

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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AUG 19 2015

Appeal from Spartanburg County SC Court of Appeals

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ODELL BROWN,

APPELLANT

APPELLATE CASE NO. 2013-001411

FINAL REPLY BRIEF OF APPELLANT

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## ARGUMENT IN REPLY

### **Introduction**

Appellant raised two issues in his brief, and the state has responded. Appellant now files this reply to address the state's arguments concerning the first issue and to provide an update on intervening case law. The first issue concerned the trial judge's failure to instruct the jury that in order to convict Appellant of attempted murder the jury must find that Appellant acted with a specific intent to kill. In fact, the trial judge instructed the jury that a specific intent to kill was not required. R. 369, line 19 – R. 370, line 20. When the jury asked to be re-instructed on attempted murder, the trial judge issued the improper instruction yet again. R. 390, line 23 – R. 391, line 2; R. 391, line 4 – R. 393, line 25; R. 407. Thereafter, the jury requested “a printed statement of attempted murder and assault and battery of a high and aggravated nature.” The trial judge provided the jurors with the written instructions concerning the definitions of attempted murder and assault and battery of a high and aggravated nature. These written instructions included the same erroneous language concerning intent as the oral instructions. R. 394, lines 21 – 22; R. 408. Thus, the jury was instructed erroneously three times on the elements of attempted murder.

### **Discussion**

On April 22, 2015, this Court decided State v. King, 772 S.E.2d 189 (S.C. Ct. App. 2015)<sup>1</sup> addressing the very issue raised by Appellant. This Court held the phrase “with intent to kill” failed to “clearly indicate what level of intent the Legislature meant to require the state to prove because the word ‘intent’ can mean anything from purpose to negligence.”

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<sup>1</sup> The state filed a petition for rehearing, which was denied on June 5, 2015. On June 15, 2015, the state filed a petition for writ of certiorari.

Id. at 192. Thus, this Court “look[ed] beyond the words of the statute and use[d] our rules of statutory construction to determine what the Legislature intended.” Id. Relying upon the Legislature’s undisputed knowledge of the history of our courts requiring the state to prove specific intent as an element of attempt crimes, this Court held the Legislature intended to require a showing of specific intent for the offense of attempted murder. Id. This Court found the trial judge erred in failing to charge the jury that attempted murder required the state to prove specific intent. Thus, this Court reversed King’s conviction. Id.<sup>2</sup>

Similarly, this Court should reverse Appellant’s conviction and sentence for attempted murder based upon the trial judge’s erroneous instruction. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (“To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.”); State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007) (“A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues.”); State v. Buckner, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000) (“In making a harmless error analysis, [the Court’s] inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.”).

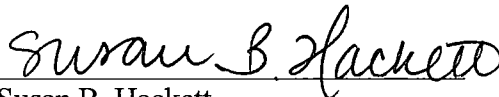
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<sup>2</sup> Appellant benefits from the King ruling as his case was pending on direct review and the issue was preserved for review. See Griffith v. Kentucky, 479 U.S. 314, 328 (1987); State v. Belcher, 385 S.C. 597, 612-613, 685 S.E.2d 802, 810 (2009).

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT.

This 19th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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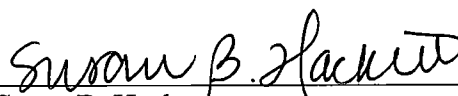
V.

ROBERT ODELL BROWN,

APPELLANT

CERTIFICATE OF SERVICE

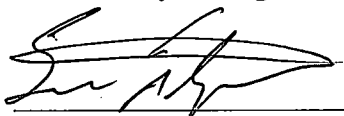
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of August, 2015.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 19th day of August, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.