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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL VINCENT JONES,

APPELLANT

APPELLATE CASE NO. 2014-002680

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

I. DID THE TRIAL COURT ERR BY REFUSING TO INSTRUCT THE JURY ON SPECIFIC INTENT AS IT RELATES TO AN INDICTMENT ON ATTEMPTED MURDER?

STATEMENT OF THE CASE

This is an appeal from a criminal jury trial in which a jury found Appellant Darryl Vincent Jones (Jones) guilty of attempted murder under S.C. Code Ann. § 16-3-29 (Supp. 2014) and kidnapping under S.C. Code Ann. § 16-3-910 (1991). On June 9, 2014, Jones was indicted for attempted murder and kidnapping. A jury trial took place before the Honorable Thomas A. Russo from December 8-10, 2014, in Columbia, South Carolina. At the close of the State's evidence, Jones moved for a directed verdict based upon the State's failure to produce competent evidence proving the crimes charged. (R. 215, lns. 10-13). The trial court denied the motion. (R. 215, lns. 14-19). Jones renewed his motion at the close of trial, and the trial court again denied it. (R. 286, lns. 2-13).

The jury found Jones guilty. (R. 344, lns. 7-16). Jones immediately made a motion for a new trial, which the trial court denied. (R. 345, lns. 18-23). The trial court sentenced Jones to thirty years for attempted murder and thirty years for kidnapping, with credit for time served, to run concurrently. (R. 346, lns. 14-23). Jones filed a timely Notice of Appeal.

STATEMENT OF FACTS

I. THE PROSECUTION CASE

Jeanine Bartell (Ms. Bartell) met Jones in April 2013 as neighbors in the Cypress Run apartment complex in Columbia. (R. 15-16). Ms. Bartell lived at Cypress Run with her two sons and Jones lived in the same building with his mother, Cathrene Gholson (Gholson). (R. 14, lns. 13-15; R. 15, lns. 1-15). Ms. Bartell and Jones began dating during the spring and summer of 2013. (R. 16-17). According to Ms. Bartell, she ended the relationship before the date of the incident, but remained on cordial terms with Jones as they were still neighbors residing in the same building. (R. 18, lns. 8-16).

According to Ms. Bartell, on the evening of August 5, 2013, Jones came to her apartment to talk, the two argued, and she asked him to leave, only to have him return an hour later. (R. 19, lns. 11-19; R. 20, lns. 5-7). Jones joined Ms. Bartell in her bedroom, where he sat in a chair next to her bed and she sat in her bed. (R. 20, lns. 9-10). Ms. Bartell told Jones she did not want to argue because she was not feeling well. (R. 20, lns. 10-12). Ms. Bartell was experiencing heart palpitations, pain in her left arm and jaw, and nausea, such that she feared she was having a heart attack. (R. 20, lns. 19-25). Jones and Ms. Bartell discussed calling 911, but Ms. Bartell decided she would rather drive herself to the hospital. (R. 21, lns. 12-14).

Initially, Jones insisted on driving Ms. Bartell to the hospital, but Ms. Bartell refused because Jones did not have a valid driver's license. (R. 21, lns. 23-25). As Jones did not own a car, the two took Ms. Bartell's car, a 1998 Ford Windstar mini-van. (R. 22, lns. 1-10). Jones and Ms. Bartell left the Cypress Run apartments at around 11:30 pm, Monday, August 5, 2013. (R. 22, lns. 16-18).

According to Ms. Bartell, once in the car, Jones insisted that instead of going to the emergency room, they should go to a nearby urgent care. (R. 23, lns. 2-4). The two argued the whole way to the urgent care, with Ms. Bartell telling Jones she knew it was closed because she had tried to take one of her sons there earlier that day and it had been closed. (R. 23, lns 4-6). To prove her point, Ms. Bartell drove over to the urgent care. (R. 23, lns. 7-9). Upon arrival at the urgent care, Jones got out and went up to the entrance, only to discover that it was indeed closed. (R. 23, lns. 9-12). When Jones returned to the car, Ms. Bartell said, "see, I told you I was right," which, according to Ms. Bartell, caused Jones to begin yelling

and screaming at her as she tried to find her way to the nearest emergency room. (R. 23, lns. 13-21).

Upon arrival at Lexington Medical Center (LMC) emergency room, Ms. Bartell parked her car in the last parking spot near the entrance to the emergency room. (R. 25, lns. 11-19). As Jones exited the car, Ms. Bartell claims she "calmly" said to Jones that she would not drive Jones home from the emergency room later because he had been arguing with her while she did not feel well. (R. 23, lns. 22-25; R. 24, lns. 1-6). According to Ms. Bartell, this caused Jones to jump back into the car and strike her causing her to land partially in the back seat. (R. 24, lns. 7-9). Ms. Bartell tried to use her feet to honk the horn in an attempt to get a passerby's attention. (R. 24, lns. 9-11). Ms. Bartell testified that Jones beat her about the head and legs. (R. 24, lns. 11-12). Further, Ms. Bartell claimed that while Jones hit her, he said, "Oh, shit, I'm going to prison tonight, I might as well kill you." (R. 25, lns. 23-25; R. 26, ln. 1). After which, Jones began to strangle Ms. Bartell with the seatbelt. (R. 26, lns. 7-11). Ms. Bartell also claimed that Jones poked her in the eye with the car keys. (R. 30, lns. 19-21).

At some point, the seatbelt broke and Ms. Bartell claimed that Jones then placed the belt from his pants around her neck. (R. 31, lns. 12-17). Finally, Ms. Bartell decided to play dead in an attempt to stop Jones from beating her. (R. 32, lns. 18-25). At that point, according to Ms. Bartell, Jones retrieved the keys to the mini-van, urinated on Ms. Bartell, and then, with the belt still around Ms. Bartell's neck, began to drive back to Cypress Run apartments. (R. 33, lns. 6-9; R. 34, lns. 1, 13-22).

Once they arrived at Cypress Run apartments, Ms. Bartell heard Jones call his mother, Gholson, and tell her he'd had a fight with Ms. Bartell, that she was hurt real bad.

(R. 37, lns. 19-21). Gholson called 911. (R. 38, lns. 7-9.) Ms. Bartell got out of the van and Gholson helped her into her apartment where she gave Ms. Bartell dry clothes to wear. (R. 39, lns. 16-25; R. 40, lns. 1-8).

Emergency Medical Services (EMS) arrived at Cypress Run apartments at 1:09 am, August 6, 2013. (R. 81, lns. 7-17). EMS found Ms. Bartell in Gholson's apartment. (R. 82, lns. 1-2). She was able to walk around on her own. (R. 82, ln. 2). According to EMS, Ms. Bartell had a contusion over her left eye, which was swollen shut, a swollen upper lip, and abrasions and bruising around her neck. (R. 82, lns. 16-19). En route to LMC, EMS further noted bruising and contusions on Ms. Bartell's body. (R. 83, lns. 14-18). EMS noted that Ms. Bartell's breath smelled of alcohol. (R. 86, ln. 25).

Once at the LMC emergency room, Dr. Steven Hayes, examined Ms. Bartell. (R. 135, lns. 13-16). Dr. Hayes testified that his diagnosis of Ms. Bartell was a closed head injury, orbital fracture, eye trauma, contusion of jaw, cervical, lumbar, elbow, and shoulder strain, chest pain, elevated troponin, and domestic violence. (R. 140, lns. 21-25; R. 140, lns. 1-3). Due to the injury to Ms. Bartell's left eye, Dr. Hayes transferred Ms. Bartell to Palmetto Health Richland, where there was an opthalmologist on staff. (R. 138, lns. 13-20).

Dr. Richard McCarroll (McCarroll), a surgical resident at Palmetto Health Richland testified as to Ms. Bartell's treatment at Palmetto Health Richland. (R. 187, lns. 18-24; R. 188, ln. 2). McCarroll testified that Ms. Bartell was initially admitted to the surgical step down unit, where she could be more closely monitored because of the severity of her injuries. (R. 197, lns. 6-12; R. 204, lns. 1-16).

Before leaving LMC, Ms. Bartell was visited by Corporal Donald Rentiers (Rentiers) with the LMC Department of Public Safety. (R. 126, lns. 1-6). Rentiers and

another LMC Department of Public Safety Officer, Corporal Blaylock (Blaylock), took photos of Ms. Bartell's injuries. (R. 127, lns. 1-10). Rentiers and Blaylock briefly interviewed Ms. Bartell and found out that the incident took place in the LMC emergency room parking lot. (R. 129, lns. 1-10). Although there was a security camera in the emergency room parking lot, it did not cover the area where Ms. Bartell claimed she parked her car. (R. 149, lns. 4-16). Despite the seriousness of the alleged crime that had occurred on its grounds, the LMC Department of Public Safety did not save any video from any camera that covered the emergency room parking lot on the night of the incident. (R. 169, lns. 1-18). Investigator Wayne Wilson (Wilson), of the LMC Department of Public Safety, testified that the hospital employed a license plate recognition system at the main entrance to the emergency room, which as of August 6, 2013, was not working properly. (R. 157, lns. 3-7). Wilson reviewed the footage from the license plate recognition system and located a mini-van that matched the description given of Ms. Bartell's mini-van exiting the emergency room parking lot at 12:40 am on August 6, 2013. (R. 152, lns. 4-6, 17-19). However, he was unable to get a tag number for the vehicle visible on the camera. (R. 152, ln. 7).

On August 6, 2013, Investigator Wilson visited Ms. Bartell at Palmetto Health Richland to interview her about the incident. (R. 153, lns. 22-25). At that time, Wilson asked Ms. Bartell to prepare a written statement. (R. 161, lns. 17-19). On August 13, Wilson returned to Palmetto Health Richland to retrieve Ms. Bartell's written statement. (R. 161, lns. 19-24). Wilson and Captain Jackie Brothers, also from LMC Department of Safety, later returned to take photos of Ms. Bartell's injuries. (R. 163, lns. 3-7).

According to Wilson, a warrant was issued for Jones' arrest. (R. 158, lns. 3-4). Wilson shared that information with the Columbia Police Department and security at

Palmetto Health Richland so that they could be on the look out for Jones. (R. 158, lns. 4-15). Eventually, Wilson notified the U.S. Marshal Service Fugitive Task Force of the warrant for Jones' arrest. (R. 159, lns. 16-20). The U.S. Marshal Fugitive Task Force located and arrested Jones on August 29, 2013. (R. 161, lns. 4-10).

II. THE DEFENSE CASE

According to Jones, he and Ms. Bartell began dating in April 2013. (R. 221, lns. 2-3). Although Ms. Bartell downplayed the relationship in her testimony, Jones regularly spent the night at Ms. Bartell's home. (R. 221, lns. 22-25). They helped each other out with expenses. (R. 222, lns. 8-10.)

Jones testified that on the day of the incident, he got off work between 4:00 and 5:00 p.m. (R. 223, lns. 1-4). On his way home from work, Jones stopped and bought among other things, a bottle of Paul Masson liquor and a Strawberita for Ms. Bartell. (R. 224, lns. 6-23). Once home, Jones called Ms. Bartell to let her know he was home and would come to her apartment once he had changed and checked in on his mother. (R. 225, lns. 11-14.)

A short while later, Jones went upstairs to Ms. Bartell's apartment. (R. 225, lns. 15-16). After making small talk with Ms. Bartell's sons, Jones gave Ms. Bartell the Strawberita and poured them each a glass of Paul Masson. (R. 226). They talked for a bit and Ms. Bartell told Jones she hadn't been feeling well. (R. 226, lns. 18-20). Jones was tired, so he decided to back to his mother's apartment to go to bed. (R. 227 lns. 10-15). He told Ms. Bartell that he thought that she should go get herself checked out and to call him if she felt any worse. (R. 227, lns. 16-18).

Sometime later, Ms. Bartell called Jones and told him that she was feeling worse. (R. 228, lns. 19-24). After some discussion, Ms. Bartell and Jones decided that it would be best

for her to go to the emergency room. (R. 229, lns. 23-25). Initially, Jones believed that Ms. Bartell should call 911, but she decided she would rather drive herself to the emergency room. (R. 230, lns. 6-12).

Jones suggested that they go to the nearest urgent care, rather than going to the emergency room. (R. 232, lns. 12-14). Ms. Bartell told him that she had been to the urgent care earlier in the day with her son and it had been closed. (R. 233, lns. 14-16). Indeed, when they arrived, Jones went up to the door and the urgent care was closed. (R. 234, lns. 9-13). When Jones returned to the car, he smelled a strong odor of alcohol. (R. 234, lns. 21-23). He saw a brown liquid resembling Paul Masson in a cup in the console. (R. 235, lns. 3-5; R. 240 lns. 1-7). Jones asked Ms. Bartell about the drink and she told him to mind his own business. (R. 235, lns. 5-6). However, Jones was concerned because Ms. Bartell's license plate tags were not only out-of-state, but were also expired. (R. 236, lns. 21-25; R. 237, ln. 1).

Once they arrived at the emergency room, Ms. Bartell parked and as they exited the car, Jones noticed a security truck patrolling the parking lot. (R. 238, lns. 13-15). When Ms. Bartell became concerned that the security truck was looking at her car, Jones explained that it was probably because of her out-of-state, expired tags. (R. 238, lns. 18-22). As they approached the emergency room entrance, Jones also noticed South Carolina Highway Patrol and Sheriff's Deputy cars near the entrance. (R. 239, lns. 12-15). He became concerned because Ms. Bartell was walking into the emergency room with her keys in one hand and an alcoholic beverage in the other. (R. 239, lns. 15-17). Jones told Ms. Bartell that he did not have any money to get anybody out of jail for DUI. (R. 240, lns. 17-19). Ms. Bartell told Jones to shut up because he did not have a driver's license. (R. 240, lns. 19-20).

As they were arguing over the drink in Ms. Bartell's hand, she suddenly changed her mind about entering the emergency room. (R. 240, lns. 17-23). As they approached Ms. Bartell's van, they saw the security truck coming around again. (R. 241). Ms. Bartell told Jones she did not want to get her van towed. (R. 241, lns. 12-13). Jones told her he really did not think she would get towed, but if security came over and spoke with her, they were going to smell alcohol on her, so they should probably leave. (R. 241, lns. 15-19). Although she knew he did not have a valid driver's license, Ms. Bartell gave Jones the keys and told him to drive. (R. 241, lns. 20-23).

As they drove home, Jones complained to Ms. Bartell that by having him drive, she was putting him in a bad position should they get pulled over, as she had an open container in a car with out-of-state expired tags. (R. 243, lns. 1-12). When they were almost back to Cypress Run apartments, Ms. Bartell told Jones that she could drive the rest of the way. (R. 243, lns. 20-24; R. 246, lns. 1-2). Jones pulled the van into the apartment complex and parked near the mailboxes to let Ms. Bartell drive the rest of the short distance to their building. (R. 247, lns. 1-4). Jones exited the van and went around to the passenger side, where he reached for the liquor bottle in Ms. Bartell's bag. (R. 249, lns. 11-13). Ms. Bartell grabbed the liquor bottle and hit Jones in the face with it, knocking out two of his teeth. (R. 249, lns. 15-19l; R. 257, lns. 22-23). After that, by his own admission, Jones lost control. (R. 252, lns. 5-8).

Although, Jones admitted that he struck Ms. Bartell, he denied strangling her with the seat belt or his belt. (R. 252, lns. 16-21). Jones adamantly denied that he intended to kill Ms. Bartell. (R. 253, lns. 22-23).

After the altercation, Jones pulled the van over to his and Ms. Bartell's building and called his mother to say he and Ms. Bartell had been in a fight. (R. 279, lns. 15-17). Jones' mother, Gholson, called 911. (R. 281, lns. 6-8).

III. THE JURY INSTRUCTIONS

After Jones' testimony, outside of the jury's presence, the court and the attorneys discussed the proposed jury instructions. (R. 287-292). Defense attorney, Ms. Fullwood requested that the court include an instruction on specific intent with the charge on attempted murder. (R. 288, lns. 4-8). The court replied that it did not believe that the law required an instruction on specific intent, but agreed to instruct the jury directly from the statute on attempted murder, which describes the intent required as an "intent to kill". (R. 288, lns.9-10; lns. 17-21). Ms. Fullwood continued to voice her objection to the charge as the judge proposed it. (R. 289).

As to the indictment for attempted murder, the court charged the jury as follows:

> Now, Mr. Jones is charged with attempted murder. In order to prove this crime, the State must prove this defendant with intent to kill, attempted to kill another person with malice aforethought, either express or implied. Now, malice is defined as hatred, ill-will, or hostility toward another person. It's the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or under the circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of previous evil intent and the act.

(R. 326, lns. 16-25; R. 327, lns. 1-6).

> Intent means intending the result that actually occurs; not accidentally or involuntary. Intent may be shown by acts and conduct of the defendant and other circumstances from with

> you may naturally and reasonably infer intent. Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplish[ed], and the resulting wounds or injuries may be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another person's life.

(R. 328, lns. 3-16).

Sometime after being sent back to deliberate, the jury sent the court a note that read, "Please define 'intent' in layman's terms as to the charge of attempted murder. Thanks." (R. 351). The court proposed using the dictionary definition of intent, which read, "The State of a person's mind that directs his or her actions toward a specific action." (R. 335, lns. 11-19). After discussing the best way to answer the jury's question, the court sent back a response that read:

> Criminal intent is always 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's 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 existed. The dictionary defines intent as the state of a person's mind that directs his or her actions towards a specific object.

(R. 352).

A short while later, the jury rendered it's guilty verdict. (R. 344, lns. 7-12). The court sentenced Jones to two 30-year terms in prison to be served concurrently. (R. 346, lns. 14-25).

ARGUMENT

The trial court erred by refusing to instruct the jury on specific intent as it relates to the indictment of attempted murder. The instruction given describing the intent required to prove attempted murder as "intent to kill" erroneously described the law and therefore prejudiced Jones, as evidenced by the jury's request for a layman's definition of intent and its subsequent guilty verdict in the matter.

A. Attempted Murder is a Specific Intent Crime

Recently, the South Carolina Court of Appeals established that to convict one of attempted murder, the State must prove that the Defendant acted with specific intent to kill. *State v. King*, Op. No. 5313, p. 6, (Ct. of App. filed April 22, 2015). In *King*, the trial court instructed the jury, "a specific intent to kill is not an element of attempted murder, but it must be a general intent to commit serious bodily harm." *Id.* at p. 4. Although attempted murder is a relatively new crime in South Carolina, even before its codification in 2010, South Carolina courts held that "attempt crimes require the State to prove the defendant had specific intent to complete the attempted crime." *Id.* at p. 4-5. Additionally, after reviewing the language of Section 16-3-29 of South Carolina Code (Supp. 2014), which defines attempted murder as "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," the Court of Appeals determined that the legislature intended the crime be one of specific intent. *Id.* at p. 6.

B. The Jury Charge Given by the Trial Court Was That of General Intent to Kill

The intent to kill can be either a general intent or a specific intent. See *State v. Faust*, 325 S.C. 12, 479 S.E.2d 50 (1996) (the State need only to prove a general intent to kill to prove that a Defendant committed the crime of Assault and Battery with Intent to Kill (ABIK)). See also *State v. Coleman*, 342 S.C. 172, 536 S.E.2d 387 (Ct. of App., 2000). (ABIK requires only a general intent to kill which may be demonstrated by the acts and conduct of the Defendant from which a jury may naturally and reasonably infer intent.)

In *Faust*, the South Carolina Supreme Court described a general intent to kill as "such intent [which] may be shown by acts and conduct from which a jury may naturally and reasonably infer intent." *State v. Faust*, note 4 at p. 52. Here, Jones correctly requested a specific intent instruction to the jury on the charge of attempted murder. (R. 288, lns. 4-8.) The trial court incorrectly indicated that it did not believe that the law required specific intent. (R. 288, lns. 9-10.) After this discussion, the court refused to give the instruction on specific intent and instead gave the following instruction, describing a general intent to kill:

> Intent means intending the result that actually occurs; not accidentally or involuntary. ***Intent may be shown by acts and conduct of the defendant and other circumstances from with you may naturally and reasonably infer intent.*** Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplish[ed], and the resulting wounds or injuries may be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another person's life.

(R. 328, lns. 3-16, emphasis added).

The above quoted instructions, particularly those italicized and bolded, given to the jury at Jones' trial are the same as the definition of general intent in *Faust*. *State v. Faust*, note 4 at p. 52. Based on the case law established by this court in *State v. King*, the court should have instructed the jury on specific intent. *State v. King*, Op. No. 5313, p. 6, (Ct. of App. filed April 22, 2015).

C. The Jury Charge Given by the Trial Court Prejudiced Jones Causing the Jury to Find Jones Guilty

"In criminal cases, an appellate court sits in review of errors only." *State v. Lee-Grigg*, 373 S.C. 388, 649 S.E.2d 41, 46 (Ct. App. 2007). "An appellate court will not reverse the trial court's decision regarding a jury instruction absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578 (2010). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id.* at 479. Failure to give the requested jury instruction is prejudicial when the instruction given does not afford the proper test for determining the issues. *Order Distributing Co., Inc. v. Newsome Carpets & Wallcovering*, 308 S.C. 429, 418 S.E.2d 550, 552, (1991).

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *Mattison supra*, 388 S.C. at 478. "When reviewing the trial court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant." *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413 (2011).

Here, the trial court's failure to give the requested jury instruction was prejudicial because it clearly did not afford the proper test for determining the issues. This is evidenced

by the fact that the jury asked the court to "define 'intent' in layman's terms as to the charge of attempted murder." (R. 335, lns. 3-5, R. 351). The jury did not understand the definition of intent as given in the court's original jury instructions. The court responded to the jury's note:

> Criminal intent is always 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's 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 existed. The dictionary defines intent as the state of a person's mind that directs his or her actions towards a specific object.

(R. 352).

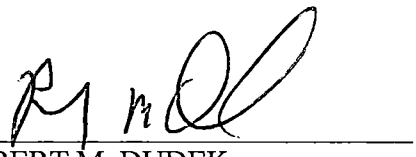
A few hours after receiving the court's response, the jury rendered its guilty verdict as to the attempted murder charge. (R. 344, lns. 7-12).

Additionally, the jury charge when read as a whole, does not contain the correct definition, nor does it adequately cover the law. This Court, in *King*, established that the intent to be charged in attempted murder should be specific intent to kill rather than a general intent to kill. *State v. King*, Op. No. 5313, p. 6, (Ct. of App. filed April 22, 2015). As discussed above, the trial court in this case, gave an instruction as to general intent rather than specific intent. This does not adequately cover the law as required by the South Carolina Supreme Court in *Mattison*. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578 (2010).

CONCLUSION

Appellant's conviction should be reversed and this case remanded to the Lexington County Court of General Sessions for a new trial.

Respectfully submitted,



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 29th day of August, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 29th, 2016

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 29th day of August, 2016.

ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.