

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case No. 2014-002680

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SC Court of Appeals

THE STATE,

Respondent,

vs.

DARRYL VINCENT JONES,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

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STATEMENT OF ISSUE ON APPEAL

Any issue with the trial judge's manner of instructing the jury on the offense of attempted murder was not properly preserved for appellate review because defense counsel acquiesced in the jury instructions proposed by the trial judge during a charge conference and subsequently directly stated she had no objections to the trial judge's jury instructions, which did not include an express statement indicating proof of a specific intent to kill was required to prove attempted murder, after those instructions were presented to the jury. However, even assuming Appellant's appellate issue with the trial judge's jury instructions was somehow preserved for appellate review and assuming a specific intent to kill was necessary to prove the offense of attempted murder, the trial judge adequately and correctly instructed the jury on the relevant and applicable law by presenting instructions and supplemental instructions that defined the elements of attempted murder and required the jury to find Appellant specifically intended to kill his victim in order for him to be convicted of that offense.

STATEMENT OF THE CASE

In August of 2013, Appellant Darryl Vincent Jones was arrested following an investigation into an assault. In June of 2014, the Lexington County Grand Jury indicted Appellant for one count of attempted murder and one count of kidnapping. On December 8, 2014, a jury trial was commenced in the Lexington County Court of General Sessions with the Honorable Thomas A. Russo, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of thirty years for each of the convictions. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the evening of August 5, 2013, Jeanine Bartell (“Victim”) received a visit at her apartment located in Columbia, South Carolina, from her neighbor, Appellant Darryl Vincent Jones.¹ (R. p. 11; pp. 13-14). During the visit, the two began arguing, and Victim asked Appellant to leave.² (R. p. 19). In response, Appellant left Victim’s apartment, but he returned just a short time later and said he wanted to talk with Victim some more. (R. pp. 19-20). At that point, Victim began to experience heart palpitations and believed she might be having a heart attack, and she informed Appellant she was not feeling well. (R. p. 20). Shortly after that, Victim decided she needed to drive herself to the hospital, and she and Appellant quickly left for the emergency room in her van.³ (R. p. 20; pp. 22-23).

While on the way to the emergency room, Appellant insisted they drive to an urgent care clinic instead. (R. p. 23). Despite the fact she knew the clinic was closed, Victim acquiesced and drove to the clinic at Appellant’s behest. (R. p. 23). Appellant then exited the vehicle, went to the clinic’s door, discovered the clinic was closed, and returned to the van. (R. p. 23). Upon Appellant’s return, Victim reminded him she had indicated earlier the clinic would be closed. (R. p. 23). At that point, Appellant became enraged, and he began berating Victim as she left the clinic’s parking lot and drove them towards the Lexington Medical Center. (R. pp. 23-24).

Shortly thereafter, they arrived at the hospital, Victim parked her van in the hospital’s parking lot, and Appellant exited the vehicle. (R. pp. 23-24). Victim then calmly informed Appellant she did not approve of his actions and did not want to take him back home from the

¹ At the time of trial, Victim was forty-four years old and Appellant was forty-eight years old. (R. p. 21; pp. 353-354).

² At that time, Victim had known Appellant for approximately four months and had been in a relationship with him for approximately two months. (R. p. 61). However, their relationship had grown tense, and, prior to the visit, Victim had expressed to Appellant she no longer wanted to be in a relationship with him. (R. pp. 16-19).

³ During trial, Victim recounted they left for the emergency room at approximately 11:30 p.m. (R. p. 22).

hospital after she was done there. (R. pp. 23-24). In response, Appellant suddenly jumped back into the van and struck Victim in the face. (R. p. 24; p. 28). Appellant then stated he was “going to prison [that night]” and “might as well kill [Victim]” before he began repeatedly striking Victim in the head and body as she begged him to stop. (R. pp. 24-26). As the assault continued, Appellant told Victim he was going to kill her, strangled her with a seatbelt until it broke, bit her finger and back, shoved a key into her eye, stated he was going to “mess [her] up” to the point where she would be unrecognizable, and choked her with his hand. (R. pp. 26-30; p. 51). Eventually, he began choking her with his waist belt until her arms began to flail. (R. pp. 30-32). At that point, Appellant began to encourage Victim to “tap out” and told her he would “see [her] on the other side.” (R. p. 32). Appellant then continued choking Victim until she held her breath and pretended to be dead.⁴ (R. p. 32).

Once Victim ceased moving, Appellant stopped choking her, urinated on her entire body, and then began driving her van with her still inside while muttering something about disposing of her body.⁵ (R. pp. 33-37). Eventually, Appellant drove the van back to the apartment complex, and Victim overheard him call his mother and inform her they had gotten into a fight and Victim was hurt “really bad.”⁶ (R. p. 37). Shortly after that, Victim heard Appellant’s mother on the phone with a 911 dispatcher and Victim responded by removing the belt from her neck and getting out of the van. (R. pp. 37-39). Appellant’s mother then helped Victim into her

⁴ Although Appellant stopped choking Victim after she pretended to be dead, Appellant left the belt around Victim’s neck and continued to hold on to it. (R. p. 34).

⁵ A van matching the description of Victim’s van was recorded leaving the parking lot of the Lexington Medical Center at approximately 12:40 a.m. on the date of the incident. (R. p. 152; pp. 200-201).

⁶ Subsequent to the assault, Victim’s van was located at the apartment complex and examined. (R. p. 94; p. 118; pp. 120-121; pp. 163-164). At that time, a substance that appeared to be blood was observed inside the vehicle in several locations, including on a seatbelt, and the van smelled of urine and sweat. (R. p. 118; p. 121; p. 165).

apartment while Appellant stood by and appeared to be shocked by what he was seeing. (R. pp. 39-40).

Shortly thereafter, officers from the Columbia Police Department along with paramedics were dispatched to the apartment complex in response to the assault and quickly travelled to that location in the early morning hours of August 6, 2013. (R. pp. 38-40; pp. 78; pp. 80-81; pp. 90-91; p. 103). Upon arriving, they located Victim in the bathroom of Appellant's mother's apartment, and Victim was rapidly transported to the Lexington Medical Center to receive treatment for her numerous injuries. (R. pp. 39-40; p. 42; pp. 82-84). The officers then attempted to locate Appellant, but they were unable to do so at that time.⁷ (R. p. 91; p. 108; pp. 110-111).

Meanwhile, at the hospital, Dr. Steven Hayes, an emergency room physician and expert in emergency medicine, examined and treated Victim. (R. pp. 134-135). During his examination, Dr. Hayes discovered Victim's eye was swollen completely shut, she had injuries to her eye muscle and behind her eye, she was bleeding behind her eye, her orbital bone was fractured, and she had another fracture near her nose.⁸ (R. p. 139; p. 142). Based on his examination, Dr. Hayes diagnosed Victim with a closed head injury, an orbital fracture, eye trauma, a jaw contusion, a cervical strain, a lumbar strain, a shoulder strain, an elbow strain, chest pain, and an elevated level of troponin, which he believed could have been related to a heart injury or a heart attack. (R. p. 138; pp. 140-141). Dr. Hayes then transferred Victim to Palmetto Health Richland to receive further treatment for her injuries, and she was hospitalized

⁷ Shortly after authorities were alerted of the incident, an individual matching Appellant's description was observed in the vicinity of the apartment complex. (R. p. 93; pp. 104-106). However, officers believed the individual fled into a nearby wooded area, and they were unable to locate him that night. (R. pp. 105-106; p. 108).

⁸ During his trial testimony, Dr. Hayes characterized Victim's injuries as serious and noted they were consistent with multiple strikes, including strikes involving significant force. (R. pp. 139-140; p. 143).

there for a total of eight or nine days as a direct result of the assault. (R. p. 42; p. 49; p. 138; p. 143; pp. 187-189; pp. 195-198; p. 284).

Subsequently, several weeks later, Appellant was apprehended by agents with the United States Marshals Service Fugitive Task Force and placed under arrest.⁹ (R. p. 123; p. 158; p. 161). He was then indicted for attempted murder and kidnapping, and he elected to proceed forward to trial. (R. pp. 3-4; pp. 347-350).

During trial, Victim recounted the events that transpired on the night of the incident, discussed the numerous injuries she sustained that night as a result of the brutal assault, and expressly identified Appellant as her assailant. (R. pp. 19-40; p. 42; p. 49). Likewise, the medical personnel who treated Victim on the night of the incident testified about her significant injuries following the assault, and the law enforcement officers who responded to the report of the incident testified about their investigation into the assault, which resulted in Appellant's arrest after he was subsequently tracked down and apprehended. (R. pp. 78-84; pp. 90-94; p. 99; pp. 103-111; pp. 125-127; pp. 134-143; pp. 146-165; pp. 188-189; pp. 193-201).

Following the presentation of that evidence, Appellant elected to testify in his own defense and provided an account of the incident that was highly dissimilar to Victim's account. (R. p. 218). Specifically, on the date of the incident, Appellant stated he visited Victim at her apartment and drank liquor with her until she reported she felt unwell. (R. pp. 222-227). After that, Appellant asserted they decided to go to the hospital and Victim drove them towards the emergency room in her van before he suggested to her they go to an urgent care clinic instead. (R. pp. 227-232). Thereafter, Appellant indicated they went to the clinic despite Victim's belief it was closed, and, once they arrived, he got out of the van to see if the clinic was open. (R. pp.

⁹ At the time of his arrest, Appellant was 5'11" tall and weighed approximately 280 pounds. (R. pp. 123-124). Meanwhile, Victim testified during trial she was 5'5" tall and weighed around 140 pounds. (R. p. 60).

233-234). After discovering it was, in fact, closed, Appellant claimed he then returned to the van, smelled alcohol, saw Victim with a drink cup, and asked her about it.¹⁰ (R. pp. 234-235). In response, Appellant indicated Victim told him not to tell her what to do and “laughed it off.” (R. p. 235). Appellant stated Victim then drove them to the hospital parking lot and became paranoid about the expired license tag on her vehicle upon seeing law enforcement personnel. (R. pp. 235-239). Based on her concerns, Appellant stated Victim returned to her van and asked Appellant to drive them home, which he claimed he riskily did despite the fact he did not have a driver’s license. (R. pp. 240-242). Appellant indicated they then returned to the apartment complex, he stopped the van near a mailbox in the parking lot upon request by Victim, he tried to remove a bottle of liquor from Victim’s bag, and Victim responded by striking him in the face with the bottle and knocking out his teeth. (R. pp. 245-246; pp. 248-249). At that point, Appellant claimed he lost control, grabbed and struck Victim, bit her, urinated in her van after being hit in the groin, and fought with her for roughly seven minutes.¹¹ (R. pp. 252-253; pp. 268-269; pp. 275-276; p. 278). However, Appellant insisted he did not choke Victim and was not trying to kill her during the assault.¹² (R. pp. 252-253).

Subsequently, at the conclusion of the evidentiary phase of trial, the trial judge conducted a charge conference to discuss with the parties the manner in which the jury should be instructed on the law. (R. p. 287). During the charge conference, defense counsel asked the trial judge to

¹⁰ Earlier, during cross-examination of Victim, Victim expressly denied both taking alcohol to the hospital on the night of the incident and drinking alcohol on the way to the hospital. (R. pp. 68-69). Consistent with Victim’s testimony, Dr. Richard McCarroll, a physician at Palmetto Health Richland, confirmed no alcohol or drugs were detected when Victim was screened upon admission to the trauma unit following the assault. (R. pp. 187-188; pp. 200-201).

¹¹ Despite Appellant’s testimony, no disturbances were reported to have occurred in the parking lot of the apartment complex at the time of the incident. (R. p. 172). Similarly, no signs of a struggle were discovered in the apartment complex’s parking lot. (R. p. 92; p. 99).

¹² Appellant did acknowledge he fled from the area subsequent to the assault because he was afraid he was going to be caught. (R. p. 272; p. 284).

instruct the jury the State was required to prove a specific intent to kill in order to establish the offense of attempted murder. (R. p. 288). In response, the trial judge indicated he did not believe defense counsel's requested instruction was a correct statement of law before asserting he would look into the matter. (R. p. 288). The trial judge then stated:

Well, here's the thing, and I'll address it this way: I charge the statute, which I felt that you just can't go wrong charging the law of the land, which the current law in South Carolina says and it's here: In order to prove this crime, the State must prove the defendant, with intent to kill, attempted to kill another person with malice aforethought, either express or implied. I think that covers it.

(R. p. 288). Following that proposal, defense counsel indicated she believed the trial judge's suggested instruction was derived from an instruction on the former offense of assault and battery with intent to kill. (R. p. 289). However, the trial judge corrected defense counsel and pointed out his proposed instruction was derived directly from the wording of the attempted murder statute, which he contended covered the substance of the instruction sought by defense counsel. (R. p. 289). After the matter was clarified, defense counsel responded: "All right, sir." (R. p. 289).

Thereafter, defense counsel presented her closing argument to the jury, argued the State was required to show Appellant meant to kill Victim in order for him to be convicted of attempted murder, and further asserted there could be no attempt to kill without a specific intent to kill. (R. pp. 294-307). Following those remarks, the solicitor presented her closing argument to the jury and argued the evidence presented in regard to Appellant's actions demonstrated Appellant intended to kill Victim on the night of the incident.¹³ (R. pp. 307-319).

At the conclusion of the closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 319-334). In doing so, the trial judge instructed the jury on the offense

¹³ During her closing argument, the solicitor made no argument contradicting defense counsel's contention a specific intent to kill was required to prove attempted murder. (R. pp. 307-319).

of attempted murder by presenting the statutory language defining the offense while also providing the definition of malice aforethought. (R. pp. 326-328). Specifically, in identifying the elements of the offense, the trial judge stated: “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 expressed or implied.” (R. p. 326). Furthermore, the trial judge instructed the jury on intent as follows:

Intent means intending the result that actually occurs; not accident[al]ly or involuntar[il]y. Intent may be shown by acts and conduct of the defendant and other circumstances from which 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. p. 328). Thereafter, once the trial judge finished instructing the jury, he inquired of the parties if they had any objections to his jury instructions, and defense counsel responded: “No, Your Honor.” (R. p. 334). The jurors then began their deliberations. (R. p. 334).

Subsequently, during their deliberations, the jurors submitted a note to the trial judge requesting for “intent” to be defined in layman’s terms in regard to the attempted murder charge. (R. pp. 334-335; p. 351). In response, the trial judge initially proposed instructing the jury on the dictionary definition of intent, and defense counsel responded by indicating she believed the instructions that had already been presented to the jury in regard to intent were “pretty clear” while asserting she did not object to the trial judge’s proposed instruction. (R. pp. 335-337). Then, after further discussion with the parties, the trial judge proposed answering the jurors’ question as follows:

The dictionary defines intent as “the state of a person’s mind that directs his or her actions toward a specific object.”

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 is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed.

(R. pp. 341-342; p. 352). Following the trial judge's proposal, defense counsel indicated she had no objection and asserted the trial judge's proposed instruction would be appropriate. (R. pp. 341-342). The trial judge then presented his proposed instruction to the jury, and the jurors resumed their deliberations. (R. p. 342).

Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 344). The trial judge then sentenced Appellant to concurrent terms of imprisonment of thirty years for each of the convictions. (R. p. 346).

ARGUMENT

Any issue with the trial judge's manner of instructing the jury on the offense of attempted murder was not properly preserved for appellate review because defense counsel acquiesced in the jury instructions proposed by the trial judge during a charge conference and subsequently directly stated she had no objections to the trial judge's jury instructions, which did not include an express statement indicating proof of a specific intent to kill was required to prove attempted murder, after those instructions were presented to the jury. However, even assuming Appellant's appellate issue with the trial judge's jury instructions was somehow preserved for appellate review and assuming a specific intent to kill was necessary to prove the offense of attempted murder, the trial judge adequately and correctly instructed the jury on the relevant and applicable law by presenting instructions and supplemental instructions that defined the elements of attempted murder and required the jury to find Appellant specifically intended to kill his victim in order for him to be convicted of that offense.

Appellant contends the trial judge committed reversible error by improperly instructing the jury on the offense of attempted murder. In support of that contention, Appellant maintains the jury instructions presented by the trial judge incorrectly suggested proof of a general intent to kill as opposed to a specific intent to kill was necessary and sufficient to prove that offense and, thus, did not afford the jury with the proper test for resolving the issues raised in his case. Importantly though, any issue in regard to the manner in which the trial judge instructed the jury on attempted murder was not properly preserved for appellate review because defense counsel acquiesced in the manner of instructing the jury proposed by the trial judge during a charge conference and then subsequently directly stated she had no objections to the trial judge's jury instructions, which did not include an express statement proof of a specific intent to kill was required to prove attempted murder, after they were presented to the jury. However, notwithstanding any issue preservation concerns, the trial judge's jury instructions as given coupled with the supplemental instructions he presented in response to a jury question conveyed all the elements of attempted murder to the jury and required the jury to find Appellant specifically intended to kill his victim in order for the jury to convict him of that offense.

Therefore, to the extent a specific intent to kill was a required element of attempted murder, the trial judge adequately and correctly instructed the jury on the relevant and applicable law in Appellant's case.¹⁴ Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Significantly, if a party fails to properly object to an issue pursuant to our issue preservation requirements, the party is precluded from raising that issue on appeal. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal."). However, even if a party properly raises an objection during trial and the objection is ruled upon, a party may still waive his right to argue error in regard to that objection on appeal under certain circumstances. See State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Amongst the circumstances under which waiver can occur, a party

¹⁴ Notably, the South Carolina Supreme Court granted the State's petition for a writ of certiorari in the case that held proof of a specific intent to kill is required to prove the offense of attempted murder, and the State maintains its position that case was wrongly decided. See State v. King, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (2015) (holding the legislature intended to require the State to prove a specific intent to kill in order to establish the offense of attempted murder).

can waive an objection by indicating to the trial judge the party does not have an objection to an issue to which the party previously objected. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review.”); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (“Dicapua’s sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua’s counsel specifically stated he had ‘no objection.’ We find this amounted to a waiver of any issue Dicapua had with the videotape.”); see also State v. Britt, 237 S.C. 293, 313, 117 S.E.2d 379, 389 (1960) (“The appellant is not in position to complain of [an exhibit’s] introduction into evidence when he expressly consented thereto[.]”), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Likewise, a party can waive a previously-raised objection to an issue by subsequently conceding that issue to the trial judge. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal).

In the case at bar, defense counsel asked the trial judge during a charge conference to instruct the jury the State was required to prove a specific intent to kill in order to establish Appellant’s guilt for attempted murder, and the trial judge responded by indicating he intended to instruct the jurors on attempted murder by simply reading them the statutory language of the offense, which did not contain an express statement that a specific intent to kill was required to prove the crime. Following a discussion on the matter, defense counsel did **not** lodge or reserve any objections to the trial judge’s proposed manner of instructing the jury and, instead, frankly

responded: "All right, sir." Thereafter, as the trial continued forward, the trial judge presented his charge on the law to the jury and instructed the jury on attempted murder in the manner he had previously discussed with the parties during the charge conference, which meant he did not expressly inform the jury a specific intent to kill was necessary to prove the offense. Then, following the presentation of the jury charge, the trial judge inquired of the parties if they had any objections to his instructions as given, and defense counsel responded: "No, Your Honor." Subsequently, after the jurors submitted a note requesting for intent to be defined in layman's terms in regard to attempted murder, the trial judge proposed an additional instruction on the matter, and defense counsel initially responded she believed the instructions that had already been presented **were sufficient** before also agreeing to the manner in which the trial judge wished to respond to the jurors' question.

Under those circumstances, any issue in regard to the trial judge's manner of instructing the jury on the offense of attempted murder was not properly preserved for appellate review for several different reasons. Initially, by agreeing with the trial judge's proposed manner of instructing the jury during the charge conference and subsequently indicating she believed the instructions as given were "pretty clear" in regard to intent, defense counsel acquiesced in the trial judge's decision to instruct the jurors on attempted murder without expressly informing them a specific intent to kill was necessary to prove the offense and, therefore, failed to preserve any issue in regard to the trial judge's jury instruction on attempted murder. See Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue during trial and then complain of an error with the issue on appeal); see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); cf. Bryant, 372 S.C. at 315-316, 642

S.E.2d at 588 (“Bryant’s acknowledgment to the trial court that the absence of certain documents would not be prejudicial to the defense goes squarely against Bryan’s contention in this appeal. If Bryant conceded that the court’s ruling was not prejudicial, he may not later assert that ruling denied him a fair trial.”); State v. Hall, 312 S.C. 95, 98, 439 S.E.2d 278, 280-281 (1994) (“It is clear from the record that Hall made no objection to the ruling; indeed, he expressly acceded to the Judge’s instructions. No issue is preserved for review.”). Furthermore, even assuming defense counsel’s remarks during the charge conference could somehow be construed as an objection to the manner in which the trial judge intended to instruct the jury on attempted murder, any objection defense counsel may have had was expressly waived when defense counsel directly informed the trial judge she had no objections to the instructions he actually presented to the jury. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (finding an appellate argument involving a jury instruction to be unpreserved because defense counsel explicitly stated he had no objection to the trial judge’s instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none); see also Dicapua, 373 S.C. at 455, 646 S.E.2d at 152 (finding a previously-raised objection was waived when defense counsel subsequently stated there were no objections to the matter to which the objection had previously been raised). Accordingly, Appellant failed to preserve any issue for appellate review in regard to the trial judge’s manner of instructing the jury on the offense of attempted murder, and such an issue cannot now properly be raised or addressed on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court “cannot address unpreserved errors”). Appellant’s convictions should be affirmed.

B. Sufficiency of the Jury Instructions as Presented in Regard to Specific Intent

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge is required to charge only the current and correct law of South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and **does not** have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

In reviewing a trial judge's jury instructions for error, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323

(2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”).

In the case sub judice, the trial judge, through his initial jury instructions, instructed the jury on attempted murder by directly presenting the jury with the statutory language defining the offense, which identified the intent required to prove the offense as an “intent to kill,” while further defining malice aforethought and explaining intent can be inferred from circumstantial evidence. Then, through his supplemental jury instructions in response to the jury’s subsequent question about intent, the trial judge presented the jury with a dictionary definition defining intent as “the state of a person’s mind that directs his or her actions toward a specific object.” Cf. State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (“In the context of an ‘attempt’ crime, specific intent means that the defendant consciously intended the completion of the acts comprising the choate offense. In other words, the completion of such acts is the defendant’s purpose.”). Based on the fact the trial judge’s supplemental instructions defined intent as a mental state directing a person’s actions towards a **specific** object coupled with the fact the trial judge had earlier presented the language of the attempted murder statute identifying the required intent to prove the offense as an “intent to kill,” the trial judge’s jury instructions as presented required the jury to find Appellant specifically intended to kill Victim in order for him to be convicted of attempted murder. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 (“A jury charge is correct if it contains the correct definition of the law when read as a whole.”); see also State v. Holmes, 277 S.C. 232, 234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law). Accordingly, to the extent a specific intent to kill was required to prove Appellant’s guilt for attempted murder, the trial

judge committed no error in instructing the jury on that offense, and the manner in which the jury was instructed was fully consistent with the manner initially requested by defense counsel during the charge conference. See Burkhart, 350 S.C. at 263, 565 S.E.2d at 304 (“Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues.”).

In arguing on appeal the trial judge reversibly erred in instructing the jury on attempted murder, Appellant contends the trial judge’s instructions improperly conveyed to the jurors proof of a general intent to kill was sufficient for them to convict him of that offense. In support of that contention, Appellant points to the language from the trial judge’s jury instruction explaining “[i]ntent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent” as the offending language that allegedly misinformed the jurors they could find him guilty based on proof of a general – but not a specific – intent to kill. Importantly though, the verbiage identified by Appellant on appeal as an improper instruction on general intent to kill was **not** an instruction on the requisite intent – specific, general, or otherwise – needed to prove the offense. Cf. State v. Kinard, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) (“ ‘General intent’ is defined as ‘the state of mind required for the commission of certain common law crimes not requiring specific intent’ and it ‘usually takes the form of recklessness . . . or negligence.’ ” (citation omitted)). Instead, it was simply an explanation the required intent, which was identified when the trial judge informed the jury an intent “to kill” was a necessary element of attempted murder, could be **inferred** through words, actions, or other circumstances established by the evidence, which unquestionably was a correct statement of law and was true regardless of whether the required intent was specific or general. See State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) (“The question

of criminal intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.” (citation omitted)); State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971) (“Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct.”); State v. Johnson, 84 S.C. 45, 47, 65 S.E. 1023, 1024 (1909) (“The intent with which an act is done denotes a state of mind, and it can be proved only from expressions, or conduct, or both, considered in light of the given circumstances.”); see also Foust, 325 S.C. at 16, 479 S.E.2d at 52 (characterizing an instruction indicating intent can be inferring from acts and conduct as a “standard ‘intent’ charge” – not a general intent to kill charge). As a result, the trial judge’s instructions as presented were far different from an instruction indicating only a general intent to kill was necessary to prove attempted murder and simply correctly conveyed intent can be inferred circumstantially without suggesting a general intent to kill would be sufficient to prove Appellant’s guilt. Cf. King, 412 S.C. 403, 772 S.E.2d 189 (finding reversible error where the trial judge **explicitly** instructed the jury attempted murder was a general intent crime). Therefore, assuming a specific intent to kill was required to prove the offense of attempted murder, the instructions presented by the trial judge in Appellant’s case did not improperly instruct the jury to the contrary. See State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (“[T]he judge’s charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the

trial judge declare the law, but no particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable.”)

Because the trial judge’s jury instructions correctly – to the extent proof of a specific intent to kill is required to prove the offense of attempted murder – conveyed the relevant and applicable law to the jurors, the trial judge committed no error in instructing the jurors on the law in Appellant’s case. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”). Accordingly, notwithstanding the fact Appellant’s appellate challenge to the trial judge’s manner of instructing the jury on attempted murder was not properly preserved for appellate review, the jury instructions as given would not justify or warrant the grant of a new trial in his case. See Rabon, 275 S.C. at 462, 272 S.E.2d at 636 (1980) (holding the failure to give a jury instruction on a proper statement of law did not constitute reversible error in light of the fact the jury instructions as given adequately and sufficiently covered the applicable law). Appellant’s convictions should be affirmed.¹⁵

¹⁵ Notably, Appellant has not challenged his kidnapping conviction on appeal, and, as a result, that conviction and Appellant’s concurrent thirty-year sentence for that conviction are the law of the case. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (explaining unchallenged and unappealed rulings are the law of the case).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

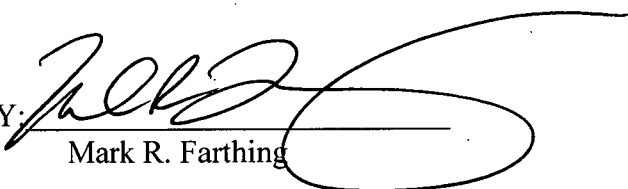
Respectfully submitted,

ALAN WILSON /
Attorney General

MARK R. FARTHING
Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY:



Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 12, 2016

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IN THE COURT OF APPEALS

RECEIVED

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Appeal from Lexington County
Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case No. 2014-002680

THE STATE,

Respondent,

vs.

DARRYL VINCENT JONES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY:


Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Melissa Arnold, Esquire
Lowcountry Legal Volunteers
Post Office Box 2496
Bluffton, SC 29910

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 12th day of August, 2016.


ANGELA S. BENNETT

Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211