STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable George C. James, Circuit Court Judge
Appeal Case No. 2015-002443

THE STATE,

RESPONDENT,

V.

RODNEY R. GREEN,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
P.O. Box 836
Sumter, SC 29150-0836

ATTORNEYS FOR RESPONDENT

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II. Violating Appellant's federal and state constitutional right to require the state to prove every element of the offense beyond a reasonable doubt, did the trial judge err by instructing the jury regarding the doctrine of transferred intent for the offense of attempted murder, which requires a specific intent to kill, in light of the requirement of only general intent for murder?

III. Did the trial judge err in failing to grant Appellant's motion for mistrial, or instruct the jury to disregard expert testimony regarding ballistics, where the police officer who found the shell casings at the scene did not testify and no other witnesses could testify that the shell casings introduced at trial or tested by the expert were the shell casings found at the scene, which violated Appellant's rights under the Sixth Amendment's Confrontation Clause?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

I. Whether the trial court erred in denying Appellant's motion for a directed verdict for the attempted murder charge when the argument raised on appeal was not presented to the trial court, and the State presented direct evidence and substantial circumstantial evidence that Appellant was guilty of attempted murder?

II. Whether the trial court abused its discretion by including an instruction regarding the doctrine of transferred intent with the instructions regarding the law for the offense of attempted murder?

III. Whether the trial court erred in denying Appellant's motion for a mistrial after admitting into evidence three fired shell casings without the testimony of the investigator who collected the casings at the scene when there was no violation of Appellant's right to confront the witnesses against him, and the State adequately established the chain of custody for the three fired casings to support their admission?

STATEMENT OF THE CASE

On November 9-11, 2015, Appellant Rodney R. Green ("Green") was tried by a jury for the murder of Tyrese Archie, the attempted murder of Ray'Quann Jenkins, possession of a firearm during the commission of a violent crime, and possession of a stolen handgun. Green was tried in the Sumter County Court of General Sessions before the Honorable George C. James, Circuit Court Judge. Charlie J. Johnson, Jr., represented Green. The State was represented by Solicitor Ernest A. Finney, III, of the Third Judicial Circuit Solicitor's Office.

On November 11, 2015, Green was convicted of murder, attempted murder, possession of a weapon during the commission of a violent crime, and possession of a stolen handgun. (Tr. 833). He was sentenced to life confinement for the murder conviction, thirty years confinement for the attempted murder conviction, five years confinement for the possession of a weapon during the commission of a violent crime conviction, and time served for the possession of a stolen pistol conviction, all to be served concurrently. (Tr. 860). Before this Court is Green's direct appeal of his convictions and sentences. Green requests this Court dismiss his conviction for attempted murder, and reverse his other convictions and sentences and remand for a new trial. The State respectfully requests this Court deny Green's appeal and affirm his convictions and sentences.

STATEMENT OF FACTS

On the early morning of March 17, 2014, Appellant Rodney Green shot and killed Tyrese Archie outside of Club Miami in Sumter. In the shooting, Green also shot Ray'Quann Jenkins in the leg.

Archie was shot in the left upper chest. (Tr. 622). The bullet travelled from front to back, and it went downward and a little towards the right. (Tr. 622). The bullet went through Archie's left lung into the chest cavity. (Tr. 622). The bullet exited his body in the left back, just a few inches below the location of the entrance wound. (Tr. 622). The forensic pathologist determined the wound was from a distant gunshot, and Archie would have died within minutes. (Tr. 624). The pathologist also indicated Archie would have been able to run a short distance immediately after suffering the wound. (Tr. 625).[1]

Background

On March 15, 1014, Green and his girlfriend, Lavitra Harvin, attended a birthday party. (Tr. 133-34). The two drove together in Harvin's Grand Marquis. (Tr. 148). Harvin noted the birthday party was an "all-white" party, in which attendees wore all white clothing. (Tr. 134). Harvin testified Green wore a white shirt, white pants, and white shoes that night. (Tr. 146).

[1] The pathologist also indicated the measurement of one of the gunshot wounds was consistent with the projectile being a medium caliber. (Tr. 624). She also indicated that a .45 caliber projectile would be considered a large caliber, not a medium caliber projectile. (Tr. 625). The pathologist noted that skin is elastic and can shrink a little bit, so she could not say the wound was not caused by a .45 caliber projectile. (Tr. 626, 627).

Harvin left the birthday party and rode with some of her girlfriends at approximately 1:45 a.m. on March 16.[2] (Tr. 135). The group went to Club Miami. (Tr. 135). Harvin did not see Green inside of the club. (Tr. 164).

Ray'Quann Jenkins, the attempted murder victim, testified he was with Tyrese Archie most of the day. (Tr. 185-212). Jenkins, Archie, and Archie's nephew were at a birthday party and cookout from 7p.m. to around midnight. (Tr. 186). When they left the cookout, they went to a club near Sumter Mall for between thirty minutes and an hour. (Tr. 188-89). They also stopped by the emergency room to check on Jenkins' son. (Tr. 190). The three then went to Club Miami. (Tr. 191). Jenkins noted they arrived at Club Miami between 12:30 and 1 a.m. (Tr. 191).

Demetrice Brooks, Archie's cousin, was also at Club Miami on March 15-16. (Tr. 268-69). She, Auntachie Blanding (another cousin), and Shateeja Rivers went to the club together. (Tr. 269). Brooks did not initially see Archie, but noted Archie arrived at the club later. (Tr. 271).

There are fights inside and outside of Club Miami.

Harvin testified she sat at the bar at Club Miami. A fight started inside the club, but she did not know who was involved. (Tr. 138). Harvin and her girlfriends were about to leave when the fight started. (Tr. 138). A large group of people were outside when they left the club. (Tr. 140).

Between 1 and 2 a.m., Jenkins and Archie went outside the club. (Tr. 194). They saw some of Archie's cousins were involved in an altercation outside. (Tr. 194-95). Jenkins testified

[2] In her statement to law enforcement, Harvin indicated Green did not travel with her to Club Miami. (Tr. 139). She also testified that Green had the keys to the Grand Marquis when she left with her girlfriends. (Tr. 149).

that Archie attempted to break up the fight; he encouraged his younger cousins to stop, get in their cars, and leave. (Tr. 196, 197). Jenkins noted that Archie did not participate in the fight. (Tr. 196). He also stated that no one in the fight had a weapon, and no one was getting kicked and stomped on the ground. (Tr. 197).

Archie then attempted to call his nephew so the three could leave. (Tr. 197). While they were waiting on Archie's nephew, Archie and Jenkins were standing in the parking lot. (Tr. 198-99). Jenkins testified that three guys came to where they were and tried to jump Archie. (Tr. 199). Jenkins stepped in to break up that confrontation, but Archie and one of the guys got into a fist fight. (Tr. 199-200). The fight did not last long, but shortly after it was broken up, Jenkins saw four or five more guys coming towards them from behind a wire fence that was serving as a property line. (Tr. 200-01). Jenkins testified that Green was among this group of guys. (Tr. 203). Jenkins testified he saw Green reach into his shirt and pull out a weapon. (Tr. 204). Jenkins then pulled Archie from the ground and pushed him away from the scene. (Tr. 204).

Auntachie Blanding, one of Archie's cousins, testified she was at Club Miami with Shateeja and Kayla on the night of the shooting. (Tr. 315). She noted there was a fight inside the club. (Tr. 316). After the fight, Auntachie and her friends went outside. (Tr. 316). Another fight broke out outside of the club. (Tr. 316). After that, Auntachie recalled that Archie told everybody to go home. (Tr. 316-17). Archie told them to leave because of the fight. (Tr. 317). Auntachie testified Archie was just making sure everyone in his family went home. (Tr. 331).

Davontae Blanding, another of Archie's cousins, was also at Club Miami that night. (Tr. 344-46). About forty-five minutes after he saw Archie at the club, an altercation broke out inside of the club. (Tr. 348). According to Davontae, the whole front side of the club was pushed to the outside by security. (Tr. 348). Once he got outside, he saw a bunch of people fighting. (Tr.

349). Archie was not involved in any of the fights. (Tr. 349, 374). Instead, Archie was telling everybody to go home, and he was attempting to get everyone to leave the scene. (Tr. 349). Davontae did not immediately leave to get in a car. (Tr. 249).

Myron Conyers, one of the security officers outside of Club Miami that night, recalled a fight breaking out inside the club around 2 – 2:15 a.m. (Tr. 380). The bouncers brought the individuals that were fighting to the outside, and security attempted to control the situation. (Tr. 380-81). The argument continued for some time, and Conyers attempted to separate one of the participants from the situation in an effort to get him to calm down. (Tr. 381).

Patrick Washington, another security officer working that night, also recalled the fight outside of the club. (Tr. 410, 415). A fight had started inside the club, and after everyone who was involved was escorted outside, arguments ensued. (Tr. 415). Another fight started outside. (Tr. 415). Washington followed one guy who had threatened to get a gun from his vehicle. (Tr. 415).

The Shooting

Harvin indicated that once her group got outside, she heard gunshots. (Tr. 140). She dropped beside a black truck for safety. (Tr. 140). Shortly thereafter, Ray'Quann Jenkins ran past her and said he was shot. (Tr. 140). Harvin testified that when she looked up, she saw gunfire. (Tr. 141). Harvin noted the gunfire was close to the rear end of the truck, but she did not see anyone firing a gun. (Tr. 145). She did see Green running, and she was later able to identify him in a picture taken that early morning. (Tr. 146, 147). Harvin testified she did not see Green with a gun, but she did see him running towards a field. (Tr. 154). However, in her statement to law enforcement, Harvin had indicated she saw Green firing a handgun and that he

ran away after firing the gun. (Tr. 156, 475-76). In the statement, she noted she saw Green with a black handgun. (Tr. 165, 475-76).

Harvin heard one shot when Jenkins ran past her. (Tr. 157). She thought the gun fired probably twice shortly thereafter. (Tr. 158). When she stood up after hearing those shots, she saw Green running. (Tr. 158). Harvin also stated the window on the driver's side of the truck she was near was shattered. (Tr. 158-59).

After Jenkins pulled Archie off the ground, he heard Green say watch out.[3] (Tr. 204, 224). That's when Jenkins heard the first gunshot. (Tr. 204). Jenkins testified the first shot hit him, and he fell forward. (Tr. 206). Jenkins noted he was hit in the left femur, right above the pelvis. (Tr. 206). Jenkins caught himself on his hands, and he tried to pick himself up. (Tr. 206). Jenkins leaned against the truck he was beside when he got shot. (Tr. 207). When he picked himself up, Jenkins looked towards Archie, who was running away from the parking lot and back towards the club. (Tr. 207, 216). Jenkins heard two or three more shots. (Tr. 207). Jenkins could tell Green was firing those shots. (Tr. 208). He saw Green firing the weapon as he was running towards Jenkins and Archie. (Tr. 208-09).

Ultimately, Jenkins testified that he saw Green with a black handgun, and he thought Green fired the gun three or four times. (Tr. 209, 227). Jenkins could not move because of his gunshot injury, and he did not see Archie get shot. (Tr. 210, 220). Jenkins did not hear any other gunshots that night. (Tr. 210). While Jenkins did attempt to go towards the area where he saw Archie fall, he could not get there because of his leg injury. (Tr. 213, 225).

[3] Jenkins recognized Green and heard his voice. (Tr. 205).

Jenkins testified Green was wearing all white on the night/early morning of the shooting: he was wearing white shirts, white pants, and white shoes. (Tr. 214). He also indicated that State's Exhibit 9 reflected Green on the night of the shooting. (Tr. 214).

Brooks was outside of the club when the shooting happened. (Tr. 272). Prior to the shooting, there was a fight inside the club. (Tr. 273). People were being pushed out of the club, and Brooks went outside because she saw some family members were involved. (Tr. 273). Once outside, Brooks saw Archie. (Tr. 274). Archie was directing Brooks and other relatives to leave the club and go home. (Tr. 274). After she saw that, she heard Green yell out, "Yo, Stymie."[4] (Tr. 275, 299). Archie continued telling his family members to get into their cars and to go home. (Tr. 278). At that point, Brooks was standing near Archie, Jenkins, and Davontae Blanding. (Tr. 278). Brooks did not see Archie involved in any fights outside of the club. (Tr. 298).

Brooks then headed towards Auntachie's car. (Tr. 278). When she looked back, she saw Green shooting a gun. (Tr. 278). She saw him fire three or four times. (Tr. 278). She did not see Green's target. (Tr. 278, 301). Brooks testified that Green was wearing all white, and he was firing a handgun. (Tr. 278-79). Brooks did identify State's Exhibit 9 as reflecting how Green looked on the early morning of the shooting. (Tr. 284-85).

As Auntachie was heading towards her car, she heard gunshots. (Tr. 318). Auntachie got into the driver's seat, Kayla got into the front seat, and Brooks and Shateeja got into the back seat.[5] (Tr. 318). Auntachie heard the gunshots, but she did not see who was firing the weapon. (Tr. 318).

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[4] Stymie was Archie's nickname. (Tr. 275).

[5] While Brooks did not go to the club in Auntachie's car, she did ride home with Auntachie. (See Tr. 317-18).

Just prior to the shooting, Davontae saw a young lady running towards Green, screaming "don't do it."[6] (Tr. 353, l 6). Davontae saw Green raise his arm and start shooting. (Tr. 362). He did not know exactly what type of handgun the shooter had, but he knew it was a big gun. (Tr. 362). Archie walked away from where Davontae was standing, and approximately ten seconds later, Davontae heard gunshots. (Tr. 350, 352). Once Davontae heard the shots, he took cover. (Tr. 363). Davontae saw both Jenkins and Archie after the shooting. (Tr. 364). Jenkins was on the ground. (Tr. 364). Archie was running to get away from the shooter, and Davontae followed. (Tr. 364). Davontae noted that Archie indicated he was hit, and once Archie got to the back of the club, he collapsed. (Tr. 364, 367). Davontae identified Green as the shooter in a photo lineup. (Tr. 356-61). Davontae also testified that Green was the only person shooting that night. (Tr. 373-74).

Conyers had noticed an individual at the fence line when he was dealing with another patron. (Tr. 381, 384). The individual fired one shot, paused, and then fired two more shots into the crowd. (Tr. 381, 384). The individual then turn and ran away. Conyers and Washington started chasing the individual. (Tr. 381, 384). Conyers noted that he had not heard any gunshots before that individual fired those three shots, and he heard no other gunfire after those shots. (Tr. 384, 402). Conyers testified the shooter was dressed in all white, and he was firing an automatic weapon. (Tr. 387-88). Conyers also identified Green as the shooter in a photo lineup. (Tr. 388-90).

After Washington verified the guy he was following did not have a weapon, he heard gunshots. (Tr. 415). Washington looked back, and he saw someone in all white attire shooting. (Tr. 415). Washington testified he saw the weapon in the shooter's hand, and it looked like

[6] In his statement to law enforcement, Davontae indicated he saw two girls attempt to stop Green from shooting. (Tr. 371).

either a .40 or .45 caliber pistol. (Tr. 419). Washington did not hear any other gunshots that night. (Tr. 421). He also identified Green as the shooter in the courtroom. (Tr. 422-23).

After the Shooting

After the shooting, Harvin ran to the Grand Marquis, broke the back window, retrieved a spare key, and drove away to a cousin's house. (Tr. 151-54, 164). Similarly, Brooks, Auntachie, and Rivers got into their car. Brooks also testified that as she and her friends were leaving the parking lot in Auntachie's car, she saw a dark-skinned man with dreads that she only knew as Carter Man. (Tr. 280-82). She noted that Carter Man had two pistols, and he may have fired one shot at their car. (Tr. 280-82, 291-92, 304-05). The three then left the scene. (Tr. 283). However, they returned shortly afterwards. (Tr. 283-84).

As she pulled out of her parking spot, Auntachie saw a man with dreads with guns in his hands. (Tr. 325). She drove around him, and in doing so, she hit a pole and ran into a ditch. (Tr. 319, 325-26). She damaged the passenger side of the vehicle. (Tr. 319). Auntachie believed the vehicle may have been shot, and the damage was later examined by law enforcement.[7] (Tr. 320-22). Auntachie testified that she was later told the man she saw with the guns was Carter Man. (Tr. 328). She noted that she saw him after she heard the earlier gunshots, and the shooting did not sound like it came from where she saw Carter Man. (Tr. 328-29). Auntachie also indicated she did not hear Carter Man shoot his guns. (Tr. 329).

After the gunfire stopped, Jenkins saw Green running back towards the area he initially saw him. (Tr. 213). Jenkins indicated he saw a security officer running in the same direction as Green. (Tr. 213).

[7] It was later determined that the damage was not caused by a gunshot. (Tr. 677-79).

Conyers noted that Washington and the sheriff's deputy were able to catch the shooter at the dirt mounds. (Tr. 385). Washington headed towards the shooter, and the shooter started running off in the field. (Tr. 415). Washington noted that he and a sheriff's deputy chased the shooter over a dirt pile. (Tr. 416). Washington saw the shooter throw something. (Tr. 416). He and the deputy were later able to subdue the man. (Tr. 416-17).

Steven Pizzino, a former corporal with the Sumter County Sheriff's Office, testified that he and Corporal Misty Lee responded to the shooting. (Tr. 242). When Pizzino arrived, Lee radioed that the shooting suspect was running across the field wearing a white shirt and white pants. (Tr. 242). Pizzino saw an individual matching that description running towards some sand berms, and he saw two others individuals chasing the man in white. (Tr. 242-43). Pizzino joined the chase. The man in white ran over the first sand berm. As Pizzino topped that berm, he saw the man attempt to negotiate over a second sand berm. (Tr. 243, 246). Pizzino tackled the suspect, and he used his taser after the suspect resisted arrest. (Tr. 243). Pizzino was eventually able to cuff the suspect. (Tr. 243). Pizzino was able to identify Green as the man he arrested. (Tr. 247). He also identified State's Exhibit 9 as a picture that reflected Green's appearance that early morning. (Tr. 247). Pizzino also testified that he saw Lee recover a handgun on the opposite side of the sand berm approximately twenty feet away from where he arrested Green. (Tr. 260, 262, 263).

Lt. Misty Lynn Lee of the Sumter County Sheriff's Office saw Pizzino's vehicle arriving on scene, and she heard him say there was a subject running and shooting and he was wearing all white. (Tr. 449-50). Lee also noted that Pizzino indicated he saw the subject. Lee parked her vehicle behind Pizzino's, and she observed Pizzino and the security guards chasing the subject. (Tr. 450-51). As Pizzino chased Green up the first berm, Lee ran around the berms and started

climbing up the berms from the back. (Tr. 451). As she did so, she heard Pizzino making contact with the suspect. (Tr. 451). Lee saw a gun lying in the valley of the berm near where Pizzino had contacted the suspect. (Tr. 451). Lee photographed and secured the gun. (Tr. 451-52). Lee placed the gun in her vehicle, and she later turned the gun over to the crime scene investigator. (Tr. 456).

Archie died as a result of his gunshot wound. As a result of his gunshot wound, Jenkins had three surgeries. (Tr. 218). He was not able to return home for three weeks. (Tr. 219).

ARGUMENT

I. The trial court did not err in denying Green's motion for a directed verdict for the attempted murder charge.

The trial court properly denied Green's motion for a directed verdict as it related to his attempted murder charge. First, the argument that Green presents on appeal, that there was no evidence that Green had a specific intent to kill Jenkins, and thus the trial court improperly utilized the doctrine of transferred intent in determining there was sufficient evidence for the charge to go to the jury, is not preserved for appellate review. Second, the trial court properly considered transferred intent in determining a directed verdict was not warranted. The doctrine of transferred intent was applicable, and in light of the evidence presented that established Green shot Jenkins in his attempt to murder Archie, the motion for a directed verdict was properly denied.

A. What occurred at trial

At the close of the State's case, Green moved for a directed verdict upon the murder charge, the attempted murder charge, the possession of a weapon during the commission of a violent crime charge, and the possession of a stolen pistol charge. (Tr. 727-41). In contending a directed verdict was warranted upon the attempted murder charge, Green argued that the only evidence presented by the State consisted of testimony from the victim stating that he believed Green shot him. (Tr. 732). Green contended that the State presented no other evidence, including medical evidence, indicating the victim was actually shot. While Green acknowledged the victim did say he was shot, the victim was not a medical expert and there was no medical evidence to support the allegation.

In response, the State argued the victim did talk about the injury and stated he was in the hospital for three weeks. (Tr. 733). Further, Jenkins, the attempted murder victim, testified he

was on a lot of medications because of the type of injury he sustained, and he noted that he was unable to walk or run away because he could not use his leg. (Tr. 733).

Regarding the identity of the shooter, the State noted Jenkins identified Green as the person who shot him, described the shooter as being dressed in all white. (Tr. 734). He also testified the shooter was brown skinned and had a low haircut, and he identified Green as the shooter in court. (Tr. 734). Defense counsel acknowledged that Jenkins testified he saw Green with a gun. (Tr. 735).

Green then reasserted that the basis for his motion was that the State had not presented any evidence Jenkins was shot.

> However, Your Honor, I still go back to the point that the State has not presented any evidence that he was shot. That was his opinion he was shot. He was injured, but there was no evidence presented that was actually shot. There was no round recovered. There was no medical records entered. There was no testimony by anybody that he actually -- the wound that he received was a gunshot wound. And the State still has to prove, or show some evidence for the jury to do that. Other than that, you're asking the jury to speculate.

(Tr. 735, ll 7-17).

When asked by the trial court, Green admitted that he could not find any case that indicated a medical expert was required to testify to establish a victim suffered a gunshot wound. After further discussion, Green reiterated that the only person who testified that Green injured Jenkins was Jenkins. (Tr. 737). He noted that there was no other testimony that anybody said they saw Green even shoot Jenkins. (Tr. 737). In response, the trial court observed, "there is enough of direct and circumstantial evidence, number one, for the jury to conclude if it chooses to do so, that Mr. Green was the sole shooter, and that Mr. Jenkins was shot." (Tr. 737, ll 13-17).

Green further contended that he believed the jury would still have to conclude as one of the elements of attempted murder that Jenkins was actually injured. (Tr. 737). Green argued the

State failed to provide evidence of an injury, and that would lead the jury to speculate about the injury. (Tr. 737-38). He again asserted that the State did not present evidence as to what caused Jenkins' injuries. (Tr. 738).

B. Discussion

1. Green's argument on appeal is not preserved for appellate review. The specific argument was not presented to the trial court, and was not ruled upon by the trial court.

On appeal, Green contends the trial court erred in denying his motion for a directed verdict because the State "failed to present direct or substantial circumstantial evidence that Appellant acted with the specific intent to kill Jenkins." IBOA at p. 15. Specifically, Green contends the State was required to present evidence that Green had a specific intent to kill Jenkins, and the doctrine of transferred intent would not apply. This was not the argument presented at trial. At no point during the discussion of the motion for a directed verdict regarding the attempted murder charge did Green contend he was entitled to a directed verdict because the State failed to present evidence Green had a specific intent to shoot Jenkins. Instead, Green's argument at trial focused on whether the State presented evidence establishing Jenkins was injured and whether Jenkins' injuries were caused by Green.

Since Green did not present the argument raised on appeal to the trial court, the argument is not preserved for appellate review. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (stating an objection should be sufficiently specific to bring the exact error to the trial court's attention); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then

another on appeal); State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998)("In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review.")("A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below.") State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.") see generally Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (concluding appellate courts will generally not address an argument unless it was first raised to and ruled upon by the trial court).

2. The trial court did not abuse its discretion in denying Green's motion for a directed verdict upon the attempted murder charge. The State presented sufficient direct and circumstantial evidence to support the conviction.

In ruling on a motion for a directed verdict, a trial judge is concerned only with the existence of evidence, not with its weight. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997); State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003) (citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)). "[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). A defendant is entitled to a directed verdict when the

state fails to produce evidence of the offense charged. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008).

> A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App.2008).

"A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29.

As a preliminary matter, the State submits the crime of attempted murder should not be considered a specific intent crime, and, therefore, should only require a general intent to kill. The South Carolina Supreme Court is currently considering the issue of whether attempted murder requires a specific intent to kill or only a general intent to act with malice aforethought.[8]

[8] At the time of this brief, the Supreme Court has held oral arguments in the case of State v. Raheem King, Appellate Case Number 2015-001278, and a decision is pending. The issue is

When the South Carolina Supreme Court determines attempted murder, like its predecessor ABIK, does not require proof of a specific intent to kill, the State will only be required to prove a general intent and Green's issue is without merit. Additionally, once it is determined to be a general intent crime, the theory of "transferred intent" is certainly applicable as it was for a common law charge of ABIK. See State v. Fennell, 340 S.C. 266, 276, 531 S.E.2d 512, 517 (2000) ("A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim. Accordingly, we hold that the doctrine of transferred intent may be used to convict a defendant of ABIK when the defendant kills the intended victim and also injures an unintended victim.").

If the South Carolina Supreme Court affirms the Court of Appeals' decision in King, and finds the statutory attempted murder charge requires proof of a specific intent to kill, it does not eliminate the applicability of the doctrine of "transferred intent." In Fennell, the South Carolina Supreme Court cited with approval the case of Ochoa v. State, 981 P.2d 1201 (Nev.1999) and its rationale. Fennell, 340 S.C. at 276, 531 S.E.2d at 518. In Ochoa, the Court specifically applied "transferred intent" to all crimes where an **unintended victim** is harmed as a result of a defendant's **specific intent to harm an intended victim** regardless of whether the intended victim is injured. In that case, the Nevada Court found it was appropriate to charge defendant who killed the intended victim and injured a bystander with a stray bullet with murder and attempted murder. Ochoa, 981 P.2d at 1205 ("Since there was sufficient evidence that Ochoa intended to kill Ortiz, that intent may be transferred to the unintended victim, Smith. As Smith

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whether by making attempted murder a statutory crime, did the legislature intend it to require proof of a specific intent to kill as opposed to retaining the common law requirements of ABIK, which only required a general intent to act with malice aforethought. See State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

did not die, the appropriate charge was attempted murder."). This is the same circumstance relating to attempted murder as is present in the instant case. The appropriate charge in this case, as in Ochoa, was attempted murder.

Furthermore, Green's contention that the doctrine of transferred intent does not apply to attempted murder appears to be based upon the mistaken belief that specific intent can only exist as to one specific intended victim. This underlying belief is not supported by the plain language of the statute or by common law. In fact, case law reflects just the opposite. For example, in State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the South Carolina Supreme Court found a defendant who killed his intended target but also injured an unrelated third party in his shooting spree was guilty of murder of the intended victim and, using the doctrine of transferred intent, ABWIK of the third party. "A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim." Fennell, 340 S.C. at 276, 531 S.E.2d at 517. The Supreme Court explained the defendant's mental state

> is contained within the defendant's brain when he commits the act. That mental state never leaves the defendant's brain; it is not "transferred" from the defendant's brain to another person or place. A more apt description might be that the mental state is like a spotlight emanating from its source—the defendant's mind—to its target—the intended victim."

Id. at 271, 531 S.E.2d at 515. Further, the "spotlight" was not extinguished at the moment a bullet strikes and killed the intended victim, but in that case shined on both victims. Id. at 271-72, 531 S.E.2d at 515. The court noted it would be "[in]appropriate" to limit the defendant's punishment and penalty to maximum punishment of ten years' imprisonment provided under that version of the State's ABHAN statute. Id. at 276, 531 S.E.2d at 518.

Similarly, the Supreme Court has found that the specific intent required to establish an attempt in the context of attempted criminal sexual conduct with a minor in the second-degree also did not require proof that the intent was tied to a specific victim.

> "In the context of an 'attempt' crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense." State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000). Accordingly, "[t]o prove attempt, the State must prove that the defendant had the *specific intent* to commit the underlying offense, along with some *overt act*, beyond mere preparation in furtherance of the intent." State v. Reid, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011) (emphasis in the original).

State v. Green, 397 S.C. 268, 283, 724 S.E.2d 664, 671–72 (2012). In Green, the Supreme Court noted the defendant was not required to complete the sexual battery in order to be prosecuted and convicted for attempted CSC with a minor in the second degree. Id. at 284, 724 S.E.2d at 672. Further, the Supreme Court found the fact that the intended victim was not an actual minor was irrelevant as the State was only required to show the defendant had the intent to commit a sexual battery on a victim between the ages of eleven and fourteen coupled with some overt act toward the commission of the offense. Id.

This reasoning holds true with the offense of attempted murder. To establish Green was guilty of attempted murder, the State had to prove he had the specific intent "to kill another person with malice aforethought, either expressed or implied." That the victim of the attempted murder was not the defendant's intended murder victim is of no consequence as long as Green acted with the intent to murder someone when he fired the shots.

The State presented sufficient direct evidence and substantial circumstantial evidence to establish Green was guilty of attempted murder. First, the State established Green was, in fact, the shooter. Several witnesses identified Green as firing a gun at the scene. (Tr. 156, 204-05, 356-61, 388-90, 422-23). Several noted that Green was the only person firing a gun that night.

(Tr. 210, 373-74, 384, 392, 421). There was circumstantial evidence that Green was firing with the intent to kill Archie. Prior to the shooting, one witness indicated they heard Green yell out, "Yo, Stymie," to get Archie's attention prior to shooting him. (Tr. 275, 299). Further, malice could be inferred from Green's use of a firearm. See generally State v. Belcher, 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009). Jenkins testified that he was hit by the first gunshot fired by Green. (Tr. 206). Altogether, the State presented evidence that Green was attempting to kill Archie, and Jenkins was hit in the process. In applying the principles of transferred intent, the record supports the trial court's determination that the State presented sufficient evidence to warrant the charge going to the jury. The trial court did not abuse its discretion in denying the motion for a directed verdict for attempted murder. The attempted murder conviction should be affirmed.

II. Trial court did not abuse its discretion in instructing the jury regarding the doctrine of transferred intent for the attempted murder charge.

The trial court did not abuse its discretion in charging the jury with the doctrine of transferred intent. The instruction was a proper statement of the law.

A. What occurred at trial.

During the discussions regarding the jury charge, the trial court indicated that it would instruct the jury "that a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury." (Tr. 743, ll 18-20). At that point, the State requested an instruction regarding transferred intent. (Tr. 744). The trial court indicated it would consider a proposed charge regarding transferred intent. (Tr. 744).

During this discussion, defense counsel objected, noting the requested charge went to his earlier concern regarding the State's failure to present evidence that Mr. Jenkins was shot. (Tr. 744-45). Defense counsel contended that it was his concern when he made his initial argument (directed verdict), that there was no evidence Mr. Jenkins was even injured by a bullet. (Tr. 745).

The trial court then discussed this Court's opinion in State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct.App. 2015). (Tr. 745-46). During the discussion, the trial court did note it disagreed with the Court of Appeals' opinion in King. (Tr. 746-47). However, the trial court went on to state,

> I can't base my refusal to charge what the Court of Appeals has charged on disagreement with it. I have to charge what the law is at this stage. So I'll tell the jury that they must find that the defendant attempted - - shot with the intent to kill Mr. Jenkins. Common sense tells you that if I am shooting at a crowd of people trying to hit Mr. Finney, but he ducks at the perfect moment, and I hit the person behind him and either kill or almost kill him, I should be subject to being convicted for attempting to murder the person who was hit by the bullet, not just Mr. Finney, because he was wise enough to duck. It doesn't make any didn't sense, but that's what that opinion says. I didn't say that. I didn't say it it doesn't

> make any - - it makes perfect sense according to the Court of Appeals, so let's just leave it at that. Let's just say it makes no practical sense in some settings.

(Tr. 747, ll 6-23). The trial court then indicated that based upon King, it did not see how it could charge transferred intent. (Tr. 747).

In response, the State argued there was no conflict between having to charge specific intent and transferred intent. (Tr. 748). In support of this position, the State noted that one could be convicted of attempted murder without the victim suffering an injury. (Tr. 748).

After a brief recess, the trial court determined it would instruct the jury on the doctrine of transferred intent. (Tr. 749).

> Here's what I think the appropriate interpretation of King is. The court said that a specific intent to kill is necessary. It doesn't say there has to be a specific intent to kill any certain person. And I think common sense has to prevail at some point, and I think transferred intent charge in some fashion would be appropriate.

(Tr. 749, ll 13-19). The trial court then confirmed that defense counsel objected to the decision regarding the instruction. (Tr. 749). The trial court later stated that its charge would be, "if a person with malice aforethought attempts to kill another person, but by mistake injures or kills a different person, and the defendant still has the specific intent to kill." (Tr. 750, ll 16-20). The defense objected to the proposed instruction. (Tr. 750). Defense counsel asserted "the problem I have with the transferred intent just for the record is that, there is no evidence that my client was aiming at Mr. Archie." (Tr. 751, ll 7-10). The trial court noted there was circumstantial evidence Green was aiming at Archie from the testimony indicating Green yelled out Archie's nickname. (Tr. 751).

Solicitor's closing argument

> The judge is going to charge you though, that there is something called transferred intent. Transferred intent means that if you find that Mr. Green was really trying to shoot Mr. Archie, but he also hit Mr. Jenkins, that transferred intent, that intent

to fire that weapon transfers, and he can be found guilty under that theory of the law as well. That's for you to consider.

We don't — we can't tell you what Mr. Green was thinking at the moment he pulled the gun. We can prove the circumstances that he fired three times; that after he hit Mr. Ray'Quann Jenkins, he didn't stop firing. He didn't come over to him and say, oh, man, I'm sorry, I hit you. I wasn't trying to hit you. Let me call an ambulance for you. He didn't do that. The man who fired that weapon started running into the field, after he chased down Mr. Tyrese Archie, and shot Mr. Archie. This wasn't something where, you know, it was a mistake. He brought the gun to the club. He got the gun out of the car. He used the gun several times, and he fled with the gun. This is serious business.

(Tr. 774, l 20 – 775, l 17).

Instruction that was given

In defining the charge of attempted murder, the trial court instructed the jury as follows:

Now, Ladies and gentlemen, the defendant is also charged with the offense of attempted murder. In order to prove this crime, in order for you to find the defendant guilty, the State must prove beyond a reasonable doubt that the defendant with the intent to kill, attempted to kill another person with malice aforethought express or implied. Malice again is hatred, ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances the law will infer an evil intent.

Again, I am going to summarize this in just a moment. Malice aforethought just as it as with murder, is not required that malice exist 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 the act is committed. So there has to be a combination of the previous evil intent and the act itself.

Now the earlier instructions I gave you about express and implied malice apply to your analysis of attempted murder as well. And again, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. And the earlier examples of deadly weapons apply here as well. And again, if facts are proven beyond a reasonable doubt to raise an inference of malice to your satisfaction, that inference is simply evidentiary fact you are to consider, and you give it the weight you believe it should receive.

Now, Ladies and gentlemen, on the issue or the count of attempted murder, proof of attempted murder requires proof of a specific intent to kill. Specific intent does not mean an intent to kill a specific person, but rather that the defendant consciously intended the completion of acts that comprise the act of

attempted murder. And the word intent as I will tell you in more detail later, means intending the result which actually occurs and not accidentally or involuntary.

Now, Ladies and gentlemen, intent can also 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 sought to be accomplished and the resulting wounds or injuries may be considered by you in determining the intent with which the act was committed.

Now, Ladies and gentlemen, intent may also be inferred when the act — when it is demonstrated rather that the defendant voluntarily, and willfully commits an act, the natural tendency of which is to destroy another person's life. Now, Ladies and gentlemen, I further charge you that if a person with malice aforethought attempts to kill another person, but by mistake injuries or kills a different person, then that person based on your view of the evidence, has the specific intent to kill. The intent to kill in that regard would be merely transferred from the original person the defendant attempted to kill, to the person who was actually killed or injured.

(Tr. 808, l 4 - 810, l 18).

B. Discussion

"'An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.'" State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Furthermore, "[t]o warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct. App. 2006). "The law to be charged must be determined from the evidence presented at trial." Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams, at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

"Generally, the trial judge is required to charge only the current and correct law of South Carolina." State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct.App.2005). If a charge is substantially correct and covers the law there is no need for reversal. Id. To warrant reversal, the refusal to give a requested charge must be erroneous and prejudicial to the defendant. State v. Hill, 382 S.C. 360, 368, 675 S.E.2d 764, 768 (Ct.App.2009) (citing Zeigler, supra). "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

"A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29. "A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim." State v. Fennell, 340 S.C. 266, 276, 531 S.E.2d 512, 517 (2000).

The trial court did not err by instructing the jury about the application of the doctrine of transferred intent to attempted murder; the instruction was a correct statement of the law.

Green contends the trial court erred by giving a transferred intent instruction within the court's instructions regarding the offense of attempted murder. As explainedabove in Argument I, Section B, subsection 2, the doctrine of transferred intent applies to attempted murder. Thus, the trial court did not err in giving an instruction reflecting that transferred intent applies. There was no abuse of the trial court's discretion. Green's attempted murder conviction should be affirmed.

III. The trial court did not abuse its discretion in denying Green's motion for a mistrial. The Confrontation Clause of the Sixth Amendment was not implicated in the admission of three fired shell casings found at the scene when the individual who collected the casings did not testify at trial. Further, the State adequately established the chain of custody of the three fired shell casings recovered from the scene through the testimony of two witnesses who observed their collection, and of several witnesses and other evidence establishing the remainder of the chain of custody. Since the admission of the fired shell casings was proper, the trial court did not abuse its discretion in denying Green's motion for a mistrial.

A. What occurred at trial

1. Crime Scene Evidence Technician Unavailable to Testify.

This issue stems from the unavailability of Investigator Mike Bean, an evidence technician and crime scene investigator with the Sumter County Sheriff's Office, to testify at trial. The State advised the trial court that Investigator Bean would be unavailable as the result of doctor's orders. (Tr. 576-77). The State requested permission to introduce four photographs that were taken by Bean of the shell casings that were recovered at the scene. (Tr. 577). During this discussion, the State noted it planned to present the photographs through Investigator Hawkins, who was at the crime scene and could identify the items in the pictures. (Tr. 578). The trial court indicated it did not foresee an issue as long as the proper foundation was laid. (Tr. 578). The State also acknowledged some concern with the introduction of certain clothing items that were collected by Officer Bean. (Tr. 578).

In response to this discussion, defense counsel noted this was the first it learned that Bean would not be testifying, and he would not be able to cross examine Bean regarding where he actually picked up the casings or took the pictures of the casings. (Tr. 579). The State responded by noting that Investigator Hawkins would be able to furnish the court with all of the information about the location of the casings, and that would be supported by the photographs. (Tr. 579). The trial court noted that it would need to hear the testimony before determining

whether a proper chain of custody was established. (Tr. 580). Further, as to Mr. Bean, the trial court stated, "I can't — certainly I can't deny [defense counsel's] rights to confront the accusers of one of whom is Mr. Bean, by virtue of his job." (Tr. 581, ll 17-20). The trial court also indicated it could not determine whether the chain of custody was sufficient based on the limited information provided. (Tr. 581).

There was further discussion regarding the implication of Bean's unavailability as it related to the shell casings that were already in evidence. (Tr. 582). Defense counsel stated he was under the impression that those who collected the evidence would be available to testify, and he was not aware that Bean was not available. (Tr. 582). The trial court and the State confirmed Bean was not on the State's witness list. (Tr. 582). At that point, defense counsel noted, "I may make a motion if Mr. Bean, if for some reason is ill, and not available. I may have a motion for a mistrial. I don't know. I'll have to think about this." (Tr. 583, ll 4-7).

After a brief recess, Investigator Greg Hawkins testified *in camera*. (Tr. 585-99). Hawkins, the primary investigator in the case, testified that he was the individual who placed the police markers on the scene. (Tr. 586, 590-91). Hawkins noted the shell casings were collected that night while he was present. (Tr. 590). He indicated the casings were photographed before they were picked up off the ground. (Tr. 590). Hawkins knew where the markers were placed, and Bean photographed the locations of markers when they were put down. (Tr. 591). Hawkins also testified about the collection of clothing that belonged to the attempted murder victim, RayQuann (put in real name). (Tr. 592).

During cross-examination, Hawkins noted that he did not see the exact number of markers that Bean placed around the whole crime scene. (Tr. 594). Hawkins did reiterate that he was the one who placed the markers down to document where the shell casings were located.

Hawkins noted that Bean was the one who took the photographs at the scene. (Tr. 596). Hawkins was a witness to the scene, and he could verify the photos reflected what the scene looked like that evening. (Tr. 596). Hawkins also stated that Bean was the person who physically collected the evidence. (Tr. 596). Hawkins could not attest to what other officers may have told Bean about other areas of the crime scene, but he could confirm where the shell casings were found. (Tr. 598).

After Hawkins testified, Green moved for a mistrial. (Tr. 600). His motion was based on Bean's unavailability. (Tr. 600-01). In addressing the specifics of why he was moving for a mistrial, counsel stated,

> He collected the spent shell casing. He took the pictures of the scene, observed the scene. He placed markers on all the other locations, except for the three shell casings. I could not question him about that. He talked to all the other officers who searched the other scene. And he would have information that would be related as to what they observed, what they detected in the scene. He took pictures of what the State has submitted is blood and location to the gunman. Without him being there, as I say, he is the one person that would have full knowledge of all the evidence, the location. And basically he was the one person that I believe all the information came into, and then was given to the investigator.

(Tr. 601, ll 7-22). Counsel further argued that Bean's unavailability is the break in the chain of custody for the shell casings. (Tr. 603). The State disagreed. (Tr. 603). The trial court then asked if the chain between the collection of the casing and its delivery to SLED was broken, should there be a mistrial, or should the court instruct the jury to disregard the testimony of the firearms examiner. (Tr. 603-04). In response, defense counsel stated, "I'm moving that there should be a mistrial, because you can't instruct the jury to disregard what the jury has already heard." (Tr. 604, ll 7-9). The trial court then took the matter under advisement.

2. The State presents evidence regarding the firearm and shell casings.

Prior to this discussion regarding the motion for a mistrial, the State had presented testimony from several witnesses relating to the firearm and the analysis of the shell casings recovered at the scene. Lt. Misty Lynn Lee of the Sumter County Sheriff's Office was the first officer to arrive at Club Miami in response to the incident. (Tr. 447-49). When she saw Pizzino's vehicle arriving on scene, she heard him say there was a subject running and shooting, and he was wearing all white. (Tr. 449-50). Lee also noted that Pizzino indicated he saw the subject. Lee parked her vehicle behind Pizzino's, and she observed Pizzino and the security guards chasing the subject. (Tr. 450-51). As Pizzino chased Green up the first berm, Lee ran around the berms and started climbing up the berms from the back. (Tr. 451). As she did so, she heard Pizzino making contact with the suspect. (Tr. 451). Lee saw a gun laying in the valley of the berm near where Pizzino had contacted the suspect. (Tr. 451). Lee photographed and secured the gun. (Tr. 451-52). Lee placed the gun in her vehicle, and she later turned the gun over to the crime scene investigator. (Tr. 456).

Michele Eichenmiller, a firearms examiner with SLED, testified she received a Smith & Wesson .45 caliber handgun from the Sumter County Sheriff's Office for analysis. (Tr. 503-09). The gun had six unfired cartridges in its magazine. (Tr. 509). Eichenmiller also received three fired shell casings. (Tr. 513). The three fired casings were .45 auto caliber, and they were consistent with the six unfired cartridges that were submitted with the gun. (Tr. 513). Eichenmiller determined that the three shell casings were fired by the gun that was submitted. (Tr. 514).

After the mistrial motion, the State also presented testimony establishing the chain of custody for the shell casings. Derron Soloman, a crime scene investigator and evidence

technician with the Sumter County Sheriff's Office, testified the firearm had been sent to SLED, SLED returned the gun to the Sheriff's Office, and the gun had since been maintained in the evidence room. (Tr. 558-62). The three fired shell casings were also sent back by SLED and were maintained in the evidence room. (Tr. 562-63). Both the gun and the fired shell casings were entered into evidence without objection. (Tr. 562, 563). Several items of white clothing recovered from Green on the night of the shooting, including a hat, a tee-shirt, an undershirt, a pair of jeans, and a pair of shoes, were maintained in the Sumter County evidence room until they were sent to SLED for a gunshot residue trace. (Tr. 563-64). After the testing, the clothing was returned to the Sumter County Sheriff's Office, and it was maintained in the evidence room upon receipt from SLED. (Tr. 564). Soloman also noted that the property reports reflected Mike Bean collected the evidence on March 16, 2014. (Tr. 569).

Soloman later testified the three fired shell casings were listed on the property evidence voucher for this case. (Tr. 608-09). He also noted that they use specific cans for collecting bullets or cartridge casings so they would not be damaged before they are sent to SLED. (Tr. 609). The person collecting the evidence would have placed the three fired shell casings in the cans that were in the evidence room. (Tr. 610-11). The evidence report indicated Michael Bean collected those casings, and he would have put them in the cans. (Tr. 610-11). The report also indicated James Atkinson, who was the prior evidence technician responsible for the evidence room, was the person who took the evidence to SLED. (Tr. 611). The property voucher was submitted into evidence without objection as State's Exhibit 37. (Tr. 613).

Investigator Robert Burnish, the lieutenant over the investigation Division at the time of the shooting, also responded to the crime scene as an investigator. (Tr. 629-30). Burnish saw Investigator Hawkins, Investigator Addison, and Investigator Bean at the scene. (Tr. 630-31).

Bean's duties were to collect evidence, process the evidence, and those kinds of things. (Tr. 631). Burnish did not know who located the shell casings that were collected at the scene, but noted Bean would have marked the shell casings and collected them. (Tr. 632-33). Burnish was at the crime scene when the shell casings were discovered, when they were marked, and when they were photographed by Bean. (Tr. 634). Burnish was also present when the casings were collected by Bean and when they were placed into evidence bags. (Tr. 635, 638, 641-42). Burnish recalled that someone else collected the firearm. (Tr. 639).

During cross-examination, Burnish testified that it was his understanding that Bean was the individual who located the shell casings, and he further acknowledged that Bean may not have been the first to locate the casings. (Tr. 642). Burnish saw Bean mark the casings, and he observed as Bean took pictures of the casings from different angles. (Tr. 643). Burnish maintained he saw Bean collect the casings. (Tr. 642).

Investigator Hawkins was one of the investigators who responded to the scene. (Tr. 650-52). When he arrived, Investigator Bean was there. (Tr. 652). Archie was lying on the ground, and Jenkins was in an ambulance receiving treatment. (Tr. 652). Hawkins did not see Green at the scene; when he arrived, Green was already in a patrol car, and he was taken away shortly before or shortly after Hawkins arrived. (Tr. 653). Hawkins was advised by Corporal Lee that she had recovered the firearm in the field with Green. (Tr. 654).

Hawkins testified three shell casings were recovered at the scene. (Tr. 655). They were .45 caliber casings. (Tr. 655). Hawkins did not disturb them, but he documented where they were found and placed markers for the crime scene technicians to later collect. (Tr. 655). Hawkins indicated that Bean documented the scene with the photographs he took. Hawkins identified State's Exhibits 20, 21, and 22 as the photographs that Bean took of the three fired

casings that were located in the parking lot that night. (Tr. 656). State's Exhibits 14 and 15 were photographs of the same shell casings, but from a further distance. (Tr. 657). The five photographs were admitted over Green's objections. (Tr. 657-58).

Hawkins indicated Bean was the individual who collected the shell casings, and Bean would have been the person who placed the casings in the tins. (Tr. 658). Hawkins further noted that Bean would have taken the casings to the evidence room. (Tr. 658). During cross-examination, Hawkins maintained he marked the shell casings at that time, and the photographs reflected the markers Hawkins placed by the casings. (Tr. 695).

3. Green presents further argument regarding his motion for a mistrial.

In later argument regarding the mistrial motion, defense counsel contended the motion was based on the testimony that Bean was the person who collected the evidence. (Tr. 717). Counsel noted that had the shell casings not been entered into evidence, the State would not have been able to connect the gun retrieved to the shooting. (Tr. 717, 718). In response, the State argued it did establish the shell casings that were found on the scene were the ones that were transported to the SLED lab, and that connection was established before the casings were entered into evidence. (Tr. 718). Thus, there was not a problem with the chain of custody. (Tr. 718). The State further contended that under State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013) and State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011), the evidence collector was not required to testify if the State could show that the investigation was handled in a reasonable manner and the evidence was collected in a manner in which it is normally collected. (Tr. 719). "And it's a non-fungible item that has specific identifying features. Which they did, they marked each one individually, took pictures of their location. And then collected them and sent them to sled." (Tr. 719, ll 9-13).

In response, the defense stated,

> But that would be my point, exactly, Your Honor. The person that collected the rounds, took the pictures, and for the court or anyone to make, whether it was collected reasonable was Mr. Bean. Without him being here, without giving my client his constitutional rights to cross examine his accuser as to how they were collected and whether it was done reasonably, the court cannot make an assessment of that.

(Tr. 719, ll 14-22).

At that point, the trial court indicated it would likely deny the motion, but it would reserve the right to change its mind. (Tr. 719-20).

> I don't think that the chain evidence has been damaged enough to require a mistrial. Obviously where this came up is when the sled agent was called out of order because she was here in the morning. And that's not an unusual thing. I am not faulting anyone for that, but that's what happened. But when it became apparent that Mr. Bean wasn't going to be here to testify about what he did with them, the question was going to be then, what other witnesses would perhaps cover that sufficiently to have a suitable chain of custody.
>
> I think that Captain Burnish and Investigator Hawkins adequately covered it for admissibility purposes. So I respectfully deny your motion for a mistrial. And to the extent you're also asking for the jury to be told that they are to disregard the sled, I know that's not your motion. But to the extent you would ask for sled firearm's expert's testimony to be excluded, I would respectfully deny that too. You made the cat out of the bag argument earlier. And I understand exactly where you're coming from.
>
> I think the chain is in tact under our case law. The fact remains whether or not the jury thinks that it's been persuaded that those casings came from that gun, and that that gun came from your client and so forth and so on. I think all that's going to be sorted out, or will have to be sorted out by the jury.

(Tr. 720, l 1 – 721, l 5).

Green renewed his motion after the jury found him guilty of all of the charges. (Tr. 841-44). Green agreed that the motion was based upon his motion for a mistrial, which was based on the ground that Bean was not present to testify as to where the shell casings were found, how they were collected, and how they were sent to the evidence technician. (Tr. 841). He further

noted that the State did not set a proper foundation for the pictures Bean took. (Tr. 841). Green further agreed that based upon the argument regarding the shell casings, he would have objected to the firearms examiner's opinion because of this missing piece of the chain of custody. (Tr. 841-42). In regards to the photographs, Green contended the way to present the proper foundation would have bene to present testimony establishing when the photographs were taken and the condition they were taken. (Tr. 842). He further argued that the person that could have done that was Investigator Bean. (Tr. 842).

In response, the State noted that it met its burden through the testimony of the other on-scene investigators who were there and who corroborated all the information that was presented in the photographs. (Tr. 842-43).

The trial court treated the motion as a motion for a new trial based on a refusal to grant a mistrial. (Tr. 843). After noting the cases that had been cited by the State in the prior argument, the trial court explained why it was denying the motion for a new trial.

> In my — the gist of it is that the proof not need to negate all evidence or suggestion of tampering. Simply the evidence has to be sufficient enough to stablish[sic] that the items were in fact what they were purported to be. I was concerned about that until I heard the testimony of Lieutenant Burnish, Investigator Hawkins. And I believe those might have been the two. Because I can tell when Mr. Finney had Mr. Soloman on the stand, that there was some uncertainty. And I was waiting for what you said. How were we going to get from A to B. But I think that the testimony as a whole established that gunshots were fired from an automatic or a semiautomatic weapon. The spent chambers or the spent casings were ejected. And they were in the general area where witnesses identified the defendant as being.
>
> Now that part is not crucial for chain of custody, that last part. What is crucial is that those shell casings that Mr. Hawkins identified as being on the ground, Lieutenant Burnish, Captain Burnish identified as being on the ground, are the same ones that were delivered to the evidence room, sent to sled for testing. Sent back to this courtroom and presented to the jury. While it wasn't a perfect chain, I think under the law in this state, the evidence establishes how those items were obtained, and how they were handled in a sufficient manner for the jury to reasonably conclude that they were what the State claimed them to be.

I perhaps unartfully stated that, but in short, I think the chain has been sufficiently established.

(Tr. 844, l 5 – Tr. 845, l 12).

B. The trial court did not abuse its discretion in denying Green's motion for a mistrial.

The trial court did not abuse its discretion in denying Green's motion for a mistrial. Green's motion was based upon his contention that the shell casings were improperly admitted at trial because the State failed to establish a sufficient chain of custody for the three fired shell casings. This argument by Green is without merit. First, contrary to Green's assertions, the admission of the three shell casings does not implicate the Confrontation Clause of the Sixth Amendment. Second, the State did ultimately present a sufficient chain of custody to support the admission of the shell casings. Since the shell casings were properly admitted and a sufficient chain of custody was established, the trial court did not abuse its discretion in denying the motion for a mistrial.

Standard of Review

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct.App.1999). Appellate courts have favored the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." State v. Key, 256 S.C. 90, 94, 180 S.E.2d 888, 890 (1971). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Patterson, 337 S.C. at 227, 522 S.E.2d at 851; see also State v. Wasson, 299 S.C. 508, 386 S.E.2d 255

(1989); State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) ("The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes.").

"[A] mistrial should not be ordered in every case in which incompetent evidence is improperly admitted." State v. White, 371 S.C. 439, 444, 639 S.E.2d 160, 162 (Ct.App.2006)(citing State v. Johnson, 334 S.C. 78, 89, 512 S.E.2d 795, 801 (1999) and Patterson, 337 S.C. at 227, 522 S.E.2d at 851). "[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (internal citation omitted). "In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion." State v. Scott, 405 S.C. 489, 497, 748 S.E.2d 236, 241 (Ct.App.2013) (citing State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866 (citation omitted).

1. The Confrontation Clause was not implicated by the admission of the three shell casings.

Contrary the Green's assertions, his right to confront his accusers was not violated by the admission of the three fired shell casings. The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." The Confrontation Clause "is violated when hearsay evidence is admitted as substantive evidence against the defendant, with no opportunity to cross-examine

the hearsay declarant at trial." Kentucky v. Stincer, 482 U.S. 730, 737 (1987) (internal citations and quotations omitted). "As a rule, if an out-of-court statement is testimonial in nature, it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront that witness." Bullcoming v. New Mexico, 564 U.S. 647, 657, 131 S. Ct. 2705, 2713 (2011).

At issue here is whether the introduction of the shell casings collected from the scene implicated the Confrontation Clause. It did not. The Confrontation Clause is not triggered by the introduction of physical evidence. See U.S. v. Sherrod, 964 F.2d 1501, 1507 n. 18 (5th Cir.1992) (citing United States v. Herndon, 536 F.2d 1027, 1029 (5th Cir.1976) and United States v. Gordon, 580 F.2d 827, 837 (5th Cir.) cert. denied, 439 U.S. 1051, 99 S.Ct. 731, 58 L.Ed.2d 711 (1978)) ("[T]he Confrontation Clause is restricted to 'witnesses' and does not include physical evidence.").

The scenario presented in this case is clearly distinguishable from the confrontation issues presented in Bulcoming and Melendez-Diaz v. Massachusetts, 557 U.S. 305, 307, 129 S. Ct. 2527, 2530 (2009). In Melendez-Diaz, the trial court admitted into evidence affidavits that reported the results of forensic analysis which showed that material seized by the police and connected to the defendant was cocaine. The United States Supreme Court found the affidavits were testimonial statements under the Confrontation Clause, and the analysts who provided the affidavits were witnesses for the purposes of the Sixth Amendment. Id. at 311, 129 S.Ct. at 2533. "Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to "'be confronted with'" the analysts at trial." Id.

In Bulcoming, the prosecution in a DWI case presented a forensic laboratory report that certified the defendant's blood alcohol content was well above the threshold for aggravated DWI. Bullcoming, 564 U.S. at 651, 131 S. Ct. at 2709. The prosecution did not present the analyst who signed the certification. Id. Instead, the prosecution presented testimony from another analyst who was familiar with the laboratory's procedures, but who otherwise had not observed or been involved in the testing of the defendant's blood sample. Id. The Supreme Court found this method of introducing the report did not comply with the Confrontation Clause. The defendant had the right to confront the analyst who made the certification "unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist." Id. at 652, 131 S. Ct. at 2710.

This case is clearly distinguishable in that the evidence at issue here are the actual fired shell casings, not an out of court statement relating to the shell casings. The State presented the analyst who examined the shell casings, and she was cross-examined by Green at trial. In presenting the shell casings, the State did not rely upon any statements made by Investigator Bean. Instead, it presented the testimony of two other investigators who observed Bean collect the three casings. These investigators did not relay any hearsay statements that were made by Bean.

> [T]he Supreme Court also noted [in Melendez-Diaz,]"[W]e do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, ... must appear in person as part of the prosecution's case." Id. at 311 n. 1, 129 S.Ct. 2527. Although "'it is the obligation of the prosecution to establish the chain of custody,' this does not mean that everyone who laid hands on the evidence must be called." Id. Indeed, "'gaps in the chain of custody normally go to the weight of the evidence rather than its admissibility.'" Id. (quoting United States v. Lott, 854 F.2d 244, 250 (7th Cir.1988)).

State v. Brockmeyer, 406 S.C. 324, 341, 751 S.E.2d 645, 654 (2013). Bean was not a witness against Green in this case. He was only, at most, a link in the chain of custody who was not

called to testify at trial. There is no confrontation issue presented in the admission of these shell casings.

2. The State established a sufficient chain of custody to support the admission of the three fired shell casings.

The State established a sufficient chain of custody regarding the three fired shell casings, even without the testimony of the investigator who collected the shell casings. Investigator Burnish was at the crime scene when the shell casings were discovered, when they were marked, and when they were photographed by Bean. (Tr. 634). Burnish was also present when the casings were collected by Bean and when they were placed into evidence bags. (Tr. 635, 638, 641-42). Burnish recalled that someone else collected the firearm. (Tr. 639). Burnish saw Bean mark the casings, and he observed as Bean took pictures of the casings from different angles. (Tr. 643). Burnish maintained he saw Bean collect the casings. (Tr. 642).

Investigator Hawkins testified he was the one who initially marked the three shell casings. (Tr. 655). Hawkins did not disturb them, but he documented where they were found and placed markers for the crime scene technicians to later collect. (Tr. 655). Hawkins indicated that Bean documented the scene with the photographs he took. Hawkins identified State's Exhibits 20, 21, and 22 as the photographs that Bean took of the three fired casings that were located in the parking lot that night. (Tr. 656). State's Exhibits 14 and 15 were photographs of the same shell casings, but from a further distance. (Tr. 657). Hawkins indicated Bean was the individual who collected the shell casings, and Bean would have been the person who placed the casings in the tins. (Tr. 658). Hawkins further noted that Bean would have taken the casings to the evidence room. (Tr. 658). During cross-examination, Hawkins maintained he marked the shell casings at that time, and the photographs reflected the markers Hawkins placed by the casings. (Tr. 695).

Soloman testified the firearm had been sent to SLED, SLED returned the gun to the Sheriff's Office, and the gun had since been maintained in the evidence room. (Tr. 558-62). The three fired shell casings were also sent back by SLED and were maintained in the evidence room. (Tr. 562-63). Soloman noted the three fired shell casings were listed on the property evidence voucher for this case. (Tr. 608-09). He also noted that they use specific cans for collecting bullets or cartridge casings so they would not be damaged before they are sent to SLED. (Tr. 609). The person collecting the evidence would have placed the three fired shell casings in the cans that were in the evidence room. (Tr. 610-11). The evidence report indicated Michael Bean collected those casings, and he would have put them in the cans. (Tr. 610-11). The report also indicated James Atkinson, who was the prior evidence technician responsible for the evidence room, was the person who took the evidence to SLED. (Tr. 611). The property voucher was submitted into evidence without objection as State's Exhibit 37. (Tr. 613). Soloman also testified that the gun and the casings were held in the evidence room after being returned from SLED until he brought them to court. (Tr. 561-63).

Agent Eichenmiller testified she received the Smith & Wesson .45 caliber handgun from the Sumter County Sheriff's Office for analysis, along with the six unfired cartridges in its magazine and the three fired shell casings. (Tr. 503-09, 513). She also indicated that the three shell casings that were presented to her in court were in the same condition as she received them at SLED. (Tr. 514). Altogether, this testimony and evidence by way of the photographs and property voucher established a sufficient chain of custody to support the admission of the three shell casings.

South Carolina courts have long held that proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable.

See State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). If there is a weak link in the chain of custody, the question is only one of credibility and not admissibility. See State v. Horton, 359 S.C. 555, 568, 598 S.E.2d 279, 286 (Ct. App. 2004). State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011) is instructive. In Hatcher, the defendant was convicted of distribution of crack cocaine for selling crack to an undercover informant. The officer took possession of the crack from the buyer-informant and placed it in an evidence bag he sealed and personally transported to SLED. The SLED analyst testified officers bring evidence to SLED in sealed containers, which the SLED Log-In Department receives and marks with a unique case number. The analyst testified she retrieved the evidence from the Log-In Department, tested the substance, returned it to the Log-In Department, which then returned the evidence to the Sheriffs Department. Though the defense objected to an improper chain of custody, the trial judge admitted the evidence and the South Carolina Supreme Court affirmed the admission. The Supreme Court found "[t]estimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility." Id. at 92, 708 S.E.2d at 753. The South Carolina Supreme Court held:

> It is unnecessary . . . that the police account for "every hand-to-hand transfer" of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial. To expect the [prosecuting authority] to produce every possible individual who may have had fleeting contact with the evidence would cause unnecessary logistical problems concerning chain of custody.

Id. at 94, 708 S.E.2d at 754. Further, in State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007), the South Carolina Supreme Court noted,

> Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. [State v.]Taylor, 360 S.C. [18,]27, 598 S.E.2d [735,] 739 [Ct.App.2004]. Where other evidence establishes the identity of those who have handled the evidence and

> reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness. See State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989) (upholding the admissibility of a blood test even though a nurse who drew the blood from the defendant did not testify at trial; hospital forms completed by the absent nurse and testimony from the other evidence custodians sufficiently established a chain of custody).

Sweet, 374 S.C. at 7, 647 S.E.2d at 206.

Similarly, in South Carolina Dep't of Social Servs. v. Cochran, 364 S.C. 621, 614 S.E.2d 642 (2005), the Supreme Court found the chain of custody to be complete even though the person who collected the sample did not testily, the courier who transported the sample from the collection facility to the testing facility was not identified, and the person who received the sample at the testing facility did not testify. The Supreme Court found the forms completed each time possession of the sample transferred from one custodian to another - coupled with the testimony provided by the custodians who did testify - was sufficient to establish a complete chain of custody. The Supreme Court further held the chain of custody rule does not require "every person associated with the procedure [to] be available to testify or identified personally, depending on the facts of the case. . . . Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally identified." Id. at 629, 614 S.E.2d at 646.

"While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence-that is, evidence that is unique and identifiable-the establishment of a strict chain of custody is not required." State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (S.C. Ct. App. 1997). Fired shell casings are not fungible items. See Brockmeyer, 406 S.C. at 351, 751 S.E.2d at 659 (finding shell casing, fired projectile, and other physical evidence were non-fungible items); see also Simmons v. State, 282 Ga. 183,

188, 646 S.E.2d 55, 60 (2007) (finding shell casing recovered at murder scene non-fungible); Hough v. State, 560 N.E.2d 511, 517 (Ind. 1990)(spent shell casings retrieved from crime scene non-fungible).

Altogether, the State presented a sufficient chain of custody for the three fired shell casings. Thus, the trial court did not improperly admit the three casings into evidence. Since the casings were properly admitted into evidence, the trial court properly denied Green's motion for a mistrial. See State v. Adams, 354 S.C. 361, 379, 580 S.E.2d 785, 794 (Ct. App. 2003) (finding mistrial not warranted when evidence of a prior theft was properly admitted). Green's convictions should therefore be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court deny Green's appeal and affirm his convictions for murder, attempted murder, possession of a weapon during the commission of a violent crime, possession of a stolen weapon, and his corresponding sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

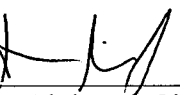
J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
P.O. Box 836
Sumter, SC 29150-0836
ATTORNEYS FOR RESPONDENT

By: 
Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

April 19, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
George C. James, Circuit Court Judge

Appellate Case No. 2015-002443

THE STATE,

Respondent,

vs.

RODNEY R. GREEN,

Appellant.

PROOF OF SERVICE

I, Alphonso Simon, Jr., of counsel for the Respondent, certify that I have served two (2) copies of the within Initial Brief of Respondent and Designation of Matter via U.S. mail to his attorney of record, Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201-3332.

I further certify that all parties required by Rule to be served have been served.

This 19th day of April, 2017.

ALPHONSO SIMON, JR.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ALAN WILSON
ATTORNEY GENERAL

April 19, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State vs. Rodney R. Green
Appellate Case No. 2015-002443

Dear Ms. Kitchings:

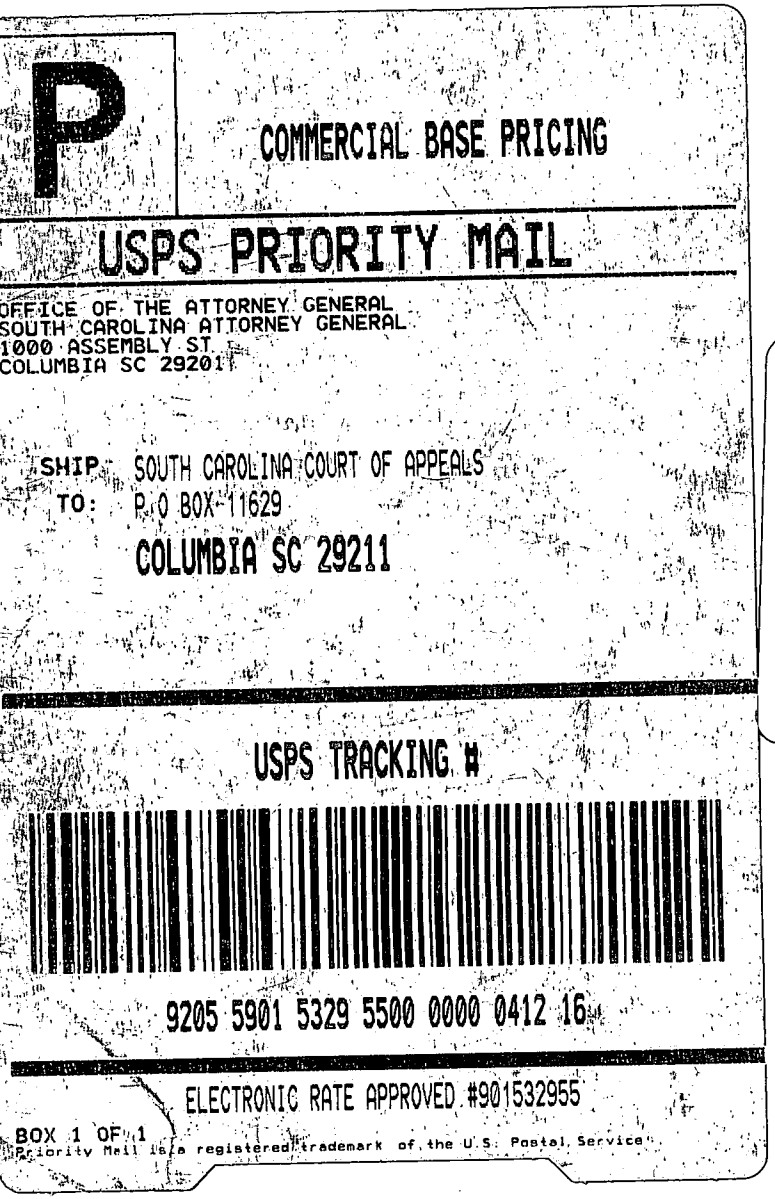
Enclosed for filing in your office is the original Initial Brief of Respondent, Designation of Matter and Proof of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.,
Assistant Attorney General

AS/dmd
Enclosures
cc: Susan B. Hackett, Esq. (w/two copies of encls.)
The Honorable Ernest Finney, III, Solicitor, Third Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Services (w/copy of encls.)



S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211