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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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ON WRIT OF CERTIORARI TO CHESTERFIELD COUNTY

Roger E. Henderson, Circuit Court Judge  
Paul M. Burch, Circuit Court Judge  
Michael S. Holt, Post-Conviction Relief Judge

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Appellate Case No. 2024-000459

GARY MOORE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON CERTIORARI

### Petitioner's Statement

Did the PCR court err by ruling defense counsel was not ineffective when counsel failed to object to the trial judge not instructing the jury that specific intent was a required element of the crime of attempted murder that the State had to prove beyond a reasonable doubt, particularly since the judge twice charged the jury that malice "does not necessarily mean an actual intent to kill," which was highly confusing at best?

## STATEMENT OF THE CASE

In December 2015, a Chesterfield County grand jury indicted Petitioner for attempted murder. (App. 658-59). On February 17, 2016, Petitioner proceeded to an immunity hearing before the Honorable Roger E. Henderson pursuant to *State v. Duncan*<sup>1</sup> and section 16-11-440(c) of the South Carolina Code. (App. 1).

At the immunity hearing, Petitioner testified that the incident occurred on July 14, 2015, at a convenience store he stopped at on his way home from work. (App. 9-10). Shortly after he went into the store, which he described as dimly lit, he heard a male voice say, "I told you I was going to kill you." (App. 10). Petitioner stated that he could not make out anyone in the store because of the dim lighting but confirmed that the voice belonged to Charles Wallace. (App. 11-12). Petitioner turned around to face Wallace, who Petitioner claimed was blocking his only escape route, and tried to go around Wallace, who slapped him. (App. 13). Petitioner attempted to push Wallace after the slap, but Wallace grabbed him by the hair and pulled him to the ground. (App. 13). Petitioner stated that a bystander started choking him. (App. 13). According to Petitioner, he hit his head when Wallace pulled him to the ground. (App. 15). Petitioner claimed that the bystander was holding him so that Wallace could get out from under him. (App. 16). Petitioner believed he was beginning to blackout, and being unsure of what Wallace and the bystander would do if he did blackout, Petitioner pulled out a knife and started stabbing. (App. 16, 18).

Petitioner testified that he and Wallace had been involved in two previous incidents where in one Wallace threatened him with an axe handle and in the other Wallace attempted to attack him in a magistrate's office. (App. 18). Petitioner claimed that he feared for his life on the day of the incident at the convenience store. (App. 19). After stabbing Wallace four times, he went outside

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<sup>1</sup> 392 S.C. 404, 709 S.E.2d 662 (2011).

and called 911. (App. 29). According to Petitioner, Wallace ripped out some of his hair, he might have had a concussion, and he had bruising where the bystander held on to him. (App. 31). Petitioner believed the bystander was helping Wallace. (App. 33).

Wallace testified that he was living with Petitioner's mother-in-law at the time of the incident. (App. 49). He stated that the prior incident with the axe handle started after Petitioner came at him with a stick. (App. 50). Wallace could not catch Petitioner at that time and instead took his frustrations out on Moore's windshield with the axe handle. (App. 52). Wallace denied attacking Petitioner in a magistrate's office but confirmed that he "went towards" Petitioner after Petitioner entered the magistrate's office "acting big." (App. 53). An officer held him back, and the magistrate ordered the officer to remove Wallace from the room. (App. 53-54).

Wallace confirmed that he slapped Petitioner at the convenience store and believed he had reason to slap him because Petitioner came into the store running his mouth. (App. 54-55). Wallace did not think about the consequences of slapping Petitioner. (App. 58). He did not present a weapon during the incident and stated, "It takes a coward man to stab a man in the back." (App. 58-60). Wallace testified that Petitioner knew what his truck looked like and should not have stopped at the store that day. (App. 60). However, Wallace believed he did not do anything to warrant Petitioner using deadly force against him. (App. 61). He confirmed that he pulled Petitioner down to the floor, which was when the bystander got involved. (App. 62). Wallace told the bystander not to let Petitioner up because Petitioner had a knife. (App. 62). According to Wallace, as soon as the bystander intervened, Petitioner began stabbing. (App. 63). Wallace was stabbed four times, and the bystander was nicked in the arm. (App. 63). He confirmed that the bystander had nothing to do with the fight and that the fight was being broken up when Petitioner began stabbing. (App. 64-65). Wallace reiterated that Petitioner was not stabbing at him to free

himself because he was already free from Wallace after the bystander separated them. (App. 68).

Steven Hooks, the bystander, was in the store at the time of the incident and heard a commotion. (App. 70-71). When Hooks rounded the corner, he saw two men on the floor and some blood. (App. 71). Hooks thought that the two men were just tussling and sought to break them up, mostly because the cashier was screaming. (App. 71). When he reached the two men, he grabbed Petitioner to break them up. (App. 71). The next thing Hooks knew there was blood "everywhere." (App. 71). Hooks confirmed that he received a little nick on his arm when he broke up the fight. (App. 71). According to him, he was trying to separate the two men and did what he needed to do to separate them. (App. 72). He stated that if he choked Petitioner, it was not intentional. (App. 72). When the incident started, he was on a different aisle in the store and that he could not recall seeing any stabbing activities. (App. 77-78). Hooks did not see anyone stab anyone else after both men were off the floor. (App. 83).

Melissa Ann Griffin, the cashier at the convenience store, testified that she did not hear Petitioner nor Wallace say anything prior to the fight beginning; rather, it was "just on." (App. 86). She stated that she saw one of the two start bleeding. (App. 87). According to Griffin, Hooks tried to break up the two and pulled on Petitioner. (App. 88). When Hooks separated Petitioner and Wallace, Griffin told Petitioner to leave. (App. 89). When Petitioner left the store, he held the door shut for about 30 seconds and said, "I told you you'd get what you deserve." (App. 89).

Tim Hutchinson, an officer with the Chesterfield County Sheriff's Office, testified that he responded to a call for a fight at the convenience store and while on route, the call was updated to a stabbing. (App. 92). As he arrived on scene, Petitioner flagged him down and told him about the knife. (App. 95). After Hutchinson handcuffed Petitioner, told him that he was being retained

for investigative purposes, and read him his *Miranda*<sup>2</sup> rights, Petitioner told him that the knife was on his right side. (App. 96). Hutchinson retrieved the knife out of its case and secured it. (App. 96). When he went into the store, there was a "big spot of blood" in front of the cash register. (App. 97). Hutchinson saw Wallace and observed some of the stab wounds. (App. 99). He did not recall a situation at the magistrate's office between Wallace and Petitioner. (App. 103).

Greg Burns, an investigator with the Chesterfield County Sheriff's Office, testified that the convenience store video surveillance system did not allow downloads. (App. 105). He testified that he recorded the surveillance camera video with his cell phone. (App. 108).

In his closing, trial counsel argued that the proper standard for an immunity hearing was a preponderance of the evidence standard. (App. 114). Trial counsel argued that the evidence showed Petitioner had a right to be in the store and was not engaged in unlawful activity. (App. 114). Counsel asserted that Wallace started the altercation and Petitioner protected himself with a knife that he always had on his person. (App. 114-15). Trial counsel argued that evidence supported prior bad acts between Petitioner and Wallace, including the axe handle incident and the magistrate's office incident. (App. 115). Trial counsel stated Petitioner had a right to defend himself and did not have a duty to retreat. (App. 116).

The State argued that this case fell squarely under *State v. Curry*.<sup>3</sup> (App. 116). The State contended that the standard of review was "almost akin to a summary judgment." (App. 116). The State asserted that Petitioner and Wallace's versions of the incident were significantly different and noted that Griffin testified that Petitioner said Wallace had it coming after exiting the store. (App. 117). The State contended that *Curry* stood for the proposition that when a material diversion of

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup> 406 S.C. 364, 752 S.E.2d 263 (2013).

the facts that gives rise to the injury occurs it becomes a "quintessential jury question." (App. 117). The State reiterated that the video from the convenience store showed what happened and, specifically, it showed that Petitioner was not in fear for his life. (App. 118). The State argued that Petitioner was still trying to stab Wallace even after Hooks intervened, including thrusting motions which likely resulted in Wallace being stabbed. (App. 118). The State asserted that when viewed in the totality of the circumstances, the facts of this case left a quintessential jury question of whether Petitioner would be entitled to self-defense. (App. 118-19). The State did not contest Petitioner's right to be in the store. (App. 119). The State presented evidence that rebutted and contradicted Petitioner's version of events. (App. 119). The State argued that the reasonableness of Petitioner's actions should be left to the jury. (App. 120). Judge Henderson took the matter under advisement. (App. 120-21).

The day after the immunity hearing, Judge Henderson orally ruled as follows:

After considering all of the testimony[, a]fter my review of the evidence including the tape of the incident as best we could see on it, I'm going to respectfully deny [Petitioner's] request for immunity under the protection of persons and property act. The evidence is[,] as I viewed it[,] is that the slap which was admitted by Mr. Wallace was not of the nature that [Petitioner] should have believed he was going to have to take action to prevent death or great bodily injury. As a matter of fact, my review of the tape once the slap occurred, [Petitioner] appeared to become the aggressor in this situation. The individual who he said was choking him did not appear to be choking him but rather was having quite a struggle to pull [Petitioner] off of Mr. Wallace. Because of the way I had viewed the evidence, I certainly find that this is a matter that should be submitted to the jury. And[,] as pointed out by the solicitor yesterday[,] this is a quintessential jury question based on my view of the evidence.

(2d Supp. App. 4).

Petitioner proceeded to a jury trial on April 5-6, 2016, before the Honorable Paul M. Burch. (App. 123).

Wallace testified consistently with his testimony from the immunity hearing. (App. 159-97). Additionally, Wallace testified that he had a pocketknife in his pocket but did not pull it out during the fight. (App. 164). Wallace suffered a punctured lung from 4 stab wounds. (App. 167).

Griffin, Hutchinson, and Hooks also testified consistently with their testimonies from the immunity hearing. (App. 198-07, 213-37).

In its closing, the State asserted, "we have to prove that there was an attempt to kill Mr. Wallace. That there was malice either expressed or implied aforethought involved in that attempt to kill and that specific intent to kill." (App. 319).

In the charge to the jury, Judge Burch provided the following:

I charge you from Section 16-3-29 of the Code of Laws of 1976, as amended as to the charge of attempted murder. A person who with the intent to kill, attempts to kill another person with malice aforethought either expressed or implied [commits] the offense of attempted murder.

What is malice? Malice is defined in the law of homicide as a term of art. Malice does not necessarily mean an actual intent to kill. It is a technical term importing wickedness and excluding just cause or legal excuse. It is something which springs from wickedness, from depravity, from a depraved spirit, from a heart devoid on social duty, and fatally bent on mischief. The words express or inferred malice do not mean[] different kinds of malice but merely the manner in which the only kind of malice known to law may be shown to exist. Malice may be expressed as where previous threats of vengeance or lying [in] wait or other circumstances so directly that intent to kill was entertained. Malice may be inferred where though no express intent to kill is proved by direct evidence, it may be inferred from the facts and circumstances which are proved. Malice may be inferred from the willful, deliberate and intentional doing of an unlawful act without just cause for legal excuse.

Now, as to the word, intent, let me discuss that with you. In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purpose intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State

beyond a reasonable doubt. Criminal intent is also a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have been existing or to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence but intent may be establish[ed] by inference in the same way as any other fact and by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or from a failure to act. It may arise from negligence, recklessness, or indifferent to duty or to the consequences that is considered by the law to be the equivalent of criminal intent.

(App. 341-43). The jury found Petitioner guilty as indicted. (App. 354). In a subsequent sentencing hearing held on April 11, 2016, Judge Burch sentenced Petitioner to 18 years' imprisonment. (App. 366, 371).

In an unpublished opinion issued on June 26, 2019, this Court affirmed Petitioner's conviction and sentence. (App. 374-76). This Court held that the trial court did not abuse its discretion in finding that Petitioner was not entitled to immunity under the Protection of Persons and Property Act. (App. 375). The citations in the opinion indicate that evidence in the record supported the trial court's determination that Petitioner's claim of self-defense at the immunity hearing presented a quintessential jury question such that immunity from prosecution was not warranted. (App. 375). The citations and emphasis placed by this Court in those citations indicate that this Court held Judge Henderson did not abuse his discretion in finding that Petitioner did not reasonably believe his actions in stabbing Wallace were necessary to prevent his own death or great bodily injury to himself. (App. 375).

In January 2020, Petitioner filed his application for post-conviction relief (PCR), which

included numerous allegations of ineffective assistance of both trial and appellate counsel. (App. 377-88). On March 14, 2022, Petitioner proceeded to a PCR hearing before the Honorable Michael S. Holt, which was conducted via WebEx. (App. 431).

Petitioner testified at the PCR hearing. (App. 462). He testified that he met with trial counsel before the immunity hearing and that they reviewed discovery together. (App. 464-65). Petitioner stated that Hooks, the bystander, was drunk and acting in cahoots with multiple friends in attacking him. (App. 500). He also contended that Wallace and Hooks were yelling to an unknown third party during the incident for someone to get a firearm. (App. 500).

Larry Knox, Petitioner's trial counsel, testified that Petitioner told him the incident was a result of a prior encounter between Petitioner and Wallace at the magistrate's office. (App. 509). Knox contacted the magistrate's office, and the magistrate confirmed that an encounter had occurred at the office. (App. 509-10). He used Petitioner's testimony to confirm the incident at the magistrate's office and the substance of Petitioner's 911 call because he felt the live testimony and the exhibits Petitioner offered at the PCR hearing provided the same information. (App. 512-13).

Knox testified he did not have a specific reason for not requesting an instruction on specific intent to kill, a point of law that was not specifically clarified by our supreme court until after Petitioner's trial. (App. 541). Knox believed that the exhibits Petitioner presented at the PCR hearing would not have added anything to his case at the immunity hearing. (App. 545-52). He testified that an officer present on the day of the events at the magistrate's office told him that everyone at the magistrate's office were acting "like bats out of hell." (App. 552).

Mary Johnson-Lee, one of the solicitors who prosecuted the case, testified that she believed Judge Henderson made sufficient findings of fact and conclusions of law. (App. 559). She stated

that Judge Henderson ruled that Wallace's slap was not of the nature to make Petitioner believe he needed to use deadly force to avoid death or great bodily injury. (App. 569).

In its order dismissing Petitioner's PCR application, the PCR court addressed Petitioner's claim of ineffective assistance of counsel regarding trial counsel not objecting to a jury instruction that did not have a specific intent instruction. (App. 604). The PCR court found that trial counsel credibly testified that he believed *State v. King*<sup>4</sup> had not been decided by our supreme court at the time of trial and that trial counsel could not be found to have provided ineffective assistance of counsel for failing to anticipate subsequent changes in the law. (App. 604).

This appeal followed.

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<sup>4</sup> 422 S.C. 47, 810 S.E.2d 18 (2017).

## STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the court. *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 839 (2018). The burden is on the petitioner to prove the allegations in the PCR application. *Bannister v. State*, 333 S.C. 298, 302, 509 S.E.2d 807, 809 (1998). Appellate courts will defer to a PCR court's findings of fact and will uphold them if evidence in the record supports the findings of fact. *Id.* Appellate courts review questions of law de novo with no deference to the conclusions of the PCR court. *Id.* Appellate courts will reverse the decision of the PCR court when such a decision is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

The PCR court properly found that trial counsel did not provide ineffective assistance of counsel to Petitioner because evidence in the record shows Petitioner failed to prove both that trial counsel's performance was deficient and that any such deficient performance prejudiced him such that a reasonable probability exists that the outcome of his trial would have been different but for counsel's performance.

A two-prong test for determining effective assistance of counsel has been set forth by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668 (1984). First, a defendant must show that counsel's performance was deficient. Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id.* at 688. The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 669. The defendant is required to overcome the presumption that counsel was effective to receive relief. *See State v. Cherry*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

- I. **The PCR court properly determined that Petitioner failed to show that trial counsel provided ineffective assistance of counsel for not objecting to the trial court's jury instruction, which did not include that attempted murder is a specific intent crime, because South Carolina law on the required intent for attempted murder was not readily clear at the time of trial.**

### A. Deficiency

The PCR court properly determined that Petitioner failed to prove that trial counsel's performance was not reasonable under prevailing professional norms. *See Cherry*, at 117, 386 S.E.2d at 625 (stating that under the deficiency prong, courts are to evaluate an attorney's performance by its "reasonableness under prevailing professional norms" (quoting *Strickland*, 466 U.S. at 688)); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The proper measure

of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.").

As noted by the PCR court, section 16-3-29 of the South Carolina Code (2015), which defines attempted murder, was codified in 2010 and 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." (App. 602). Section 16-3-29 was enacted only a few years prior to Petitioner's trial. (App. 1, 123).

At the time of Petitioner's trial in 2016, our supreme court had not issued an opinion upon the required intent—specific or general—required under the statute. Additionally, our supreme court granted certiorari in *State v. King*—from this Court's decision in that case—approximately one week before Petitioner's trial. In our supreme court's divided opinion in *State v. King*, the supreme court (1) agreed with the State that this Court based its conclusion in its opinion in *King* on dicta from *State v. Sutton*,<sup>5</sup> (2) acknowledged that South Carolina had been afflicted with conflicting case law on the required intent in criminal cases, and (3) noted the ambiguity of the required intent under the attempted murder statute. *King*, 422 S.C. at 55-62, 810 S.E.2d at 22-26. In deciding *King*, the majority was concerned enough to specifically request that the General Assembly reevaluate the language of the section 16-3-29 to clarify the intent requirement. *Id.* at 64 n.5, 810 S.E.2d at 27 n.5. Trial counsel testified that *King* had not been finally decided at the time of trial, which the PCR court found credible. (App. 541, 604). Trial counsel did not have the benefit of our supreme court's opinion in *King* at the time of trial.

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<sup>5</sup> 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (stating that attempted murder *would* require specific intent to kill if South Carolina recognized the crime of attempted murder, which at the time of this opinion, it did not).

Considering our supreme court's emphasis in *King* on the ambiguity of the attempted murder statute, trial counsel's erroneous understanding of the intent requirement under attempted murder statute was not unreasonable. (App. 604). Trial counsel had no way of knowing with any certainty that attempted murder was a specific intent crime at the time of trial, which our supreme court itself remained divided on in the *King* matter. See *State v. Williams*, 427 S.C. 148, 154 n.5, 829 S.E.2d 702, 705 n.5 (2019) ("To be fair to counsel, at the time of [defendant's] trial, we had not yet handed down our decision in *King*, in which a majority of this Court held attempted murder was a specific-intent crime.").

Despite this Court's holding in its *King* opinion that attempted murder is a specific intent crime, our supreme court granted certiorari to this Court regarding that opinion merely a week before Petitioner's trial began on April 5, 2016. *State v. King*, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015), cert. granted March 28, 2016, aff'd as modified, 422 S.C. 47, 810 S.E.2d 18 (2017). (App. 123). Therefore, trial counsel would have had to be clairvoyant in his performance at trial and correctly guessed how our supreme court would deal with the issue of general versus specific intent for attempted murder in an opinion that our supreme court did not issue until well after Petitioner's trial concluded. Trial counsel testified as much at the PCR hearing, which the PCR court found credible. (App. 541, 604). *Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (stating that an attorney has never been required to anticipate or discover changes in the law or facts which did not exist at the time of trial); *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) ("[E]ven if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if 'the record does not reveal' that counsel took an approach that no competent lawyer would have chosen." (quoting *Harrington v. Richter*, 562 U.S. 86, 104 (2011))). Therefore, as the issue of whether attempted murder is a specific or general intent crime was

unresolved with any finality at the time of Petitioner's trial, the PCR court did not err in finding that Petitioner failed to prove that trial counsel was deficient for not objecting to the trial court's lack of a specific intent instruction in the jury charges.

### **B. Prejudice**

Should this Court determine that the PCR court properly found that trial counsel did not provide deficient representation for failing to object to the lack of a specific intent jury charge, then the Court need not consider the prejudice prong of the *Strickland* ineffective assistance of counsel test. *See Strickland*, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.").

However, should this Court decide to address the issue, Petitioner failed to prove that any prejudice resulted from trial counsel's decision not to object to the jury charge. Petitioner needed to show that but for trial counsel's alleged deficiency, a reasonable probability existed that the result of his trial would have been different. *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (stating that a PCR applicant must prove that their counsel's deficient performance prejudiced them such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different"). Put another way, Petitioner needed to show that if trial counsel had objected to the jury charges as given—meaning that the trial court would have given a specific intent jury charge—that he would not have been convicted of attempted murder.

Here, the question facing the jury did not center around whether Petitioner *intended* to stab Wallace; that the stabbing was intentional appears to be uncontested at trial due to Petitioner's theory of self-defense. Rather, according to trial counsel, the question focused on whether Petitioner's intentional stabbing act was born out of maliciousness or out of self-defense. (App.

515-18). If born out of self-defense, then Petitioner would be not guilty. This was the theory under which Petitioner and trial counsel sought pretrial immunity and argued self-defense to the jury. However, if born out of maliciousness, then Petitioner is guilty of attempted murder. This is what the jury ultimately concluded by finding Petitioner guilty of attempted murder. Petitioner's intentional action of stabbing Wallace was born out of maliciousness, not self-defense.

Therefore, the PCR court's finding that trial counsel credibly testified that the defense at trial never indicated that Petitioner stabbing Wallace could have been committed out of recklessness or negligence—the general state of mind required for certain general intent crimes—is a direct ruling with support from the record that a specific intent jury instruction would have had no effect on the jury verdict in this case. (App. 604). *See generally State v. Kinard*, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) ("General intent' is defined as 'the state of mind required for the commission of certain common law crimes not requiring specific intent' and it 'usually takes the form of recklessness . . . or negligence.'" (alteration in original) (quoting "General Intent," *Black's Law Dictionary* (7th ed. 1999))), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).


Therefore, because the question before the jury was not about Petitioner's mental state when he stabbed Wallace but rather whether his intentional act was committed out of either maliciousness or self-defense, Petitioner has failed to show that but for trial counsel's failure to object to the lack of a specific intent jury charge, a reasonable probability of his trial ending in a different outcome exists. Thus, the PCR court correctly determined that Petitioner failed to show any prejudice from trial counsel's alleged deficient performance.

**CONCLUSION**

Based on the foregoing, the State requests that this Court affirm the PCR court's denial of Petitioner's Application for Post-Conviction Relief.

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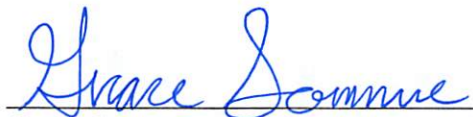
**PROOF OF SERVICE**

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I, Grace Sommer, certify that I have served this Brief of Respondent on Lara M. Caudy, Esquire, counsel of record for the Petitioner, by electronic mail to the address listed for counsel in the South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 8th day of April 2026.



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