STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

ROBERT XAVIER GETER,.....APPELLANT

INITIAL BRIEF OF RESPONDENT

Appellate Case No. 2018-001647

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APPELLANT'S STATEMENTS ON APPEAL

1. Whether the Court erred in instructing the jury on transferred intent since that was an improper, inapplicable jury charge in an attempted murder case, were specific intent to kill was an element of that crime?

2. Whether the Court erred by allowing Richland County Sheriff's Investigator Joseph Clarke to testify that defense counsel's opening statement to the jury was the first time he had heard the defense "scenario of the facts" while at the same time he vouched for victim's Stone's testimony being absolutely consistent, since it was an improper for the solicitor to use the sheriff's investigator to opine that the defense case was inconsistent with the evidence he uncovered during his investigation while the victim's testimony was consistent?

RESPONDENT'S COUNTER STATEMENT ON APPEAL

1. Did the trial court err in instructing the jury on transferred intent when there were sufficient evidence that victim Clarence Stone was injured due to the intentional actions of the Appellant causing the death of James Lewis?

2. Did the Court err in allowing Richland County Investigator Joseph Clarke testimony stating that the defense's version of the story he heard in opening argument was the first time he heard this version of the facts, and the story given to him by Mr. Stone was "consistent" to what he testified to on the witness stand? If the Court did commit an error allowing this testimony, was this error harmless?

STATEMENT OF THE CASE

On March 7, 2015, the Appellant and the victim Mr. James Lewis got into an altercation at Cullers Bar in Richland County, South Carolina. During this altercation Mr. Lewis beat the Appellant about his face causing swelling and a cut above one eye. A second victim Mr. Clarence Stone who at times is a person who attempts to keep peace at the establishment broke up this fight. He pulled Mr. Lewis out of the establishment on a deck out back. (Tr. p. 238 lines 10-11) Once the fight had ended the owner of the bar Ms. Deborah Culler told the Appellant that he had to leave. (Tr. p. 125 lines 18-19) Instead of going out of the front door the Appellant decided to go out of the back where the deck was located. While leaving the establishment a witness by the name of Michael Harkness overheard Appellant stating "I'm gonna kill somebody tonight." (Tr. p. 173 lines 12-13)

Both victims were outside on the deck where Mr. Stone was attempting to calm Mr. Lewis down. Appellant came outside and made both men think he was offering peace. (Tr. p. 239 lines 7-21) However, once he approached both men he pulled out a knife and attacked Mr. Lewis. Mr. Stone in an attempt to stop the altercation was stabbed in the eye. (Tr. p. 241 lines 4-6) Bloodied and in pain Mr. Stone went back into the establishment for assistance. The Appellant and Mr. Lewis continue fighting, Appellant stabbed Mr. Lewis twice the one was in the chest puncturing his heart. While Mr. Lewis lay bleeding Appellant pulled the knife out of his chest and left the establishment. (Tr. p. 198 lines 7-12) Mr. Lewis was assisted back into the bar, he laid in the front doorway waiting on emergency medical services. Mr. Lewis was rushed to the hospital where he later died due to excessive bleeding. Mr. Stone was treated for his eye where he lost vision in that eye due to this injury. (Tr. p. 241 lines 23-24) Richland County Sheriff's Department later responded to the incident location. The lead investigator Joseph Clarke got

statements from witnesses who informed him that Boo committed the murder. (Tr. p. 313 lines 18-21) Boo was a nickname that everyone knew the Appellant by. At the completion of this investigation warrants were issued for the Appellant for the offenses of murder and attempted murder.

Appellant was later told that Mr. Lewis died due to this stab wounds and was instructed by Richland County Sheriff's Department to turn himself in. He turned himself in the next day and was arrested for one count of murder and one count of attempted murder. At the time of his arrest Appellant maintained to the authorities that he was "jumped" by five individuals and he stabbed Mr. Lewis in self-defense. (Tr. p. 320 lines 19-21)

On May 15, 2017, his case was called for trial before the Honorable Alexander S. Macaulay, Circuit Court Judge. Present were Assistant Solicitors Richard Cathcart and Jeremiah Shellenburg, and representing the Appellant was attorney Aimee Zmroczek. During this trial the trial court denied Appellant immunity under the Protection of Persons and Property Act.[1] During trial two jurors informed the trial Court that they had prior knowledge of this case due to the fact they knew the Mr. Lewis' mother. At that time the trial court decided to declare this case a mistrial.

This case was again called for trial on April 9, 2018 before the Honorable Deandrea G. Benjamin. Present representing the state once again was assistant solicitors Richard Cathcart and Jeremiah J. Shellenburg, and representing the Appellant were attorneys Aimee Zmroczek and Ryan Schwartz. The trial concluded on April 12, 2018 with a jury of his peers finding Appellant guilty of all charges. (Tr. p. 723 line 21 – p. 724 line 6) At the conclusion of this trial the

[1] A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force. S.C. Code Ann. §16-11-450 (2018).

Appellant appeared before the trial judge. He was sentenced to a forty year term of incarceration for the offense of murder and twenty years for the offense of attempted murder. The court ordered that these sentences were to be served concurrently. (Tr. p. 736 lines 19-24)

Appellant filed a timely notice of appeal before this court. Within this notice of appeal the Appellant argued that the trial court erred in instructing the jury on the doctrine of transferred intent. It is the Appellant's position that since attempted murder is a specific intent crime there has to be an intent to kill to be found guilty of this offense, so transferred intent does not apply. The Appellant also argues that the trial court erred in allowing Investigator Clarke to testify that the version stated by Appellant's counsel on opening argument was the first he have heard of this, and the statement given to him by Mr. Stone was consistent with his testimony. The Appellant alleges that it was unlawful for the solicitor to inquire that investigator Clarke state that his case was inconsistent with the evidence he recovered; and, to vouch for the victim's testimony.

The Respondent will argue that it was lawful for the trial court to instruct the jury on the doctrine of transferred intent. There was sufficient evidence provided by the state that Appellant committed this act with malice. The doctrine of transferred intent definitely can be applied to a case of attempted murder, due to the fact the punishment follows the intent and not the crime. The Respondent would further argue that Investigator Clarke was only testifying about facts that was told to him by the witnesses during the course of his investigation. He never gave his opinion about either side, and his testimony never favored one side of the case against the other. The Respondent would also argue that even if this court determines that the trial court committed an error in allowing this testimony it did not change the outcome of this case so it should be considered harmless.

Respondent now requests this court to affirm the decision of the trial court. The Respondent's brief supporting all of the above referenced defenses follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The trial court has considerable discretion on the admissibility of evidence. *State v. Sheldon,* 344 S.C. 340, 342, 543 S.E.2d 585 (2001). On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 234 S.E.2d 230 (1977). The doctrine of transferred intent applies only in the situation of some intended harm inflicted on an unintended victim. *State v. Bryant,* 316 S.C. 216, 219, 447 S.E.2d 852, 854 (1994). The assessment of witness credibility is within the exclusive province of the jury. *State v. Wright,* 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977). A witness may not give an opinion on whether he or she believes another witness is telling the truth or comment on another witness veracity. *State v. Kromah,* 401 S.C. 340, 358-359, 737 S.E.2d 490, 499-500 (2013). Error is harmless where it could not reasonably have affected the trial's outcome. *State v. Mitchell,* 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

ARGUMENT

1. **The trial court did not err in giving the jury instruction regarding the doctrine of transferred intent.**

These parties are seeking to have the Court answer the question existing in *State v. Williams,* 427 S.C. 148, 829 S.E.2d 917 (2019), whether the doctrine of transferred intent can be assessed in a case of attempted murder.

Appellant was convicted of the offense of murder which is defined as the killing of any person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-10 (2018).

Appellant was also convicted of the offense of attempted murder, which is defined as a person with the intent to kill attempts to kill another person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-29 (2018). Malice is a major element for both the offenses of murder and attempted murder.

In the South Carolina Supreme Court case of *State v. Heyward,* 197 S.C. 371, 15 S.E.2d 669 (1941) malice was defined as:

> "a wicked condition of the heart. It is a wicked purpose. It is a performed purpose to do a wrongful act, without sufficient legal provocation; and, in this case it would be an indication to do a wrongful act which resulted in the death of this man without sufficient legal provocation, or just excuse or legal excuse. In its proper sense term "malice" conveys the meaning of hatred, ill-will or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse."

Heyward, 15 S.E.2d at 671, *quoting, State v. Gallman,* 79 S.C. 229, 60 S.E.2d 682, 686 (1908). The difference is that attempted murder requires proving that the defendant had a specific intent to kill. *State v. King,* 422 S.C. 47, 810 S.E.2d 18 (2017).

Appellant was convicted of murder for the intentional killing of Mr. James and of attempted murder for the stabbing of Mr. Stone. The conviction for attempted murder was accomplished through the doctrine of transferred intent. Transferred intent is where the actor's intent to kill his intended victim is said to be transferred to his actual victim. *State v. Gandy,* 283 S.C. 571, 574, 324 S.E.2d 65, 67 (1984). Appellant while attacking Mr. James stabbed Mr. Stone who was attempting to break up the fight. After Mr. Stone went away due to the pain he endured

after being stabbed in eye, Appellant proceeded to kill Mr. James. There is no doubt that the *mens rea* existed. The testimony of eyewitnesses stated that Appellant followed both victims out of the bar onto a deck where he attacked the victims with a knife. This obviously reveals malice and an intent to kill. The trial court did not err in instructing the jury on the doctrine of transferred intent. If the mental state exist then there exist an intent to kill and this intent can be transferred to another victim.

In *State v. Fennell,* 340 S.C. 266, 531 S.E.2d 512 (2000), the Supreme Court stated that the word "transferred intent" is a bit misleading. In *Fennel,* the Court stated:

> The defendant's mental state, or *mens rea,* whatever it may be at the time he allegedly commits the 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.

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

The 'spotlight" of Appellant existed with the two victims on the deck of Cullers bar. Appellant attacked both individuals with a total disregard for human life. Appellant even gave the victims the false sense of security by offering an olive branch and when they relaxed he attacked both men with a knife. If there is malice in the Appellant's heart he is guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake. *Heyward,* 197 S.C. at 377, 15 S.E.2d at 672.

It was obvious that Appellant had an intent to kill. He killed the intended target as well as severely injuring an innocent bystander doing the right thing by attempting to stop the fight. The actions of Appellant should not be excused because Mr. Stone made an attempt to stop the Appellant's aggression and suffered because of it. Appellant argues that there should not be any transferred intent due to the fact there was no intent to kill Mr. Stone. However, Mr. Stone was struck due to the Appellant's intentional malicious attack with a knife on both victims killing one and causing a permanent injury to the other.

According to eyewitness testimony Appellant had an intent to kill. The question raised by the Appellant is can that intent be transferred to a victim who was at the scene and injured but not killed. Appellant argues that since there is a requirement as to a specific intent to kill, transferred intent cannot apply to an attempted murder, we disagree. Appellant had malice and intent to kill. He stabbed Mr. James in the chest and he had other numerous cuts about his face and body. (Tr. p. 268 line 7 – p. 271 line 23) He was not convicted of another charge of murder due to the fact Mr. Stone was lucky enough not to die of his major injury. Where there is an intent to kill and act designed to bring about desired killing, accused is responsible for all natural and probable consequences of the act, regardless of intended victim. *U.S. v. Wills,* 46 M.J. 258 (1997). The Appellant argues that there cannot be transferred intent toward his actions against Mr. Stone due to there not existing a specific intent to kill. The doctrine of transferred intent is based upon a legal fiction that imposes criminal liability upon a person based upon his or her participation in a factual scenario which creates harm to person or property. *Ochoa v. State,* 115 Nev. 194, 198 (1999). The fact there was not an intent to kill is not necessary, the punishment should follow the intent and not the crime. Direct proof of a particular element of a crime is not

required because the requisite element is imputed from the conduct of the defendant. *Id.* Appellant must be held responsible for all of the consequences that is a result of said act.

In *State v. Williams,* 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018) this court ruled that the circuit court did not err in instructing the jury on transferred intent in a case involving attempted murder.[2] In *Williams,* this court determined that "A person who acting with malice, unleashes a deadly force in an attempt to kill. . . an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injuries an unintended victim." *Williams,* 422 S.C. at 543, 812 S.E.2d at 926, *quoting, Fennell,* 340 S.C. at 276, 531 S.E.2d at 517.

Appellant had a total disregard for human life. He attacked two people with a knife after being ordered by the owner of the establishment to leave the premises. He was specifically being heard saying "I'm gonna kill somebody tonight." That obviously reveals an intent to kill someone and he accomplishes this by attacking both victims killing one and severely injuring the other. The act of the Appellant was definitely an act of malice, and the fact one of the victims did not also die due to his actions should not absolve Appellant or relieve him of any punishment that he has received due to his act of recklessness. It should not be excused that Mr. Stone was not the intended victim, he is a victim who was attacked and suffered a permanent injury. The fact he was lucky enough to survive should not absolve the Appellant of his actions.

The Appellant argues that the trial court erred in instructing the jury on the law regarding transferred intent. This case should have been submitted to the jury with the jury making a

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[2]The South Carolina Supreme Court recently ruled, "Because the court of appeals treated the case as if it had been tried as a specific-intent crime, we vacate the portion of its opinion dealing with the issue of transferred intent and leave for another day the determination of whether the doctrine applies to attempted murder." *State v. Williams,* 427 S.C. 148, 157-158, 829 S.E.2d 702, 707 (2019)

determination as to whether or not transferred intent existed. The question of intent with which an act is done is one of fact and is ordinarily for jury determination. *State v. Tuckness,* 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971).

In other jurisdictions it has been determined that transferred intent can apply to attempted murder. The elements of attempted murder in Illinois are very similar to that of South Carolina.[3] The Illinois Appellant Court has decided that the doctrine of transferred intent is applicable in attempted murder cases, *People v. Swaney,* 2 Ill.App.3d 857, 276 N.E.2d 346 (1971); *People v. Burrage,* 269 Ill.App.3d 67, 645 N.E.2d 346 (1994); *People v. Hill,* 276 Ill.App.3d 683, 658 N.E.2d 1294 (1995); *People v. Carlisle,* 35 N.E.3d 649 (2015).

In *State v. Ross,* the Louisiana Court of Appeals decided;

> The doctrine of transferred intent provides that "[w]hen a person shoots at an intended victim with specific intent to kill or inflict great bodily harm and accidently kills or inflicts great bodily harm upon another person, if the killing or inflicting of great bodily harm would have been unlawful against the intended victim actually intended to be shot, then it would be unlawful against the person actually shot even though that person was not the intended victim."

State v. Ross, 115 So.2d 616, 621 (2013), *quoting, State v. Strogen,* 814 So.2d 725, 728 (2002). There was obviously an act of malice toward both victims. When this occurs transferred intent applies. It is insufficient to argue that due to the fact Mr. Stone was not the intended victim, the Appellant should be absolved of all acts toward Mr. Stone that caused his extensive injuries. Theoretically, the doctrine applies in any case where there is intent to commit a criminal act and the only difference between the actual result and the contemplated result is the nature of the personal or property injuries sustained. *Ochoa,* 115 Nev. At 198. If there exist intent and malice

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[3] An individual commits the offense of attempted murder when with, **specific intent to kill,** he does any act which constitutes a substantial step toward the commission of murder. *People v. Hill,* 276 Ill.App.3d 683, 687, 658 N.E.2d 1294, 1297 (1995)(emphasis added).

any person who has committed an act of violence should suffer the consequences of this act, regardless if the injured party was the intended victim or not. It was proper for the trial court to instruct the jury on the doctrine of transferred intent, especially since attempted murder was the only charge the Appellant could have been convicted of committing.[4]

2. **The court did not err in allowing Investigator Joseph Clark's testimony regarding what he observed during his investigation. Since he never gave his opinion regarding what was presented before the jury, his testimony was lawful.**

Richland County Sheriff's Department investigator Joseph Clarke testified regarding what he found as part of his investigation. During his testimony he was asked about the opening argument made by the defense attorney during this trial. As part of a redirect examination conducted by the Respondent, investigator Clarke was asked about the scenario of facts Appellant's attorney relayed to the jury during her opening argument and whether this was the first time he ever heard of the defense of self-defense. He answered "yes." (Tr. p. 349 lines 23-25) Investigator Clarke was also asked if the statement given to him by Mr. Stone was the same given through his testimony. Investigator Clarke responded, "seems absolutely consistent, correct." (Tr. p. 349 line 25) There Appellant argues that investigator Clarke gave the impression that self-defense was inconsistent with the corroborated evidence, and that the self-defense argument was an "invention." The Appellant further argues that investigator Clarke vouched for Mr. Stone's credibility by stating that his testimony was consistent with the prior statement Mr. Stone had given to him during his investigation.

Investigator Clarke only gave testimony of things he heard or saw. It is lawful for a lay witness to testify regarding something he heard or saw. Pursuant to Rule 701 of the rules of evidence which state:

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[4] The Appellant refused a court instruction on the lesser-included offense of assault and battery of a high and aggravated nature. (Tr. p. 628 lines 22 – p. 629 line 10)

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony, and (c) do not require special knowledge, skill, experience or training.

Rule 701 SCRE

Investigator Clarke just answered yes as to this being the first time hearing the self-defense argument. An opinion that he was later corrected on in re-cross examination. (Tr. p. 350 lines 7-18) He never revealed any opinion that he believed his statement was true of false. Investigator Clarke never gave the impression that Mr. Stone's testimony was credible. He just said that the testimony he gave during trial is "consistent" to what was told to him earlier. He never gave any opinion regarding its truth or veracity.

Within his brief Appellant's list numerous decisions regarding witnesses giving their opinion on a certain topic, or event during their testimony. Most of these cases involved expert witnesses improperly bolstering witness testimony. *Chappell v. State,* 429 S.C. 68, 837 S.E.2d 496 (2019)(Court ruled that an expert stating "children don't often lie about sexual abuse indictments" was improper bolstering.), *Briggs v. State,* 421 S.C. 316, 806 S.E.2d 713 (2017)(Expert erred when she testified that she conduct forensic interviews for the purpose of finding out whether the sexual abuse happened – Thereby expressing to the jury she already made that determination.), *State v. Jennings,* 394 S.C. 473, 716 S.E.2d 91 (2011)(Trial court abused its discretion in allowing the state to introduce reports of the expert stating that each child "provided a compelling disclosure of abuse by appellant."), *State v. McKerley,* 397 S.C. 461, 725 S.E.2d 142 (2012)(Forensic interviewer testifying that "both interviews that I conducted with her, I found them to be compelling for sexual abuse," was inadmissible), *State v. Kromah,* 401 S.C. 340, 737 S.E.2d 490 (2013)(The forensic interviewer stating that victim had given a

"compelling finding" of child abuse was inadmissible but harmless),*Gilchrist v. State,* 350 S.C. 221, 565 S.E.2d 281 (2002))(Solicitor improperly vouched witness's credibility in opening statement.) In each of these cases there were statements of improper bolstering. A witness relaying to the jury that a person was truthful or showed signs of abuse. Investigator Clarke never relayed his personal opinion as to the defense raised by the Appellant, or the truth of Mr. Stone's testimony. He just gave a statement about what he heard during the investigation.

A witness may not give an opinion for the purpose of conveying to the jury – directly or indirectly – that she believes the victim. *Briggs v. State,* 421 S.C. at 324, 806 S.E.2d at 718. Improper bolstering is "testimony that indicates the witness believes the victim but does not serve some other valid purpose." *Id.* at 325, 806 S.E.2d at 718. The jury could not determine the opinion of investigator Clarke just by these statements, so no improper bolstering exist.

Within his brief Appellant relies on this court's recent decision of *Chappell v. State,* 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019). Within *Chappell* this court outlines the elements that reveals if a witness is improperly bolstering a witness. This court decided that the testimony of a witness is improper bolstering if: 1) the witness directly states an opinion about the victim's credibility; 2) the sole purpose of the testimony is to convey the witness's opinion about the victim's credibility; or 3) there is no way to interpret the testimony other than to mean the witness believes the victim is telling the truth. *Chappell,* 429 S.C. at 77, 837 S.E.2d at 501. In looking at the *Chappell* criteria this court should not find that the testimony of investigator Clarke can be considered improper bolstering.

Investigator Clarke was asked if the testimony of Mr. Stone was identical now than what was told to him during his investigation. First, Investigator Clarke never gave any opinion regarding the truth of the statements made by Mr. Stone. He just said that the statement was

"absolutely consistent" to what was told to him when he interviewed him prior to trial. He never relayed to the jury any opinion regarding any belief that his testimony was the truth or that it should be believed. Second, this was not the sole purpose of Investigator Clarke's testimony. He is the lead investigator in this case. He testified not only about witness statements that was given to him in order for him to find probable cause to obtain arrest warrants, but he also testified about what he saw in terms of forensic evidence when he arrived at the scene. He also was able to testify regarding contact made with the Appellant prior to his turning himself in, and Appellant's statements once he arrived at the sheriff's department. Third, there was plenty of ways to interpret the statements of Investigator Clarke regarding the testimony of Mr. Stone other than believing he was bolstering his testimony. Investigator Clarke just said that his testimony was consistent. He never stated that it was the truth or that everything he said must be believed. There was no bolstering in the statement of Investigator Clarke. So this case should not be reversed based on these grounds.

If there exist any error regarding the testimony of Investigator Clarke it must be considered harmless. In *State v. Young,* 420 S.C. 608, 803 S.E.2d 888 (2017) this court defined the harmless error doctrine. In *Young* this court decided:

> The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.

Young, 420 S.C. at 628, 803 S.E.2d at 899, *quoting, Deleware v. VanArsdall,* 475 U.S. 673, 106 S.Ct. 1431 (1986).

Error is harmless only when it could not reasonably have affected result of trial. *State v. Charping,* 313 S.C. 147, 437 S.E.2d 88 (1993). Investigator Clarke's testimony alone did not

affect the outcome of this trial. There was sufficient evidence including eyewitness testimony and forensic evidence proving that the Appellant was guilty beyond a reasonable doubt.

The Appellant got into a fight against Mr. Lewis and according to testimony presented to be the aggressor. Even though he was beaten by Mr. Lewis he refused to continue to stop coming after him. (Tr. p. 190 lines 19-22) The fight was finally broken up and Mr. Stone took Mr. Lewis outside to cool off. At that time the owner testified that she told Appellant to leave. There was testimony that the Appellant not only failed to follow her instructions but stated, "I'm gonna kill somebody tonight" and proceeded to go onto the deck with the intent of attacking the victim. He proceeded to go after both men with a knife, killing one and injuring the other. This totally reveals a malicious act with a depraved heart bent on mischief. This act was absent any mistake or reason. Everyone testified that Mr. Lewis was the sole person involved in the fight with the Appellant, and when the fight ended he attacked the victim. This was an act of malice, a total disregard of human life. When a person commits an act like this he must expect some type of punishment. There was obviously sufficient evidence revealing that he was the aggressor, that there was not a group of men attacking him but a fight between two men that after it ended the Appellant followed these men outside with the sole intent to kill. This was an intentional attack and not one of Appellant defending himself. Deborah Culler and her daughter Reeshemah testified that the Appellant was the person that kept coming after Mr. Lewis, and Mr. Stone testified that once outside the Appellant came to them making them think that it was over and he wanted to make peace, then attacked both men with a knife. Reeshemah looked through the door during the attack and testified that she saw Appellant stabbing Mr. Lewis multiple times and then once lying on the floor fighting for his life the Appellant pulled the knife out of his body. This reveals no mistake or accident and definitely reveals malice.

The Appellant is the only person who testified that a group of men attacked him. However, all of the physical evidence corroborated the testimony of each witness. He stated that he stabbed Mr. Lewis on the dance floor, however, all of the blood evidence was on the deck where according to all of the witnesses is where the fight occurred. Investigator Yvonne Woods was crime scene investigator who testified that she did a walk-through of the premises and put markers down everywhere blood was found. (Tr. p. 368 lines 4-8) She found reddish-brown stains on the back deck. (Tr. p. 364 lines 14-15) Dr. Gary Amick an expert on DNA analysis testified that all of the blood swabs investigator Woods took at the crime scene matched the DNA of the victim Mr. Lewis. (Tr. p. 364 lines 14-15)

There were sufficient testimony and forensics that corroborated this testimony to find the Appellant guilty of murder and attempted murder. Investigator Clarke statements regarding the opening statements and testimony of Mr. Stone had no effect on the final outcome. This is due to the fact all of the eyewitness testimony were basically the identical facts. Which was matched by the forensic evidence collected. So if there exist any error by the few statements made by investigator Clark it is completely harmless. It had no effect on the final outcome due to the all of the evidence that was presented proving the Appellant's guilt beyond a reasonable doubt.

CONCLUSION

The trial court made the proper decisions regarding this matter the Respondent respectfully request this court to affirm the decision of the trial court.

Respectfully submitted,

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Columbia, South Carolina
March 19, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

ROBERT XAVIER GETER,.....APPELLANT.

CERTIFICATE OF SERVICE

I, Tommy Evans, Jr., counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, and addressed to his attorney of record: Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

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

This 19th day of March, 2020.

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ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

March 19, 2020

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

Re: *The State v. Robert Xavier Geter*
Appeal from Richland County
Appellate Case No. 2018-001647

Dear Ms. Kitchings:

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

Thank you for your assistance in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant Attorney General

TE/dmd
Enclosures
cc: Robert M. Dudek, Esq. (w/two copies of encls.)
The Honorable Byron E. Gipson, Solicitor, 13th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)