

RECEIVED

Oct 05 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Matie Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREVON TYRIEK DIXON,

APPELLANT

APPELLATE CASE NO. 2026-000791

INITIAL BRIEF OF APPELLANT

W. CHANDLER NORVILLE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARDS OF REVIEW.....	7
ARGUMENT	
I.	
The trial court erred in admitting in-color autopsy photographs into evidence when those photographs served no probative value and served only to prejudice Appellant.....	8
II.	
The trial court should have granted Appellant's motion for directed verdict as to the two counts of attempted murder.	13
CONCLUSION.....	17

TABLE OF AUTHORITIES

United States Cases

<i>Old Chief v. United States</i> , 519 U.S. 172 (1997).....	8, 9, 10
<i>United States v. Clemons</i> , 442 S.C. 670, 901 S.E.2d 280 (2024)	15

South Carolina Cases

<i>In re Harvey</i> , 355 S.C. 53, 584 S.E.2d 893 (2003).....	11
<i>State v. Alexander</i> , 303 S.C. 377, 401 S.E.2d 146 (1991)	9
<i>State v. Bailey</i> , 298 S.C. 1, 377 S.E.2d 581 (1989)	11, 13
<i>State v. Bryant</i> , 316 S.C. 216, 447 S.E.2d 852 (1994).....	13
<i>State v. Burdette</i> , 427 S.C. 490, 832 S.E.2d 575 (2019).....	15
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004)	7
<i>State v. Collins</i> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	12
<i>State v. Geter</i> , 445 S.C. 139, 912 S.E.2d 255 (2025)	13, 14, 15
<i>State v. Gray</i> , 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014).....	7, 8
<i>State v. Hepburn</i> , 406 S.C. 416, 753 S.E.2d 402 (2013)	7
<i>State v. Horne</i> , 282 S.C. 444, 319 S.E.2d 703 (1984).	14
<i>State v. James</i> , 355 S.C. 25, 583 S.E.2d 745 (2003).....	8, 10
<i>State v. Jones</i> , 440 S.C. 214, 891 S.E.2d 347 (2023)	10
<i>State v. Kinard</i> , 373 S.C. 500, 646 S.E.2d 168 (Ct. App. 2007)	15
<i>State v. King</i> , 422 S.C. 47, 810 S.E.2d 18 (2017).....	13, 14, 15
<i>State v. Kornahrens</i> , 290 S.C. 281, 350 S.E.2d 180 (1986)	9
<i>State v. Lyles</i> , 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)	8
<i>State v. McLeod</i> , 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004).....	11

<i>State v. Mizzell</i> , 349 S.C. 326, 563 S.E.2d 315 (2002).....	12
<i>State v. Reid</i> , 393 S.C. 325, 713 S.E.2d 274 (2011)	13, 14
<i>State v. Robinson</i> , 201 S.C. 230, 22 S.E.2d 587 (1942)	9
<i>State v. Smith</i> , 33 S.C.L. (2 Strob.) 77 (1847)	14
<i>State v. Smith</i> , 430 S.C. 226, 845 S.E.2d 495 (2020).	15
<i>State v. Stuckey</i> , 347 S.C. 484, 556 S.E.2d 403 (Ct. App. 2001).....	14
<i>State v. Torres</i> , 390 S.C. 618, 703 S.E.2d 226 (2010)	9, 11
<i>State v. Waitus</i> , 224 S.C. 12, 77 S.E.2d 256 (1953)	9
<i>State v. Williams</i> , 427 S.C. 148, 829 S.E.2d 702 (2019).	2, 14

Other Jurisdictions

<i>Keys v. State</i> , 766 P.2d 270 (Nev. 1988)	14
---	----

Rules

FED. R. EVID. 403	9
Rule 403, SCRE	5, 8, 9

Statutes

S.C. Code Ann. § 16-3-29.....	13
-------------------------------	----

Other Authorities

Chapple & Ziebland, *Viewing the Body After Bereavement due to a Traumatic Death:*

<i>Qualitative Study in the UK</i> , 340 BRITISH MED. J. 2032 (2010).....	11
---	----

Classification and Rating Administration, *Common Descriptor Elements*,

https://www.filmratings.com/common-descriptors/ (last accessed Oct. 1, 2026)	11
--	----

Edwin Keedy, <i>Criminal Attempts at Common Law</i> , 102 U. PENN. L. REV. 464 (1954).....	14
--	----

STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in admitting in-color autopsy photographs into evidence when those photographs served no probative value and served only to prejudice Appellant?

II. Whether the trial court should have granted Appellant's motion for directed verdict as to the two counts of attempted murder?

STATEMENT OF THE CASE

On March 30, 2022, an Orangeburg County grand jury indicted Appellant for two counts of murder and two counts of attempted murder. R.*(Indictments). The case was tried from March 23 – 26, 2026, before the Honorable Matie Murphy and a jury. Tr. 1. Douglas Mellard and Brittany Schelper represented Appellant; assistant solicitors Bethany Miles, Gabrielle Williams, and Caroline Land represented the state.¹ Tr. 1. The jury convicted Appellant as indicted. Tr. 784-785. Judge Murphy sentenced Appellant to concurrent terms of life imprisonment for both murders and thirty years' imprisonment for the attempted murders. Tr. 803.

This appeal follows.

¹ Appellant was tried jointly with Deron Brundage, represented by Andrew Farley, and Jamore Ellison, represented by Melissa Fortier and Christel Purvis.

STATEMENT OF FACTS

On September 21, 2021, Candice Brown, Jessica Johnson, April Johnson, and Brittany Summers were riding together in Brown's daughter's car. Tr. 270, ll. 3-4. The car stopped to drop off April Johnson. As she was getting out of the car, an SUV pulled in front of them, and at least two people got out of the SUV and began shooting at their car. Tr. 250, ll. 19-22; State's Exhibit 216 (Ring Footage)(on file with this Court). Summers was grazed by bullets several times. Tr. 281, ll. 8-9. Brown and Jessica Johnson were killed. Tr. 627, ll. 11-15; 634-635. Summers made eye contact with one of the shooters and would later identify him as Jamore Ellison. Tr. 288, ll. 10-12.

Warnazia Russell testified that she went to a party the night of the shooting. Tr. 447, ll. 24-25. The party was in North, South Carolina, and Russell rode there with Ellison, Deron Brundage, Dimonte Fields, and Appellant. Tr. 448, ll. 10-16. On the way back from the party, the group stopped at a gas station where they saw a gold or brown Honda. Tr. 451, ll. 9-15. The group believed that the occupants of the Honda were "their opps." Tr. 451, ll. 18-19. They followed the car and then went back to Marshall Apartments where Ellison lived. Tr. 451, ll. 24-25. Thinking that the Honda had come with them to the apartments, the group searched for the car around the apartments. Tr. 452, ll. 3-7. Afterwards, the group left the apartment and went driving again. While doing so, they saw a Honda Accord that they believed to be the same Honda from before. Tr. 453, ll. 1-14.

At some point, the Accord stopped. Tr. 454, ll. 6-8. Fields, who was driving the car, pulled in front of the stopped Accord and parked. Tr. 454, ll. 19-20; 454, l. 1. When the car

stopped, Appellant and Brundage got out of the car. Tr. 455, ll. 15-18.² Appellant and Brundage then shot into the Accord. Tr. 456, l. 2. Afterwards, the group went back to the apartments, and Russell drove Fields home. Tr. 456, ll. 11-14; 457, l. 23. Russell was not charged with any crime related to this case. Tr. 482, ll. 4-7.

Dimonte Fields testified similarly to Russell, but his testimony differed in several key respects. Fields testified that when he stopped their SUV in front of the Accord, Appellant, Brundage, and Ellison got out and shot into the Accord. Tr. 493, ll. 8-16. When they got back into the SUV, someone said “what happens here, stays here.” Tr. 494, ll. 6, 14. When the group arrived back at the apartments, a white car pulled up, and Appellant, Brundage, and Ellison got inside and left. Tr. 495, ll. 1-13. They eventually returned, at which time their friend “Pep” came outside and told the group “that was some dumb ass shit.” Tr. 495, ll. 17-23; 496, l. 6. Fields was also charged with two counts of murder and two counts of attempted murder for his role in the offense. Tr. 497, ll. 6-15.³

Dr. Kelly Rose was qualified as an expert in forensic pathology. Tr. 619, ll. 1-9. During her testimony, the state sought to introduce autopsy photographs, State’s Exhibits 207-209 (on file with this Court). Tr. 622, ll. 10-24. State’s Exhibit 207 is a color photograph of Candice Brown. It depicts a gunshot wound above her eyebrow. See State’s Exhibit 207. Blood is visible coming from the wound, and the photograph allows the viewer to see inside the bullet wound. *Id.*

² Russell testified that Ellison did not get out of the car and shoot. Tr. 477, ll. 10-16. She gave three statements to the police in total; in the first and third statements, she said that Ellison was present, and in the second statement she said he was not. Tr. 458, l. 5 – 460, l. 17.

³ For his cooperation, it appears that Fields was permitted to plead guilty to accessory after the fact to murder, for which he received a time-served sentence. Public Index, *State v. Dimonte J. Fields*, Case No. 2021A3810700781 (Orangeburg Cnty.). The other murder charge and the two attempted murder charges were dismissed by the state. Public Index, *State v. Dimonte J. Fields*, Case Nos. 2021A3810700780, -782, and -783 (Orangeburg Cnty.).

State's Exhibit 208 is another color photograph of Brown. See State's Exhibit 208. This photograph shows a gunshot wound to Brown's cheek, and a side profile of Brown's face. Blood is visible in the photograph. *Id.* State's Exhibit 209 is another color photograph that depicts a gunshot wound to the middle of Brown's chest, and smeared blood across Brown's breast. See State's Exhibit 209. The state also introduced the pathologist's notes, which depicted drawings of the locations and types of the injuries. See State's Exhibits 204-206 (Diagrams) (on file with this Court). Defense counsel objected to the introduction of the photographs, pursuant to Rule 403, SCRE. Tr. 622, ll. 10-20. The trial court found that the photographs were relevant, and their prejudicial effect was outweighed by their probative value and overruled the objection. Tr. 622, ll. 22-24.

At the close of the state's evidence, defense counsel moved for directed verdict. Tr. 642. As to the attempted murder charges specifically, defense counsel argued that the state's evidence demonstrated that, if anything, Appellant and his group were shooting at the Accord because they believed it to be occupied by different individuals. Tr. 642, ll. 23-24. Because the legal doctrine of transferred intent does not apply to attempted murder, the fact that Appellant had no intention at all to kill April Johnson and Brittany Summers was fatal to the state's case. Tr. 643, ll. 2-8. The state responded that it had proven that Appellant and his co-defendants "want[ed] to kill every single person in that car," and the fact that they did not know who was in the car was immaterial. Tr. 647, ll. 6-12. The trial court denied the motion, holding that the outcome of the co-defendants' acts was immaterial and that the act of attempted murder was complete upon the co-defendants shooting at the car. Tr. 649, ll. 16-20. Therefore, the doctrine of transferred intent was inapplicable, because the co-defendants got "out of the car with malice aforethought." Tr. 649, ll. 16-23.

The jury convicted Appellant of both murders and both attempted murders.

STANDARDS OF REVIEW

Issue I: This Court reviews the trial court’s decisions on the admission or exclusion of evidence for abuse of discretion. *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014).

Issue II: When reviewing a trial court’s ruling on a motion for directed verdict, this Court “must view the evidence and all reasonable inferences in the light most favorable to the state.” *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (*quoting State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)). This Court reviews the evidence using the same standard as the trial court; if there is not “direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” this Court must reverse. *Id.*

ARGUMENT

I.

The trial court erred in admitting in-color autopsy photographs into evidence when those photographs served no probative value and served only to prejudice Appellant.

In this case, no one disputed the causes or manners of deaths of the Decedents, nor did anyone dispute the types or locations of the injuries suffered by the Decedents. Even if they had, the state introduced other evidence that established those facts. Therefore, photographs depicting these injuries possessed no possible probative value. On the other hand, permitting the jury to see these unpleasant photographs of a deceased individual with visible gunshot wounds and blood is likely to elicit an emotional response from the jury and lead them to render their decision on an improper basis. Therefore, the probative value of State's Exhibits Nos. 207, 208, and 209 was substantially outweighed by the prejudicial effect. The trial court erred in concluding otherwise, and this Court should reverse.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...." Rule 403, SCRE. Probative value is "the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). Probative value must be determined in context, considering the issues at stake to the trial of an individual case. *Id.* (citing *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). The probative value of a given piece of evidence will depend on the "scarcity or abundance of other evidence of the same point." *State v. James*, 355 S.C. 25, 35, 583 S.E.2d 745, 750 (2003) (quoting *Old Chief v. United States*, 519 U.S. 172, 185 (1997)). In other words, the probative value of evidence "may be calculated by comparing evidentiary alternatives." *Old Chief*, 519 U.S. at 184. The probative

value of photographs depends on their necessity “to show *material* facts or conditions.” *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587, 589 (1942) (emphasis added).

Probative value must be weighed against improper prejudice. Rule 403, SCRE. “Unfair prejudice within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (*quoting* FED. R. EVID. 403, adv. comm. notes). Unfair prejudice “speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief*, 519 U.S. at 180.

The caselaw of this state has long held that autopsy photographs pose a significant risk of prejudice and should only be admitted when necessary to prove material facts. *See Robinson*, 201 S.C. 230, 22 S.E.2d at 589; *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (“Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.”). For that reason, “[i]n the guilt phase of a trial, photographs of the murder victims should be excluded where the facts they are intended to show have been fully established by competent testimony.” *State v. Kornahrens*, 290 S.C. 281, 288-89, 350 S.E.2d 180, 185 (1986) (*citing State v. Waitus*, 224 S.C. 12, 77 S.E.2d 256 (1953)) (emphasis deleted).

Here, it was not contested that the Decedents suffered gunshot wounds. It was not contested that Decedents died of those gunshot wounds. And the location of those gunshot wounds was not contested, nor is it particularly relevant. The existence and location of the gunshot wounds are the only possible probative value of the photographs, and neither fact was material to this case. It was entirely undisputed that the Decedents died due to gunshot wounds

fired by individuals who jumped out of an SUV that pulled up in front of the Decedents' car. The only material issue at trial was whether the co-defendants were the individuals who committed the murders. The autopsy photographs do absolutely nothing to prove that Appellant or any of his co-defendants committed the murders. Therefore, the autopsy photos were not even relevant, much less possessive of any significant probative value. *See* Rule 401, SCRE (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is *of consequence*...more probable or less probable than it would be without the evidence." (emphasis added)).

Even if there were some probative value to the autopsy photographs, there was already significant uncontested evidence to prove the same fact. The state admitted the pathologist's notes which depicted drawings of the locations and types of the injuries. see State's Exhibits 204-206 (Diagrams) (on file with this Court). These notes conclusively demonstrated the nature and location of the injuries. Because these notes were of "at least equivalent" evidentiary value as the autopsy photos to prove the nature and location of the gunshot wounds, *see Old Chief*, 519 U.S. at 186, there was an "abundance of other evidence of the same point." *James*, 355 S.C. at 35, 583 S.E.2d at 750. Therefore, even if the location and nature of the gunshot wounds were somehow relevant to the facts contested at trial, the state was allowed to present more than adequate evidence establishing the same facts. Accordingly, the autopsy photographs had no probative value.

The autopsy photographs were enormously prejudicial. To be sure, Appellant does not contend the photographs depict mangled corpses or extreme amounts of blood and gore. *Compare, e.g., State v. Jones*, 440 S.C. 214, 263, 891 S.E.2d 347, 373 (2023). However, the photographs are still highly unpleasant. They depict obviously deceased, naked individuals with

visible blood and gunshot wounds. One of the photographs depicts the lifeless face of one of the Decedents. see State's Exhibit 208 (on file with this Court). Depictions of dead bodies in general make people uncomfortable. *Cf., e.g.,* Classification and Rating Administration, *Common Descriptor Elements*, <https://www.filmratings.com/common-descriptors/> (last accessed Oct. 1, 2026) (realistic depictions of death, "such as gunshot, stab wounds" will typically result in an "R" rating for a film, meaning the viewer must be seventeen years old or older to view the movie without the presence of an adult); *cf. also*, Chapple & Ziebland, *Viewing the Body After Bereavement due to a Traumatic Death: Qualitative Study in the UK*, 340 BRITISH MED. J. 2032 (2010) (some studied individuals who lost family members regretted viewing their loved one's body, others outright refused to view them).⁴ Combined with the fact that the bodies depicted in these photographs are murder victims with visible blood and gunshot wounds, the photographs are substantially likely to "arouse the sympathy or prejudice of the jury." *Torres*, 390 S.C. at 623, 703 S.E.2d at 228. For these reasons, the prejudicial effect of the autopsy photographs far exceeded their probative value. The trial court erred in refusing to exclude them.

Further, the error was not harmless. "Error is harmless where it could not reasonably have affected the result of the trial." *State v. McLeod*, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) (*citing, inter alia, In re Harvey*, 355 S.C. 53, 584 S.E.2d 893 (2003)). "An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence *such that no other rational conclusion can be reached.*" *Id.* (*citing State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989) (emphasis added)). Here, the state's case largely relied on circumstantial evidence and the testimony of two witnesses: Warnazia Russell and Diamonte Fields. Russell's testimony was contradicted by Fields' testimony and her own statements to the

⁴ Available at: <https://www.bmj.com/content/340/bmj.c2032> (last accessed Oct. 1, 2026).

police, which themselves were contradicted by other statements to the police. Fields' testimony was contradicted by Russell's, and Fields had pending charges of murder and attempted murder, giving him significant motivation to give false or biased testimony. *See State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) ("The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency."). Therefore, the only direct evidence of Appellant's involvement in the murders came from two witnesses; one of whom contradicted herself on several occasions, the other of whom stood to benefit greatly from testifying in the manner that he did.⁵ It cannot be said that the introduction of these prejudicial photographs was "harmless beyond a reasonable doubt." *See State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014).

The autopsy photographs had no probative value and presented a substantial likelihood of significant, unfair prejudice. Therefore, the trial court erred in admitting them. Further, the error was not harmless. Accordingly, this Court should reverse Appellant's convictions and sentences and remand for a new trial.

⁵ And, in fact, *did* benefit greatly. *See supra* n. 3.

II.

The trial court should have granted Appellant's motion for directed verdict as to the two counts of attempted murder.

The state's own evidence proved that, if anything, Appellant was attempting to kill other individuals, not the individuals in the car. For that reason, the trial court should have granted Appellant's motion for directed verdict as to the attempted murder charges. Because it did not, this Court should vacate those convictions.

Attempted murder is defined as follows: "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. "Intent to kill" means specific intent to kill, *State v. King*, 422 S.C. 47, 64, 810 S.E.2d 18, 27 (2017), meaning that the defendant actually intended to complete the crime of murder, *see State v. Reid*, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011). Therefore, there can be no attempted murder unless the defendant specifically intends the death of another person to result from his actions. *King*, 422 S.C. at 63-64, 810 S.E.2d at 26-27. Attempted murder can thus be defined as having three elements: "(1) malice, (2) the specific intent to kill a person, and (3) an attempt to kill *that person*." *State v. Geter*, 445 S.C. 139, 146, 912 S.E.2d 255, 258 (2025) (emphasis added). The intent element is crucial, because no person can be convicted of any crime unless his mental state is proven to be that required by the charged offense. *State v. Bryant*, 316 S.C. 216, 218, 447 S.E.2d 852, 864 (1994).

The reason that attempted murder requires a higher mental state than its predicate crime, murder, is one of logic. Criminal liability requires the concurrence of two things: "an evil-meaning mind," or *mens rea*, and "an evil-doing hand," or *actus reus*. *United States v. Bailey*, 444 U.S. 394, 402 (1980). Attempt has two elements, (1) specific intent to commit a crime, and

(2) “an overt act, beyond mere preparation, in furtherance of the intent to commit the crime.” *Reid*, 393 S.C. at 329, 713 S.E.2d at 276. An action without intent is not a crime, nor is intent without an action. *See generally*, Edwin Keedy, *Criminal Attempts at Common Law*, 102 U. PENN. L. REV. 464, 466-68 (1954) (collecting cases). Logically, therefore, regardless of the *mens rea* necessary to complete the choate offense, an attempt requires proof of specific intent, “because there is no such criminal offense as an attempt to achieve an unintended result.” *King*, 422 S.C. at 57, 810 S.E.2d at 23 (*quoting Keys v. State*, 766 P.2d 270, 273 (Nev. 1988) (internal quotation marks and emphasis deleted)).

A defendant’s malice, however, is specific to his target. *See State v. Stuckey*, 347 S.C. 484, 502, 556 S.E.2d 403, 412 (Ct. App. 2001) (“Malice is the wrongful intent to injury another and indicates a wicked or depraved spirit intent on doing wrong.” (internal quotation marks omitted)). When a defendant attempts to kill one person but by mistake kills another, the doctrine of transferred intent applies. In that circumstance, the defendant is still guilty, because “if one design[s] to kill A but by accident kills B, his crime is the same as if he had executed his intended purpose.” *State v. Smith*, 33 S.C.L. (2 Strob.) 77, 80 (1847) (cleaned up). In such circumstances, “the actor’s intent to kill his intended victim is said to be transferred to his actual victim.” *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). However, the doctrine of transferred intent applies only to *general* intent crimes. *State v. Williams*, 427 S.C. 148, 157, 829 S.E.2d 702, 707 (2019). It does not apply to attempted murder. *Geter*, 445 S.C. at 148, 912 S.E.2d at 259. “[T]he attempt to kill must be directed toward a person the defendant specifically intended to kill.” *Id.*

The evidence here, in the light most favorable to the state, demonstrated that Appellant intended to kill someone else, but mistakenly shot at Johnson and Summers. The state charged

him with attempted murder, under the theory that he “did...attempt to kill April Johnson [(and Summers)].” R.*(Indictments). But Appellant did not specifically intend the death of any of the occupants in that car. The doctrine of transferred intent saves the murder convictions, but it has no application to the attempted murder convictions.

The reason why lies in the difference of *mens rea* required by murder and attempted murder. Start with murder. Murder is a general intent crime; it is accomplished by any of three⁶ mental states: specific intent, intent to inflict grievous injury, or reckless indifference. *State v. Kinard*, 373 S.C. 500, 503-04, 646 S.E.2d 168, 169 (Ct. App. 2007), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). Attempted murder, by contrast, is a specific intent crime, and there can be no crime for attempting to achieve an unintended result. *King*, 422 S.C. at 57, 810 S.E.2d at 23.

The state’s evidence demonstrates that Appellant *did not* intend the result of his actions. He had no intention of killing Johnson and Summers, he intended to kill his “opps.” However, the indictment does not charge Appellant for attempting to kill his “opps,” it charges him with attempting to kill Johnson and Summers. But such a finding would require application of the legal fiction of transferred intent, which is not applicable to attempted murder. *Geter*, 445 S.C. at 148, 912 S.E.2d at 259. If anything, Appellant could be found guilty of assault and battery of a high and aggravated nature or assault and battery in the first degree, since both are general intent crimes and the doctrine of transferred intent would apply. *See generally, e.g., United States v. Clemons*, 442 S.C. 670, 901 S.E.2d 280 (2024) (assault and battery in the second degree and domestic violence of a high and aggravated nature are general intent crimes). But Appellant was

⁶ *Kinard* also stated that murder could be established by “intent to commit a felony (felony murder rule).” *Kinard*, 373 S.C. at 504, 646 S.E.2d at 169. However, this portion of *Kinard* is no longer good law, following the Supreme Court’s recognition that “felony murder” does not exist in South Carolina. *State v. Smith*, 430 S.C. 226, 234, 845 S.E.2d 495, 499 (2020).

not charged with those offenses, he was charged with attempted murder. And, for the foregoing reasons, the state's evidence did not establish attempted murder as a matter of law. Therefore, the trial court should have directed a verdict on the attempted murder indictments. Because it did not, this Court should reverse.

CONCLUSION

For the foregoing reasons, Appellant's convictions and sentences should be reversed and this case should be remanded for a new trial. In the alternative, Appellant's convictions and sentences for attempted murder should be vacated.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2026.