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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

PETITIONER,

v.

MONTRELLE LAMONT CAMPBELL,

RESPONDENT.

Appellate Case No. 2022-000349

REPLY BRIEF OF PETITIONER

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In light of certain arguments set forth in Campbell's Brief of Respondent, Petitioner sets forth the following arguments in this brief Reply.

ARGUMENTS IN REPLY

I. Campbell assigns an overly narrow interpretation of the Court of Appeals' ruling that is not fairly supported by the content of the opinion and is likewise not fairly squared with his existing arguments.

Much of Campbell's argument discusses the holdings of *Belcher* and *Burdette*. (See Brief of Respondent, p. 12-14). *Burdette* is relevant to this case, but its holding is not the crux of the Court of Appeals errors of law and fact. The reason for this, is that *Burdette* had not been decided at the time of trial[1] – so arguments under *Burdette* (i.e. arguing an improper charge upon the facts) were not made. Instead, the objection was argued at trial under the theory that implied malice jury charges are inconsistent with specific intent crimes. As *Burdette* permitted retroactive application to appeals still pending, *Burdette* simply became a vehicle used by the Court of Appeals to further drive the supposed "*State v. King*" issue.

It is not disputed that this Court held implied malice from use of a deadly weapon can no longer be charged to a jury. That decision was reached because this Court concluded that such a charge was a charge upon the facts; it had nothing to do with the differentiation of the terms express and implied/inferred malice, or the application of such to specific intent crimes. See *State v. Burdette*, 427 S.C. 490, 503, 832 S.E.2d 575, 583 (2019). Challenging the instruction as a charge upon the facts has never been Campbell's argument and the Court of Appeals did not simply conclude that the judge's "implied malice from use of a deadly weapon" charge runs afoul of *Burdette*, and must be reversed as prejudicial. It instead undertook an evaluation of *King* and the

[1] *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) was not decided until after the completion of final briefs on August 16, 2019, but before oral argument on September 15, 2019.

application of inferred malice *in general*. It took into consideration Campbell's flawed argument that *State v. King* renders *all* implied malice evidence inapplicable to attempted murder because of the specific intent nature of the crime. The Court of Appeals agreed, and in reliance upon *King* explicitly held that attempted murder required both express malice and specific intent to kill. It was under this analysis that the Court of Appeals then found tangential error under *Burdette*. Part of the State's argument to the Court of Appeals was the fact that, notwithstanding Campbell's erroneous interpretation of *King*, the record was replete with express malice evidence. (See Appendix, Final Brief of Respondent, at p. 26-27). However, the State also argued against Campbell's interpretation of *King* and argued that an inferred malice charge is not contrary to an attempted murder case. (See Appendix, Final Brief of Respondent, at p. 23-24; Petition for Rehearing, at p. 1). In order to resolve this case, this Court must address the manner in which evidence may be considered by the jury in establishing the element of malice for attempted murder, because such parameters are necessary in determining the existence of trial court error, whether such error was harmless in light of the evidence of malice within the record, and whether the Court of Appeals erred in its subsequent analysis.

Additionally, *Campbell would now argue* that "nowhere in the Court of Appeals' opinion did it state that the jury was not permitted to infer malice from the circumstances of the case in considering a defendant's guilt for attempted murder. . ." (Brief of Respondent, p. 14). Such an argument is directly counter to his argument that *King* establishes attempted murder as requiring both express malice and specific intent, and is in direct conflict with the clear ruling of the Court of Appeals that explicitly agreed with his argument. *State v. Campbell*, 435 S.C. 528, 535, 868 S.E.2d 414, 418 (Ct. App. 2021), reh'g denied (Feb. 24, 2022), cert. granted (Sept. 8, 2022) (holding "[C]ampbell 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."). Campbell's narrow interpretation of the Court of Appeals' opinion is both a capitulation to the *appropriate* ruling the Court of Appeals handed down in *State v. Taylor*, 434 S.C. 365, 370, 862 S.E.2d 924, 927 (Ct. App. 2021)(certiorari denied October 7, 2022) and is simply not supported by the language of the opinion in this case. The Court of Appeals' opinion demonstrates that it limited its consideration of the issue to the evidence it considered "evidence of express malice". *Id.*, 435 S.C. at 537-538, 868 S.E.2d at 419) (Stating: "[t]he 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." . . . "In the present case, the evidence of express malice is significantly less than the amount in *Brooks*.").

As a result of its consideration of *King*, the Court of Appeals evaluated the case only on the basis of what express malice evidence existed in the record. While the State would argue that Court of Appeals failed to even accomplish that endeavor accurately, it was an endeavor that should not have been undertaken at all. And, as a consequence, it resulted in an improper examination of record, an improper consideration of the available evidence of malice, and an improper harmless error analysis. The Court of Appeals' holding in this case was the result of both legal and factual error warranting reversal.

II. Campbell reaches conclusions about the record that are not established by the evidence presented at trial and mistakenly relies upon competing evidentiary inferences to suggest the accomplice liability charge was in error.

In consideration of the trial court charging the jury that the hand of one is the hand of all, Campbell asserts that the physical evidence at the scene showed that there was only one shooter. (Brief of Respondent, at p. 23). Such a conclusion is unfounded. No one saw the shooting take place and witnesses testified at trial to seeing two armed gunmen fleeing the area of the shooting. To conclude that there "was only one shooter" is to reach a conclusion that cannot be supported by the record.

In addition to the fact that Richardson and Ms. Blake testified at trial to seeing different men armed with rifles leaving the area, in Footnote 6 Campbell disputes the inferences relied upon from the scene of the crime as supporting the possibility that there were two shooters at the scene working together. Specifically, Campbell disputes the following portion of Petitioner's Brief:

> Moreover, that particular inference - that there were two shooters at the scene – is corroborated by other evidence that the Court of Appeals omitted from its analysis entirely. Two separate cell phones were found at the location where the shooting was committed. (App., p. 157-158). This bolsters the inference that two people were at the scene of the crime. Additionally, the recovered shell casings were not all of the same manufacturer; this bolsters the reasonable inference that two guns were at the scene of the crime. (App., 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 reasonable inference that two guns were fired at the scene of the crime.

In an effort to challenge this argument, Campbell states that 1) "[t]he recovered cell phones could have belonged to any number of people", 2) that the different manufacturer ammunition is "not evidence 'that two guns were fired at the scene'", and 3) that "[e]ven if two guns were fired, they could have been fired by the same person." Campbell even goes so far as to say that "[e]ven

if two people were at the scene, this is not evidence to support accomplice liability." (Brief of Respondent, at p. 24, n. 6). Notwithstanding Campbell's disregard for the fact that two different cell phones were on the ground *amongst the fired shell casings* (App., p. 157-158), and that evidence would demonstrate that the bullets were fired from a rifle[2] (App., p. 134), all Campbell has done is suggest differing inferences *for the same evidence*. The fact that the inferences are there to be made at all gives rise to the need for the accomplice liability charge. As has been a frequent mistake by Campbell in this case, direct evidence is not needed to prove malice and direct evidence is not needed to warrant an accomplice liability instruction. The State need not demonstrate that an inference to be taken from the evidence is irrefutable, only that such is reasonable. Each of the challenged inferences is independently reasonable, and collectively these inferences exceed "reasonable" and begin to approach "probable". The evidence presented at trial more than satisfies the any evidence standard to warrant the accomplice liability charge.

III. Clarification of surveillance video explanation

Respondent has identified by Footnote 1 a discrepancy in Petitioner's statement of facts. Petitioner would agree that correction and clarification is needed so as not to confuse the Court. The video footage contained in State's Exhibit 95 contains multiple camera angles and essentially captures two different time spans: 1) the parking of the car and moments that follow, and 2) the returning to the car. In one of these angles, a man can be seen smoking and flicking a cigarette as he parks the car. (See Exhibit 95, Channel 4, at 1:12-1:18). That man, dressed in a white shirt and the subject whom Richardson testified to being, can be seen in other camera angles walking away from Nunan Street with the man authorities believed to be Andrew Rivers (aka "Ace"). (App., p. 271-272; p. 284; p. 338). In the second time span, that individual in the white shirt can be seen by

[2] This fact makes it hard to believe that one man would use two rifles.

multiple camera angles returning to the area where the car was parked on Nunan Street. Also, during that second time span, a man dressed in blue (often referred to as an "Italia shirt" in the record), can be seen walking to the area where the car had been parked, mere seconds after the man dressed in white. That man in blue was carrying a black assault rifle and appears to have a shirt covering his head. (App., p. 207, lines 4-25; p. 285; p. 346-348). These individuals were later believed to be identified by police as Richardson and Campbell. (App., p. 348-349).

CONCLUSION

For the above stated reasons, and for the reasons set forth in the Brief of Petitioner, the ruling of the Court of Appeals should be reversed.

Respectfully submitted,

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