

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Florence County  
The Honorable D. Craig Brown, Circuit Court Judge

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Appellate Case No. 2013-001445

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**RECEIVED**

JUN 30 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

WILLIAM JAMELL THOMAS, JR.,

APPELLANT.

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**STATE'S RESPONSE TO APPELLANT'S MOTION TO CERTIFY**

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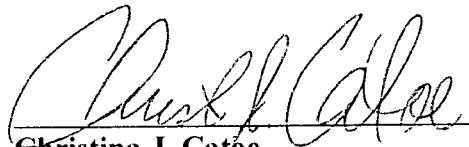
On June 18, 2014, Appellant submitted his Initial Brief to the South Carolina Court of Appeals and also submitted a Motion to Certify Appellant's Case for Review by the South Carolina Supreme Court. In his Motion to Certify, Appellant asserts that the case involves a legal principle of major importance; specifically, whether or not the new attempted murder statute requires a specific intent to kill. While the State does not dispute that this question is significant, Appellant's case is not the appropriate vehicle to decide this issue because the issue is clearly unpreserved for review where defense counsel never requested any particular charge on attempted murder and never objected to the charge as given. (See Attachment – Trial Transcript, p. 552-64; p. 590-610). Therefore, the State requests that this Court deny Appellant's Motion to Certify.

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENT**

June 27, 2014

ATTACHMENT

1 MR. JEPERTINGER: Judge, I think this would be an  
2 appropriate time to have a charge conference, if that would be  
3 okay with the Court.

4 THE COURT: Mr. Wilson?

5 MR. WILSON: That's fine. I don't have any objection to  
6 it.

7 MR. JEPERTINGER: Your -- Your Honor, specifically in  
8 this case, I would ask based on State v. Price and following  
9 State v. Belcher that the Court would include that malice may  
10 be inferred from the use of a deadly weapon. Judge, there is  
11 no evidence whatsoever either from any of the State's  
12 witnesses nor from the defense witnesses to show that this was  
13 anything less than a premeditated shooting of Brittany  
14 Singletary.

15 Obviously, from the State's perspective it was William  
16 Jamell Thomas, Jr., that did the shooting. The defense is  
17 going to argue that it was a guy named Joe that did the  
18 shooting. There would be nothing to mitigate the crime.  
19 There was no indication of any self-defense. Nothing to  
20 lessen what happened. It would have been a cold-blooded  
21 shooting, Judge, and I would specifically ask for that charge.

22 THE COURT: All right. Mr. Wilson?

23 MR. WILSON: Your Honor, there is testimony in the record  
24 that there was a struggle between Joe and -- and -- and the  
25 victim. I'm sorry. Between Joe and this Johnny person and

1 that the gun fired when that was happening and -- and that  
2 that's how she was shot. Now, if the issue had been -- you  
3 know, and as far as this trial is concerned, I would think  
4 that that was certainly evidence that, you know, which would  
5 -- which would be less than malice if -- if that were true.

6 Secondly, the victim testified, as best I remember, that  
7 -- that -- that the gun was pulled out, that the first shot  
8 was fired, then he -- that the person -- that the defendant  
9 walked away and then turned around and the gun fired a second  
10 time, and that that's when she was hit. She didn't say if --  
11 as best I recall, she didn't say, well, he turned around and  
12 he said some threatening words to me and then fired the second  
13 shot and hit me, which would indicate that he was  
14 intentionally shooting her. Even if you get -- even if you  
15 listen to his story -- to her story, and if that's the only  
16 story that you were going by, she doesn't say that.

17 MR. JEPERTINGER: But I do recall there's testimony there  
18 from Ms. Singletary saying that a line that he said was I  
19 ought to kill you and then kill myself, because apparently she  
20 wasn't dead at the time of when he shot.

21 MR. WILSON: Well, this is after. That would have been  
22 after ---

23 MR. JEPERTINGER: But he ---

24 MR. WILSON: --- the alleged shooting had taken place.

25 THE COURT: Well, I've already made my decision. I'm not

1 going to charge that language and this is why I'm not going to  
2 charge it. In State v. Price, it goes into and it says --  
3 bear with me just a second here.

4 (Whereupon, there is a pause in the proceedings.)

5 THE COURT: Well, let me look at -- do this. I've looked  
6 at State v. Price. I want to look at Belcher over lunch.  
7 Price dealt with an assault and battery with intent to kill.  
8 Assault and battery with intent to kill, assault with intent  
9 to kill, assault and battery of a high and aggravated nature,  
10 all of that was changed with the enactment of the Omnibus  
11 Crime Bill, which for instance, ABHAN is now codified and  
12 ABHAN by statute is specifically stated within the statute  
13 that it is a lesser included offense of attempted murder.  
14 What we have here -- I mean the statute specifically says that  
15 it is a lesser included offense of attempted murder.

16 Price says -- and Mr. Jepertinger argued to the Court  
17 that it was not a self-defense type of issue. However, the  
18 case says where evidence is presented that would reduce,  
19 mitigate, excuse or justify. So it's not just a self-defense  
20 type of situation that would warrant the charge.

21 MR. JEPERTINGER: Sure.

22 THE COURT: So ---

23 MR. JEPERTINGER: I understand that. I just didn't think  
24 based on my perception of the testimony elicited both from Ms.  
25 Singletary and even from the defense witnesses ---

1 THE COURT: Right.

2 MR. JEPERTINGER: --- that it did any of those things  
3 that Price addresses. I just used self-defense as an example,  
4 Judge.

5 THE COURT: Right. Well, it encapsulates all of that,  
6 not ---

7 MR. JEPERTINGER: Sure.

8 THE COURT: --- just self-defense excusing or justifying  
9 it, but reduce or mitigate.

10 MR. JEPERTINGER: That's correct.

11 THE COURT: I mean it includes that language as well and  
12 we had previously had this discussion about what I felt like  
13 as the testimony came out during the course of the last couple  
14 of days that I felt like certainly an attempted murder charge  
15 was warranted, as well as ABHAN, assault and battery high and  
16 aggravated nature, based upon the testimony that's been  
17 elicited, as well as the fact that the statute says that it's  
18 a lesser included offense of attempted murder.

19 I will look at Belcher over lunch, but my leanings at  
20 this point are not to include that language that you've  
21 requested about the inference of malice ---

22 MR. JEPERTINGER: Okay.

23 THE COURT: --- by the use of deadly weapon.

24 MR. JEPERTINGER: I understand. The other thing, too,  
25 Judge, I don't know if you're going to address Count II in

1 terms of how you're going to say that to the jury in terms of  
2 the assault and battery high and aggravated nature that --  
3 that -- I guess you would say assault and battery of a high  
4 and aggravated nature would be considered a crime of violence  
5 under 16-23-10 and 30, I guess both since 30 is the charging  
6 statute, 50 is the penalty, and I believe 10 is the  
7 definitional statute.

8 THE COURT: Well, what I would say -- and that needs to  
9 be changed a little bit -- that you heard testimony that the  
10 defendant has a prior conviction of a crime of violence, that  
11 being assault and battery of a high and aggravated nature, and  
12 you may only consider this prior conviction as a proof of an  
13 element of the crime of possession of a pistol by a person  
14 convicted of a crime of violence. You are not to consider the  
15 defendant's prior conviction as proof or evidence of the  
16 defendant's guilt of the charges that he's currently on trial  
17 for. Mr. Wilson?

18 MR. WILSON: That's satisfactory.

19 MR. JEPERTINGER: As long as that, you know, fits that --  
20 that was ---

21 THE COURT: The language ---

22 MR. JEPERTINGER: --- considered an element of the crime.  
23 Yes, sir.

24 THE COURT: Right.

25 MR. JEPERTINGER: Mm-hmm.

1 THE COURT: Okay. I mean the -- on that the State must  
2 prove beyond a reasonable doubt that the defendant knowingly  
3 possessed or acquired a handgun within the state and that the  
4 defendant is a person who has been convicted of a crime of  
5 violence in any court in the United States. I'm going to need  
6 all that stuff.

7 THE LAW CLERK: Yeah.

8 (Whereupon, there is a pause in the proceedings.)

9 THE COURT: All right. You heard testimony that the  
10 defendant has a prior conviction for assault and battery of a  
11 high and aggravated nature, which is a crime of violence. You  
12 may only consider the defendant's prior conviction -- this  
13 prior conviction -- this conviction -- all right.

14 You may only consider this testimony as proof of an  
15 element of the crime of possession of a pistol by a person  
16 convicted of a crime of violence. You are not to consider  
17 this defendant's prior conviction as proof of the defendant's  
18 guilt of the charges -- consider the defendant's prior  
19 conviction as proof of the defendant's guilt. You are not --  
20 let's see. I'm sorry.

21 You may only consider this testimony as proof of an  
22 element of the crime of possession of a pistol by a person  
23 convicted of a crime of violence. You are not to consider the  
24 defendant's prior conviction as proof of the defendant's guilt  
25 of the charges for which he is currently being tried.

1 All right. Any objection to that?

2 MR. JEPERTINGER: Sounds good to me.

3 MR. WILSON: I don't have any ---

4 MR. ETHERIDGE: No, that's fine.

5 MR. WILSON: I don't have any objection, Your Honor.

6 (Whereupon, there is a pause in the proceedings.)

7 THE COURT: Let me ask you this. Because of the  
8 testimony I allowed in regarding the incident that occurred on  
9 that Friday evening -- that Friday evening, this charge -- you  
10 have also heard evidence that the defendant committed a bad  
11 act not the subject of a conviction other than the ones for  
12 which the defendant is now on trial. This testimony, if you  
13 conclude it is true, may only be considered by you on the  
14 question of motive and for no other reason and no other  
15 purpose. You may give this evidence the weight and value, if  
16 any, which you find it should have on the sole issue of  
17 motive. You must not consider evidence of the commission of  
18 the bad act not the subject of a conviction as proof of the  
19 defendant's guilt of the charges we are trying today. Mr.  
20 Wilson?

21 MR. WILSON: Yes, sir. I have -- I think that's  
22 satisfactory, sir.

23 THE COURT: Okay. Now, I'm going to go from the top and  
24 I'm going to just hit the highlights on this. If you want me  
25 to read a specific portion of the charge, we'll certainly do

1 so.

2 Multiple charges. You'll be asked to write a separate  
3 verdict of guilty or not guilty for each charge alleged in the  
4 indictment. You must decide each charge separately on the  
5 evidence.

6 Charge, arrest, and indictment is not evidence in this  
7 case. Presumption of innocence. Reasonable doubt. Proof  
8 beyond a reasonable doubt is proof that leaves you firmly  
9 convinced of the defendant's guilt. The kind of doubt that  
10 would cause a reasonable person to hesitate to act.

11 Direct and circumstantial evidence. Duties of the judge  
12 and jury. Expert witnesses. Pretty much along the same  
13 charge that I've already given them that they're not to give  
14 them any more weight. That they're allowed -- they're to use  
15 -- not give them any greater weight than that of any other  
16 witness simply because they are an expert. You're not  
17 required to accept an expert's opinion even though it is not  
18 contradicted. Police officer charge, which tells them that  
19 they are not to give any more weight to a police officer's  
20 testimony solely because they are a police officer.

21 Failure of the defendant to testify. Intent. Then go  
22 into the offense of attempted murder. And then assault and  
23 battery of a high and aggravated nature as a lesser included  
24 offense. And then the possession of a pistol by a person  
25 convicted of a crime of violence. Alibi, which says -- do

1 y'all want me to read that? I mean it's a standard alibi  
2 charge. I mean it's ---

3 MR. WILSON: Yes, sir.

4 THE COURT: You want me to read it?

5 MR. WILSON: Yes, sir. No. Meaning now?

6 THE COURT: Yeah.

7 MR. WILSON: All right. No, sir.

8 THE COURT: All right. And then I mean the conclusion,  
9 which is standard type conclusion, conclusory statements. And  
10 certainly give each of you an opportunity to object or make  
11 any exceptions to the charge after I've charged the jury.

12 The verdict form. Pretty standard verdict form. I don't  
13 have it right here, but I'll certainly give you -- first, they  
14 consider the attempted murder, guilty or not guilty. If they  
15 find the defendant not guilty of attempted murder, then they  
16 go to the lesser included assault and battery high and  
17 aggravated nature. If they find him guilty of attempted  
18 murder, they go down and consider Count II and don't even go  
19 to the assault and battery high and aggravated nature.

20 But if he's found not guilty of attempted murder, then  
21 they're instructed to go and consider the lesser included of  
22 ABHAN. Once they've considered ABHAN, then they consider  
23 Count II the indict -- of the indictment on the possession of  
24 a pistol by a person convicted of a crime of violence. It's a  
25 pretty standard verdict form, but certainly you all -- I'll

1 let you look at it before it goes back.

2 Let me ask this question. Is there any objection to me  
3 sending a copy of the charge back to the jury from the State?

4 MR. JEPERTINGER: Not from the State.

5 THE COURT: Defense counsel?

6 MR. WILSON: No, sir. No objections to that. Judge, in  
7 terms of the -- the form of the verdict form ---

8 THE COURT: Yes, sir.

9 MR. WILSON: I understand that you're going to have them  
10 look at attempted murder and say guilty or not guilty.

11 Obviously, if they say not guilty, then they can look at ---

12 THE COURT: ABHAN.

13 MR. WILSON: --- ABHAN. Is there just going to be a not  
14 guilty?

15 THE COURT: On what?

16 MR. WILSON: Just not guilty.

17 MR. ETHERIDGE: Complete not guilty.

18 THE COURT: No. They've got to answer each -- each  
19 question unless they determine not guilty on attempted murder.  
20 Then they skip down to number two to consider the lesser  
21 included of attempted murder, which is ABHAN.

22 MR. WILSON: Right.

23 THE COURT: Then they have not guilty or guilty on that  
24 count.

25 MR. WILSON: Right.

1 THE COURT: And then they go to question three, which is  
2 the pistol charge -- the weapon charge.

3 MR. WILSON: And the reason I'm asking is -- is that if  
4 the jury believed the testimony of the alibi and the defendant  
5 ---

6 THE COURT: Right.

7 MR. WILSON: --- then they could just find him not guilty  
8 and not have to go -- if that's what they believe and if  
9 that's ---

10 THE COURT: If they believe that, then they can check not  
11 guilty on each one of these questions.

12 MR. WILSON: All right.

13 THE COURT: Okay?

14 MR. WILSON: Yes, sir.

15 THE COURT: All right. Anything else from the State at  
16 this time?

17 MR. JEPERTINGER: No, sir.

18 THE COURT: Defense counsel?

19 MR. WILSON: Nothing further, Your Honor.

20 THE COURT: All right. Is the State going to open on the  
21 law?

22 MR. JEPERTINGER: No. I will -- I will close and let Mr.  
23 Wilson argue first.

24 THE COURT: All right. Mr. Wilson?

25 MR. WILSON: I decline -- no, sir. I'll do that. That's

1 okay.

2 THE COURT: How long do you all expect on closing  
3 arguments?

4 MR. WILSON: I wouldn't think more than thirty minutes.

5 THE COURT: All right.

6 MR. JEPERTINGER: I might be a tad longer since I have  
7 the burden of proof.

8 THE COURT: All right. Well, I don't -- I mean I'm not  
9 going to sit here and say you've got fifteen minutes or twenty  
10 minutes or whatever, but if you hear me kind of clear my  
11 throat a few times, you know it's time to start wrapping it  
12 up.

13 MR. WILSON: Yes, sir.

14 THE COURT: Okay? All right. We'll stand at ease until  
15 2:15.

16 (Whereupon, there is a break in the proceedings from 1:09  
17 p.m. until 2:16 p.m.)

18 THE COURT: All right. Anything from the State before I  
19 bring the jury in?

20 MR. JEPERTINGER: Judge, I'm sitting here with baited  
21 breath for your decision.

22 THE COURT: I am not going to include that language in  
23 the charge.

24 MR. JEPERTINGER: Very good, Judge. You've satisfied a  
25 yearn that I had to know what you were going to do.

1 THE COURT: Well, now you know.

2 MR. JEPERTINGER: Thank you, Judge. Nothing further,  
3 Your Honor.

4 THE COURT: All right.

5 MR. JEPERTINGER: Just -- just for the record though in  
6 all -- in all candor and seriousness, the State would object,  
7 Your Honor, to the lack of that language in your charge.

8 THE COURT: So noted for the record. All right. I'm  
9 going to bring the jury out. We're going to go into closing  
10 arguments and then I'm going to go into a charge -- into the  
11 charge on the law. Once closing arguments begin, you will not  
12 be allowed to leave this courtroom until after I have finished  
13 charging this jury on the law. Bring me the jury, please,  
14 ma'am. So if you want to leave, now is your time.

15 (Whereupon, the jury enters the courtroom at 2:19 p.m.)

16 THE COURT: All right. Madam Forelady and ladies and  
17 gentlemen of the jury, as I told you before lunch, the only --  
18 that which we have remaining to do is closing arguments by  
19 counsel and my charge on the law. At this time, I am going to  
20 recognize defense counsel for closing arguments. He will be  
21 followed by the prosecutor, Mr. -- or the solicitor, Mr.  
22 Jepertinger. I will remind you all, ladies and gentlemen,  
23 that arguments of counsel is not evidence in this case. It is  
24 not evidence in this case. Mr. Wilson, you're recognized,  
25 sir.

1 pistol. No doubt.

2 Search for the truth. It's so very important. The road  
3 map that we have in this case was where Brittany has been.  
4 The trails she has traveled, good and bad. Your verdict today  
5 can help her to reach a safe harbor in her life and bring  
6 closure to this horrible, horrible crime she suffered at the  
7 hands of William Jamell Thomas, Jr.

8 I ask you based on the evidence to find this man guilty  
9 of both attempted murder and the weapons charge. Thank you.

10 CHARGE ON THE LAW

11 THE COURT: All right. Ladies and gentlemen, it is now  
12 my duty as the trial judge under the constitution of this  
13 state to charge and instruct you on the law applicable to this  
14 case. It is your duty as jurors to accept and apply the law  
15 as I will now state it to you.

16 Furthermore, it is your exclusive duty to decide all the  
17 issues of fact in this case, and to determine the effect,  
18 value, weight, and truth of the evidence. Now, both the State  
19 and the defendant have a right to expect that you will  
20 carefully consider and evaluate the evidence and apply the law  
21 of this case to it, so that in the end, both the State of  
22 South Carolina and the defendant will receive a fair and  
23 impartial trial.

24 I want you to understand that when I use the word  
25 defendant, I refer to William Jamell Thomas, Jr. Furthermore,

1 it is important to understand that the indictment in this case  
2 alleges two different offenses against the defendant. The  
3 charges alleged in the indictment are attempted murder and  
4 possession of a pistol by a person convicted of a crime of  
5 violence.

6 To these charges, the defendant has entered a plea of not  
7 guilty. This plea of not guilty places the burden of proof on  
8 the State to prove the guilt of the defendant to you, the  
9 jury, beyond a reasonable doubt.

10 As I mentioned above, the indictment in this case alleges  
11 two separate and distinct offenses against the defendant. You  
12 must decide each charge separately on the evidence and the law  
13 applicable to it, uninfluenced by your decision as to any  
14 other charge. The defendant may be convicted or acquitted on  
15 any or all of the offenses charged. You will be asked to  
16 write a separate verdict of guilty or not guilty for each  
17 charge alleged in the indictment.

18 I remind you that the fact the defendant was arrested,  
19 charged and indicted in this case is not evidence in this case  
20 and cannot be considered by you as evidence of guilt in this  
21 case, nor does it create any presumption or inference of  
22 guilt. The indictment is simply the formal written instrument  
23 which contains the charges made against the defendant. It is  
24 the formal document by which this case is brought into this  
25 court.

1 It is vital to understand that the defendant is presumed  
2 under the law to be innocent of these charges. The defendant  
3 has no obligation to prove his innocence. It is a fundamental  
4 rule of our law that a defendant, irrespective of the  
5 seriousness of the charges against him, is always presumed  
6 innocent of the crimes for which he is charged, unless and  
7 until his guilt has been proven by evidence that satisfies  
8 you, the jury, beyond a reasonable doubt.

9 The presumption of innocence is not a mere legal theory  
10 or a legal phrase. The presumption of innocence is very  
11 important and you need to understand that this presumption  
12 accompanies the defendant from the time of his arrest and  
13 appearance in this court and continues with the defendant even  
14 after you retire to the jury room to deliberate. In other  
15 words, the defendant receives the benefit of the presumption  
16 of innocence until the very end of this trial, when you, the  
17 jury, will deliberate upon the evidence and decide whether the  
18 State has proven his guilt beyond a reasonable doubt.

19 Now, ladies and gentlemen, what is a reasonable doubt in  
20 the law? A reasonable doubt is the kind of doubt that would  
21 cause a reasonable person to hesitate to act.

22 Proof beyond a reasonable doubt is proof that leaves you  
23 firmly convinced of the defendant's guilt. Now, there are  
24 very few things in this world that we know with absolute  
25 certainty, so even in criminal cases the law does not require

1 proof that overcomes every possible doubt. However, if based  
2 on your consideration of the evidence, you are firmly  
3 convinced that the defendant is guilty of the crimes charged,  
4 you must find him guilty. If, on the other hand, you think  
5 there is a real possibility that he is not guilty, you must  
6 give him the benefit of the doubt and find him not guilty.

7 Jurors, please understand that reasonable doubt may arise  
8 from evidence which has been presented in the case or from the  
9 lack of evidence in the case. It is your responsibility to  
10 determine whether or not reasonable doubt exists as to the  
11 guilt of this defendant.

12 I charge you that the defendant is entitled to every  
13 reasonable doubt arising in the whole case. Now, if, upon any  
14 issues of fact essential to conviction and a verdict of  
15 guilty, you have a reasonable doubt as to how that issue  
16 should be resolved, it would be your duty to resolve that  
17 reasonable doubt in favor of the defendant.

18 Thus, in summary, it is important to understand that a  
19 defendant is not required to prove his innocence. Instead,  
20 the State is required by law to prove every essential element  
21 of the offenses charged against the defendant by evidence  
22 which satisfies you of his guilt beyond a reasonable doubt.  
23 Only then can you convict the defendant and find him guilty.

24 Now, there are two types of evidence which are generally  
25 presented during a trial: direct evidence and circumstantial

1 evidence.

2 Direct evidence is the testimony of a person who claims  
3 to have actual knowledge of a fact, such as an eyewitness. It  
4 is evidence which immediately establishes the main fact to be  
5 proved.

6 Circumstantial evidence is proof of a chain of facts and  
7 circumstances indicating the existence of a fact. It is  
8 evidence which immediately establishes collateral facts from  
9 which the main fact may be inferred. Circumstantial evidence  
10 is based on inference and not on personal knowledge or  
11 observation.

12 The law makes absolutely no distinction between the  
13 weight or value to be given to either direct or circumstantial  
14 evidence. Nor is a greater degree of certainty required of  
15 circumstantial evidence than of direct evidence. You should  
16 weigh all of the evidence in the case. Now, if, after  
17 weighing all the evidence, you are not convinced of the guilt  
18 of the defendant beyond a reasonable doubt, you must find the  
19 defendant not guilty.

20 Now, during this trial, you and I have had separate  
21 duties to perform. As the trial judge, it is my  
22 responsibility to preside over this trial, and I also have the  
23 duty to rule upon the admissibility of the evidence offered  
24 during the process of this trial. In that regard, you are to  
25 consider only the competent evidence before you, and you are

1 to disregard from your mind any testimony ordered stricken  
2 from the record of this case during the progress of this  
3 trial, if there was any. And you are to consider only the  
4 testimony which has been presented from this witness stand,  
5 together with any exhibits admitted into the record of this  
6 case and any stipulations of counsel made into the record, if  
7 there were any.

8         Furthermore, I have the additional duty to charge you on  
9 the applicable law of this case and in that regard, I am the  
10 sole judge of the law in this case. It is your duty to accept  
11 and apply the law as I state it to you. If you have any  
12 preconceived ideas as to what the law is, or what the law  
13 ought to be, and it does not agree with what I tell you the  
14 law is, you are obligated under your oath to abandon these  
15 preconceptions, because you are sworn to accept the law  
16 precisely as I state it to you.

17         Now, in this trial you are the sole and exclusive judge  
18 of the facts, and I am the judge of the law. Do not infer  
19 that I have any opinion about the facts in this case from  
20 anything that I have said during the course of this trial in  
21 ruling upon the admissibility of evidence or otherwise, or  
22 from anything that I say during the course of this charge to  
23 you. In this regard, the law simply does not permit me to  
24 have an opinion about the facts. As jurors, it is your duty  
25 and your duty alone to determine the effect, value, weight,

1 and truth of the evidence presented during the course of this  
2 trial.

3 In determining what the facts in this case are, you must  
4 judge the credibility, which simply means the believability,  
5 of the witnesses and the value of weight to be given to their  
6 testimony. You alone must decide the force, effect and truth  
7 of the testimony. In making this decision, there are many  
8 things you may, and should, take into consideration, such as  
9 the appearance and manner of the witness on the stand, a  
10 characteristic often referred to as the demeanor of a witness.

11 Was the witness forthright or hesitant? Was the  
12 witness's testimony consistent or did it contain  
13 discrepancies? What was the ability of the witness to know  
14 the facts about which he or she testified? Did the witness  
15 have a cause or reason to be biased and prejudiced in favor of  
16 the testimony he or she gave? Was the testimony of the  
17 witness corroborated or made stronger by other testimony and  
18 evidence or was it made weaker or impeached by such other  
19 testimony and evidence?

20 As jurors, please understand you have the right to  
21 believe a small portion of a witness's testimony and discard  
22 the larger portion or vice versa. You may believe all of a  
23 witness's testimony or none. You may believe the testimony of  
24 a single witness against that of many witnesses or the other  
25 way around.

1 In exercising your mental processes and attempting to  
2 decide the truth, the law simply requires that you exercise  
3 your good judgment, your common sense, your sense of logic and  
4 reason, and your experiences in life. You then apply these  
5 attributes to the evidence and apply the law as I state it to  
6 you, and thus arrive at a verdict.

7 Now, during the course of this trial, you heard the  
8 testimony of an individual qualified as an expert witness. As  
9 I told you before and I'm going to tell you again, ladies and  
10 gentlemen, the rules of evidence ordinarily do not permit  
11 witnesses to testify to opinions or conclusions. An exception  
12 to this rule exists for witnesses that we call expert  
13 witnesses. A witness who, by education and experience, has  
14 become an expert in some art, science, profession, or calling  
15 may state an opinion as to a relevant and material matter in  
16 which the witness claims to be an expert, and may also state  
17 the reasons for the opinion.

18 You should consider any expert opinion received in  
19 evidence in this case and, like any other evidence, give it  
20 the weight you think it deserves. If you decide that the  
21 opinion of an expert witness is not based on sufficient  
22 education and experience, or if you conclude that the reasons  
23 given in support of the opinion are not sound, or that the  
24 opinion is outweighed by other evidence, you may disregard the  
25 opinion entirely.

1           Furthermore, an expert witness's testimony is to be given  
2 no greater weight than that of other witnesses simply because  
3 the witness is an expert. Further, you are not required to  
4 accept an expert's opinion, even though it is not  
5 contradicted.

6           Now, ladies and gentlemen, you have also heard the  
7 testimony of police officers during this trial. Please  
8 understand that the testimony of a police officer is not  
9 entitled to more weight than that of any other witness. You  
10 are the sole judges of the credibility of a witness, and you  
11 are not to give more weight to a police officer's testimony  
12 solely because he or she is a police officer. Rather, you  
13 should judge an officer's testimony by the same standards that  
14 you apply to all other witnesses.

15           Now, you heard testimony or evidence that the defendant  
16 committed a bad act not the subject of a conviction other than  
17 the ones for which the defendant is now on trial. This  
18 testimony, if you conclude that it is true, may only be  
19 considered by you on the question of motive and for no other  
20 reason and no other purpose. You may give this evidence the  
21 weight and value, if any, which you find it should have on the  
22 sole issue of motive. You must not consider evidence of the  
23 commission of the bad act not the subject of a conviction as  
24 proof of the defendant's guilt of the charges that we are  
25 trying here this week or today.

1           Now, I instruct you and emphasize that the fact, ladies  
2 and gentlemen, that the defendant did not testify is not a  
3 factor to be considered by you in any way in your  
4 deliberations and in your consideration on the question of the  
5 guilt or the innocence of the defendant. It -- it must not be  
6 considered by you in any manner whatsoever. A defendant has  
7 the constitutional right to remain silent, and the assertion  
8 of this right must not be considered by you in your  
9 deliberations.

10           I repeat, under your oath, you are to draw no conclusion  
11 whatsoever from the fact that the defendant in this case did  
12 not testify. The fact that this defendant did not testify  
13 should not even be discussed in the jury room. The burden of  
14 proof, as I have stated to you, is on the State. The  
15 defendant is not required to prove his innocence. The burden  
16 of proof remains on the State to prove guilt beyond a  
17 reasonable doubt.

18           Now, in order, ladies and gentlemen, to establish  
19 criminal liability, criminal intent is required. For example,  
20 the mental state required to be proven by the State for a  
21 particular crime might be purpose, intent, knowledge,  
22 recklessness, or criminal negligence. Criminal intent must be  
23 proven by the State beyond a reasonable doubt. Criminal  
24 intent is always a matter that must be determined by the jury  
25 from the facts and circumstances surrounding the situation.

1 Now, there is no way to prove intent to a mathematical  
2 certainty. There is no way that medical science can dissect a  
3 person's brain and determine what the person had in mind. So  
4 the law says that criminal intent may be inferred from the  
5 circumstances shown to have existed. This is how you make a  
6 determination of whether or not the element requiring intent  
7 was present. It is not necessary to establish intent by  
8 direct and positive evidence, but intent may be established by  
9 inference in the same way as any other fact by taking into  
10 consideration the acts of the parties and all the facts and  
11 circumstances of the case.

12 Criminal intent is a mental state, a conscious  
13 wrongdoing. It is up to you to determine what the defendant  
14 intended to do based on the circumstances shown to have  
15 existed.

16 Criminal intent can arise from action or a failure to  
17 act. It may arise from negligence, recklessness, or an  
18 indifference to duty or to consequences that is considered by  
19 the law to be the equivalent of criminal intent.

20 Now, the defendant, ladies and gentlemen, is charged with  
21 attempted murder. In order to prove this crime, the State  
22 must prove the defendant attempted to kill another person or  
23 persons with malice aforethought, either express or implied.

24 Malice is hatred, ill will, or hostility towards another  
25 person or persons. It is the intentional doing of a wrongful

1 act without just cause or excuse and with an intent to inflict  
2 an injury or it is, under the law, circumstances that the law  
3 will infer an evil intent.

4 Malice aforethought does not require that malice exists  
5 for any particular time before the act is committed, but  
6 malice must exist in the mind of the defendant just before and  
7 at the time the act is committed. Therefore, there must be a  
8 combination of the previous evil intent and the act.

9 Malice aforethought may be express or inferred. Inferred  
10 also means implied. These terms, express and inferred or  
11 implied, do not mean different kinds of malice but merely the  
12 manner in which malice may be shown to exist. That is either  
13 by direct evidence or by inference from the facts and  
14 circumstances which are proved.

15 Express malice is shown when a person speaks words which  
16 express hatred or ill will for another or when the person  
17 prepared beforehand to do the -- to do the act which was later  
18 accomplished; for example, lying in wait for a person or any  
19 other act of preparation going to show that the deed was  
20 within the defendant's mind would be express malice. Malice  
21 may be inferred from conduct showing a total disregard for  
22 human life.

23 If facts are proved beyond a reasonable doubt sufficient  
24 to raise an inference of malice to your satisfaction, this  
25 inference would be simply an evidentiary fact to be considered

1 by you, the jury, along with the other evidence in the case,  
2 and you may give it the weight you decide it should receive.

3 A specific intent to kill is not an element of attempted  
4 murder, but there must be a general intent to commit a serious  
5 bodily injury. Intent means intending the result which  
6 actually occurs; not accidentally or involuntarily. Intent  
7 may be shown by acts and conduct of the defendant and other  
8 circumstances from which you may naturally and reasonably  
9 infer intent. Evidence of the character of the act or crime,  
10 the character of the instrument used, the manner in which it  
11 was used, the purpose to be accomplished, and the resulting  
12 wounds or injuries may be considered in determining the intent  
13 with which the criminal act or crime was committed. Intent  
14 may also be inferred when it is demonstrated that the  
15 defendant voluntarily and willfully commits an act, the  
16 natural tendency of which is to destroy another's life.

17 Once again, ladies and gentlemen, to prove attempted  
18 murder, the State must prove beyond a reasonable doubt that  
19 the defendant attempted to kill another person with malice  
20 aforethought.

21 Now, if you find that the State has failed to prove  
22 beyond a reasonable doubt that the defendant committed  
23 attempted murder, you must then determine whether the State  
24 has proved beyond a reasonable doubt that the defendant  
25 committed the lesser included offense of assault and battery

1 of a high and aggravated nature. To prove assault and battery  
2 of a high and aggravated nature, the State must first prove  
3 beyond a reasonable doubt that the defendant unlawfully  
4 injured another person.

5 Next, the State must prove beyond a reasonable doubt that  
6 either great bodily injuries -- injury resulted or that the  
7 act was accomplished by means likely to produce death or great  
8 bodily injury.

9 Great bodily injury is defined as bodily injury which  
10 causes a substantial risk of death or which causes serious,  
11 permanent disfigurement or protracted loss or impairment of  
12 the function of a bodily member or organ.

13 The defendant, ladies and gentlemen, is also charged with  
14 possession of a pistol by a person convicted of a crime of  
15 violence. The State must prove beyond a reasonable doubt that  
16 the defendant knowingly possessed or acquired a handgun within  
17 this state and that the defendant is a person who has been  
18 convicted of a crime of violence in any court of the United  
19 States.

20 You heard testimony that the defendant has a prior  
21 conviction for assault and battery of a high and aggravated  
22 nature which is a crime of violence. You may only consider  
23 this testimony as proof of an element of the crime of  
24 possession of a pistol by a person convicted of a crime of  
25 violence. You are not to consider the defendant's prior

1 conviction as proof of the defendant's guilt of the charges  
2 for which he is currently being tried.

3 Now, the defendant has raised the defense, ladies and  
4 gentlemen, of alibi. In order to establish an alibi, it must  
5 be shown that the defendant was at another specified place at  
6 the time the crimes were committed, and that it was,  
7 therefore, impossible for the defendant to have been at the  
8 scene of the crime. Mere denial of presence at the scene of  
9 the crime does not constitute an alibi.

10 Now, there is no burden on the defendant to prove an  
11 alibi. The burden is on the State to prove beyond a  
12 reasonable doubt that the defendant was actually present at  
13 the scene of the crime, actually participated in the crime,  
14 and was not somewhere else. In other words, the State has the  
15 burden of disproving the defendant's alibi defense.

16 Now, ladies and gentlemen, I am now drawing near the end  
17 of my charge and I want you to clearly understand that you are  
18 not partisans or advocates for the State of South Carolina or  
19 the defendant. It is your duty by your joint deliberations  
20 to determine the truth in this case, giving to the defendant  
21 the benefit of every reasonable doubt on each and every issue.  
22 Then, to the facts which you determine to be true, you should  
23 take and apply the law which has been given to you by this  
24 Court and thus arrive at a verdict which speaks the truth in  
25 this case. In fact, the word verdict, which has a Latin

1 derivative, means a true saying. Thus, when you have  
2 accomplished these responsibilities, you will have satisfied  
3 your oath as jurors and you will have discharged your duty to  
4 this Court.

5 Now, once you retire to the jury room, the bailiff will  
6 give you -- or give the forelady the verdict form. When you,  
7 the jury, arrive at a verdict as to the offenses charged in  
8 this case, the forelady will select the verdict as to each  
9 charge on the verdict form. If the State has failed to prove  
10 the guilt of the defendant beyond a reasonable doubt, your  
11 verdict will be not guilty. Likewise, if the State has proven  
12 the guilt of the defendant beyond a reasonable doubt, your  
13 verdict will be guilty. Once a decision has been made, the  
14 forelady will check whichever choice is the verdict of the  
15 jury as to each charge.

16 The verdict that you render in this case, ladies and  
17 gentlemen, must be the verdict of each and every juror. It  
18 must be your unanimous verdict. All twelve jurors must agree  
19 on the verdict which you authorize the forelady to write for  
20 the jury.

21 Now, ladies and gentlemen, I want you to further  
22 understand that the order in which the choices of verdict  
23 appear on the verdict form are not suggestive of any verdict  
24 on the part of this Court. The verdict in this case is to be  
25 determined by you, the jury, not the Court. Furthermore,

1 ladies and gentlemen, please understand that even though I  
2 will give the verdict form to the forelady, it is not her  
3 verdict alone. It is the verdict of all twelve of you and I  
4 emphasize again it must be unanimous.

5 Now, I am also going to give you all a copy of these  
6 instructions in written form. During your deliberations, you  
7 may refer to the instructions to guide your decision-making.  
8 You must consider the instructions as a whole and not follow  
9 some and ignore others. Please return these instructions to  
10 the Court at the time that your verdict is rendered.

11 Now, I'm getting ready to ask you all to retire to the  
12 jury room, but before I do so, let me ask a couple things.  
13 Does everybody on the jury feel okay? Anybody not feel well?  
14 All right.

15 On the verdict form, the first question, Madam Forelady  
16 and ladies and gentlemen of the jury, question number one, as  
17 to the charge of attempted murder, we, the jury, unanimously  
18 find the defendant William Jamell Thomas, Jr., not guilty or  
19 guilty. If your answer -- and there are instructions below  
20 here. If your answer as to question number one is not guilty,  
21 then you proceed to answer question number two. If your  
22 verdict as to the first question is guilty, then you proceed  
23 to answer question number three. You do not have to answer  
24 question two. If your verdict as to attempted murder is not  
25 guilty, it instructs you to proceed to question two, which

1 includes the lesser included offense for you to consider.

2 Now, at this time, ladies and gentlemen, I am going to  
3 ask you to step to the jury room. Retire to the jury room,  
4 but do not -- do not begin your deliberations until you are  
5 told to do so. The law requires that I consult with the  
6 attorneys to make sure that I have not left anything out of  
7 these instructions. After I have checked with the attorneys,  
8 the bailiff will bring in a copy -- in a copy of these  
9 instructions to you, along with the items of evidence, along  
10 with paper and pencil.

11 Now, during your deliberations, should you have any  
12 questions, Madam Forelady, it will be your responsibility to  
13 reduce that question to writing. Knock on the door, let the  
14 bailiff know that you have a question, and the bailiff will  
15 get that question to me and I will answer it accordingly.  
16 Once you have reached a verdict, knock on -- fill out the  
17 verdict form, sign and date it, Madam Forelady, and again I  
18 emphasize it must be your unanimous verdict. It must be the  
19 verdict of each and every juror. Knock on the door, let the  
20 bailiff know that you have reached a verdict -- that you all  
21 have reached a verdict and we will get you back into the  
22 courtroom as quickly as possible.

23 At this time, if you all will step to the jury room. Do  
24 not begin your deliberations until you are instructed to do  
25 so.

1 (Whereupon, the jury exits the courtroom at 3:53 p.m.)

2 THE COURT: All right. Any exception or objection to the  
3 charge by the State?

4 MR. JEPERTINGER: No, sir.

5 THE COURT: Defense counsel?

6 MR. WILSON: Judge, I don't. I think it's more of a  
7 question than an objection. I don't have any objection I  
8 don't think. One of the questions I have is in -- if the jury  
9 comes back and they find the defendant say not guilty of -- of  
10 attempted murder and ABHAN, but they find him guilty of the  
11 gun, is that a possible verdict? Because then my concern  
12 would be that that's inconsistent with -- that would in my  
13 mind be an inconsistent verdict.

14 THE COURT: Mr. Jepertinger?

15 MR. JEPERTINGER: Judge, I can tell you from experience I  
16 had a gentleman right in this court when I sat where Mr.  
17 Wilson sat by the name of Jackie Robinson, not the same  
18 individual, that was being charged with armed robbery and  
19 possession of a weapon during the commission of a violent  
20 crime. They found him guilty of the armed robbery and not  
21 guilty of the possession of a weapon during the commission of  
22 a violent crime. That issue went up. Your Honor, it was an  
23 unpublished opinion, but it -- there was a published opinion,  
24 which case I can't remember, but basically allowing  
25 inconsistent verdicts.

1 And, you know, of course, my argument was -- was an  
2 illogically inconsistent verdict. However, it would not be a  
3 logically inconsistent verdict in this case because they could  
4 very well say he had a gun in his possession on -- during that  
5 time and did nothing and somehow someone else shot her.

6 THE COURT: Mr. Wilson, anything else?

7 MR. WILSON: No, sir. There's just no evidence in the  
8 record to support that theory.

9 THE COURT: Well, I mean they can believe all or part of  
10 a witness's -- all of a witness's testimony, part of it or  
11 none of it.

12 MR. WILSON: Yes, sir.

13 THE COURT: So there you go. I mean that's kind of my  
14 conclusion on it.

15 MR. WILSON: All right. I just ---

16 THE COURT: But I'll -- I'll -- I'll take -- certainly  
17 take that under consideration and be thinking about it. Do  
18 you want to look at the verdict form? I don't think y'all  
19 looked at the verdict form, but if y'all come forward and make  
20 sure that the items of evidence ---

21 (Whereupon, there is a pause in the proceedings as the  
22 evidence is checked by counsel.)

23 THE COURT: Mr. Wilson, under State v. Alexander, the  
24 Court has abolished the rule prohibiting inconsistent  
25 verdicts.

1 MR. JEPERTINGER: That's the case they cited in State v.  
2 Jackie Robinson in an unpublished opinion.

3 THE COURT: He can be convicted by a jury on one count  
4 and not conviction because it was inconsistent.

5 MR. WILSON: A man can hope, Judge.

6 MR. JEPERTINGER: Where is the verdict form?

7 THE COURT: She's got the verdict form.

8 MR. JEPERTINGER: Thanks. Thank you, Judge. For the  
9 record, I have along with defense counsel looked at all the  
10 exhibits. Everything that is going to the jury is in  
11 evidence, Your Honor. I have also looked at the verdict form,  
12 Your Honor, and everything seems to be proper and I noticed  
13 and I have no objection to the jury charge going back because  
14 I believe you read it verbatim.

15 MR. WILSON: And I concur with his statement.

16 THE COURT: All right. If you will, take the items of  
17 evidence along with the instructions and verdict form to the  
18 -- to the jury room. Pull Mr. David Brown out and Ms. April  
19 Amerson. Those are my two alternates.

20 THE BAILIFF: All right, sir.

21 MR. JEPERTINGER: I do not know the instructions for the  
22 alternates. Are they picking a jury tomorrow or what?

23 THE COURT: I've heard they were. Can we find that out?

24 THE CLERK: I was told that they were supposed to call  
25 after six.

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from Florence County  
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001445

**RECEIVED**

JUN 30 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v

WILLIAM JAMELL THOMAS, JR.,

APPELLANT.

**AFFIDAVIT OF SERVICE**

The undersigned attorney hereby certifies that the **State's Response to Appellant's Motion to Certify** in the above-referenced case has been served upon **Elizabeth A. Franklin-Best**, Blume Norris & Franklin-Best, 900 Elmwood Avenue, Suite 101, Columbia, South Carolina, 29201, this 27<sup>th</sup> day of **June, 2014**.

  
CHRISTINA J CATOE

Assistant Attorney General

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

SWORN to before me this 27<sup>th</sup> day of June, 2014.



Notary Public for South Carolina

My Commission Expires: 7/18/2017



ALAN WILSON  
ATTORNEY GENERAL

June 27, 2014

**VIA HAND-DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of Court, S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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JUN 30 2014

**SC Court of Appeals**

**RE: State of South Carolina v. William Jamell Thomas, Jr.**  
**Appellate Case No. 2013-001445**

Dear Mr. Shearouse

Enclosed please find the original and six copies of the **State's Response to Appellant's Motion to Certify**, along with **Proof of Service**, in the above-referenced appeal.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe  
Assistant Attorney General

CJC/

cc Elizabeth A. Franklin-Best, Esquire  
The Honorable Jenny A. Kitchings

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