Reh’g at 2. However, this Court properly cited the standard used to determine whether an erroneous jury instruction is harmless: “When considering whether an error with respect to a jury instruction was harmless, [the Court] must ‘determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.’” Burdette, 427 S.C. at 496, 832 S.E.2d at 578 (quoting State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014)); See Campbell, Op. No. 5885 (S.C. Ct. App. filed December 22, 2021) (Howard Adv. Sh. No. 45 at 45). This Court then correctly determined that the jury may have found malice based solely on the use of a weapon and, therefore, the error in giving the inferred malice instruction was not harmless.

There was no evidence of express malice in this case. There was no evidence the shooting was premeditated or planned in advance as the state claimed. See Pet. for Reh’g at 3. The alleged “evidence of preparation” outlined by the state is simply not supported by the record. Even if there was some evidence of express malice, the standard for determining harmless error is not merely the “existence or nonexistence” of evidence as the state suggests. See Pet. for Reh’g at 4. The state’s claim that “a charge on inferred malice cannot be said to have contributed to the verdict when the record has been said to include evidence of express malice” is wholly incorrect. Pet. for Reh’g at 4. Notably, the state failed to cite to any authority for this proposition and no authority supports such a bright line rule. The standard for determining harmless error when an inferred malice instruction is erroneously given is not merely the

“existence or nonexistence” of evidence of express malice. The standard is whether *beyond a reasonable doubt* the erroneous instruction did not contribute to the verdict. As this Court held, the jury could have reasonably found malice partially or solely based on the use of a weapon. See Campbell, Op. No. 5885 (S.C. Ct. App. filed December 22, 2021) (Howard Adv. Sh. No. 45 at 46). Consequently, the error cannot be said to have been harmless.

Moreover, this Court properly held the trial judge erred by instructing the jury on the hand of one is the hand of all theory of accomplice liability because no evidence supported the charge. In its petition for rehearing, the state claimed there was “equivocal” evidence that Richardson was the shooter because the identity of the man carrying the rifle captured on surveillance footage is unclear. However, while the identity of the man carrying the rifle may have been disputed, there was absolutely no evidence that this individual was Richardson. Richardson was identified by multiple state witnesses as the man wearing a white shirt, blue jeans, and a baseball hat. R. 284, ll. 8-17; R. 338, l. 1 – 340, l. 22; R. 346, ll. 9-20. The man carrying the rifle seen on the surveillance footage was wearing “an Italia shirt with numbers on it,” also described as a blue polo shirt with 115 on the back, and shorts. R. 285, ll. 1-20; R. 346, ll. 15-20.

Lastly, the state suggests there was circumstantial evidence of an accomplice relationship between Appellant and the individual seen by Ms. Blake sufficient to support the trial judge’s decision to charge accomplice liability. Pet. for Reh’g at 6. The evidence cited by the state in support of this assertion is merely the timing of when Ms. Blake saw the armed individual flee the scene. The state claimed the man seen on the surveillance camera carrying a rifle “*could* have been working together” with the individual seen by Blake because both individuals were seen around the same time. This is simply not evidence that the two individuals had joined

together in a common plan or scheme to carry out the shooting. This Court correctly held there was no evidence of an accomplice relationship between Appellant and the man seen by Blake. Campbell, Op. No. 5885 (S.C. Ct. App. filed December 22, 2021) (Howard Adv. Sh. No. 45 at 48-49).

Based upon the above arguments, Appellant respectfully requests this Court deny the state's petition for rehearing. This Court correctly held the trial judge erred by charging the jury that malice may be inferred by the use of a deadly weapon in light of our Supreme Court's decisions in State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), and State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), and that the error was not harmless. The Court also correctly held that the trial judge erred by instructing the jury on the hand of one is the hand of all theory of accomplice liability because no evidence supported the charge.

Respectfully Submitted,

s/ Lara M. Caudy
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Appellate Defender

DAVID ALEXANDER
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South Carolina Commission on Indigent Defense
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ATTORNEYS FOR APPELLANT

This 14th day of January, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MONTRELLE LAMONT CAMPBELL,

APPELLANT.

APPELLATE CASE NO. 2018-000115

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Return to Petition for Rehearing in the above referenced case has been served upon William Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Montrelle Lamont Campbell, #276819, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 14th day of January, 2022.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

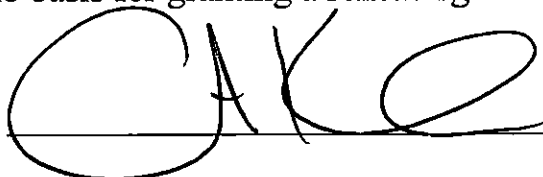
v.

Montrelle Lamont Campbell, Appellant.

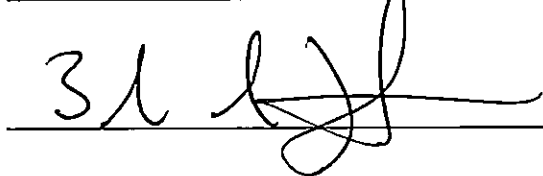
Appellate Case No. 2018-000115

ORDER

After careful consideration of the 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 petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Lara Mary Caudy, Esquire

William Joseph Maye, Esquire

W. Jeffrey Young, Esquire

FILED
Feb 24 2022

Donald J. Zelenka, Esquire
Scarlett Anne Wilson, Esquire
David Alexander, Esquire
The Honorable Deadra L. Jefferson