STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
Appeal from Saluda County
Court of General Sessions
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2018-000994

THE STATE, ...RESPONDENT,

v.

GERALD RUDELL WILLIAMS,..... PETITIONER.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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II. The Court of Appeals properly affirmed the trial judge's jury instruction on the doctrine of transferred intent.

STATEMENT OF THE CASE

On July 9, 2013, the Saluda County Grand Jury indicted Petitioner on three counts of attempted murder (2013-GS-41-257,-258,-259). On October 14–17, 2013, Petitioner proceeded to a jury trial before the Honorable J. Michael Baxley. Bennett E. Casto, Esquire and Robert M. Madsen, Esquire, represented Petitioner; Assistant Solicitors Ervin J. Maye, Esquire, and H. Franklin Young, III, Esquire, represented the State. The jury found Petitioner guilty as indicted and the trial judge sentenced him to three concurrent terms of twenty years' incarceration.

Petitioner filed a timely Notice of Appeal and the direct appeal perfected. On February 28, 2018, the South Carolina Court of Appeals affirmed the convictions and sentences in a published opinion. State v. Williams, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018). Petitioner's timely petition for rehearing was denied on May 1, 2018. On June 21, 2018, Petitioner submitted a Petition for a Writ of Certiorari to this Court. This Return, filed on behalf of the State, follows.

STATEMENT OF FACTS

On April 12, 2012, Investigator Robert Shorter with the Saluda County Sheriff's Office received information that Orienthal James Charley would potentially attack A.J. Young that night. Investigator Shorter advised officers to be on the lookout for a teal green Ford Windstar van, in which Charley would be an occupant, and that Charley would be armed and dangerous. Officers believed Charley would likely attack Young at his home in Shadow Ridge Court. (R.p.150, line 24–R.p.153, line 19).

That night, the sheriff's office received reports that a shooting incident occurred at Young's home. Officers Grenier and Morelli responded to the call and left for the crime scene. On their way, they discovered a vehicle matching the description of the teal green van parked on the grass on the side of the road. They inspected the vehicle and found it empty, but were fairly certain it was the vehicle for which they were searching. However, because the vehicle was empty and they still needed to respond to the incident, the officers asked Officer Brett Long with the city police department to guard the vehicle. Officer Long informed them he was just up the road, so the officers departed for the crime scene. (R.p.297, line 7–R.p.299, line 6).

When Officer Long arrived at the scene, he pulled up behind the van, turned on his blue lights, and put his headlamps on their bright setting. At that time, he noticed a person lying in the ditch. The person immediately stood up, and Officer Long directed the person to stop and raise their hands. However, the man ducked into the passenger door of the vehicle, and the van started to slowly drive off. Officer Long notified the other officers that someone was in the van and that it was leaving, and followed the van. Officers Grenier and Morelli returned to the scene and boxed the van in, forcing it to stop. Officers discovered Petitioner and Charley in the vehicle and took them into custody. (R.p.300, line 21–R.p.303, line 2; R.p.322, line 17–R.p.327, line 8).

Officers investigating the scene of the shooting discovered three individuals were inside Young's residence at the time the shootout began. In addition to Young himself, Ycedra Williams and her husband Joseph Wrighton were in the home. Officers found multiple bullet holes in the door to the home and its surrounding wall. Notably, the evidence showed bullets penetrated the door and wall from both directions, including a bullet lodged in the electrical box of the home. Numerous bullet casings were also found in the yard of the home. Young's gun was found in his room. In the early morning hours following the crime, two guns and two sets of rubber latex gloves—one complete set of gloves and one missing pieces—were found beside the driveway of a nearby house. (R.p.160, line 18–R.p.162, line 24; R.p.179, lines 2–7; R.p.180, line 16–R.p.183, line 6; R.p.184, line 18–R.p.189, line 12; State's Exhibit 21; State's Exhibit 22). Officers searching the van found two stocking hats, a bandana, a dark jacket, and a partially torn rubber latex glove. (R.p.339, line 21–R.p.340, line 25). At the Saluda County Detention Center, Officer Rhonda Adams was booking Petitioner when she discovered two pieces of latex rubber gloves still attached to two of his fingers. Officer Adams recovered those pieces of gloves from Petitioner's possessions, and gave them to Investigator Shorter. (R.p.208, line 15–R.p.212, line 22).

The sheriff's office ordered DNA testing of the pieces of latex gloves found near the driveway and in the van, and the tests found Petitioner's DNA on both sets of items. Forensic testing found that eleven of the fifteen recovered bullet shell casings came from a .40 caliber gun, one of the two found with the rubber latex gloves. (R.p.384, line 3–R.p.387, line 25; R.p.409, line 23–R.p.473, line 19; R.p.510, line 8–R.p.514, line 5; R.p.539, line 14–R.p.545, line 4).

At trial, Williams, Wrighton, and Young testified they were in the home at the time of the shooting.[1] They were sitting around the home when they noticed two men approaching. They turned off the lights, and Wrighton went to the door to get a better look at the men. The men began firing at Wrighton through the door and wall. Wrighton ran to the living room and pushed Williams to the ground. Young pulled out his gun and returned fire, shooting towards the men but firing through the door and wall. After a few moments, the gun battle ended, and all three occupants remained in the home until police arrived. (R.p.231, line 4–R.p.235, line 1; R.p.255, line 4–R.p.257, line 8; R.p.275, line 3–R.p.276, line 24).

Charley also testified at trial. He admitted to driving to Young's home in an attempt to collect money. He claimed: (1) Petitioner was his driver; (2) a man named Rico Riverez also followed them in a separate vehicle; (3) Petitioner was unaware of the true purpose for the trip; (4) he disembarked from the vehicle some distance from Young's home, and told Petitioner to wait for him with the vehicle; (5) he and Rico were the ones that approached the trailer; (6) he heard Young shout and then saw him come outside and fire two warning shots into the air; (7) he responded by firing one shot into the air; (8) Rico then shot at the house; (9) he fled without Rico, and had no idea whether Rico was arrested after the event; (10) he returned to Petitioner at the vehicle, and within seconds of his return police pulled up to the vehicle. (R.p.585, line 24–R.p.595, line 23).

On cross-examination, Charley admitted he had pled to one count of attempted murder as a result of his participation in this crime and that the State had dropped two charges of attempted murder against him because he had agreed to cooperate with the police and in the State's case against Petitioner. He admitted to telling Investigator Shorter about the crime and that Petitioner,

[1] In addition to the three victims, six other individuals lived in the home: Mike and Felicia Barlow, their three children and Williams's stepbrother Frank Gonzalez. However, these six individuals were not in the home that night. R.p.219, line 5–R.p.220, line 8; R.p.225, line 23–R.p.226, line 5).

not Rico, was the second gunman. The solicitor reminded Charley that his sentencing hearing was deferred until after Petitioner's trial. He conceded he was "double-crossing" the State and that he was lying about Petitioner's involvement in the crime in an attempt to try and help himself. He also admitted to speaking with Williams at the home during a previous attempt to try and locate Young, and that he only assumed Williams and the other occupants of the home were not present that night because she appeared scared during the previous attempt and he did not see a vehicle in the yard. Finally, Charley stated Petitioner was in possession of the .40 caliber gun found with the gloves, he fired one shot in the air, and did not shoot at Young or the house, and conceded that Petitioner was the person who fired numerous shots towards Young and the house. (R.p.603, line 21–R.p.607, line 23; R.p.612, line 1–R.p.618, line 20; R.p.624, line 17–R.p.627, line 18; R.p.631, line 21–R.p.633, line 24).

CERTIORARI

Petitioner argues this Court should grant certiorari because the issue of transferred intent is novel and conflicts with this Court's opinion in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), in which the Court found attempted murder is a specific intent crime. First and foremost, the State notes Petitioner provides no compelling reason[2] why certiorari should be granted on his first issue, whether the Court of Appeals erred in finding harmless the trial court's refusal to charge the jury on the lesser-included offense of assault and battery; Petitioner only argues the Court generally erred in its analysis and fails to challenge the merits of the issue or the law relied upon by the Court. Thus, this Court should limit its consideration of whether to grant certiorari to the second issue.

In regards to the second issue, Petitioner is incorrect that the doctrine of transferred intent is a novel question. The doctrine of transferred intent has been repeatedly recognized by this Court. See, e.g., State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). Further, Petitioner is incorrect that the doctrine conflicts with King. Petitioner asseverates that allowing Williams to remain precedent would render the requirement of showing specific intent for attempted murder "virtually meaningless." What Petitioner misunderstands is that King[3] and Williams are not inconsistent with one another. Pursuant to King, the State is still required to prove a defendant

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[2] Pursuant to Rule 242(b), SCACR, a writ of certiorari will only be granted where there are "special and important" reasons, including: (1) novel questions of law; (2) cases in which there was a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals conflicts with a prior decision of this Court; (4) cases implicating substantial constitutional issues; and (5) where a federal question is included and the Court of Appeal's decision conflicts with a decision of the United States Supreme Court.

[3] In his Petition for a Writ of Certiorari, Petitioner claims "[t]he dissent in King agreed with the majority that, after its ruling, the notion of implied malice for specific intent crimes would be problematic." (PWC p.5). Notably, there was no dissent in King, but a concurrence. Further, the majority and minority did not agree the "notion of implied malice for specific intent crimes would be problematic." Instead both the majority and the concurrence agreed the language of the attempted murder statute created an ambiguity, with the majority interpreting the statute as requiring specific intent and the minority finding the statute adopted the general intent required for attempted murder's common law precursor, assault and battery with intent to kill. King, 422 S.C. at 61–62, 72–73, 810 S.E.2d at 25–26, 31–32.

had a specific intent to kill his intended victims. Once the State has proven that specific intent, Williams and its ilk merely allow for the transfer of that intent to other foreseeable victims. See id. at 542–43, 812 S.E.2d at 927.

Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of reviewing and affirming the trial court's application of established precedent, logic, and practical consideration of the particular facts and circumstances of Petitioner's case. Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

ARGUMENT

I.

The Court of Appeals properly found harmless the trial judge's refusal to charge the jury on the lesser-included offense of first-degree assault and battery because the only conclusion established by the evidence was Petitioner attempted to kill the victims.

Petitioner argues the Court of Appeals erred in finding harmless the trial judge's refusal to charge the jury on the lesser-included offense of first-degree assault and battery, claiming the court made its own credibility findings and improperly weighed the evidence. As noted above, Petitioner has failed to articulate a special or important reason for this Court to grant certiorari on this issue. In any event, the State disagrees with these allegations of error. To determine whether the trial judge's error was harmless, the Court of Appeals was required to weigh the evidence and determine what, if any, effect the error had on the verdict. Applying this Court's analysis from State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014), the Court of Appeals correctly determined the trial judge's error was ultimately harmless.

Standard of Review

"In reviewing jury charges for error, we must consider the [circuit] court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). "The [circuit court] is to charge the jury on a lesser-included offense if there is any evidence from which the jury could infer that the lesser, rather than the greater, offense was committed." State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002).

"Errors, including erroneous jury instructions, are subject to harmless error analysis." State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009); see also Lowry v. State, 376 S.C. 499, 507, 657 S.E.2d 760, 764 (2008) ("an unconstitutional jury instruction will not require

reversal of the conviction if the Court determines beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."); Arnold v. State/Plath v. State, 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992) (finding an improper malice charge harmless beyond a reasonable doubt); State v. Jefferies, 316 S.C. 13, 23, 446 S.E.2d 427, 433 (1994) (finding incorrect kidnaping charge which may have confused jury was harmless); State v. Kerr, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct. App. 1998) (holding improper and confusing jury charge on impairment in a DUI case was harmless error).

In determining whether an improper jury charge is harmless, "we must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." State v. Buckner, 341 S.C. 241, 247–48, 534 S.E.2d 15, 18–19 (Ct. App. 2000). As this Court has explained:

> Harmless error review looks to the basis on which the jury actually rested its verdict. From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must "find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record."

Lowry, 376 S.C. at 508, 657 S.E.2d at 765 (quoting Yates v. Evatt, 500 U.S. 391, 403 (1991)) (internal citation omitted). "In making a harmless error analysis, our inquiry is not what would the verdict have been had the jury been given the correct charge, but rather did the erroneous charge contribute to the verdict rendered." Jefferies, 316 S.C. at 22, 446 S.E.2d at 432 (citing Sullivan v. Louisiana, 508 U.S. 275 (1993)).

Pursuant to S.C. Code Ann. section 16-3-20 (2015), "[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. section 16-3-600 (2015), which codifies the varying degrees of assault and battery, provides:

(C)(1)A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or
(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or
(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

(3) Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

S.C. Code Ann. § 16-3-600 (C) (Supp. 2017).

In State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014),[4] the defendant appealed his conviction for attempted murder, arguing the trial judge erred in refusing to charge the jury on

[4] The full facts of the case, as stated by this Court:

> On September 28, 2010, Stephanie Mack was driving her vehicle in which Ryan Stephens was riding as a passenger. Mack stopped the vehicle at a school bus stop sign. They were 10–15 feet away from the school bus, facing the bus in the opposite lane, as kindergarten-aged children attempted to exit the bus. Petitioner, driving a moped, approached Mack's stopped vehicle from the rear, and drove around to the passenger side. As he approached, he pulled out a gun and began firing into the passenger side of the vehicle, striking the vehicle repeatedly and shattering glass. He continued shooting into the vehicle as he rounded the front of the vehicle. Stephens testified that he and Mack were "laid back" in the seats at the time Petitioner approached the vehicle, and he immediately jumped across Mack and into the driver's seat so that he could drive away. In the process, he struck Petitioner with the vehicle. He stated these actions were the reasons that he and Mack were not shot and killed. Both Stephens and Mack testified that Petitioner shot at them 5–7 times. None of the bullets struck Mack or Stephens. At trial, Mack testified that her only injuries

first-degree assault and battery as the victim was uninjured when he fired 5-7 bullets into his vehicle and that his actions met the definition of first-degree assault and battery under S.C. Code Ann. § 16-3-600(C)(1)(b)(i). The Court found the trial judge erred in failing to charge the jury on first-degree assault and battery, as it was undisputed that the defendant's actions met the elements of § 16-3-600(C)(1)(b)(i). However, the Court further found the trial judge's error was harmless because the only evidence produced at trial showed the defendant attempted to kill the victim: he opened fire into the victim's vehicle and shot at least five times, and the only reason the victim was not killed was because he jumped into the driver's seat and ran the defendant off the road. In the Court's view, the error in failing to charge first-degree assault and battery did not contribute to the verdict beyond a reasonable doubt, as there was "no other way to construe the evidence" but that the defendant attempted to kill the victim. Middleton, 407 S.C. at 316–19, 755 S.E.2d at 434–36.

Analysis

In the instant case, the only evidence presented at trial demonstrated Petitioner attempted to murder the victims. The three witnesses testified Petitioner and Charley shot at them numerous times through the door and walls of the house, with the attack only abating when Young returned fire. Even Charley's testimony,[5] which differed in various respects from the

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were a few cuts from the broken glass. Stephens testified that he was upset by the incident but was not otherwise struck or injured in any way.

Petitioner was charged with two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. He requested a jury charge on the lesser-included offense of assault and battery in the first degree on both counts of attempted murder. The trial judge charged the jury on the lesser-included offense as to Mack but refused to charge the lesser-included offense as to Stephens.

407 S.C. at 314–15, 755 S.E.2d at 433–34.

[5] Admittedly, Charley initially testified Rico Riverez, not Petitioner, was the gunman who shot the trailer. However, such testimony would only support a finding of Petitioner's complete innocence, not that he was guilty of a lesser-included offense. See State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012) ("A trial judge is required to

witnesses' testimonies, supported the attempted murder charge. He testified Young came outside and fired only a single warning shot into the air before Petitioner fired eleven shots at Young and the house. Here, much like Middleton, the only evidence adduced at trial shows Petitioner attempted to murder Young and the occupants of the home. Thus, any error in failing to charge the lesser-included offense was harmless because the erroneous instruction did not contribute to the verdict beyond a reasonable doubt. See Middleton, 407 S.C. at 316–19, 755 S.E.2d at 434–36; Buckner, 341 S.C. at 247–48, 534 S.E.2d at 18–19.

Accordingly, the Court of Appeals did not err in finding harmless the trial judge's failure to charge the jury on first-degree assault and battery.

II.

The Court of Appeals properly affirmed the trial judge's jury instruction on the doctrine of transferred intent.

Petitioner asseverates the Court of Appeals erred in finding the doctrine of transferred intent applies to the offense of attempted murder and claims the doctrine is "completely unnecessary" under South Carolina law. (PWC p.10). The State disagrees with this allegation of error. As noted by the Court of Appeals, South Carolina law allows for, and even requires, the doctrine of transferred intent. Further, use of the doctrine is entirely consistent with this Court's opinion in King, because the State still must prove a defendant possessed the specific intent to kill an intended victim; the doctrine only allows for intent to transfer in situations in which the character of a defendant's actions necessarily endangered others.

charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed."); State v. Drayton, 293 S.C. 417, 428, 361 S.E.2d 329, 335 (1987) (finding defendant was not entitled to a charge on a lesser included offense, as the only evidence presented at trial either supported a finding of guilt, or of complete innocence).

Standard of Review

In State v. Sutton, 340 S.C. 393, 532 S.E.2d 283(2000), the South Carolina Supreme Court first addressed the issue of whether attempted murder was an offense in South Carolina. Declining to recognize the common law attempted murder offense, which required a specific intent to kill, as an offense separate from ABWIK, the Court specifically found the common law ABWIK and ABIK offenses "adequately cover the conduct which attempted murder would include." Id. at 388–89, 532 S.E.2d at 285–86. In short, unlike **common law** attempted murder, common law ABWIK did **not** require a specific intent to kill. However, the Court noted "[a] specific intent to kill may be, and normally is, inferred from the surrounding circumstances [of a crime], such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries." Id. at 397 n.5, 532 S.E.2d at 285 n.5.

In Fennell, 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. The court explained:

> The defendant's mental state, or mens rea, whatever it may be at the time he allegedly commits a criminal act, 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.
>
> Nor is that mental state in limited supply. The mental state "spotlight" is not extinguished at the moment a bullet strikes and kills the intended victim, such that there is no mental state left upon which to convict an unintended victim who also is injured or killed.

340 S.C. at 271, 531 S.E.2d at 515.

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (Omnibus Act) substantially overhauled the state's criminal law. State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). It codified attempted murder in § 16-3-29 (2015) and four degrees of assault and battery in § 16-3-600 (2015). S.C. Code Ann. §§ 16-3-29, -600 (2015). The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees. Middleton, 407 S.C. at 315, 755 S.E.2d at 434. Under the statute, ABHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3) (2015). Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN. S.C. Code Ann. § 16-3-600(C)(3) (2015). Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense. S.C. Code Ann. § 16-3-600(D)(3) & (E)(3) (2015). Finally, the Omnibus Act abolished the common law offense of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault. *See* Act No. 273, 2010 S.C. Acts 1947.

In King, 422 S.C. 47, 810 S.E.2d 18 (2017), this Court found the trial court erred in instructing jurors "[a] specific intent to kill is not an element of Attempted Murder but it must be a general intent to commit serious bodily harm." 422 S.C. at 54, 63–64, 810 S.E.2d at 21, 26–27. The Court found the language of S.C. Code Ann. section 16-3-29, combined with the fact that a majority of jurisdictions have concluded attempted murder requires a specific intent to kill, indicated the General Assembly intended our statute to require a higher degree of intent than the general intent required under ABWIK. Id. at 55–64, 810 S.E.2d at 22–27.

Analysis

As an initial matter, the State contends Petitioner possessed the specific intent to kill the victims. Notably, Petitioner does not dispute the propriety of his conviction for the attempted murder of Young, including his specific intent to complete the crime. The crux of Petitioner's argument is the mistaken belief that specific intent can only exist as to the primary victim of attempted murder. Notably, the language of § 16-3-29 contradicts this assertion; "attempted murder" does not require that specific intent be directed at a specific individual. S.C. Code Ann. § 16-3-29 (2015) ("A person who, with the intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."). Such language is similar to that used in South Carolina's murder statute; an offense which Petitioner does not dispute allows for the transfer of intent. See S.C. Code Ann. § 16-3-10 (2015) (defining "murder" as "the killing of any person with malice aforethought, either express or implied" (emphasis added)).

Petitioner claims this Court's opinion in King indicates transferred intent is inapplicable to attempted murder. Indeed, this Court found attempted murder is a specific intent crime; however, such a finding is not inconsistent with the use of transferred intent, a fact recognized by the Court of Appeals in its opinion in this case. King, 422 S.C. at 61, 810 S.E.2d at 25; Williams, 422 S.C. at 542–43, 812 S.E.2d at 925–26. Pursuant to King, the State was required to prove Petitioner specifically intended to kill at least one of his victims. However, once the State established Petitioner acted with the requisite degree of intent, that intent remained with Petitioner throughout the duration of the attack.

In Fennell, the 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. Id. at 276–77, 531 S.E.2d at 517–18. The Court explained the defendant's mental state was like a "spotlight" which emanated from the defendant's mind to his target, the intended victim; the mental state never left the defendant's brain and was not extinguished at the moment the bullet struck and killed the intended victim. 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 517. The court further found "[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 deed when that force kills or injures an unintended victim." Id.

In his brief, Petitioner cites to cases from five separate jurisdictions to support his claim that the doctrine of transferred intent is not applicable to the crime of attempted murder. See Cockrell v. State, 890 So.2d 174 (Ala. 2004); Ramsey v. State, 56 P.3d 675 (Alaska Ct. App. 2002); People v. Smith, 124 P.3d 730 (Cal. 2005); State v. Hinton, 630 A.2d 593 (Conn.1993); and State v. Brady, 903 A.2d 870 (Md. 2006). In most of these jurisdictions, the courts found the doctrine inapplicable due to the language used in the states' murder statutes. See Cockrell, 890 So.2d at 176–181 (finding the doctrine of transferred intent was explicitly codified in the state's murder statute, and due to this the court felt constrained by the rule of lenity to conclude the state legislatures did not intend for transferred intent to apply); also Ramsey, 56 P.3d at 682 ("Alaska law authorizes a separate conviction for homicide or assault for every victim of a defendant's assaultive act." (internal citation omitted)); People v. Bland, 48 P.3d 1107, 1116–17 (Cal. 2002) (finding "no suggestion the [California] [l]egislature intended to extend liability for unintended victims" to attempt crimes); Hinton, 630 A.2d at 601– 02 (stating Connecticut's murder and

assault statutes had specific provisions allowing for the transfer of intent to unintended victims, and because the Connecticut code did not contain a specific attempted murder statute, but a general attempt statute which states an attempt has been made if a defendant acts "with the kind of mental state required for commission of the crime . . . ," the Connecticut Supreme Court felt constrained by the rule of lenity to conclude the doctrine of transferred intent should not be applied to attempted murder).

More importantly, each of these States recognizes a form of "concurrent intent." Using this doctrine, these jurisdictions allow for convictions for the attempted murder of unintended victims based on defendants engaging in a course of conduct which, based on the method of attack, endangers those in proximity to the intended target; notably, these versions of concurrent intent mirror South Carolina's version of transferred intent. Compare Fennell, 340 S.C. at 271–72, 531 S.E.2d at 515 (comparing a defendant's intent to a spotlight which shines on his victims), and Sutton, 340 S.C. at 397 n.5, 532 S.E.2d at 285 n.5 (stating a specific intent to kill may be inferred from the circumstances of the crime, including the character of the attack and the weapon used) with Cockrell, 890 So.2d at 175–76 (recognizing California's use of concurrent intent to convict a defendant of attempted murder when a defendant employs a means to commit the crime against a primary victim from which a fact finder can "reasonably infer that the defendant intended that harm to all who are in the anticipated zone" (internal citation omitted)), Ramsey, 56 P.3d at 682–83 (finding the doctrine of transferred intent did not allow for the attempted murder conviction for a secondary victim, but that the facts of the case, such as the defendant's use of a shotgun in close proximity to the intended and secondary victim, may be evidence in a new trial of defendant's intent to kill the secondary victim), Bland, 48 P.3d at 1118–19 (finding the concurrent intent to kill persons other than a primary target can be inferred

from the facts of a case, such as the number of shots fired and the type of ammunition used, which may demonstrate that a defendant intended to create a "kill zone" around the intended victim), Hinton, 630 A.2d at 595–96; 599–603 (remanding for a new trial because defendant could not have been convicted of both the attempted murder and first-degree assault of a victim, but noting the facts of the case, which included the defendant firing a sawed-off shotgun loaded with the largest commercially available buckshot, could be evidence the defendant intended to kill the victim in question), and Brady, 903 A.2d at 882 (finding transferred intent inapplicable to the crime of attempted murder, but stating "other theories of liability, such as concurrent intent . . . are available" to ensure criminal defendants are appropriately punished).

Accordingly, the Court of Appeals properly affirmed Petitioner's convictions and sentences.

CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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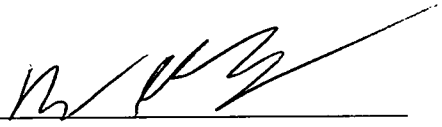
BY: 

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ATTORNEYS FOR RESPONDENT

July 23, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 23 2018
S.C. SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
Appeal from Saluda County
Court of General Sessions
Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2018-000994

THE STATE, ...RESPONDENT,

v.

GERALD RUDELL WILLIAMS,..... PETITIONER.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by sending two copies of the same to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served this 23rd day of July, 2018.

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