

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

MAY 17 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL JUAN SMITH,

APPELLANT.

APPELLATE CASE NO. 2015-001905

MOTION TO ARGUE AGAINST PRECEDENT

The undersigned respectfully shows the Court:

1. Oral argument in this matter has been set for June 7, 2018, at noon.
2. After briefing was complete, this Court decided State v. Gerald Williams, ___ S.C. ___, ___ S.E.2d ___, 2018 WL 1074369, Op. No. 5540 (S.C. Ct. App. Feb. 28, 2018). Williams holds that trial courts can charge the doctrine of transferred intent for attempted murder.
3. Counsel for appellant expects the State will argue that Williams is controlling precedent on aspects of Issue 2 in appellant's brief. Issue 2 of the brief contends

appellant is entitled to a directed verdict on the attempted murder charge because, pursuant to this Court's decision in State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015) *aff'd as modified* 422 S.C. 47, 810 S.E.2d 18 (2017), attempted murder is a specific intent crime and the doctrine of transferred intent does not apply. It was undisputed that the victim in this case was not the intended target of the bullet that hit her, even assuming the bullet was fired by the defendant.

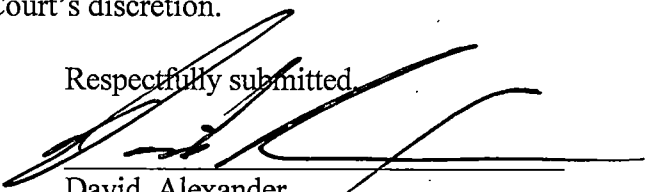
4. Counsel for appellant also represents the appellant in Williams and will be seeking certiorari at the South Carolina Supreme Court. This Court denied the petition for rehearing in Williams on May 1, 2018.

5. This Court's Opinion in Williams recognizes that the issue of transferred intent and South Carolina's attempted murder statute is novel. The facts of Williams also distinguish its holding from the circumstances present in this case, but counsel anticipates the Attorney General will argue otherwise.

5. For the above-stated reasons, counsel for appellant requests permission to argue against precedent with regard to Williams to the extent it is necessary at the oral argument of this case.

6. Counsel for appellant has conferred with William M. Blich, Jr., Esq., who represents the State, and he authorized me to inform the Court he takes no position on appellant's motion and leaves it to the Court's discretion.

Respectfully submitted,



David Alexander
Appellate Defender

Attorney for Appellant

This 17th day of May, 2018

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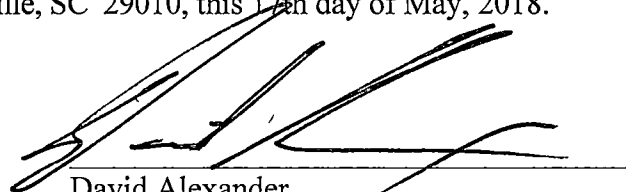
V.

MICHAEL JUAN SMITH,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the Motion to Argue Against Precedent in the above referenced case has been served upon William M. Blicht, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy has been served on Mr. Michael Juan Smith, #350413, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of May, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of May, 2018.

Mark Jendel (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.