

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001220

RECEIVED

JUL 24 2017

SC Court of Appeals

THE STATE,

Respondent,

vs.

PATRICK O'NEIL MCGOWAN,

Appellant.

**MOTION TO HOLD APPEAL
IN ABEYANCE PENDING RESOLUTION OF
ISSUE BY SUPREME COURT**

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On August 3, 2012, the Saluda County Grand Jury indicted Appellant on four counts of attempted murder. On May 31–June 2, 2016, Appellant proceeded to a jury trial before the Honorable Donald B. Hocker. Thomas Adduci, Esquire, represented Appellant; Assistant Solicitors C. Dale Scott, Esquire, and Margaret Boykin, Esquire, represented the State. The jury found Appellant guilty of the lesser-included charge of first-degree assault and battery on all four charges, and the trial judge sentenced him to seven and one-half years' incarceration on each

count, running the sentences for two of the victims consecutively and the other sentences concurrently. Thereafter, Appellant filed a timely notice of appeal.

II.

On May 11, 2017, Appellant filed his initial brief, claiming the trial judge erred in: (1) failing to direct a verdict on the indictment for Appellant's fourth victim, a four-year-old girl who was asleep in the home he fired upon, because there was no evidence Appellant was aware that victim was in the house when he opened fire, and the three shots Appellant fired could only be used to convict him of the assault and battery of the three other victims; and (2) the trial court erred in denying Appellant's defense that the jury charge the jury on first-degree assault and battery and include an instruction that the State had to prove Appellant had a specific intent to harm each of the four victims. Appellant contends both of his issues on appeal are supported by this Court's opinion in State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), cert. granted (Mar. 28, 2016), argued (Sept. 7, 2016). in which this Court determined the doctrine of transferred intent was inapplicable to attempted murder, which it determined was a specific intent crime.

III.

On April 22, 2015, this Court issued its opinion in King. King was convicted of attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime following the robbery and shooting of a taxi driver. The King court held, "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder," and the trial court erred in charging the jury that attempted murder is a general intent crime. Id. This Court additionally found the trial court erred in admitting hearsay testimony from the responding officer as to how many shots were fired. The Court concluded

the trial court's errors prejudiced King as to his attempted murder charge, finding the officer's "inadmissible testimony as to the number of shots King fired affected the jury's verdict on attempted murder, and we cannot say that either the admission of the evidence or the erroneous jury charge are harmless beyond a reasonable doubt." Id. at 417, 772 S.E.2d at 196. The Court affirmed the other convictions, finding that the trial court's errors did not prejudice King as to his convictions for armed robbery and possession of a firearm because the errors did not affect the result of his trial those charges. Id. Both King and the State filed timely petitions for rehearing, which this Court denied by order filed June 5, 2015.

IV.

Following this Court's decision in King, King and the State filed timely petitions for a writ of certiorari to the South Carolina Supreme Court. In its petition, the State asked the Supreme Court to resolve whether it is error for a trial court to instruct the jury that the offense of attempted murder does not require a specific intent to kill.¹ The court granted certiorari on this issue on March 28, 2016² and held oral arguments on September 7, 2016. The court has not yet issued its opinion in the case.

V.

Because the Supreme Court's decision in King is highly relevant to Appellant's case and could play a large, potentially decisive, role in the ultimate outcome in both of Appellant's issues on appeal, the State believes it is critical and necessary for the final decision in King to be issued before the State can fully and properly respond to Appellant's challenges to his conviction. Accordingly, the State asks this Court to hold Appellant's appeal and the time for filing the Initial Brief of Respondent and Designation of Matter in abeyance pending the Supreme Court's

¹ A copy of the State's petition for a writ of certiorari in State v. King is attached to this motion as Exhibit "A."

² A copy of the Supreme Court's order granting certiorari is attached to this motion as Exhibit "B."

resolution of King and to permit the State thirty days to file the Initial Brief of Respondent and Designation of Matter in this case after the Supreme Court issues its final decision in King. The State also asks this Court to hold the filing deadlines in abeyance pending resolution of this motion. Should this Court grant the State's motion, the State will immediately notify this Court in writing when the Supreme Court issues its final decision in King. Further, the State also asks that should this Court deny the State's motion, the State have thirty days from such order to submit its Initial Brief of Respondent and Designation of Matter in this case.

WHEREFORE, Respondent prays that the Court hold the time for filing the Initial Brief of Respondent and Designation of Matter in abeyance pending a final disposition by the Supreme Court in State v. King; extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty days from the date the Supreme Court issues the final decision in State v. King; hold the filing deadlines in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

BY: 

William F. Schumacher, IV
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July 24, 2017

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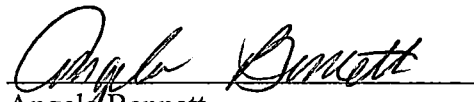
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Motion to Hold Appeal in Abeyance Pending Resolution of Issue By Supreme Court by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, 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 24th day of July, 2017.


Angela Bennett
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368



ALAN WILSON
ATTORNEY GENERAL

July 24, 2017

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SC Court of Appeals

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

RE: State v. Patrick O'Neil McGowan – Appellate Case No. 2016-001220

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Hold Appeal in Abeyance Pending Resolution of Issue by Supreme Court, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

William F. Schumacher, IV.
Assistant Attorney General
S.C. Bar No. 100231

WFS/
Enclosures

cc: Laura R. Baer, Esquire
Victim Advocacy Division