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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal From Sumter County  
Hon. Howard P. King, Circuit Court Judge  
Appellate Case Tracking No. 2021-001493  
\_\_\_\_\_

The State,

Petitioner,

v.

James Caleb Williams,

Respondent.

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**  
\_\_\_\_\_

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TABLE OF CONTENTS

CERTIFICATION OF COUNSEL..... 1

STATEMENT OF QUESTIONS PRESENTED..... 1

STATEMENT OF THE CASE..... 2

ARGUMENT..... 8

    I. The Court of Appeals erred in reversing Williams’ convictions for attempted murder and possession of a weapon during the commission of a violent crime finding the trial court should have granted a directed verdict because transferred intent does not apply to this charge of attempted murder. The Court erred in finding any issue related to transferred intent preserved for review on appeal. Additionally, transferred intent can apply to a charge of attempted murder and this Court should grant certiorari to make that determination. Finally, the Court of Appeals committed clear legal error in finding directed verdict should be granted because Williams was acquitted of the attempted murder of Myers when an acquittal on one charge is entirely irrelevant to a determination of whether a judge properly denied a motion for directed verdict and allowed a charge to go forward to the jury. .... 8

CONCLUSION..... 20

## **CERTIFICATION OF COUNSEL**

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on July 29, 2021. The Petition for Rehearing was denied by Order filed November 18, 2021.

## **STATEMENT OF QUESTIONS PRESENTED**

I. A majority of the Court of Appeals erred in reversing Williams' convictions for attempted murder and possession of a weapon during the commission of a violent crime finding the trial court should have granted a directed verdict because transferred intent does not apply to this charge of attempted murder. The Court erred in finding any issue related to transferred intent preserved for review on appeal. Additionally, transferred intent can apply to a charge of attempted murder and this Court should grant certiorari to make that determination. Finally, the Court of Appeals committed clear legal error in finding directed verdict should be granted because Williams was acquitted of the attempted murder of Myers when an acquittal on one charge is entirely irrelevant to a determination of whether a judge properly denied a motion for directed verdict and allowed a charge to go forward to the jury.

## STATEMENT OF THE CASE

### **Procedural History**

On March 17, 2016, the Sumter County Grand Jury indicted Williams for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. On July 17–19, 2017 Williams proceeded to a jury trial before the Honorable Howard King. The jury found Williams guilty of one count of attempted murder and possession of a weapon during the commission a violent crime but acquitted him of the remaining charge. The trial judge sentenced to fifteen years' incarceration, suspended upon the service of ten years' imprisonment and five years' probation.

After briefing and oral argument, two judges of the Court of Appeals issued an opinion reversing Williams' convictions and sentences finding an issue related to transferred intent was preserved, transferred intent could not apply to attempted murder, and because Williams was acquitted of the attempted murder of one victim directed verdict had to be granted as to the other. Judge Huff issued a dissent in which he found the issue not properly preserved for review on appeal, found evidence existed which warranted sending the charge to the jury, and found transferred intent can apply to an attempted murder charge. The State served and filed a Petition for Rehearing, which was denied.

### **Factual Background**

#### **The State's Evidence**

On May 2, 2015, fifteen-year-old Ashley R. (Victim) attended a teenager-friendly party at Club Cream in Sumter County. Around 2:00 a.m., she exited the club and was walking to a car in the parking lot when she heard people say "fight, gun, shooting." Victim then heard

gunshots. As she looked around, she noticed Malik Myers return gunfire after the unknown gunman fired his first two or three shots. Around the time she heard a fifth gunshot, Victim felt a bullet enter her leg. She started to flee and blacked out. When she woke, she discovered club security and another man had placed her in the club until medical help arrived. Victim was taken to the hospital and the bullet was removed from her leg. Victim described Myers to investigating officers and told them he was one of the men involved in the shooting. A few days later, Myers contacted Victim and apologized for the shooting. (R.p.68, line 7–R.p.88, line 21).

Chelsea Rogers, Myers' then-girlfriend, was also at Club Cream the night of the shooting. Rogers exited the club with Myers following behind her. As she got to her vehicle, she heard a gunshot erupt from a nearby grassy area. At the moment, she saw Myers and observed he was not holding a gun. He ran away from the gunfire but towards a nearby group of his friends. Shortly thereafter, she heard several gunshots erupt from the area to which Myers ran. (R.p.36, line 24–R.p.53, line 18).

Myers, who pled guilty to assault and battery of a high and aggravated nature (ABHAN) for his actions in that night's shooting, also testified. He admitted he submitted a written statement to police on May 4, 2015, in which he described the events of that night. According to Myers, he had a longstanding feud with Williams. When he ran into Williams that night, the latter made gun gestures with his hands, implying he was going to shoot Myers. As Myers left the club, he retrieved his gun, a .38 revolver, from his friend because he expected "anything" could happen. After hearing the initial gunfire and realizing Williams was the culprit shooting at him, Myers returned fire, emptying all six rounds of his revolver. Myers claimed five of his bullets hit the car Williams was using at the time. A friend drove Myers to the hospital where he

received treatment for a gunshot wound to his leg. Myers noted a girl, later identified as Victim, was shot by Williams. (R.p.54, line 3–R.p.66, line 23; R.pp.308–09).

Officer Joseph Jones with the Sumter Police Department was one of the first officers to arrive at scene of the shooting. A Springfield XD pistol and several shell casing were located in a grassy area near the club, which were photographed and marked for investigating detectives. Officer Jones noted officers did not find any revolver shell casings that night, but that was to be expected because revolvers do not discharge spent shell casings. Former Detective Jacob Mitchell collected evidence at the club that night, including the Springfield pistol and the spent bullet casings. (R.p.19, line 4–R.p.35, line 23; R.p.94, line 10–R.p.107, line 23).

Michelle Eichenmiller, a firearms examiner with SLED, analyzed the Springfield pistol and the other ballistics evidence collected by law enforcement. She determined: (1) the Springfield was a .40 gun manufactured by Smith and Wesson; (2) the Springfield pistol produced all the shell casings found at the scene of the crime; (3) the bullet found in Victim could have been fired by the Springfield pistol because it had similar markings and grooves to a test round fired by Eichenmiller, but the physical results of her testing were not clear enough that she could definitively claim it was; and (4) a .38 weapon could likely not have fired the bullet that hit Victim because the type of ammunition was too large for that caliber of weapon. (R.p.110, line 7–R.p.124, line 13).

Detective Nathalie Kelly, another officer with the Sumter Police Department, spoke with Williams after the time and received his written statement. In both his written statement and his conversation with her, Williams claimed: (1) he bumped into Myers in the club and knew a physical confrontation was going to occur; (2) both men were armed; (3) he fired his gun, but stated he fired the weapon into the back of his own vehicle so that it would “look like” he was

shooting at Myers; and (4) he threw his gun under a tree when he saw security. During his interview, he admitted to Detective Kelly the Springfield pistol recovered by police was the gun he used that night. Detective Kelly also testified she was the officer who received Myers' written statement, the same one presented during his trial testimony. (R.p.125, line 15–R.p.158, line 17; R.pp.306–09).

#### Williams' Evidence

Qawiyy McFadden, the person shot by Myers, testified he and another friend were hanging out with Williams the night of the incident. He claimed that when the shooting started, he was standing outside the vehicle and was hit in the ear by one of the first five shots fired, within the first ten seconds of the incident. He did not see Williams shooting, but admitted he did not see anyone who was shooting. (R.p.164, line 8–R.p.171, line 22).

Amanda Snap, a crime scene investigator with the Sumter Police Department, testified she searched and photographed Williams' vehicle a few weeks after the crime. She noted that five bullets hit the rear vehicle, all of which travelled diagonally downwards from a heightened position, entering around the roof line of the car. (R.p.172, line 12–R.p.177, line 6).

Williams' testimony largely corroborated the State's case. He admitted to attending the event at Club Cream that night and bumping into Myers, with whom he had a long-standing feud which originated in middle school. He knew something was "about to happen" with him and went to his vehicle upon exiting the club and retrieved his gun. He claimed Myers began shooting first and he responded by shooting into his own vehicle to make it appear as if he was shooting at Myers. When Williams saw a security guard approaching, he ran off and threw his Springfield pistol under a nearby tree. (R.p.178, line 6–R.p.186, line 24).

On cross-examination, Williams admitted all the shell casing found came from his weapon, and that he was not sure whether every shot he fired from his gun went into his car; he conceded he fired six bullets that night, at least one of those bullets did not enter the car, and that Myers used a revolver that night. Williams, for the first time, also claimed there was at least one additional shooter at the scene, despite making no assertions of such in his prior statements to police or during his direct examination. (R.p.187, line 12–R.p.209, line 16).

#### Directed Verdict Motion

After the State presented its case-in-chief, trial counsel moved for a directed verdict on all charges, claiming the State could not conclusively prove Williams shot Myers or Victim because neither witness testified, with certainty, as to who shot them nor did the ballistics evidence guaranty Williams' gun fired the bullet which hit Victim. His motion focused solely on identity and did not reference in any way a specific intent to kill or any other elements of attempted murder. In response, the State argued: (1) Williams admitted to carrying and using his gun that night; (2) multiple witnesses testified Williams was the initial shooter; (3) in his statement to police, Williams admitted there was bad blood between him and Myers; (4) Williams' decision to arm himself after his confrontation in the club with Myers showed malice aforethought; the evidence showed the bullet which hit Victim likely came from Williams gun and most likely could not have been fired by Myers' weapon; and (5) Williams' intent to kill Myers transferred to Victim. The trial judge denied the motion, finding "competent" evidence in the record, consisting of both direct and circumstantial evidence, that: (1) Williams fired first, and (2) Williams intended to kill Myers. He further found Williams' intent to kill Myers transferred to Victim. (R.p.159, line 22–R.p.162, line 13). Counsel for Williams said nothing in response to the mention of transferred intent as a means of establishing specific intent to kill.

At the close of the defense's case, trial counsel renewed his motion for a directed verdict based on the same arguments presented. Again, the trial judge denied the motion because there was ample evidence in the record from which a jury could find Williams' guilt. (R.p.212, line 11-R.p.213, line 3).

## ARGUMENT

I. The Court of Appeals erred in reversing Williams' convictions for attempted murder and possession of a weapon during the commission of a violent crime finding the trial court should have granted a directed verdict because transferred intent does not apply to this charge of attempted murder. The Court erred in finding any issue related to transferred intent preserved for review on appeal. Additionally, transferred intent can apply to a charge of attempted murder and this Court should grant certiorari to make that determination. Finally, the Court of Appeals committed clear legal error in finding directed verdict should be granted because Williams was acquitted of the attempted murder of Myers when an acquittal on one charge is entirely irrelevant to a determination of whether a judge properly denied a motion for directed verdict and allowed a charge to go forward to the jury.

### Reason for Granting Certiorari

According to the South Carolina Appellate Court Rules, though not controlling, certain criteria indicate whether certiorari will be considered. Of the five reasons listed the first two apply in the present case. A novel question of law exists and there exists a dissent in the decision of the Court of Appeals. See Rule 242(b), SCACR.

The issue of transferred intent as it applies to attempted murder has been before the Court of Appeals on numerous occasions with different outcomes. State v. Williams, 422 S.C. 525, 812 S.E.2d 917 (Ct. App. 2018)(transferred intent doctrine could be applied to attempted murder of intended and unintended victims, even though no victim was injured); State v. Smith, 425 S.C. 20, 819 S.E.2d 187 (Ct. App. 2018)(defendant's intentional use of deadly force firing a pistol at rival gang members which resulted in injury to an unintended victim supported defendant's conviction for attempted murder); State v. Williams, 2021 WL 2944778 (Ct. App. 2021)(this case finding doctrine of transferred intent inapplicable to this charge of attempted murder); State v. Geter, 2021 WL 3641733 (Ct. App. 2021)(doctrine of transferred intent was inapplicable to attempted murder); and State v. Bessellieu, 2021 WL 5355632 (Ct. App. 2021)(the evidence

overwhelmingly supports convictions for four counts of attempted murder and any error in charging transferred intent was harmless).

There have been previous cases presented before this Court but this issue has yet to be addressed.<sup>1</sup> Petitioner submits that a failure to address this issue continues to result in lower courts applying varying opinions as to how transferred intent should be applied to attempted murder; thereby, leading to more confusion as to the law regarding this issue. This is a matter that should no longer be left to the lower court's interpretation and should be addressed by this Court.

### **Consideration of the Merits of Court of Appeals Opinion**

The majority of the Court of Appeals erred in even addressing the issue of transferred intent when it was never raised to the trial court and never presented as a basis for the grant of a directed verdict motion. Additionally, the majority erred in finding transferred intent cannot and should not apply in attempted murder. Finally, the majority erred in relying on Williams' acquittal of charges related to a second victim as a basis for reversing the denial of a motion for directed verdict.

### **Preservation**

Initially, this Court should find the Court of Appeals erred in addressing any issue related to transferred intent when it was never raised to the trial court as a basis for the grant of the motion for directed verdict and the sole basis provided related to the identity of the shooter and not whether a specific intent to kill existed.

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<sup>1</sup> State v. Williams, 427 S.C. 148, 829 S.E.2d 702 (2019) (“we vacate the portion of the opinion dealing with issue of transferred intent and save for another day the determination of whether the doctrine applies to attempted murder.”); State v. Smith, 430 S.C. 226, 845 S.E.2d 495 (2020) n.9 (“We need not address this issue because the prior issue are dispositive.”)

As noted by the dissent, the only issue preserved on appeal is whether the trial court erred in denying Williams' motion for directed verdict as related to his charge of attempted murder of Ashley R. When making his directed verdict motion, trial counsel argued "[he] certainly d[id]n't think the [S]tate had met its burden beyond a reasonable doubt" because both Myers and Ashley R. could not say "conclusively" who shot them. (R.p.159, line 20–R.p.160, line 11). The State responded by explaining there was "strong evidence" the bullet which hit Ashley R. was fired from Williams' gun and added the State was proceeding under the theory of transferred intent in regard to the attempted murder charge for Ashley R. (R.p.160, line 12–R.p.161, line 6). The trial judge acknowledged this was the State's theory of the case and Williams failed to contest the applicability of transferred intent to that charge. (R.p.161, line 7–R.p.163, line 2).

At no time during the motion, or more specifically after the State and trial judge mentioned transferred intent, did Williams raise any issue regarding the failure to establish a specific intent to kill because transferred intent cannot apply. As a matter of fact, he never suggested to the trial court that transferred intent could not apply in this case or that it should not be considered in this case.

The majority of the Court of Appeals improperly ignored the clear preservation issues presented by the Record before it. Although the majority opinion acknowledges Williams failed to argue the impropriety of transferred intent at trial, it brushes the issue aside by noting the State did not raise the issue of preservation in its brief and this omission by the State somehow implies the "obscurity" of the issue. (*citing Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332–33, 730 S.E.2d 282, 287 (2012))("When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indicator to the court of the obscurity of

the purported procedural flaw.”)(Toal, C.J., concurring in result in part and dissenting in part)). In Lewis, then-Chief Justice Toal observed this finding was based on two aspects of the case: (1) her belief the majority “scour[ed] the records before [it]” for the purpose of finding a preservation issue; and (2) “the question of preservation [was] subject to multiple interpretations,” and in such a situation “doubt should be resolved in favor of preservation.” However, this issue is not one of obscurity: as noted above, Williams never challenged the doctrine of transferred intent at trial. Because the trial judge was never given any facts, law, or even arguments challenging the propriety of transferred intent to his case, the issue was waived. See State v. Porter, 389 S.C. 27, 37–38, 698 S.E.2d 237, 242. (Ct. App. 2010). As noted by the majority in Lewis, “While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our **longstanding precedent** and resolve the issue on preservation grounds when it clearly is unpreserved.” Lewis, 398 S.C. at 330, 730 S.E.2d at 285 (emphasis added).

As the dissent correctly noted:

“The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal.” State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010). “Imposing this preservation requirement is meant to enable the trial court to rule properly after it has considered all the relevant facts, law, and arguments.” Id. at 38, 698 S.E.2d at 242. An appellate court is limited by appellate rules that allow the court to consider only the precise question that was before the trial court and ruled upon by the court. State v. Whitten, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007). “[E]rror preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court.” Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). “Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Id. (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood

Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)).

State v. Williams, Op. No. 5835 (Filed July 14, 2021)(Huff, J., dissenting). This Court should agree with the well-reasoned and correct opinion of Judge Huff, grant the petition for writ of certiorari, and find any issue related to transferred intent is not preserved for review on appeal.

### **Merits**

The majority of the Court of Appeals erred in finding the trial judge should have granted Williams' motion for a directed verdict as to the attempted murder of the victim. This Court should grant the petition for writ of certiorari, find transferred or concurrent intent can apply to an attempted murder charge, and find the trial court in this case properly denied the motion for directed verdict.

First and foremost, the issue raised in Williams' directed verdict motion was whether the State established the identity of the shooter, not the intended victim. The State notes that it is undisputed in the record that Williams was armed and fired at least six bullets from his gun during the incident. Williams himself admitted such in his written statement to police and during his trial testimony. The only questions at trial were who initiated the attack, whether Williams intended to murder Myers, and whether Williams was the individual who shot Victim. The State presented a combination of direct and circumstantial evidence answering each of these questions in the affirmative.

Victim, Rogers, and Myers all testified Myers did not initiate the shooting and only fired his own weapon after hearing several gunshots. Myers identified Williams as the shooter and claimed the latter acted in response to a longstanding feud confirmed by Williams. Further, Williams' threatened Myers via hand gesture—forming his hand into a gun and “firing” it at Myers—and did, in fact, shoot Myers shortly thereafter. These testimonies, along with Myers'

written statements to police, were direct evidence that Williams initiated the shooting and intended to murder Myers that night. See State v. Copeland, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982) (stating a prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination).

Further, there is substantial circumstantial evidence indicating Williams, not Myers, was the individual who shot Victim. Victim, who saw Myers during the exchange of gunfire, did not see him fire in her direction. Further, McFadden, who was next to Williams' vehicle and not near Victim, testified he was hit in the ear by one of the shots fired from the "front" of the vehicle, which were from Myers' gun. Most importantly, Eichenmiller testified: (1) the ballistics evidence indicated the bullet which hit Victim had characteristics matching other bullets fired from Williams' Springfield pistol; and (2) the bullet which hit Victim most likely could not have been fired by Myers' weapon because it was too large for Myers' .38 caliber gun. Considered in tandem, this evidence indicates Williams, not Myers', was the shooter who injured Victim.

Additionally, there is evidence Williams intended to kill the victim in this case. Williams created a "kill zone" with his firing numerous shots at multiple people. In doing so, the jury should be free to infer that he intended to kill anyone within that kill zone in an attempt to ensure his primary target was hit. See Ford v. State, 625 A.2d 984, 1001 (Md. 1993) ("The defendant has intentionally created a 'kill zone' to ensure the death of his primary victim, and the trier of fact may reasonably infer from the method employed an intent to kill others concurrent with the intent to kill the primary victim."). As the Supreme Court of California explained: "Where the means employed to commit the crime against a primary victim create a zone of harm around that victim, the factfinder can reasonably infer that the defendant intended that harm to all who are in the anticipated zone." People v. Bland, 48 P.3d 1107, 1118 (Cal. 2002).

The Court of Appeals of Maryland explained the analysis as follows:

The essential questions, therefore, become (1) whether a fact-finder could infer that the defendant intentionally escalated his mode of attack to such an extent that he or she created a “zone of harm,” and (2) whether the facts establish that the actual victim resided in that zone when he or she was injured.

Harrison v. State, 855 A.2d 1220, 1230–31 (Md. 2004); see also, State v. Hinton, 630 A.2d 593, 595-96; 600-02 (Conn. 1993) (the court found that although the evidence showed Williams only had a “beef” with one of the victims killed by the shotgun, the act of firing it into a crowd of people could be interpreted as evidence that Hinton attempted to kill Diaz).

A similar case can be found in Hunt v. United States, 729 A.2d 322, 326 (D.C. 1999). The defendant fired multiple “quick fire” shots trying to hit his intended victim, Hayden, who was seated in a vehicle. Instead, he hit Gilchrist, a bystander standing beside the vehicle in which Hayden sat. The Court explained: “Hunt created a ‘kill zone’ that ensnared Gilchrist, and a jury could reasonably infer an intent to kill Gilchrist concurrent with the intent to kill Hayden.” Id.

In the instant case, even if the victim was not Williams’ primary target, she was clearly within the kill zone he created, and the jury should be given the chance to determine from the evidence presented whether Williams had a specific intent to kill only the primary victim or any victim within the kill zone.

In finding transferred intent should not apply, the majority erred in finding this Court’s opinions in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), Gerald Williams II, and Smith II indicate the doctrine of transferred intent is inapplicable to the attempted murder charge for Ashley R. In Gerald Williams I and Smith I, the Court of Appeals found the doctrine of transferred intent applies to attempted murder. Gerald Williams I, specifically, reached this

conclusion by viewing the long-established precedent of transferred intent explained in State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), which itself explains South Carolina law views a defendant’s mental state as never leaving his brain: instead, it “is like a spotlight emanating from its source—the defendant’s mind—to its target—the intended victim.” Fennell, 340 S.C. at 271, 531 S.E.2d at 515. Nothing in Gerald Williams II or Smith II repudiates this analysis or states transferred intent is inapplicable to the crime attempted murder. In both cases, this Court declined to address the issue in its opinions.

While in King, this Court required the State prove Petitioner maintained a specific intent to kill, it did not require a specific intent to kill the ultimate victim. The State was required to prove Williams acted with the intent to commit an act that would have the natural and probable consequence of another person being killed. Williams demonstrated his specific intent to kill by pulling the trigger of a loaded gun numerous times at multiple people. His actions clearly indicate an intent to kill “another person,” and the pulling of the trigger is certainly the overt act taking a step towards fulfilling that intent. As a result, he is guilty of the crime of attempted murder as set forth by section 16-3-29 and defined by this Court in King. See e.g., People v. Stone, 205 P.3d 272, 274 (Cal. 2009) (“Can a person who shoots into a group of people, intending to kill one of the group, but not knowing or caring which one, be convicted of attempted murder? Yes. The mental state required for attempted murder is the intent to kill a human being, not a *particular* human being.”) (italics in original); Commonwealth v. Palmer, 192 A.3d 85, 98–99 (Pa. Super. 2018) (“It does not matter whether Petitioner’s intent was generalized or specific with respect to his **target**. It matters only that he had a specific intent to inflict serious bodily injury upon someone.”) (bold in original).

Even if transferred intent is required, it should be applied in this case and in any attempted murder case. In State v. Fennell, the South Carolina Supreme Court cited with approval the case of Ochoa v. State, 981 P.2d 1201 (Nev.1999) and its rationale. State v. Fennell, 340 S.C. 266, 276, 531 S.E.2d 512, 517-518 (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.”). 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 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. Williams clearly intended to kill one person, created a kill zone which incorporated another, and ultimately shot a possibly unintended victim. The appropriate charge in this case, as in Ochoa, was attempted murder whether based on concurrent intent or transferred intent.

This Court should grant the Petition for Writ of Certiorari to review the Court of Appeals decision and determine, consistent with Fennell and Ochoa, that transferred intent or concurrent intent, to the extent even necessary, can apply to an attempted murder charge.

## Effect of Acquittal

The majority also seems to suggest that because Williams was acquitted of an attempted murder charge as it relates to one victim, the directed verdict as to the other should have been granted. The majority misunderstands the effect of an acquittal and this Court's long-standing case law that it is not dispositive because it is not a finding of innocence but instead a finding the State failed its burden of proof.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). “[I]f there is **any direct** or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (emphasis added). A jury's later evaluation of the facts has **no** bearing on whether a trial judge abused her discretion in denying a defendant's motion for a directed verdict: a trial judge properly submits a case to a jury when there is any direct or substantial circumstantial evidence justifying submission. As explained by the United States Supreme Court:

[A] criminal defendant already is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts. This review should not be confused with the problems caused by inconsistent verdicts. Sufficiency-of-the evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt. This review should be independent of the jury's determination that evidence on another count was insufficient. The Government must convince the jury with its proof, and must also satisfy the courts that given this proof the jury could rationally have reached a verdict of guilty beyond a reasonable doubt. We do not believe that further safeguards against jury irrationality are necessary.

United States v. Powell, 469 U.S. 57, 67 (1984) (citations omitted). Importantly, South Carolina courts have explicitly adopted the rationale of Powell and rejected the prohibition against inconsistent verdicts. See State v. Alexander, 303 S.C. 377, 382–83, 401 S.E.2d 146,149–50.

Juries may at times acquit defendants of at least some portion of their charged crimes, and their reasons for doing so—assuming they are even legitimate considerations—are not revealed in any way by a general verdict of guilty or not guilty. The appellate courts long ago recognized that an acquittal at trial did not equal innocent of the charges. In State v. Houston, 17 S.C.L. 300 (S.C. App. L. & Eq. 1829), the defendant was acquitted of a related charge to be used as evidence against him in a subsequent trial. The Court noted the acquittal could have been from a variety of sources including lack of sufficient witnesses and explained: “It does not follow, that because a man is acquitted, he is innocent: the legal consequence is, that he cannot be tried again. But still he may have been guilty, and this guilt may be shewn in a collateral matter.” Id. at 303.

Acquittal on criminal charges does not prove that a defendant is innocent, only that the factfinder found the defendant not guilty of the charged crime in a legal—not necessarily factual—sense. United States v. Watts, 519 U.S. 148, 155 (1997). Thus, an acquittal on the attempted murder charge related to Myers cannot be interpreted as it finding Williams innocent on the charge. In fact, as noted by the dissent, the jury’s acquittal of the attempted murder of Myers but conviction for the attempted murder of Ashley R. can readily be reconciled. As explained by the dissent:

. . . [I]t is understandable that the jury did not appreciate this nuance, especially given the fact that (1) Myers discouraged the jury from holding Williams responsible for shooting him; (2) the defense introduced evidence there was a third shooter present; (3) the State presented evidence the bullet that struck Ashley R. could have been fired from the gun used by Williams that night but presented no evidence concerning the bullet that struck Myers; (4) the defense

argued to the jury that five of the six bullets shot by Williams hit Williams's car and it would have had to have been a "magic bullet" to have hit both Ashley R. and Myers, implying to the jury that Williams could not be guilty of shooting both of them; and (5) the jury was implicitly instructed a permissible verdict included one in which Williams could be found guilty on either count of attempted murder without being found guilty on the other.

The State cannot emphasize these points enough: based on the evidence, arguments, and instructions provided to the jury, it believed it could find Williams guilty of Ashley R.'s attempted murder independent of the charge pertaining to Myers. At no point did Williams challenge the trial judge's instructions or argue the verdicts were inconsistent. Thus, it is inappropriate to reverse Williams' conviction based on the inconsistency perceived by the majority. See Powell, 469 U.S. at 67; Alexander, 303 S.C. at 382–83, 401 S.E.2d at 149–50.

Accordingly, the State submits this Court should grant the Petition for Writ of Certiorari because, at least in part, the majority erred by looking to Williams' subsequent acquittal on other charges as a basis for granting a directed verdict on the attempted murder charge related to the victim for which he was convicted.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals, determine any issue related to transferred intent was not preserved for review on appeal, find transferred intent or concurrent intent would apply in this attempted murder case, and find the majority of the Court of Appeals erred in looking to an acquittal on a related charge as evidentiary support for the grant of a directed verdict.

Respectfully submitted,

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January 10, 2022